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#

February 27, 2025	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. Presentation of the Employee of the Year nominees and recognition of the Employee of The Year, the City Impact Award, and the City Leadership Award recipients.

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. 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.
c. Texas A&M University System v. BVGCD, et al, Cause No. 24-002626-CV-472, in the 472nd District Court, Brazos County.

4.2. **Real Estate {Gov't Code Section 551.072}**;
Possible action. The City Council may deliberate the purchase, exchange, lease or value of real property if deliberation in an open meeting would have a detrimental effect on the position of the City in negotiations with a third person. After executive session discussion, any final action or vote taken will be in public. The following subject(s) may be discussed:

a. Approximately 28 acres of land generally located at Midtown Drive and Corporate Pkwy in the Midtown Business Park.
b. Approximately 8 acres of land located at 1508 Harvey Road.
c. 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. Council Self Evaluation

4.4. **Competitive Matters {Gov't Code Section 551.086);**
Possible action. The City Council may deliberate, vote, or take final action on a competitive matter as that term is defined in Gov't Code Section 552.133 in closed session. The following is a general representation of the subject matter to be considered:
a. Power Supply

4.5. **Economic Incentive Negotiations {Gov't Code Section 551.087};**
Possible action. The City Council may deliberate on commercial or financial information that the City Council has received from a business prospect that the City Council seeks to have locate, stay or expand in or near the city which the City Council in conducting economic development negotiations may deliberate on an offer of financial or other incentives for a business prospect. After executive session discussion, any final action or vote taken will be in public. The following subject(s) maybe discussed:
a. Economic development agreement for a development generally located at the intersection of University Drive East and Tarrow Street.
b. Economic development agreement for a development generally located at the intersection of University Drive and College Avenue.
c. Economic development agreement with Fujifilm Diosynth Biotechnologies Texas, LLC, f/k/a Kalon Biotherapeutics LLC.
d. Economic development agreement for a development generally located at the intersection of Raymond Stotzer Parkway and State Highway 47.

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:
• February 13, 2025 Council Meeting
Sponsors: Tanya Smith
Attachments: 1. CCM021325 DRAFT Minutes

8.2. Presentation, discussion, and possible action on the second reading of an ordinance renewing a non-exclusive natural gas franchise to Atmos Energy Corporation Mid-Tex Division.
Sponsors: Ross Brady
Attachments: 1. College Station 2025 Atmos Energy Mid-Tex Franchise Ord Final v12-10-2024

8.3. Presentation, discussion, and possible action on approving annual purchases of auto parts, shop equipment and services from NAPA Auto Parts (College Station, TX) through the Purchasing Solutions Alliance in the annual not-to-exceed amount of $180,000.
Sponsors: Mary Ellen Leonard
Attachments: 1. NAPA Award

8.4. Presentation, discussion, and possible action on approving an annual blanket purchase order for repair parts and repair labor from Siddons-Martin Emergency Group through the BuyBoard in the annual not-to-exceed amount of $250,000.
Sponsors: Mary Ellen Leonard
Attachments: 1. Siddons Martin Emergency Group, LLC

8.5. Presentation, discussion, and possible action on approving annual tire purchases and retread services from Southern Tire Mart, LLC through the BuyBoard in the annual not-to-exceed amount of $310,000.
Sponsors: Mary Ellen Leonard
Attachments: 1. Southern Tire Mart LLC

8.6. Presentation, discussion, and possible action on annual price agreements for various Electric Warehouse inventory items with KBS Electrical (KBS) for $508,287.00, and Techline, Inc (Techline) for $1,383,562.50 for a total not-to-exceed amount of $1,891,849.50.
Sponsors: Timothy Crabb
Attachments: 1. 25-034 AWARD BID TABULATION

8.7. Presentation, discussion, and possible action approving a purchase order for the acquisition of a data analytics consultant from ThirdLine Inc., LLC for a not-to-exceed contract in the amount of $124,910.

Sponsors: Ty Elliott
Attachments: 1. ThirdLine_Data Analytics_25300285 ADc (CC 2.27.25)

8.8. Presentation, discussion, and possible action on an emergency construction contract with Larry Young Paving, Inc. in the amount of $486,977.44 plus the City's contingency in the amount of $48,697.74 for a total appropriation of $535,675.18 for emergency repairs to culverts under Holleman Drive. Approval of this item grants authority for the City Manager to authorize expenditures up to the City's contingency amount.
Sponsors: Emily Fisher
Attachments: 1. Holleman Drive Culverts Vendor Signed Contract

8.9. Presentation, discussion, and possible action on a contract with Baktown, LLC dba Still Creek Mechanical in the amount of $121,200 for the Fire Station 6 HVAC Replacement Project.
Sponsors: Jennifer Cain
Attachments: 1. Fire Station #6 HVAC Vendor Signed Contract

8.10. Presentation, discussion, and possible action on a Construction Manager at Risk (CMAR) Contract with Skanska USA Building, Inc., for the Texas Independence Park Development Project. The anticipated budget for this project is $20,000,000.
Sponsors: Jennifer Cain
Attachments: 1. Texas Independence Park Bid Tab
2. Texas Independence Park Map
3. Texas Independence Park CMAR Vendor Signed Contract

8.11. Presentation, discussion, and possible action and discussion regarding an interlocal agreement with Texas A&M University to provide fire protection services from the College Station Fire Department to the Texas A&M campus.
Sponsors: Richard Mann
Attachments: 1. TAMU Fire ILA 2025

9. Workshop Agenda.

9.1. Presentation, discussion, and possible action regarding an update of the over occupancy enforcement.
Sponsors: Debbie Eller
Attachments: None

9.2. Presentation, discussion, and possible action regarding an update on the Recreation Center Feasibility Study.
Sponsors: Jennifer Prochazka
Attachments: None

9.3. Presentation, discussion, and possible action regarding the first phase of the Convention Center Feasibility Study.
Sponsors: Jeremiah Cook
Attachments: None

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 boundaries from GS General Suburban to GS General Suburban and ROO

Restricted Occupancy Overlay on approximately 11.52 acres being 33 lots within Glenhaven Estates Phase 2 Subdivision, excluding Glenhaven Drive, Fernhaven Circle, Francis Circle, and Springhaven Circle, generally located between Brazoswood Drive and Summerglen Drive.

Sponsors: Jeff Howell

Attachments:
1. Glenhaven ROO Ordinance
2. Aerial and Small Area Map
3. Background Information
4. Rezoning Map
5. Future Land Use Map
6. Original Subdivision Plat
7. Applicant's Supporting Information
8. Petition Committee Members
9. Neighborhood Meeting Materials
10. Petition Signatures

10.2. Public Hearing, presentation, discussion, and possible action regarding an ordinance amending the Comprehensive Plan - Future Land Use & Character Map from Estate Residential to Neighborhood Commercial for approximately 3.60 acres at 3768 McCullough Road, generally located northeast of the intersection of Wellborn Road and McCullough Road.

Sponsors: Jeff Howell

Attachments:
1. Aerial and Small Area Map
2. Comprehensive Plan Exhibit
3. Background Information
4. Applicant’s Supporting Information
5. Comprehensive Plan Amendment Map
6. McCullough Ordinance

10.3. Public Hearing, presentation, discussion, and possible action regarding an ordinance amending Appendix A, Unified Development Ordinance, Article 4, "Zoning Districts,” Section 4.2 “Official Zoning Map,” of the Code of Ordinances of the City of College Station, Texas, by changing the zoning district boundaries from R-4 Multi-Family to GC General Commercial on approximately 2.3 acres generally located at 810 Southwest Parkway East.

Sponsors: Garrett Segraves

Attachments:
1. Southwest Crossing Ordinance
2. Aerial and Small Area Map
3. Existing Future Land Use
4. Rezoning Exhibit
5. Rezoning Map
6. Background Information
7. Applicant's Supporting Information

10.4. Public Hearing, presentation, discussion, and possible action regarding an ordinance vacating and abandoning a 0.124 acre tract, being all of Gilbert Street (a variable width right-of-way formerly known as Otto Street) located in the Richard Carter League Survey, Abstract 8, College Station, Brazos County, Texas, and being the tract further described as a portion of Lots 11 & 12 of D. A. Smith’s Subdivision shown on the plat filed in Volume 49, Page 105-106 of the Deed of Records of Brazos County, Texas, and conveyed to Joe Pasler in a Sheriff’s Deed recorded in Volume 81, Page 587 of the Deed Records of Brazos County, Texas.

Sponsors: Gillian Sitler

Attachments:
1. Gilbert St. Ordinance

2. Vicinity Map
3. Location Map
4. Applications

10.5. Presentation, discussion, and possible action regarding a recommendation on Planning & Zoning Commission appointments to the BioCorridor Board.
Sponsors: Tanya Smith, Anthony Armstrong
Attachments: None

10.6. Presentation, discussion, and possible action regarding the appointment of members to the Housing Action Plan Committee.
Sponsors: Tanya Smith
Attachments: None

10.7. Presentation, discussion, and possible action regarding the appointment of members to the Tourism Committee.
Sponsors: Tanya Smith
Attachments: None

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 February 21, 2025 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."

February 27, 2025
Item No. 8.1.
February 13th Meeting Minutes

Sponsor: Tanya Smith, City Secretary

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action of minutes for:
• February 13, 2025 Council Meeting

Relationship to Strategic Goals:

- Good Governance

Recommendation(s): Recommends Approval.

Summary: N/A

Budget & Financial Summary: None

Attachments:
1. CCM021325 DRAFT Minutes

MINUTES OF THE CITY COUNCIL MEETING
IN-PERSON WITH TELECONFERENCE PARTICIPATION
CITY OF COLLEGE STATION
FEBRUARY 13, 2025

STATE OF TEXAS §
§
COUNTY OF BRAZOS §

Present:
John Nichols, Mayor

Council:
Mark Smith
William Wright
David White
Melissa McIlhaney
Bob Yancy
Scott Shafer

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

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

With a quorum present, the meeting of the College Station City Council was called to order by Mayor Nichols via In-Person and Teleconference at 4:00 p.m. on February 13, 2025, in the Council Chambers of the City of College Station City Hall, 1101 Texas Avenue, College Station, Texas 77840.

2. Executive Session Agenda.

In accordance with the Texas Government Code §551.071-Consultation with Attorney, §551.072-Real Estate, §551.074-Personnel, and §551.087- Economic Incentive Negotiations and the College Station City Council convened into Executive Session at 4:00 p.m. on February 13, 2025, 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
- 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
- Texas A&M University System v. BVGCD, et al, Cause No. 24-002626-CV-472, in the 472nd District Court, Brazos County.

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 8 acres of land located at 1508 Harvey Road.
- Approximately 300 acres generally located at Corporate Parkway and Midtown Drive in the Midtown Business Park.

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

- Zoning Board of Adjustment
- City Manager
- 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:

- Economic development agreement for a development generally located at the intersection of University Drive East and Tarrow Street.
- Economic development agreement for a development generally located at the intersection of University Drive and College Avenue.
- Economic development agreement with Fujifilm Diosynth Biotechnologies Texas, LLC, f/k/a Kalon Biotherapeutics LLC.
- Economic development agreement for a development generally located at the intersection of Raymond Stotzer Parkway and State Highway 47.

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 6:40 p.m. No action was taken.

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

5. PRESENTATION - PROCLAMATIONS, AWARDS, AND RECOGNITIONS.

5.1. Presentation of a proclamation recognizing February 2025 as Black History Month.

Mayor Nichols presented a proclamation to Lisa Mouton, Mildred Davis, Felicia Benford, Natalyn Samuels, and Jennifer Ross Hasan with the BV Africa American Museum Board, Markeesha Watson with the Lincoln Center, and Barbara Moore with the City of College Station, proclaiming the month of February 2025 as Black History Month.

6. Hear Visitors Comments.

Shelby Behm, College Station, came before Council regarding the lack of growth in College Station Mid-Town. She is disappointed by the tax rate in the municipal management district in relation to what she feels were the promised commercial development and amenities.

Eddie Damanafshan, College Station, came before Council regarding the Mid-Town Reserve area and stated that he is disappointed in the lack of economic development and increasing tax rate in the municipal management district.

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.

(7.2), (7.3) and (7.4) were pulled for clarification.

(7.2) Jennifer Cain, Capital Projects Director, stated that the project is to develop Summit Crossing Park. This contract will include the installation of a 6' wide concrete walk around the pond, picnic area, pond overlook with railing, drainage culverts, sidewalk ramps to access Alamosa, and a pond aerator and all other related work required to complete the construction.

(7.3) Jennifer Cain, Capital Projects Director, stated that this project was procured using the Invitation to Bid (ITB) Method. Five proposals were received and reviewed and the proposal by Brazos Paving, Inc. was the lowest responsible bidder. Construction of a roundabout at the intersection of Holleman Drive West and Jones Butler. The work involves tacking on new asphalt and concrete to accommodate the roundabout layout while keeping the roadways open during construction. Also includes mill and overlay of existing asphalt pavement, adjustments to the existing storm sewer, and minor adjustments to the water and wastewater systems, installing TCP, SW3P, and all other related work required to complete the construction.

(7.4) Ross Brady, Chief of Staff, stated that this is the first reading of the ten-year renewal of a franchise agreement granting Atmos Energy Corporation, Mid-Tex Division a franchise to construct, maintain, and operate pipelines and equipment in College Station for the transportation, delivery, sale, and distribution of natural gas. This franchise was first granted to Atmos in 2004, when Atmos acquired the distribution and transmission assets of TXU Gas Company.

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

- **January 23, 2024 Council Meeting**

7.2. Presentation, discussion, and possible action on a construction contract with McDermott Construction, LLC for the development of Summit Crossing Park in the amount of $255,668.10, plus the City's contingency in the amount of $25,566.00 for a total appropriation of $281,234.10 for Summit Crossing Park Development. Approval of this item grants authority for the City Manager to authorize expenditures up to the City's contingency amount.

7.3. Presentation, discussion, and possible action on a construction contract with Brazos Paving, Inc. in the amount of $741,674.00, plus the City's contingency in the amount of $74,167.40 for a total appropriation of $815,841.40 for the Holleman Drive West and Jones Butler Roundabout. Approval of this item grants authority for the City Manager to authorize expenditures up to the City's contingency amount.

7.4. Presentation, discussion, and possible action on the first reading of an ordinance renewing a non-exclusive natural gas franchise to Atmos Energy Corporation Mid-Tex Division.

7.5. Presentation, discussion, and possible action regarding Resolution No. 02-13-25-7.5 establishing a City of College Station Council Legislative Engagement Committee.

7.6. Presentation, discussion, and possible action regarding the rejection of all bids relating to Bid No. 24-073 Purchase and Redevelopment of 301 Patricia Street.

7.7. Presentation, discussion, and possible action on Ordinance No. 2025-4573 providing for the imposition of a lien against an owner's property for delinquent municipal utility service bills, pursuant to Texas Local Government Code Sec. 552.0025(d).

MOTION: Upon a motion made by Councilmember Wright and a second by Councilmember McIlhaney, 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 regarding basic public purchasing policies, procedures and statutes.

Mary Ellen Leonard, Finance Director, provided an overview on the City's statutory requirements and policies and procedures for the expenditure of public funds with a local preference.

Municipal Gov't Purchasing Process

- Understand how local governments purchase goods and services
- Key laws and processes involved
- How local businesses and vendors can participate

Laws Governing Municipal Purchases

- GC 791, GC 2254 and GC 2269
- TX Local Gov't Code 252, 271.905 and 271.9051

Summary of LGC 271.905 and 271.9051

Contract Amt	Goods and Real Property	Services (Architect or Engineering or Surveyor)	Services (Other)	Construction Contracts
< $50,000	No preference	Not permitted	No preference	No preference
$50,001 to $99,999	5% of lowest bid	Not permitted	5% of lowest bid	5% of lowest bid
$100,000 to 499,999	5% of lowest bid	Not permitted	5% of lowest bid	No preference
> $500,000 and up	3% of lowest bid	Not permitted	No preference	No preference

Ethical Standards in Procurement

- Fairness & Transparency:
  - Public procurement must ensure no favoritism or conflicts of interest.
- Legal Compliance:
  - All purchases follow state laws and local policies.
  - Officials cannot accept gifts or bribes from vendors.
- Conflict of Interest Rules:
  - Officials must disclose personal relationships with vendors.
  - Strict regulations ensure equal opportunity for all bidders.

How Local Business Can Participate

- Purchases under $50,000:
  - 70.9% of businesses within the City are Retail / Restaurant / Grocery

    - P-Card and D-Card training for small purchases encourages local business use
- Register as a Vendor:
    - With Brazos Valley e-Market place portal on city website. Will get notifications of opportunities for not just College Station, but also the City of Bryan, BTU, Brazos County and San Jacinto River Authority.
    - Register as a vendor with Buy Board (cooperative purchasing group).
- Prepare Competitive Bids:
    - Read the bid requirements carefully.
    - Ensure pricing is competitive and meets all qualifications.
    - Attend Pre-Bid Meetings to understand project details and ask questions.
    - Submit On Time: Late submissions are automatically rejected.

8.2. Presentation, discussion, and possible action on an update from the College Station Police Department.

Billy Couch, Police Chief, provided an update on calendar year 2024 operations and activities for the College Station Police Department.

- Calls for Service Reactive v. Proactive
- Response Times
- Crime Statistics
- Arrest Data Residents vs Non-Residents
- Traffic Contact Analysis
- Crime Victim Services
- Air Operations
- Unit Profiles
- Drone Fleet Inventory
- Flight Missions
- Air Operations Video

Mayor Nichols opened up for Citizen Comments.

Brian Alg, College Station, came before Council to share his opinions about the death of Mark Hopkins, the police actions on that day, and transparency since the event.

Citizen Comments was closed.

8.3. Presentation, discussion, and possible action on an update from the College Station Fire Department.

Richard Mann, Fire Chief, provided an update on calendar year 2024 operations and activities for the College Station Fire Department.

- Call Volume Trends
- Areas of Service Delivery
- Fire & EMS Response Trend to ETJ
- Most Common Call Types
- Treatment & Transport
- Response Time Trends
- Ambulance Capacity
- New Response Model
- Fire Prevention Occupancy Inspections
- Community Outreach
- New Shift Schedule
- Fire Station 7
- Fire Vehicle Fleet
- Additional Revenue Opportunities

Mayor Nichols recessed Council Meeting at 9:36 p.m.

The Council Meeting reconvened at 9:42 p.m.

8.4. Presentation, discussion, and possible action on code compliance and utility issues in aging multifamily properties.

Debbie Eller, Community Services Director, reported that the information being presented relates to problems that have been seen and reported with older multi-family dwellings.

Rental Property Maintenance Issues

- Aging apartments (6 problem properties)
- Not limited to multi-family
- SeeClickFix usage for documenting concerns
- Referrals: TAMU & B-CS Apartment Association
- SCF Report: 2023 - 77
  2024 - 87
  2025 - 16

Challenges & Opportunities

- Lease terms
- Affordable rental units
- Tenant population
- Retaliation concern upon report
- Unfounded issues reported
- Identification of tenant caused problems (example: infestation)

Combined Totals for 2 Properties

- 1501 Holleman – Holleman Oaks Apartments
- 700 Dominik – The Dominik Apartments
  - 230 Total Summons from June 2022 - present
  - Fines paid on both properties - $20,668
  - Fines due: $28,385

Majority of Council directed staff to continue to work through the abetment processes to address issues or obtain compliance from the properties on Holleman and Dominik.

9. REGULAR ITEMS

9.1. Public Hearing, presentation, discussion, and possible action regarding Ordinance No. 2025-4574 amending Appendix A, Unified Development Ordinance, Article 4, "Zoning Districts," Section 4.2 "Official Zoning Map," of the Code of Ordinances of the City of College Station, Texas by changing the zoning district boundaries from R Rural to MU Mixed-Use for approximately 12.43 acres at 2950 Rock Prairie Road West, generally located west of the intersection of Rock Prairie Road West and Old Wellborn Road.

Jeff Howell, Planning and Development, stated that the purpose of this request is to change the R Rural zoning to MU Mixed-Use for about 12.43 acres of land that are typically west of the intersection of Rock Prairie Road West and Old Wellborn Road. The proposed rezoned site is mostly undeveloped, with a few existing single-family connected units (duplexes) on an unplatted property. When the property was first annexed by the city in 2002, it was classified R Rural. The purpose of this zoning request is to encourage further development in this area. In order to authorize uses that are prohibited

on properties rated R Rural under the MU Mixed-Use zoning, the applicant is asking the zoning district to change.

At the Planning and Zoning Commission meeting on January 16th, this item was discussed. The Commission voted 6-0 to recommend approval, but only if the construction, installation, and acceptance of a roughly 506-foot section of sewer line (from manhole numbers O38B2M007 to O38B2M006) on Old Wellborn Road be improved within 24 months of the ordinance being signed. This line must adhere to the B/CS Design Guidelines and be approved by the Planning and Development Services Department and the Water Services Department of the City of College Station.

At approximately 10:33 p.m., Mayor Nichols opened the Public Hearing.

There being no further comments, the Public Hearing was closed at 10:33 p.m.

MOTION: Upon a motion made by Councilmember Wright and a second by Councilmember Smith the City Council voted seven (7) for and none (0) opposed, to adopt Ordinance No. 2025-4574, amending Appendix A, Unified Development Ordinance, Article 4, “Zoning Districts,” Section 4.2 “Official Zoning Map,” of the Code of Ordinances of the City of College Station, Texas by changing the zoning district boundaries from R Rural to MU Mixed-Use for approximately 12.43 acres at 2950 Rock Prairie Road West, generally located west of the intersection of Rock Prairie Road West and Old Wellborn Road, with the condition of the construction, installation, and acceptance of a roughly 506-foot section of sewer line (from manhole numbers O38B2M007 to O38B2M006) on Old Wellborn Road be improved within 24 months of the ordinance being signed.. The motion carried unanimously.

9.2. Public Hearing, presentation, discussion, and possible action regarding Ordinance No. 2025-4575 amending Appendix A, Unified Development Ordinance, Article 4, "Zoning Districts," Section 4.2 "Official Zoning Map," of the Code of Ordinances of the City of College Station, Texas by changing the zoning district boundaries from R Rural to WC Wellborn Commercial on approximately 4 acres generally located at 15305 FM 2154.

Robin Macias, Planning and Development, stated that the purpose of this request is to change the R Rural zoning of around 4 acres of land at 15305 FM 2154 to WC Wellborn Commercial. The City of College Station now owns the undeveloped property. The rezoning is intended to make the site more marketable and to permit future commercial use.

This item was discussed during the January 16th meeting of the Planning and Zoning Commission, which unanimously recommended approval.

At approximately 10:37 p.m., Mayor Nichols opened the Public Hearing.

There being no further comments, the Public Hearing was closed at 10:37 p.m.

MOTION: Upon a motion made by Councilmember Yancy and a second by Councilmember Shafer the City Council voted seven (7) for and none (0) opposed, to adopt Ordinance No. 2025-4575, amending Appendix A, Unified Development Ordinance, Article 4, "Zoning Districts," Section 4.2 "Official Zoning Map," of the Code of Ordinances of the City of College Station, Texas by changing the zoning district boundaries from R Rural to WC Wellborn Commercial on approximately 4 acres generally located at 15305 FM 2154. The motion carried unanimously.

9.3. Presentation, discussion, and possible action on approval of Amendment No. 1 to the Construction Manager at Risk (CMAR) contract with Lott Brothers Construction Co., Inc. accepting the Guaranteed Maximum Price (GMP) of $827,573 for off-site utilities for the Fire Station No. 7 Project.

Jennifer Cain, Capital Projects Director, stated that all necessary off-site utility work for the Fire Station No. 7 project is included in this update to the present construction manager at risk contract with Lott Construction, accepting the guaranteed maximum price. This covers stormwater pollution prevention, traffic management, landscape restoration, concrete repair, demolition, and off-site utilities. The GMP for the building construction, site utilities, dry utilities, and paving work will be included in the second amendment, which is scheduled to be presented to the Council in April. The Construction Manager at Risk (CMAR) for pre-construction and construction phase services was solicited via Request for Qualifications (RFQ) on March 27, 2024, RFQ 24-035 and RFP 24-035. Three (3) responses were submitted to RFQ 24-035 and two (2) were invited to submit for the RFP 24-035. Both respondents to the RFP were interviewed. After evaluation and interviews, Lott Brothers Construction, Inc. was selected as the most qualified, best value for the city based on the published selection criteria.

The Facilities and IT Capital Improvement Projects Fund presently has $18,000,000 allocated for this project. There is still $16,153,025.09 remaining for project expenses after $1,846,974.91 has been pledged or spent thus far. The City of College Station's General Obligation Bond Election in November 2022 authorized funding for this project.

MOTION: Upon a motion made by Councilmember Yancy and a second by Councilmember White the City Council voted seven (7) for and none (0) opposed, to approve Amendment No. 1 to the Construction Manager at Risk (CMAR) contract with Lott Brothers Construction Co., Inc. accepting the Guaranteed Maximum Price (GMP) of $827,573 for off-site utilities for the Fire Station No. 7 Project. The motion carried unanimously.

9.4. Presentation, discussion, and possible action regarding appointments to the Zoning Board of Adjustments.

Tanya Smith, City Secretary, presented the Zoning Board of Adjustments to the Council for their determination on applicants.

Zoning Board of Adjustments

- Valen Cepak - Alternate 1 for a 2-yr term
- Alison Drouilhet - Alternate 2 for a 2-yr term
- Gabriel Rojo Luke - Alternate 3 for a 2-yr term
- Brian Yung - Alternate 4 for a 2-yr term

MOTION: Upon a motion made by Councilmember Wright and a second by Councilmember McIlhaney, the City Council voted seven (7) for and none (0) opposed, to approve the Zoning Board of Adjustments as stated. 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.

Mayor Nichols recognized City Secretary Tanya Smith for her 2nd Texas Municipal Clerk Re-Certification for another 5-years.

Councilmember McIlhaney recognized the REACH Project "4th Annual For the Culture Market" event recently held at City Hall.

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 Shafer reported Bicycle, Pedestrian and Greenway Advisory Board.

Councilmember Smith reported on a recent Chamber of Commerce delegation trip to Austin.

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

No future agenda items at this time.

13. Adjournment.

There being no further business, Mayor Nichols adjourned the meeting of the City Council at 10:48 p.m. on Thursday, February 13, 2025.

_____
John P. Nichols, Mayor

ATTEST:

_____
Tanya Smith, City Secretary

February 27, 2025
Item No. 8.2.
Atmos Franchise Renewal

Sponsor: Ross Brady, Chief of Staff

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action on the second reading of an ordinance renewing a non-exclusive natural gas franchise to Atmos Energy Corporation Mid-Tex Division.

Relationship to Strategic Goals:

Recommendation(s):

Summary: This is the second and final reading of the ten-year renewal of a franchise agreement granting Atmos Energy Corporation, Mid-Tex Division a franchise to construct, maintain, and operate pipelines and equipment in College Station for the transportation, delivery, sale, and distribution of gas. This franchise was first granted to Atmos in 2004, when Atmos acquired the distribution and transmission assets of TXU Gas Company.

Budget & Financial Summary: The City will receive a franchise fee of five percent (5%) of gross revenue.

Attachments:
1. College Station 2025 Atmos Energy Mid-Tex Franchise Ord Final v12-10-2024

ORDINANCE NO: _____

AN ORDINANCE GRANTING TO ATMOS ENERGY CORPORATION, MID-TEX DIVISION, A TEXAS AND VIRGINIA CORPORATION, ITS SUCCESSORS AND ASSIGNS, A FRANCHISE TO CONSTRUCT, MAINTAIN, AND OPERATE PIPELINES AND EQUIPMENT IN THE CITY OF COLLEGE STATION, BRAZOS COUNTY, TEXAS, FOR THE TRANSPORTATION, DELIVERY, SALE, AND DISTRIBUTION OF GAS IN, OUT OF, AND THROUGH SAID CITY FOR ALL PURPOSES; RESERVING MUNICIPAL AUTHORITY; PROVIDING FOR INDEMNITY TO THE MUNICIPALITY AND INSURANCE BY ATMOS ENERGY CORPORATION; REQUIRING BOOK AND RECORD KEEPING; PROVIDING FOR THE PAYMENT OF A FEE OR CHARGE FOR THE USE OF THE PUBLIC RIGHTS-OF-WAY; AND PROVIDING THAT SUCH FEE SHALL BE IN LIEU OF OTHER FEES AND CHARGES, EXCEPTING AD VALOREM TAXES; PROVIDING AN EFFECTIVE DATE AND TERM; AND REPEALING ALL PREVIOUS GAS FRANCHISE ORDINANCES.

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

SECTION 1. GRANT OF AUTHORITY:

A. The City of College Station, Texas, hereinafter called “City,” hereby grants to Atmos Energy Corporation, Mid-Tex Division, hereinafter called "Atmos Energy" or the “Company”, its successors and assigns, consent to use and occupy the present and future Public Rights-of-Way for the purpose of laying, maintaining, constructing, protecting, operating, and replacing therein and thereon the System to deliver, transport, and distribute gas in, out of, and through City for persons, firms, and corporations, including all the general public, and to sell gas to persons, firms, and corporations, including all the general public, within the City corporate limits, as such limits may be amended from time to time during the term of this franchise. Atmos Energy acknowledges that by this Franchise it obtains no rights to, or further use of, the Public Right-of-Way other than those expressly granted herein. Atmos Energy acknowledges and accepts at its own risk that the City may use future Public Rights-of-Way in which Atmos Energy’s System is located in a manner inconsistent with Atmos Energy’s use of such Public Rights-of-Way.

B. The provisions set forth in this Ordinance represent the terms and conditions under which Atmos Energy shall construct, operate, and maintain the System. In granting this franchise, the City does not in any manner surrender or waive its sovereign immunity, its governmental immunity, its regulatory or other rights and powers under and by virtue of the Constitution and statutes of the State of Texas as the same may be amended, nor any of its rights and powers under and by virtue of present or future ordinances of the City. Atmos Energy, by its acceptance of this Franchise, agrees that all such lawful regulatory powers and rights as the same may be from time to time

vested in the City shall be in full force and effect and subject to the exercise thereof by the City at any time.

SECTION 2. DEFINITIONS: For the purpose of this Franchise, the following words and phrases shall have the meaning given in this section. When not inconsistent with the context, words used in the present tense include future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is mandatory and "may" is permissive. Words not defined in this section shall be given their common and ordinary meaning.

"Affiliate" means any entity controlling, controlled by or under common control with the entity in question. As used in this definition, the term "control" means, with respect to an entity that is a corporation, the ownership, directly or indirectly, of more than 50% of the voting securities of such entity or, with respect to an entity that is not a corporation, the power to direct the management or policies of such entity, whether by operation of law, by contract or otherwise.

“Atmos Energy” or “Company” means Atmos Energy Corporation’s Mid-Tex Division, its successors and assigns, but does not include its affiliates, subsidiaries or any other entity in which it has an ownership interest, with its principal office at 5430 LBJ Freeway, Dallas, Texas 75240.

"City" means the municipal corporation designated as the City of College Station and includes the territory as currently is or may in the future be included within the boundaries of the City, with its principal office at 1101 Texas Ave. S., College Station, Texas 77840.

“City Council” means the governing body of the City of College Station, Texas.

“City Manager” means the City Manager of the City, or his or her duly authorized representative.

“Contributions in Aid of Construction” or “CIAC” means monies received by Atmos Energy for construction, removal, or relocation of facilities in the City’s Public Rights-of-Way and does not include donated property or reimbursements received for damages to the System.

"Customer" means all persons, businesses, industry, governmental agencies, and any other entity whatsoever, located, in whole or part, within the City that are or may be served by Atmos Energy hereunder.

“Emergency” means sudden and unforeseeable damage to or malfunction of a portion of the System that creates a threat to life, health, or property.

"Franchise" or "Agreement" or “Ordinance” or “Franchise ordinance” means the rights and obligations of the City and Atmos Energy set forth in this Franchise ordinance, as the same may be amended from time to time, and includes those rights and duties provided under the laws of Texas and of the United States.

"Gas" means such gaseous fuels as natural, artificial, synthetic, liquefied natural gas, liquefied petroleum, manufactured, or any mixture thereof.

"Gross Revenues" means:

(A) all revenues received by Atmos Energy from the sale of gas to all classes of customers (excluding gas sold to governmental customers, industrial customers, and another gas utility in the City for resale of gas to its customers within City) within the City including base rate revenues and revenues from the Company's purchased gas adjustment tariff;

(B) "Gross Revenues" shall also include CIAC and the following "miscellaneous charges": charges to connect, disconnect, or reconnect gas within the City, charges to handle returned checks from consumers within the City, and State gross receipts fees.

(C) "Gross Revenues" shall not include:

(1) revenues billed but not ultimately collected or received by Atmos Energy;

(2) the revenue of any affiliate or subsidiary of Atmos Energy;

(3) sales taxes and franchise fees paid to the City;

(4) interest or investment income earned by Atmos Energy; and

(5) monies received from the lease or sale of real or personal property, provided, however, that this exclusion does not apply to the lease of facilities within the Public Rights-of-way.

"Public Rights-of-Way" means the public streets, medians, boulevards, roads, lanes, alleys, highways, public utility easements, viaducts, and bridges across water ways and other public places that are deeded or dedicated to the City and are available for Atmos Energy's non-exclusive use.

"Railroad Commission" means the Railroad Commission of the State of Texas or other authority succeeding to the regulatory powers of the Railroad Commission.

"System" and/ or "System Facilities" means all of Atmos Energy's pipes, pipelines, gas mains, laterals, feeders, regulators, meters, fixtures, connections or other appurtenant equipment used in or incident to providing delivery, transportation, distribution, supply, and sales of natural gas for heating, lighting, power, and any other purpose for which natural gas may now or hereafter be used, located within the corporate limits of the City.

SECTION 3. COMPLIANCE WITH LAW: Atmos Energy, during the term of this Franchise, shall be subject to and comply with all applicable local, state, and federal laws, including the rules and regulations of any and all agencies thereof, whether presently in force or whether enacted or adopted at any time in the future. This Franchise shall in no way affect or impair the rights, obligations, or remedies of the parties under the Gas Utility Regulatory Act, or other state or federal law. Nothing herein shall be deemed a waiver, release, or relinquishment of either party's right to contest, appeal, or file suit with respect

to any action or decision of the other party, including ordinances adopted by the City, that it believes is contrary to any federal, state, or local law or regulation. In constructing, maintaining, and operating the System, Atmos Energy shall act in a good and workmanlike manner, observing industry standards of engineering and workmanship and using materials of good and durable quality. Atmos Energy shall comply in all respects with applicable codes and industry standards.

SECTION 4. CONSTRUCTION, MAINTENANCE, OPERATION & RELOCATION OF ATMOS ENERGY FACILITIES:

A. Atmos Energy shall lay, maintain, construct, operate, and replace its pipes, mains, laterals, and other equipment to minimize interference with traffic, place or cause to be placed appropriate barriers to mark excavations or obstructions, and restore to approximate original condition all Public Rights-of-Way that it may disturb. Before any work is commenced, the Company must obtain any permits required by the City for construction within the Public Rights-of-Way in accordance with the ordinances or process in place at the time the work is performed. It shall not be necessary for the Company to obtain permits for the laying of service lines from the mainline pipes of the Company to customers if no work will take place in the Public Rights-of-Way. It shall not be necessary for the Company to obtain a permit in advance of resolving an Emergency. In the event of an Emergency, the Company shall notify the City Manager no later than ten (10) days after the last day of the Emergency, along with information that describes the circumstances of the Emergency. If Atmos Energy damages any City facilities, Atmos Energy shall notify the City immediately and shall reimburse the City for the City's cost of repairing the damage. If City damages any Atmos Energy facilities, the City shall notify Atmos Energy immediately and shall reimburse Atmos Energy for its cost of repairing the damage.

B. In determining the location of the facilities of the City and other users of Public Right-of-Way within City, City shall minimize interference with then existing System facilities and shall instruct other users of Public Rights-of-Way to minimize interference with existing System facilities. The placement of all System facilities shall be subject to the City's approval. In the event of a conflict between the location of the Company's proposed facilities and the location of the existing City facilities or other users of Public Rights-of-Way within Public Rights-of-Way that cannot otherwise be resolved, the City or an authorized agent of the City shall resolve the conflict and determine the location of the respective facilities within the Public Rights-of-Way.

C. Atmos Energy or contractors working on behalf of Atmos Energy shall not be required to pay for street cutting, street excavation or other special permits related to excavations in Public Rights-of-Way in connection with Atmos Energy's operations in Public Rights-of-Way. A copy of the City's annual capital improvement plan ("CIP") will be made available on the City's website or upon request. City shall notify Atmos Energy as soon as reasonably possible of any projects that will affect Atmos Energy's facilities located in the Public Rights-of-Way. When required by City to remove or relocate its mains, laterals, and/or other facilities lying within Public Rights-of-Way, Atmos Energy shall do so as soon as practicably possible with respect to the scope of the project. In no event shall Atmos Energy be required to remove or relocate its facilities in less than thirty (30) days from the time notice is given to Atmos Energy by the City.

D. The City reserves the right for any reason whatsoever to change the grade of, alignment of, construct, install, repair, alter, maintain, relocate, modify, close, reduce, or widen (together, "change") any Public-Right-of-Way within the present or future limits of the City. If City, in constructing its sewers, drainage, water lines, electric lines, streets, traffic signals, sidewalks, or any other types or categories of utilities or facilities, should request that Atmos Energy remove or relocate its mains, laterals, and other facilities lying within Public Rights-of-Way, Atmos Energy shall do so at its own expense for facilities that are in conflict, unless such work is for the primary purpose of beautification. However, if such work is being performed because of or to accommodate a private development project, the private developer shall be required to reimburse Atmos Energy for the cost of removal or relocation of its System facilities. System facilities are deemed to be in conflict to the extent that the proposed City facilities are determined by Atmos Energy to be inconsistent with gas distribution industry standard safe operating practices for existing facilities. Atmos Energy shall not be required to relocate facilities to a depth of greater than four (4) feet unless prior agreement is obtained from Atmos Energy.

E. When Atmos Energy is required by the City to remove or relocate its mains, laterals, and other facilities lying within Public Rights-of-Way to accommodate a request by City, and costs of utility removals or relocations are eligible under federal, state, county, local or other programs for reimbursement of costs and expenses incurred by Atmos Energy as a result of such removal or relocation, and such reimbursement is required to be handled through City, Atmos Energy costs and expenses shall be included in any application by City for reimbursement if Atmos Energy submits its cost and expense documentation to City prior to the filing of the application. City shall provide reasonable written notice to Atmos Energy of the deadline for Atmos Energy to submit

documentation of the costs and expenses of such relocation to City. Upon receipt of an amount of reimbursement intended for utility relocations including gas utilities, City shall remit to Atmos Energy, within thirty (30) days of receipt, any portion of such reimbursement specifically designated as a reimbursement of Atmos Energy's costs incurred in the relocation or removal of Atmos Energy's facilities but only after City has been fully reimbursed for its own costs of relocation or removal of utilities and related facilities.

F. If Atmos Energy is required by City to remove or relocate its mains, laterals, or other facilities lying within Public Rights-of-Way for any reason other than: (a) the changing of the grade, alignment of, construction, installation, repair, alteration, maintenance, relocation, modification, closing, reducing, or widening (together, "change" or "changing") of any Public-Right-of-Way within the present or future limits of the City; or (b) the construction or reconstruction of sewers, drainage, water lines, electric lines, streets, traffic signals, sidewalks, or any other types or categories of utilities or facilities by City, Atmos Energy shall be entitled to reimbursement from City or others of the reasonable cost and expense of such removal or relocation.

G. When Atmos Energy is required to remove or relocate its mains, laterals or other facilities to accommodate construction by City without reimbursement from City, Atmos Energy shall have the right to seek recovery of relocation costs as provided for in applicable state and/or federal law. Nothing herein shall be construed to prohibit, alter, or modify in any way the right of Atmos Energy to seek or recover a surcharge from customers for the cost of relocation pursuant to applicable state and/or federal law. City shall not oppose recovery of relocation costs when Company is required by City to perform relocation. City shall not require that Company document request for reimbursement as a pre-condition to recovery of such relocation costs. Notwithstanding any provision of this Ordinance and Franchise, the City shall have the right to participate and challenge any other capital costs or expenses of Atmos Energy and request full documentation to the full extent provided by state law.

H. If City abandons any Public Rights-of-Way in which Atmos Energy has facilities, such abandonment shall be conditioned on Atmos Energy's right to maintain its use of the former Public Right-of-Way and on the obligation of the party to whom the Public Right-of-Way is abandoned to reimburse Atmos Energy for all removal or relocation expenses if Atmos Energy agrees to the removal or relocation of its facilities following abandonment of the Public Right-of-Way. If the party to whom the Public Right-of-Way is abandoned requests Atmos Energy to remove or relocate

its facilities and Atmos Energy agrees to such removal or relocation, such removal or relocation shall be done within a reasonable time at the expense of the party requesting the removal or relocation. If relocation cannot practically be made to another Public Right-of-Way, the expense of any right-of-way acquisition shall be considered a relocation expense to be reimbursed by the party requesting the relocation.

I. Atmos Energy hereby agrees that it will not arbitrarily refuse to provide service to any customer that it is economically feasible for Atmos Energy to serve if the customer to be benefitted will pay a reasonable portion of the cost thereof or if it can be shown that the revenue resulting from such extension will, within a reasonable time after same is made, pay a reasonable return on Atmos Energy's investment.

J. Atmos Energy shall furnish reasonably adequate service to customers using reasonable rates and charges therefor, and Atmos Energy shall maintain its System in good order and condition.

SECTION 5. INDEMNITY & INSURANCE:

A. **IN CONSIDERATION OF THE GRANTING OF THIS FRANCHISE, ATMOS ENERGY AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS THE CITY, ITS OFFICERS, AGENTS, EMPLOYEES, BOARDS AND COMMISSIONS (THE "INDEMNITEES") FROM AND AGAINST ALL SUITS, ACTIONS OR CLAIMS OF INJURY TO ANY PERSON OR PERSONS, OR DAMAGES TO ANY PROPERTY BROUGHT OR MADE FOR OR ON ACCOUNT OF ANY DEATH, INJURIES TO, OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR FOR DAMAGE TO OR LOSS OF PROPERTY ARISING OUT OF, OR OCCASIONED BY ATMOS ENERGY'S INTENTIONAL AND/OR NEGLIGENT ACTS OR OMISSIONS IN CONNECTION WITH ATMOS ENERGY'S OPERATIONS, EXCEPT THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY DETERMINED BY A COURT OF COMPETENT JURISDICTION TO HAVE RESULTED FROM THE SOLE NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS OF THE CITY, ITS OFFICERS, AGENTS OR EMPLOYEES. IN THE EVENT OF JOINT AND CONCURRENT NEGLIGENCE OR FAULT OF BOTH THE CITY AND ATMOS ENERGY, RESPONSIBILITY AND INDEMNITY, IF ANY, SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE**

STATE OF TEXAS WITHOUT, HOWEVER, WAIVING ANY NECESSARY CONSENT TO SUIT OR GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY OF THE DEFENSES OF THE PARTIES UNDER TEXAS LAW. FURTHER, IN THE EVENT OF JOINT AND CONCURRENT NEGLIGENCE OR FAULT OF BOTH THE CITY AND ATMOS ENERGY, RESPONSIBILITY FOR ALL COSTS OF DEFENSE SHALL BE APPORTIONED BETWEEN THE CITY AND ATMOS ENERGY BASED UPON THE COMPARATIVE FAULT OF BOTH.

B. Atmos Energy shall, at its sole cost and expense, obtain, maintain, or cause to be maintained, and provide, throughout the term of this Franchise, insurance in the amounts, types and coverages in accordance with the following requirements. Such insurance may be in the form of self-insurance to the extent permitted by applicable law or by obtaining insurance, as follows:

(1) Commercial general or excess liability on an occurrence or claims made form with minimum limits of five million dollars ($5,000,000) per occurrence and ten million dollars ($10,000,000) aggregate.

This coverage shall include the following:

(a) Premises / Operations,

(b) Independent contracts/contractors,

(c) Products/completed operations (to be maintained for a warranty period of at least three years),

(d) Personal and advertising injury,

(e) Contractual liability (insuring the indemnity provided herein), and

(f) Explosion, collapse, or underground (XCU) hazards.

(2) Business automobile liability coverage with a minimum policy limit of two million dollars ($2,000,000) combined single limit each accident. This coverage shall include all owned autos, leased or rented autos, hired autos, any autos, and non-owned automobiles.

(3) Workers' compensation and employer's liability coverage. Statutory workers' compensation benefits in accordance with the statutes and regulations of the State of Texas. Atmos must provide the City with a waiver of subrogation for workers' compensation claims.

(4) Additional Insured and Waiver of Subrogation in Favor of City. Those policies set forth in Section 5(A) and Section 5(B) shall contain an endorsement listing the City as Additional Insured and further providing that Atmos Energy'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 Atmos Energy in compliance with the terms of this Agreement. Atmos Energy shall be responsible for all deductibles which may exist on any policies obtained in compliance with the terms of this Agreement. All Certificates of Insurance and endorsements shall be furnished to the City at the time of execution of this Agreement and approved by the City before this Franchise becomes effective.

(5) Annually, Atmos Energy, or its insurance carrier/broker, will provide proof of insurance in accordance with this Franchise within thirty (30) days after each certificate of insurance renews and in the event of any material reduction in coverage.

SECTION 6. NON-EXCLUSIVE FRANCHISE: The rights, privileges, and franchises granted by this ordinance are not to be considered exclusive, and City hereby expressly reserves the right to grant, at any time, like privileges, rights, and franchises as it may see fit to any other person or corporation for the purpose of transporting, delivering, distributing, or selling gas to and for City and the inhabitants thereof.

SECTION 7. RIGHT OF CONDEMNATION RESERVED: Nothing in this Franchise shall limit any right the City may have to acquire by eminent domain any property of Atmos Energy.

SECTION 8. TERM OF FRANCHISE: If Atmos Energy accepts this Franchise ordinance pursuant to Section 20, and sixty (60) days pass following its second and final passage by the City Council pursuant to Section 105 of the College Station City Charter, and no proper petition is filed challenging the granting of this Franchise, the parties agree that the retroactive effective date for Atmos Energy to pay franchise fees to the City shall be January 1, 2025. Franchise payments remitted to City prior to the final passage date of this ordinance shall be calculated pursuant to the previous franchise agreement. This Franchise shall terminate on December 31, 2034, unless terminated earlier by either party in accordance with the provisions herein.

SECTION 9. PAYMENTS TO CITY:

A. Atmos Energy, its successors and assigns, agrees to pay and City agrees to accept, on or before the 15th of May, August, and November, 2025, and February 2026, and on or before the same days of each succeeding year during the term of this franchise, the last payment of the initial term being made on the 15th day of February, 2035, a sum of money which shall be equivalent to five percent (5%) of the Gross Revenues, as defined in Section 2 above, received by Atmos Energy during the preceding calendar quarter.

B. The initial payment for the rights and privileges herein provided shall be for the privilege period January 1 through March 31, 2025, and each succeeding payment shall be for the privilege period of the calendar quarter preceding the quarter in which the payment is made.

C. It is also expressly agreed that the aforesaid payments shall be in lieu of any and all other and additional occupation taxes, easement, franchise taxes or charges (whether levied as an ad valorem, special, or other character of tax or charge), municipal license, permit, and inspection fees, bonds, street taxes, and street or alley rentals or charges, and all other and additional municipal taxes, charges, levies, fees, and rentals of whatsoever kind and character that City may now impose or hereafter levy and collect from Atmos Energy or Atmos Energy's agents, excepting only the usual general or special ad valorem taxes that City is authorized to levy and impose upon real and personal property. If the City does not have the legal power to agree that the payment of the foregoing sums of money shall be in lieu of taxes, licenses, fees, street or alley rentals or charges, easement or franchise taxes or charges aforesaid, then City agrees that it will apply so much of said sums of money paid as may be necessary to satisfy Atmos Energy's obligations, if any, to pay any such taxes, licenses, charges, fees, rentals, easement or franchise taxes or charges aforesaid.

D. The franchise fee amounts that are due based on CIAC shall be paid at least once annually on or before April 30 each year based on the total CIAC recorded during the preceding calendar year. The initial CIAC franchise fee amount will be paid on or before April 30, 2026, and will be based on the calendar year January 1 through December 31, 2025. The final CIAC franchise fee amount under the initial term will be paid on or before April 30, 2035, and will be based on the calendar year January 1 through December 31, 2034.

E. Atmos Energy agrees that at the time of each payment, Atmos Energy shall also submit to the City a statement showing its Gross Revenues for the preceding calendar quarter.

F. Payments received after the due date shall be subject to interest charged at the greater of the rate of the prime rate for the due date or the rate for customer deposits under Texas Utilities Code Section 183.003 in effect for the time period involved, from such due date until payment is received by the City.

G. Atmos Energy may file with the City a tariff or tariff amendment(s) to provide for the recovery of the franchise fees under this agreement. City agrees that (i) as regulatory authority, it will adopt and approve the ordinance, rates or tariff which provide for 100% recovery of such franchise fees as part of Atmos Energy's rates; (ii) if the City intervenes in any regulatory proceeding before a federal or state agency in which the recovery of Atmos Energy's franchise fees is an issue, the City will take an affirmative position supporting 100% recovery of such franchise fees by Atmos Energy and; (iii) in the event of an appeal of any such regulatory proceeding in which the City has intervened, the City will take an affirmative position in any such appeals in support of the 100% recovery of such franchise fees by Atmos Energy. City agrees that it will take no action, nor cause any other person or entity to take any action, to prohibit the recovery of such franchise fees by Atmos Energy.

SECTION 10. ACCOUNTING MATTERS:

A. Maintenance of Records. Atmos Energy shall keep and maintain complete and accurate books, records, accounts, documents and papers (regardless as to whether in paper or electronic format) pertaining to Atmos Energy's System, its business operations under and in connection with this Franchise, and all underlying books, records, and working documents on which the Gross Revenue calculations were based and the determination of any other amounts due to the City under this Franchise, in accordance with Atmos Energy's record retention policy or for a period of four (4) years, whichever is greater. Said records shall be available or accessible to the City at Atmos Energy's principal office in Dallas, Texas.

B. The City may conduct an audit or other inquiry in relation to a payment made by Atmos Energy. As a part of the audit process, the City or City's designee may inspect Atmos Energy's

books of accounts, records, and documents relative to the City at any time during regular business hours and on ten (10) business days' prior notice. The City or City's designee may also request (1) the amount of the sale of gas service provided to each class of customer in the city and (2) the type of service delivered for any additional service distributed directly to customers through Atmos Energy's System within the City's Public Rights-of-Way for which Atmos Energy receives compensation.

C. Access to Records. All records deemed by City or City's designee to be reasonably necessary for such audit shall be made available by Atmos Energy at Atmos Energy's corporate office in the Dallas, Texas. Atmos Energy agrees to give its full cooperation in any audit and shall provide complete responses to inquiries within twenty (20) calendar days of a written request, unless a different schedule is agreed to by the City and Atmos Energy.

D. In the event that a dispute arises regarding an audit performed on Atmos Energy's books and records, Atmos Energy agrees to participate in mediation in an attempt to resolve the dispute. Atmos Energy agrees that it will consult with the City and the parties will mutually agree on a mediator to preside over the mediation.

D. The omission by the City to exercise its rights to an audit shall not constitute waiver of such right.

SECTION 11. EFFECT OF OTHER MUNICIPAL FRANCHISE ORDINANCE FEES: If Atmos Energy should at any time after the effective date of this Ordinance agree to a new municipal franchise ordinance, or renew an existing municipal franchise ordinance, with another municipality in Atmos Energy's Mid-Tex Division, which municipal franchise ordinance determines the franchise fee owed to that municipality for the use of its public rights-of-way in a manner that, if applied to the City, would result in a franchise fee greater than the amount otherwise due City under this Ordinance, then the franchise fee to be paid by Atmos Energy to City pursuant to this Ordinance may, at the election of the City, be increased so that the amount due and to be paid is equal to the amount that would be due and payable to City were the franchise fee provisions of that other franchise ordinance applied to City. The City acknowledges that the exercise of this right is conditioned upon the City's acceptance of all terms and conditions of the other municipal franchise *in toto*. The City may request waiver of certain terms and Company may grant, in its sole reasonable discretion, such waiver.

SECTION 12. LEASE OF FACILITIES WITHIN THE CITY'S RIGHTS-OF-WAY: Intentionally omitted.

SECTION 13. CITY TERRITORY AND ANNEXATION: This Franchise shall extend to and include any and all territory that is within the corporate limits of the City. Additionally, this Franchise shall extend to any and all territory that is annexed by the City during the time of this Franchise. In the event of disannexation, this Franchise shall be reduced to the territory that continues to be in the City. City shall within thirty (30) days of final approval, give Company notice of annexations and disannexations of territory by the City, which notice may include a map and addresses, if known. Upon receipt of said notice, Company shall promptly initiate a process to reclassify affected customers into the city limits no later than sixty (60) days after receipt of notice from the City. The annexed areas added to the city limits will be included in future franchise fee payments in accordance with the sales tax effective date of the annexation if notice was timely received from City. Upon request from City, Company will provide documentation to verify that affected customers were appropriately reclassified and included for purposes of calculating franchise fee payments. In no event shall the Company be required to add premises for the purposes of calculating franchise payment prior to the earliest date that the same premises are added for purposes of collecting sales tax.

SECTION 14. DEFAULTS:

Events of Default.

The occurrence, at any time during the term of this Franchise, of any one or more of the following events, shall constitute an Event of Default by Atmos Energy under this Franchise:

A. The failure of Atmos Energy to pay the Franchise Fee on or before the due dates specified herein;

B. Atmos Energy's substantial breach or violation of any of the material terms contained herein.

C. The foregoing shall not constitute a breach if the violation occurs without fault of Atmos Energy or occurs as a result of circumstances beyond its control which could not have been avoided as a result of the exercise of reasonable care. The Company shall not be excused by mere economic hardship or by misfeasance or malfeasance of its directors, officers or employees.

Uncured Events of Default.

A. Upon the occurrence of an Event of Default which can be cured by the immediate payment of money to the City, Atmos Energy shall have thirty (30) calendar days after written notice from City of

an occurrence of such Event of Default to cure the same before City may exercise any of its rights or remedies provided under this Franchise.

B. Upon the occurrence of an Event of Default by Atmos Energy which cannot be cured by the immediate payment of money to the City, Atmos Energy shall have ninety (90) calendar days after written notice from City of an occurrence of such Event of Default to cure the same before City may exercise any of its rights or remedies under this Franchise.

C. If any Event of Default is not cured within the time period provided herein, such an Event of Default shall, without additional notice, become an Uncured Event of Default, which shall entitle City to exercise the remedies provided in the section below.

SECTION 15. REMEDIES:

Upon the occurrence of any Uncured Event of Default as described above, City shall be entitled to exercise any and all of the following cumulative remedies: (1) The commencement of an action against Atmos Energy for monetary damages; (2) the commencement of an action in equity seeking injunctive relief or the specific performance of any of the provisions that, as a matter of equity, are specifically enforceable; (3) the termination of this Franchise in accordance with the provisions of Section 16.

The rights and remedies of City and Atmos Energy set forth in this Franchise shall be in addition to, and not in limitation of, any other rights and remedies provided by law or in equity. City and Atmos Energy understand and intend that such remedies shall be cumulative to the maximum extent permitted by law and the exercise by City of any one or more of such remedies shall not preclude the exercise by City, at the same or different times, of any other such remedies for the same Uncured Event of Default.

SECTION 16. TERMINATION: Should City intend to exercise the remedy of termination in accordance with Section 15, City shall notify Atmos Energy in writing of its right to have a hearing before the City Council to present any objections or defenses the Company may have that are relevant to the proposed termination. The notice shall specify a hearing date which shall be at least thirty (30) days from the date of the notice. After such hearing, the City may determine whether to continue or to terminate the Franchise. The final decision of the City Council may be appealed to any court or regulatory authority having jurisdiction. Upon timely appeal by Atmos Energy of the City Council's decision terminating the Franchise, the effective date of such termination shall be either when such appeal is withdrawn or a court order upholding the termination becomes final and unappealable, and until the termination becomes effective, the provisions of this Franchise shall remain in effect for all purposes.

SECTION 17. NO THIRD-PARTY BENEFICIARIES: This Franchise is made for the exclusive benefit of the City and Atmos Energy, and nothing herein is intended to or shall confer any right, claim or benefit in favor of any third party.

SECTION 18. SUCCESSORS AND ASSIGNS: No assignment or transfer shall be made in whole or in part except in the case of assignment or transfer to an affiliate, parent, or subsidiary of the Company without approval of the City Council. Notice of said transfer or assignment shall be provided to the City. City shall grant approval unless the assignee is materially weaker than Company. For purposes of this Section, "materially weaker" means that the long-term unsecured debt rating of the assignee is less than investment grade as rated by both S&P and Moody's (or their successor entities). If the assignee is materially weaker, the City may request additional documents and information reasonably related to the transaction and the legal, financial, and technical qualifications of the assignee. City agrees that said approval shall not be unreasonably withheld or delayed. Upon approval, the rights, privileges and franchise herein granted to the Company shall extend to and include all successors and assigns. The terms, conditions, provisions, requirements and agreements contained in this Franchise shall be binding upon the successors and assigns of the Company.

SECTION 19. SEVERABILITY: This Ordinance and every provision hereof shall be considered severable, and the invalidity and unconstitutionality of any other portion of this Ordinance shall not affect the validity or constitutionality of any other portion of this Ordinance. If any term or provision of this ordinance is held to be illegal, invalid or unenforceable, the legality, validity or enforceability of the remaining terms or provisions of this Ordinance shall not be affected thereby.

SECTION 20. ACCEPTANCE OF FRANCHISE: In order to accept this Franchise, Atmos Energy must file with the City Secretary its written acceptance of this Franchise ordinance within sixty (60) days after its final passage and approval by City. If such written acceptance of this Franchise ordinance is not filed by Atmos Energy, the Franchise ordinance shall be rendered null and void.

SECTION 21. REPEAL: When this Franchise ordinance becomes effective, all previous ordinances of City granting franchises for gas delivery purposes that were held by Atmos Energy shall be automatically canceled and annulled, and shall be of no further force and effect, with the exception of Atmos Energy's obligations to continue paying Franchise Fees under the previous franchise ordinance until this Franchise Ordinance becomes effective.

SECTION 22. PARAGRAPH HEADINGS, CONSTRUCTION: The paragraph headings contained in this Ordinance are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several paragraphs hereof. Both parties have participated in the preparation of this ordinance and this ordinance shall not be construed either more or less strongly against or for either party.

SECTION 23. NOTICES: Any notices required to be sent to the parties under this Franchise shall be sent to the following:

CITY:

City of College Sation
Attn: City Manager
P.O. Box 9960
College Station, Texas 77842

ATMOS ENERGY:

Atmos Energy
Attn: Public Affairs Manager
297 N. Earl Rudder Freeway
Bryan, Texas 77802

SECTION 24. EFFECTIVE DATE: If Atmos Energy accepts this Franchise ordinance pursuant to Section 20, it becomes effective after sixty (60) days following its second and final passage by the City Council pursuant to Section 105 of the College Station City Charter.

FIRST READING: PASSED AND APPROVED on this the _____ day of _____, 2025.
SECOND READING: PASSED AND APPROVED on this the _____ day of _____, 2025.

ATTEST:

_____
Tanya Smith, City Secretary

_____
John P. Nichols, Mayor
City of College Station, Texas

APPROVED AS TO FORM:

_____
City Attorney

STATE OF TEXAS §
COUNTY OF BRAZOS §
CITY OF COLLEGE STATION §

I, Tanya Smith, City Secretary of the City of College Station, Brazos County, Texas, do hereby certify that the above and foregoing is a true and correct copy of an ordinance passed by the City Council of the City of College Station, Texas, at a regular session, held on the _____ day of _____, 2025, as it appears of record in the Minutes in Book _____, page _____.

WITNESS MY HAND AND SEAL OF SAID CITY, this the ___ day of _____, 2025.

_____
Tanya Smith, City Secretary
City of College Station, Texas

February 27, 2025
Item No. 8.3.
NAPA Auto Parts Annual Purchase

Sponsor: Mary Ellen Leonard, Director of Fiscal Services

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action on approving annual purchases of auto parts, shop equipment and services from NAPA Auto Parts (College Station, TX) through the Purchasing Solutions Alliance in the annual not-to-exceed amount of $180,000.

Relationship to Strategic Goals:
Financially Sustainable City

Recommendation(s): Staff recommends approval to purchase various auto parts, shop equipment and services from NAPA Auto Parts through the Purchasing Solutions Alliance (PSA) contract. The estimated annual expenditure of $180,000.00 is based on the average amount spent on automotive and truck fluids and lubricants since January 2023 and the anticipated needs for existing vehicles and new vehicles being added to inventory this fiscal year.

Summary: NAPA Auto Parts is the local (College Station, TX) PSA contract dealer for auto parts, shop equipment and services (PSA Contract 24-203). PSA is a purchasing cooperative for public agencies. All products and services available for purchase through PSA contracts have been competitively bid and awarded and satisfy any State law requirements relating to competitive bids or proposals. Contingent upon Council approval, a blanket contract will be issued for the term of February 27th, 2025 through February 26th, 2026.

Budget & Financial Summary: Purchases of auto parts are made through an inventory account as budgeted and available in the Fleet Maintenance Funds. Charges are made to the various departments for vehicle maintenance based on the average annual cost for each piece of equipment.

Attachments:
1. NAPA Award

Contract Term

March 1, 2024 through February 28, 2026

three optional one-year extensions

Vendor Contact Info

Genuine Parts Company (d.b.a. NAPA Auto Parts)

Don Lachance

Government/Fleet Sales Manager

Phone: 678.934.5057

Email: Don_Lachance@genpt.com

Purchasing Solutions Alliance

a purchasing cooperative for public agencies

February 23, 2024

Mr. Don Lachance
NAPA Auto Parts
2999 Wildwood Partway
Atlanta, GA 30339

Dear Mr. Lachance,

Purchasing Solutions Alliance (PSA), a cooperative purchasing program of the Brazos Valley Council of Governments (BVCOG) is pleased to announce that NAPA Auto Parts has been awarded the contract for the following products and services, based on your proposal submitted to PSA in response to Request for Proposals (RFP) No. 24-203.

- Products and Services Description: Automotive Parts and Services

Notice is hereby given that NAPA Auto Parts, may commence with the publicity and marketing of the contract and sales of products and services effective March 1, 2024, under terms of our contract.

It is with great pleasure that we welcome you as Automotive Parts and Services to PSA/BVCOG and member agencies of PSA. We look forward to expanding our relationship with NAPA Auto Parts and PSA.

If you have any questions or concerns, please feel free to contact me at (979) 595-2801 ext. 2035, or by email susan.lightfoot@bvcog.org.

Sincerely,

Purchasing Solutions Alliance:
a program of the Brazos Valley Council of Governments

Susan Lightfoot, Program Manager

Brazos Valley Council of Governments:

Roger Sheridan, Deputy Director

cc: Procurement File

February 27, 2025
Item No. 8.4.
Emergency Response Vehicle Parts and Service

Sponsor: Mary Ellen Leonard, Director of Fiscal Services

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action on approving an annual blanket purchase order for repair parts and repair labor from Siddons-Martin Emergency Group through the BuyBoard in the annual not-to-exceed amount of $250,000.

Relationship to Strategic Goals:
Financially Sustainable City

Recommendation(s): Staff recommends approval of an annual blanket purchase order to purchase various repair parts and services from Siddons-Martin Emergency Group through the BuyBoard Purchasing Cooperative contract number 746-24. The estimated annual expenditure of $250,000 is based on the average amount spent on repair parts and services since January 2023 and the anticipated needs for existing vehicles and new vehicles being added to inventory this fiscal year.

Summary: BuyBoard is a purchasing cooperative for public agencies. All products and services available for purchase through BuyBoard contracts have been competitively bid and awarded and satisfy any State law requirements relating to competitive bids or proposals. Contingent upon Council approval, a blanket purchase order will be issued for the term of February 27th, 2025 through February 26th, 2026.

Budget & Financial Summary: Purchases of fire apparatus parts are made through an inventory account as budgeted and available in the Fleet Maintenance Funds. Charges are made to the Fire Department for fire apparatus vehicle maintenance and repairs based on the average annual cost for each piece of equipment.

Attachments:
1. Siddons Martin Emergency Group, LLC

P.O. Box 400, Austin, Texas 78767
800.695.2919 • info@buyboard.com • buyboard.com

Electronic Delivery

Jeff Doran
Siddons Martin Emergency Group, LLC
1362 E Richey Rd.
Houston, TX 77073

Welcome to BuyBoard!

Re: *Notice of The Local Government Purchasing Cooperative Contract Award;* Proposal Invitation No. 746-24, Fire Service Apparatus Vehicles

Congratulations, The Local Government Purchasing Cooperative (Cooperative) has awarded your company a BuyBoard® contract based on the above-referenced Proposal Invitation. The contract is effective for an initial one-year term of October 1, 2024 through September 30, 2025, and may be subject to two possible one-year renewals. Please refer to the Proposal Invitation for the contract documents, including the General Terms and Conditions of the Contract.

To review the items your company has been awarded, please review Proposal Tabulation No. 746-24 at: www.buyboard.com/vendor. Only items marked as awarded to your company are included in this contract award, and only those awarded items may be sold through the BuyBoard contract. All sales must comply with the contract terms and must be at or below the awarded pricing as set forth in the General Terms and Conditions.

The contract will be posted on the BuyBoard website as an online electronic catalog(s). **You are reminded that, in accordance with the General Terms and Conditions, all purchase orders must be processed through the BuyBoard**. Except as expressly authorized in writing by the Cooperative's administrator, you are not authorized to process a purchase order received directly from a Cooperative member that has not been processed through the BuyBoard or provided to the Cooperative. If you receive a purchase order directly from a Cooperative member that you have reason to believe has not been received by the Cooperative or processed through the BuyBoard, you must promptly forward a copy of the purchase order by email to info@buyboard.com.

A list of Cooperative members is available on the buyboard.com website. Once the contract is active, the BuyBoard vendor relations staff will be contacting you to assist with the resources available and to provide any support you may need as an awarded BuyBoard vendor.

On behalf of the Cooperative, we appreciate your interest in the Cooperative and we are looking forward to your participation in the program. If you have any questions, feel free contact me at bids@buyboard.com.

Sincerely,

Leigh Clover, Bid Analyst
Texas Association of School Boards, Inc.,
Administrator for The Local Government Purchasing Cooperative

Vendor Contract Information Summary

Vendor	Siddons Martin Emergency Group, LLC
Contact	Jeffrey Doran
Phone	1-800-784-6806
Email	omt@siddons-martin.com
Vendor Website	www.siddons-martin.com
TIN	27-4333590
Address Line 1	1362 East Richey
Vendor City	Houston
Vendor Zip	77073
Vendor State	TX
Vendor Country	USA
Delivery Days	10
Freight Terms	FOB Destination
Payment Terms	net due upon delivery
Shipping Terms	Freight prepaid by vendor and added to invoice
Ship Via	Other
Designated Dealer	No
EDGAR Received	Yes
Service-disabled Veteran Owned	No
Minority Owned	No
Women Owned	No
National	No
No Foreign Terrorist Orgs	Yes
No Israel Boycott	Yes
MWBE	No
ESCs	All Texas Regions
States	All States
Contract Name	Fire Service Apparatus Vehicles
Contract No.	746-24
Effective	10/01/2024
Expiration	09/30/2027
Accepts RFQs	Yes
Service Fee Note	Vehicle purchase orders are subject to a $1500 service fee
Return Policy	Parts may be returned unused, and the vehicle may not be returned

February 27, 2025
Item No. 8.5.
Auto and Truck Tire Purchases

Sponsor: Mary Ellen Leonard, Director of Fiscal Services

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action on approving annual tire purchases and retread services from Southern Tire Mart, LLC through the BuyBoard in the annual not-to-exceed amount of $310,000.

Relationship to Strategic Goals:
Financially Sustainable City

Recommendation(s): Staff recommends approval to purchase new tires and retread services from Southern Tire Mart, LLC through the BuyBoard Purchasing Cooperative contract number 729-24. The estimated annual expenditure of $310,000 is based on the average amount spent on new tire and retread services since January 2023 and the anticipated needs for existing vehicles and new vehicles being added to inventory this fiscal year.

Summary: Southern Tire Mart, LLC is BuyBoard's contractor for the sale of new tires and retread services. BuyBoard is a purchasing cooperative for public agencies. All products and services available for purchase through BuyBoard contracts have been competitively bid and awarded and satisfy any State law requirements relating to competitive bids or proposals. Contingent upon Council approval, a blanket contract will be issued for the term of February 27th, 2025 through February 26th, 2026.

Budget & Financial Summary: Funds are available and budgeted in the Fleet Maintenance fund which is funded by all other departments.

Attachments:
1. Southern Tire Mart LLC

P.O. Box 400, Austin, Texas 78767
800.695.2919 • info@buyboard.com • buyboard.com

January 24, 2024

Sent Via Email: gov-sales@stmtires.com

Richard Conwill
Southern Tire Mart LLC
800 Highway 98
Columbia, MS 39429

Welcome to BuyBoard!

Re: *Notice of The Local Government Purchasing Cooperative Contract Award;* Proposal Invitation No. 729-24, Tires, Tubes, Supplies and Equipment

Congratulations, The Local Government Purchasing Cooperative (Cooperative) has awarded your company a BuyBoard® contract based on the above-referenced Proposal Invitation. The contract is effective for an initial one-year term of March 1, 2024, through February 28, 2025, and may be subject to two possible one-year renewals. Please refer to the Proposal Invitation for the contract documents, including the General Terms and Conditions of the Contract.

To review the items your company has been awarded, please review Proposal Tabulation No. 729-24 at: www.buyboard.com/vendor. Only items marked as awarded to your company are included in this contract award, and only those awarded items may be sold through the BuyBoard contract. All sales must comply with the contract terms and must be at or below the awarded pricing as set forth in the General Terms and Conditions.

The contract will be posted on the BuyBoard website as an online electronic catalog(s). **You are reminded that, in accordance with the General Terms and Conditions, all purchase orders must be processed through the BuyBoard**. Except as expressly authorized in writing by the Cooperative's administrator, you are not authorized to process a purchase order received directly from a Cooperative member that has not been processed through the BuyBoard or provided to the Cooperative. If you receive a purchase order directly from a Cooperative member that you have reason to believe has not been received by the Cooperative or processed through the BuyBoard, you must promptly forward a copy of the purchase order by email to info@buyboard.com.

A list of Cooperative members is available on the buyboard.com website. Once the contract is active, the BuyBoard vendor relations staff will be contacting you to assist with the resources available and to provide any support you may need as an awarded BuyBoard vendor.

On behalf of the Cooperative, we appreciate your interest in the Cooperative and we are looking forward to your participation in the program. If you have any questions, feel free contact me at bids@buyboard.com.

Sincerely,

Stacy Finn

Stacy Finn, Bid Analyst
Texas Association of School Boards, Inc.,
Administrator for The Local Government Purchasing Cooperative

P.O. Box 400, Austin, Texas 78767
800.695.2919 • info@buyboard.com • buyboard.com

February 10, 2025

Sent via email to: gov-sales@stmtires.com

Richard Conwill
Southern Tire Mart LLC
800 Highway 98
Columbia MS 39429

Re: Tires, Tubes, Supplies and Equipment
BuyBoard Contract 729-24

The Local Government Purchasing Cooperative (BuyBoard) awarded your company a contract under Tires, Tubes, Supplies and Equipment, Contract 729-24 effective 3/1/2024 through February 28, 2025, with two possible one-year renewals. At this time the BuyBoard is renewing your contract through February 28, 2026.

All discounts, terms, and conditions of your contract will remain the same. If you agree to this renewal, there is nothing you need to do. However, if you do not agree to this renewal, you must notify me via email at contractadmin@buyboard.com prior to the start of the renewal term.

Reminder: Once a BuyBoard contract is awarded, vendors must generate a minimum of $15,000 annually or they may not be offered a contract renewal.

If you have questions or comments concerning this renewal, please contact me as soon as possible at contractadmin@buyboard.com . We appreciate your interest in The Local Government Purchasing Cooperative.

Sincerely,

Jim Tulberg

Jim Tulberg
Contract Administrator

1st renewal v.02.13.2020

Vendor Contract Information Summary

Vendor	Southern Tire Mart LLC
Contact	Richard Conwill
Phone	877-786-4681
Email	gov-sales@stmtires.com
TIN	06-1689011
Address Line 1	800 Highway 98
Vendor City	Columbia
Vendor Zip	39429
Vendor State	MS
Vendor Country	USA
Delivery Days	10
Freight Terms	FOB Destination
Payment Terms	NET 30
Shipping Terms	Freight prepaid by vendor and added to invoice
Ship Via	Company Truck
Designated Dealer	No
EDGAR Received	Yes
Service-disabled Veteran Owned	No
Minority Owned	No
Women Owned	No
National	No
No Foreign Terrorist Orgs	Yes
No Israel Boycott	Yes
MWBE	No
ESCs	All Texas Regions
States	Alabama, Arizona, Arkansas, California, Colorado, Florida, Georgia, Louisiana, Mississippi, Nevada, New Mexico, Oklahoma, South Carolina, Tennessee, Texas, Utah
Contract Name	Tires, Tubes, Supplies and Equipment
Contract No.	729-24
Effective	03/01/2024
Expiration	02/28/2027
Accepts RFQs	Yes
Quote Reference Number	729-24

February 27, 2025
Item No. 8.6.
Annual Price Agreement for Various Electric Inventory Items

Sponsor: Timothy Crabb, Director of Electric

Reviewed By CBC: N/A

Agenda Caption: Presentation, discussion, and possible action on annual price agreements for various Electric Warehouse inventory items with KBS Electrical (KBS) for $508,287.00, and Techline, Inc (Techline) for $1,383,562.50 for a total not-to-exceed amount of $1,891,849.50.

Relationship to Strategic Goals:
Core Services and Infrastructure
Financially Sustainable City

Recommendation(s): Staff recommends award of this purchase with KBS in the amount not to exceed $508,287.00 and Techline in the amount not to exceed $1,383,562.50, for total annual price agreements of $1,891,849.50. This purchase aligns with historical years' activity for Electrical warehouse needs.

Summary: Staff issued Bid #25-034 on December 19, 2024, for Annual Price Agreement for Purchase of Various Electric Inventory Items and the Bid was opened on January 23, 2025. Three (3) sealed proposals were received and Electric staff reviewed for compliance of required specifications, pricing, and delivery times.

Purchase Orders will be issued to vendors as inventory restock is required.

Budget & Financial Summary: Funds are budgeted and available within the Electrical Fund. Various projects will be expensed as supplies are requisitioned by staff and issued from inventory.

Attachments:
1. 25-034 AWARD BID TABULATION

CITY OF COLLEGE STATION

BID #25-034 Annual Price Agreement for Electric Inventory

01/23/25 @ 2:00 P.M.

Item #	Description	CSU Provided Data			KBS ELECTRICAL			TECHLINE, INC.			Priester-Mell & Nicholson			
Group A Materials - 15kV Underground Cable Accessories														
A-1	Disconnectable Secondary Transformer Connector, 350 MCM, Insulated	Preferred MFG	Polaris	MFG	polaris			Homac			No Quote			
		Preferred Catalog Number	PSMTLSC3506SLP	Catalog Number	psmtlsc3506slp			CSW6350SLC						
		Alternates Accepted	YES	Delivery	16weeks			STK-5WKS						
		Inventory Item #	285-008-00007	Unit Price	**$ 23.95**	300	$ 7,185.00	**$ 30.70**	300	$ 9,210.00	$ -	300	$ -	
A-2	Disconnectable Secondary Transformer Connector, 500 MCM	Preferred MFG	Polaris	MFG	polaris			Homac			No Quote			
		Preferred Catalog Number	PSMTLECC500-6SL	Catalog Number	psmtlecc5006sl			EZC6500-SLC						
		Alternates Accepted	YES	Delivery	10weeks			3-5WKS						
		Inventory Item #	285-008-00008	Unit Price	**$ 31.79**	150	$ 4,768.50	**$ 45.25**	150	$ 6,787.50	$ -	150	$ -	
A-3	Flood-Seal, Muli-port Secondary Connector, 6 port	Preferred MFG	Polaris	MFG	polaris			Homac			No Quote			Homac Bars are better rated for submersion and shorter lead times
		Preferred Catalog Number	IPLWB600-6P	Catalog Number	iplwb6006p			RAB65C						
		Alternates Accepted	YES	Delivery	10weeks			6-8WKS						
		Inventory Item #	285-008-00012	Unit Price	**$ 51.95**	400	$ 20,780.00	**$ 65.25**	400	$ 26,100.00	$ -	400	$ -	
A-4	Deadbreak T -OPII Connector, 600 Amp	Preferred MFG	COOPER	MFG	cooper						No Quote			
		Preferred Catalog Number	TP615HH27TC	Catalog Number	tp615hh27tc			No Bid						
		Alternates Accepted	NO	Delivery	stock									
		Inventory Item #	285-022-00036	Unit Price	**$ 485.00**	100	$ 48,500.00		100	$ -	$ -	100	$ -	
A-5	Inline Splice, 200 Amp	Preferred MFG	3M	MFG	3m			3M			No Quote			
		Preferred Catalog Number	5411A-CI 1/0	Catalog Number	5411aci1/0			5411A-CI 1/0						
		Alternates Accepted	NO	Delivery	3-4wks			STK						
		Inventory Item #	285-076-00002	Unit Price	**$ 88.00**	100	$ 8,800.00	**$ 50.25**	100	$ 5,025.00	$ -	100	$ -	
A-6	Splice Re-jacketing Kit	Preferred MFG	3M	MFG	3m			3M			No Quote			
		Preferred Catalog Number	SJ-2FB	Catalog Number	sj2fb			SJ-2FB						
		Alternates Accepted	NO	Delivery	3-4wks			STK-2WKS						
		Inventory Item #	285-076-00005	Unit Price	**$ 105.00**	75	$ 7,875.00	**$ 78.00**	75	$ 5,850.00	$ -	75	$ -	
A-7	Inline Splice, 600 Amp	Preferred MFG	3M	MFG	3m			3M			No Quote			
		Preferred Catalog Number	QS4-15JCN-QCI-5	Catalog Number	qs415jcnqci5			QS4-15JCN-QCI-500-1000						
		Alternates Accepted	NO	Delivery	3-4wks			2-3wks						
		Inventory Item #	285-076-00007	Unit Price	**$ 1,018.00**	50	$ 50,900.00	**$ 575.00**	50	$ 28,750.00	$ -	50	$ -	
A-8	Elbow Arrester, 10 kV	Preferred MFG	COOPER	MFG	cooper			Elastimold			No Quote			
		Preferred Catalog Number	3238018C10M	Catalog Number	3238018c10m			167ESA10						
		Alternates Accepted	YES	Delivery	20wks			Stk						
		Inventory Item #	285-082-00005	Unit Price	**$ 89.85**	50	$ 4,492.50	**$ 115.79**	50	$ 5,789.50	$ -	50	$ -	
A-9	1000MCM Termination Kit	Preferred MFG	3M	MFG	3m			3M			No Quote			
		Preferred Catalog Number	3M #7655-S-4(L)-QL2-500-1000	Catalog Number	7655s4lql2			7655-S-4-1000-CSU						
		Alternates Accepted	NO	Delivery	3-4wks			2-3wks						
		Inventory Item #	285-082-00010	Unit Price	**$ 439.00**	50	$ 21,950.00	**$ 407.50**	50	$ 20,375.00	$ -	50	$ -	
A-10	1/0 to #4 Termination Kit	Preferred MFG	3M	MFG	3m			3M			No Quote			
		Preferred Catalog Number	#7652-S-4-TI-CI-T3-MB4	Catalog Number	7652s4ticit3			7652-S-4-TI-CSU						
		Alternates Accepted	NO	Delivery	3-4wks			2-3wks						
		Inventory Item #	285-082-00016	Unit Price	**$ 224.00**	150	$ 33,600.00	**$ 173.20**	150	$ 25,980.00	$ -	150	$ -	

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Item #	Description	CSU Provided Data			KBS ELECTRICAL			TECHLINE, INC.			Priester-Mell & Nicholson			
Group A Materials - 15kV Underground Cable Accessories														
A-11	Parking Stand Arrester, 10kV	Preferred MFG	COOPER	MFG	cooper			Elastimold						
		Preferred Catalog Number	3237686C10M	Catalog Number	323786c10m			167PSA10			No Quote			
		Alternates Accepted	YES	Delivery	53wks			24-26wks						
		Inventory Item #	285-082-00022	Unit Price	**289..79**	50	$ 14,489.50	**$ 363.90**	50	$ 18,195.00	$ -	50	$ -	
A-12	Loadbreak Elbow, 200 Amp	Preferred MFG	ELASTIMOLD	MFG	cooper			Elastimold						
		Preferred Catalog Number	162LRJS-C5240	Catalog Number	le215cc06t			162LRJS-C5240			No Quote			Unacceptable Alternate
		Alternates Accepted	YES	Delivery	stock			STK-36wks						
		Inventory Item #	285-082-00028	Unit Price	**$ 32.24**	500	$ 16,120.00	**$ 62.25**	500	$ 31,125.00	$ -	500	$ -	
A-13	Loadbreak Bushing Insert, 200 Amp	Preferred MFG	ELASTIMOLD	MFG	cooper			ELASTIMOLD						
		Preferred Catalog Number	1601A4	Catalog Number	lbi215			1601A4			No Quote			
		Alternates Accepted	YES	Delivery	stk-26wks			stk-20wks						
		Inventory Item #	285-095-00006	Unit Price	**$ 34.95**	750	$ 26,212.50	**$ 38.05**	750	$ 28,537.50	$ -	750	$ -	
A-14	Underground Fault Circuit Indicator	Preferred MFG	SmartGrid	MFG	smartgrid			SmartGrid						
		Preferred Catalog Number	FI-3CS04NC-M-F	Catalog Number	fi3cs04ncmf			FI-3CS04NC-M-F			No Quote			
		Alternates Accepted	NO	Delivery	13wks			13 wks						
		Inventory Item #	285-111-00001	Unit Price	**$ 151.49**	200	$ 30,298.00	**$ 163.50**	200	$ 32,700.00	$ -	200	$ -	
A-15	Pull Tape	Preferred MFG	Fibertek	MFG	neptco			Orion			Orion Ropeworks			
		Preferred Catalog Number	WP2500-3	Catalog Number	wp2500			64P2500-03000-3			64P2500-03000-3			
		Alternates Accepted	YES	Delivery	stock			2wks			2-3wks			
		Inventory Item #	M280-095-00001	Unit Price	**$ 128.00**	72	$ 9,216.00	**$ 168.75**	72	$ 12,150.00	**$ 142.00**	72	$10,224.00	
A-16	Protective Cap, 200 Amp	Preferred MFG	ELASTIMOLD	MFG	cooper			ELASTIMOLD						
		Preferred Catalog Number	160DRG	Catalog Number	lpc215			160DRG			No Quote			
		Alternates Accepted	YES	Delivery	4-6wks			stk-20wks						
		Inventory Item #	M285-095-00004	Unit Price	**$ 30.85**	200	$ 6,170.00	**$ 40.40**	200	$ 8,080.00	$ -	200	$ -	
Group B Materials - Overhead Cable and Pole Accessories														
B-1	Arrester for Polemount Transformers	Preferred MFG	OHIO BRASS	MFG	cooper			OHIO BRASS			Siemens			
		Preferred Catalog Number	213709-7314	Catalog Number	uhs10050a1c1d1a			213709-7314			3EK8 100-3CA4			
		Alternates Accepted	YES	Delivery	stock			3-4WKS			22-24wks			
		Inventory Item #	285-003-00001	Unit Price	**$ 51.50**	250	$ 12,875.00	**$ 73.50**	250	$ 18,375.00	**$ 63.00**	250	$15,750.00	
B-2	Riser Pole Arrester 10 KV	Preferred MFG	OHIO BRASS	MFG	cooper			OHIO BRASS			Siemens			
		Preferred Catalog Number	PVR-221609-7324	Catalog Number	urs10050a1a1b1a			PVR-221609-7324			3Ek8 100-4EA4-Z Q51			
		Alternates Accepted	YES	Delivery	stk-7wks			3-4WKS			22-24wks			
		Inventory Item #	285-003-00005	Unit Price	**$ 57.00**	150	$ 8,550.00	**$ 83.50**	150	$ 12,525.00	**$85.00**	150	$12,750.00	
B-3	Off Pole Arresters	Preferred MFG	HUBBELL	MFG				HUBBELL						
		Preferred Catalog Number	602009BOX1003	Catalog Number				602009BOX1003			No Quote			
		Alternates Accepted	YES	Delivery				30-32WKS						
		Inventory Item #	285-003-00006	Unit Price	**N/B**	200	$ -	**$ 220.00**	200	$ 44,000.00	$ -	200	$ -	

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Item #	Description	CSU Provided Data			KBS ELECTRICAL			TECHLINE, INC.			Priester-Mell & Nicholson			
Group A Materials - 15kV Underground Cable Accessories														
B-4	**Polymer Bell Insulator**	**Preferred MFG**	SALISBURY	**MFG**	salisbury			HUBBELL						
		Preferred Catalog Number	9503U-SI	**Catalog Number**	9503usi			4010250215			No Quote			
		Alternates Accepted	YES	**Delivery**	stock			STK						
		Inventory Item #	285-035-00008	**Unit Price**	**$ 15.95**	200	$ 3,190.00	**$ 21.75**	200	$ 4,350.00	**$ -**	200	$ -	
B-5	**Polymer Vise Top Insulator**	**Preferred MFG**	PREFORMED	**MFG**	preformed			PREFORMED						
		Preferred Catalog Number	IP-35-VTU2	**Catalog Number**	ip35vtu2			IP-35-VTU2			No Quote			
		Alternates Accepted	NO	**Delivery**	4-6wks			STK-4WKS						
		Inventory Item #	285-035-00013	**Unit Price**	**$ 27.50**	500	$ 13,750.00	**$ 27.75**	500	$ 13,875.00	**$ -**	500	$ -	
B-6	**100 Amp Polymer Cut-Out**	**Preferred MFG**	MACLEAN	**MFG**	aluma form			HUBBELL						
		Preferred Catalog Number	SC15HG116-BD	**Catalog Number**	csg15100a110ck16ka			C710114PX			No Quote			
		Alternates Accepted	YES	**Delivery**	stk-6wks			10-12WKS						
		Inventory Item #	285-028-00001	**Unit Price**	**$ 88.30**	300	$ 26,490.00	**$ 128.50**	300	$ 38,550.00	**$ -**	300	$ -	
B-7	**Large Dead-End Shoe 477**	**Preferred MFG**	MACLEAN	**MFG**	maclean			HUBBELL						
		Preferred Catalog Number	#HDSO-88	**Catalog Number**	hdso88			ADEZ88N			No Quote			
		Alternates Accepted	YES	**Delivery**	2-3wks			2-4WKS						
		Inventory Item #	285-047-00077	**Unit Price**	**$ 19.25**	150	$ 2,887.50	**$ 21.50**	150	$ 3,225.00	**$ -**	150	$ -	
B-8	**Conduit Standoff Bracket**	**Preferred MFG**	Barfield	**MFG**	aluma form			HUBBELL						
		Preferred Catalog Number	BASOCL6-12H	**Catalog Number**	6cso12			C6CSO12			No Quote			
		Alternates Accepted	NO	**Delivery**	stk-6wks			STK-4WKS						
		Inventory Item #	285-047-00108	**Unit Price**	**$ 47.00**	200	$ 9,400.00	**$ 47.00**	200	$ 9,400.00	**$ -**	200	$ -	
B-9	**Bolt Clamp for Metal Banding Strap**	**Preferred MFG**	BAND-IT	**MFG**	usaband									
		Preferred Catalog Number	D50489	**Catalog Number**	812500			No Bid			No Quote			
		Alternates Accepted	NO	**Delivery**	2-3wks									
		Inventory Item #	285-047-00120	**Unit Price**	**$ 13.95**	250	$ 3,487.50		250	$ -	**$ -**	250	$ -	
B-10	**Pole Setting Foam**	**Preferred MFG**	POLY-SET	**MFG**	poly set			BMK			Utility Structural			
		Preferred Catalog Number	PS225W	**Catalog Number**	ps225w			BMK03PS			PS225W			
		Alternates Accepted	YES	**Delivery**	stock			STK			1-2wks			
		Inventory Item #	285-065-00019	**Unit Price**	**$ 84.00**	500	$ 42,000.00	**$ 89.00**	500	$ 44,500.00	**$ 86.00**	500	$43,000.00	
B-11	**Bushing Guard #5**	**Preferred MFG**	Reliaguard	**MFG**	central maloney			Reliaguard						
		Preferred Catalog Number	BC-16003	**Catalog Number**	70380340			BC-16003			No Quote			Alternates not accepted
		Alternates Accepted	NO	**Delivery**	stock			2-7WKS						
		Inventory Item #	M285-102-00003	**Unit Price**	**$ 5.95**	2000	$ 11,900.00	**$ 22.75**	2000	$ 45,500.00	**$ -**	2000	$ -	
B-12	**1/0 H-Tap Copper Connector**	**Preferred MFG**	BLACKBURN	**MFG**	blackburn			BLACKBURN						
		Preferred Catalog Number	CF1010-1	**Catalog Number**	cf10101			CF1010-1			No Quote			
		Alternates Accepted	NO	**Delivery**	stk-4wks			STK-42WKS						
		Inventory Item #	M285-022-00003	**Unit Price**	**$ 3.38**	1000	$ 3,380.00	**$ 3.30**	1000	$ 3,300.00	**$ -**	1000	$ -	

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Item #	Description	CSU Provided Data			KBS ELECTRICAL			TECHLINE, INC.			Priester-Mell & Nicholson			
Group A Materials - 15kV Underground Cable Accessories														
B-13	**477 to 477 Shoot-On Connector**	**Preferred MFG**	AMP	**MFG**	amp			AMP						
		Preferred Catalog Number	#1-602031-3	**Catalog Number**	16020313			#1-602031-3			No Quote			
		Alternates Accepted	NO	**Delivery**	10-12wks			10WKS						
		Inventory Item #	M285-022-00012	**Unit Price**	**$ 39.79**	300	$ 11,937.00	**$ 31.40**	300	$ 9,420.00	**$ -**	300	$ -	
B-14	**Transformer Grounding Lug**	**Preferred MFG**	HUBBELL	**MFG**	penn union			HUBBELL			Penn Union			
		Preferred Catalog Number	GTCS34A	**Catalog Number**	gsec1			GTCS34A			GSE020			
		Alternates Accepted	YES	**Delivery**	stock			STK			2-36wks			
		Inventory Item #	M285-022-00026	**Unit Price**	**$ 2.98**	750	$ 2,235.00	**$ 5.80**	750	$ 4,350.00	**$ 3.45**	750	$ 2,587.50	
B-15	**477 AAC Stirrup**	**Preferred MFG**	Ampact	**MFG**	amp			Ampact						
		Preferred Catalog Number	#602047	**Catalog Number**	602047			#602047			No Quote			
		Alternates Accepted	NO	**Delivery**	stk-12wks			10WKS						
		Inventory Item #	M285-047-00082	**Unit Price**	**$ 82.19**	500	$ 41,095.00	**$ 83.93**	500	$ 41,965.00	**$ -**	500	$ -	
B-16	**Cut-Out Protector**	**Preferred MFG**	PDM	**MFG**	aluma form			Hubbell			PDM-4991			Durability preference has changed to the Hubbell option
		Preferred Catalog Number	PDM-4991	**Catalog Number**	bcaegcutout100p2b12			CC101			PDM-4991			
		Alternates Accepted	YES	**Delivery**	6wks			STK-2WKS			3-4wks			
		Inventory Item #	M285-028-00003	**Unit Price**	**$ 35.87**	500	$ 17,935.00	**$ 34.50**	500	$ 17,250.00	**$ 16.25**	500	$ 8,125.00	
B-17	**5/8" Ground Rod Clamp**	**Preferred MFG**	FARGO	**MFG**	maclean			FARGO						Unacceptable Alternate
		Preferred Catalog Number	GC268	**Catalog Number**	tg820			GC268			No Quote			
		Alternates Accepted	NO	**Delivery**	3wks			STK-2WKS						
		Inventory Item #	M285-047-00025	**Unit Price**	**$ 7.50**	500	$ 3,750.00	**$ 15.20**	500	$ 7,600.00	**$ -**	500	$ -	
B-18	**Parallel Groove Clamp**	**Preferred MFG**	Hubbell	**MFG**				Hubbell						
		Preferred Catalog Number	LC811AXB	**Catalog Number**				LC811AXB			No Quote			
		Alternates Accepted	NO	**Delivery**				STK-2WKS						
		Inventory Item #	M285-047-00030	**Unit Price**	**N/B**	500	$ -	**$ 6.50**	500	$ 3,250.00	**$ -**	500	$ -	
B-19	**Small Hotline Clamp**	**Preferred MFG**	MACLEAN	**MFG**	maclean			Hubbell			Penn Union			
		Preferred Catalog Number	C1520	**Catalog Number**	c1520			BC20			HLC020			
		Alternates Accepted	YES	**Delivery**	stock			STK			2-36wks			
		Inventory Item #	M285-047-00027	**Unit Price**	**$ 11.95**	200	$ 2,390.00	**$ 13.50**	200	$ 2,700.00	**$ 11.20**	200	$ 2,240.00	
B-20	**FARGO CONNECTORS, #8 - #2**	**Preferred MFG**	HUBBELL	**MFG**	maclean			HUBBELL						
		Preferred Catalog Number	GA9003GAA	**Catalog Number**	avc36			GA9003GAA/GA9003 GLSS			No Quote			
		Alternates Accepted	YES	**Delivery**	20wks			STK						
		Inventory Item #	M285-022-00061	**Unit Price**	**$ 8.15**	1000	$ 8,150.00	**$ 7.40**	1000	$ 7,400.00	**$ -**	1000	$ -	
B-21	**SNAP-ON COVER FOR FARGO CONNECTORS, #6 SOL - 336**	**Preferred MFG**	HUBBELL	**MFG**	maclean			HUBBELL						Shipping Speed Is critical on these
		Preferred Catalog Number	GA9000B3	**Catalog Number**	cavc3			GA9000B3			No Quote			
		Alternates Accepted	YES	**Delivery**	19wks			STK						
		Inventory Item #	M285-022-00062	**Unit Price**	**$ 3.65**	500	$ 1,825.00	**$ 4.40**	500	$ 2,200.00	**$ -**	500	$ -	

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Group A Materials - 15kV Underground Cable Accessories														
B-22	FARGO CONNECTORS, #6 - 2/0	Preferred MFG	HUBBELL	MFG	maclean			HUBBELL			No Quote			Shipping Speed Is critical on these
		Preferred Catalog Number	GA9020GAA	Catalog Number	avc20g			GA9020SSGAA/GA9020GLSS						
		Alternates Accepted	YES	Delivery	20wks			STK						
		Inventory Item #	M285-022-00063	Unit Price	$ 6.85	1000	$ 6,850.00	$ 11.85	1000	$ 11,850.00	$ -	1000	$ -	
B-23	FARGO CONNECTORS, SMALL PG	Preferred MFG	HUBBELL	MFG				HUBBELL			No Quote			
		Preferred Catalog Number	GC8002PGL	Catalog Number				GC8002PGL						
		Alternates Accepted	YES	Delivery				2-4WKS						
		Inventory Item #	M285-022-00064	Unit Price	N/B	1000	$ -	$ 13.25	1000	$ 13,250.00	$ -	1000	$ -	
B-24	SNAP-ON COVER FOR FARGO CONNECTORS, 4/0 - 600	Preferred MFG	HUBBELL	MFG				HUBBELL			No Quote			
		Preferred Catalog Number	GA9000B4	Catalog Number				GA9000B4						
		Alternates Accepted	YES	Delivery				2WKS						
		Inventory Item #	M285-022-00065	Unit Price	N/B	500	$ -	$ 11.25	500	$ 5,625.00	$ -	500	$ -	
B-25	FARGO CONNECTORS, #2 - 800	Preferred MFG	HUBBELL	MFG	maclean			HUBBELL			No Quote			Shipping Speed Is critical on these
		Preferred Catalog Number	GA9843GAA	Catalog Number	avc842			GA9843GLSS						
		Alternates Accepted	YES	Delivery	19wks			STK-40WKS						
		Inventory Item #	M285-022-00066	Unit Price	$ 14.50	1000	$ 14,500.00	$ 29.50	1000	$ 29,500.00	$ -	1000	$ -	
B-26	STREETLIGHT FOUNDATION	Preferred MFG	CHANCE	MFG	ecp			CHANCE			No Quote			Unacceptable Alternate
		Preferred Catalog Number	T1122833	Catalog Number	zlps4005610			T1122833						
		Alternates Accepted	NO	Delivery	6wks			4-6WKS						
		Inventory Item #	210-085-00001	Unit Price	$ 295.50	50	$ 14,775.00	$ 1,025.00	50	$ 51,250.00	$ -	50	$ -	
Group C Materials - Pull Boxes and Utility Enclosures														
C-1	Pull Box, 36"x60"x48"	Preferred MFG	Hubbell	MFG	old castle			Hubbell			No Quote			KBS alternate is too heavy, this is the lightweight pull box
		Preferred Catalog Number	A143660529XH1	Catalog Number	cvg366048x3004			A143660529XH1						
		Alternates Accepted	YES	Delivery	9-11wks			8WKS						
		Inventory Item #	285-045-00007	Unit Price	$ 2,665.00	30	$ 79,950.00	$ 3,062.00	30	$ 91,860.00	$ -	30	$ -	
C-2	Pull Box, 48"x96"x48"	Preferred MFG	ARMORCAST	MFG	old castle			Hubbell			No Quote			KBS alternate is too heavy, this is the lightweight pull box
		Preferred Catalog Number	A6001449TAP-BCS	Catalog Number	cvg489648xe004			A1B4896518XH1						
		Alternates Accepted	YES	Delivery	6-8wks			10-12WKS						
		Inventory Item #	285-045-00008	Unit Price	$ 5,565.00	10	$ 55,650.00	$ 6,995.00	10	$ 69,950.00	$ -	10	$ -	
C-3	Pull Box Extension 24" for a 48"x96"x48"	Preferred MFG	ARMORCAST	MFG	old castle			Hubbell			No Quote			KBS alternate is too heavy, this is the lightweight pull box
		Preferred Catalog Number	A6001449PCX12	Catalog Number	cvb489624x000fx000			B1B489624T						
		Alternates Accepted	YES	Delivery	6-8wks			10-12WKS						
		Inventory Item #	285-045-00012	Unit Price	$ 2,455.00	10	$ 24,550.00	$ 2,995.00	10	$ 29,950.00	$ -	10	$ -	
C-4	Secondary Pedestal	Preferred MFG	NORDIC	MFG	old castle			NORDIC			No Quote			
		Preferred Catalog Number	PSP-151530-MG	Catalog Number	1220a3he1c0			PSP-151530-MG						
		Alternates Accepted	YES	Delivery	4-6wks			STK						
		Inventory Item #	285-045-00009	Unit Price	$ 198.00	300	$ 59,400.00	$ 190.00	300	$ 57,000.00	$ -	300	$ -	

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Group A Materials - 15kV Underground Cable Accessories														
C-5	Transformer Box Pads	Preferred MFG	NORDIC	MFG	old castle			NORDIC			No Quote			Needs to be a fiberglass basement style pad
		Preferred Catalog Number	CBP-37-43-15A-MG-22X24	Catalog Number	hl3743152224t			CBP-37-43-15A-MG-22X24						
		Alternates Accepted	YES	Delivery	7-10wks			6-8WKS						
		Inventory Item #	210-017-00001	Unit Price	**$ 319.60**	200	$ 63,920.00	**$ 325.50**	200	$ 65,100.00	$ -	200	$ -	
C-6	BOTTOMLESS CONCRETE PULL BOX, 48" X 96" X 48"	Preferred MFG	CAPITAL PRECAST	MFG				CAPITAL PRECAST			No Quote			
		Preferred Catalog Number	CSU4x84R	Catalog Number				CSU4x84R						
		Alternates Accepted	NO	Delivery				2-4wks						
		Inventory Item #	285-045-00016	Unit Price	**N/B**	10	$ -	**$ 2,765.00**	10	$ 27,650.00	$ -	10	$ -	
C-7	CONCRETE PULL BOX, 48" X 96" X 48"	Preferred MFG	CAPITAL PRECAST	MFG				CAPITAL PRECAST			No Quote			
		Preferred Catalog Number	CSU4x84B	Catalog Number				CSU4x84B						
		Alternates Accepted	NO	Delivery				2-4wks						
		Inventory Item #	285-045-00017	Unit Price	**N/B**	25	$ -	**$ 4,045.00**	25	$ 101,125.00	$ -	25	$ -	
C-8	CONCRETE PULL BOX EXTENSION, 48" X 96" X 24"	Preferred MFG	CAPITAL PRECAST	MFG				CAPITAL PRECAST			No Quote			
		Preferred Catalog Number	CSU4x82R	Catalog Number				CSU4x82R						
		Alternates Accepted	NO	Delivery				2-4wks						
		Inventory Item #	285-045-00018	Unit Price	**N/B**	35	$ -	**$ 1,385.00**	35	$ 48,475.00	$ -	35	$ -	
C-9	CONCRETE PULL BOX REGULAR LID	Preferred MFG	CAPITAL PRECAST	MFG				CAPITAL PRECAST			No Quote			
		Preferred Catalog Number	CSU4x88Top	Catalog Number				CSU4x88Top						
		Alternates Accepted	NO	Delivery				2-4wks						
		Inventory Item #	285-045-00019	Unit Price	**N/B**	30	$ -	**$ 3,895.00**	30	$ 116,850.00	$ -	30	$ -	
C-10	CONCRETE PULL BOX TRAFFIC RATED LID	Preferred MFG	CAPITAL PRECAST	MFG				CAPITAL PRECAST			No Quote			
		Preferred Catalog Number	DR:CSU4x8GalH20	Catalog Number				DR:CSU4x8GalH20						
		Alternates Accepted	NO	Delivery				2-4wks						
		Inventory Item #	285-045-00020	Unit Price	**N/B**	5	$ -	**$ 4,755.00**	5	$ 23,775.00	$ -	5	$ -	
Group D Materials - Fiberglass Crossarms														
D-1	Heavy Duty Deadend, 8'	Preferred MFG	SHAKESPEARE	MFG	pupi			SHAKESPEARE			No Quote			
		Preferred Catalog Number	IDB096G12242	Catalog Number	da4000096e2b7x2			IDB096G12242						
		Alternates Accepted	YES	Delivery	6-8wks			4 wks						
		Inventory Item #	285-047-00088	Unit Price	**$ 350.00**	100	$ 35,000.00	**$ 322.00**	100	$ 32,200.00	$ -	100	$ -	
D-2	Standard Duty Crossarm, 8'	Preferred MFG	SHAKESPEARE	MFG	pupi			SHAKESPEARE			No Quote			Pupi is not rated as strongly as Shakespeare arms
		Preferred Catalog Number	STB096N12602	Catalog Number	tb220009604x2			STB096N12602						
		Alternates Accepted	YES	Delivery	6-8wks			4 wks						
		Inventory Item #	285-047-00093	Unit Price	**$ 152.00**	200	$ 30,400.00	**$ 185.00**	200	$ 37,000.00	$ -	200	$ -	
D-3	Standard Duty Crossarm, 10'	Preferred MFG	SHAKESPEARE	MFG	pupi			SHAKESPEARE			No Quote			Pupi is not rated as strongly as Shakespeare arms
		Preferred Catalog Number	STB120N12602	Catalog Number	tb220012005x2			STB120N12602						
		Alternates Accepted	YES	Delivery	6-8wks			4 wks						
		Inventory Item #	285-047-00094	Unit Price	**$ 179.00**	200	$ 35,800.00	**$ 214.00**	200	$ 42,800.00	$ -	200	$ -	

CITY OF COLLEGE STATION

BID #25-034 Annual Price Agreement for Electric Inventory

01/23/25 @ 2:00 P.M.

Item #	Description	CSU Provided Data			KBS ELECTRICAL			TECHLINE, INC.			Priester-Mell & Nicholson			
Group A Materials - 15kV Underground Cable Accessories														
D-4	Heavy Duty Deadend, 10'	Preferred MFG	SHAKESPEARE	MFG	pupi			SHAKESPEARE						Pupi product deflects more than Shakespeare
		Preferred Catalog Number	IDB120G12242	Catalog Number	da3000120e2b9x2			IDB120G12242			No Quote			
		Alternates Accepted	YES	Delivery	6-8wks			4 wks						
		Inventory Item #	285-047-00099	Unit Price	**$ 355.00**	100	$ 35,500.00	**$ 360.00**	100	$ 36,000.00	$ -	100	$ -	
Group E Materials - Streetlight Fixtures														
E-1	LED Cobrahead Light Fixture, Autobahn LED Roadway, LED 50	Preferred MFG	American Electric Lighting (AEL)	MFG				American Electric Lighting (AEL)						
		Preferred Catalog Number	ATBS-G-MVOLT-R2-3K-BZ-NL-XL-P5	Catalog Number				ACC P304 MVOLT D4I R2 3K BZ 20K XL NL P7 NBR			No Quote			
		Alternates Accepted	NO	Delivery				4-8WKS						
		Inventory Item #	285-056-00015	Unit Price	**N/B**	50	$ -	**$ 224.00**	50	$ 11,200.00		50	$ -	
E-2	LED Cobrahead Light Fixture, Autobahn LED Roadway, LED 130	Preferred MFG	American Electric Lighting (AEL)	MFG				American Electric Lighting (AEL)						
		Preferred Catalog Number	ATBM-F-MVOLT-R3-BZ-NL-XL-P5	Catalog Number				ACM P607 MVOLT D4I R3 2B 4K BZ 20K XL NL P7 NBR			No Quote			
		Alternates Accepted	NO	Delivery				4-8WKS						
		Inventory Item #	285-056-00017	Unit Price	**N/B**	30	$ -	**$ 413.00**	30	$ 12,390.00	$ -	30	$ -	
E-3	LED Cobrahead Light Fixture, Autobahn LED Roadway, LED 210	Preferred MFG	American Electric Lighting (AEL)	MFG				American Electric Lighting (AEL)						
		Preferred Catalog Number	ATBL-D-MVOLT-R3-BZ-NL-XL-P5	Catalog Number				ACL P127 MVOLT D4I R3 4B 4K BZ 20K XL NL P7 NBR			No Quote			
		Alternates Accepted	NO	Delivery				4-8WKS						
		Inventory Item #	285-056-00018	Unit Price	**N/B**	30	$ -	**$ 640.00**	30	$ 19,200.00	$ -	30	$ -	
E-4	LED Decorative Light Fixture	Preferred MFG	Holophane	MFG				Holophane						
		Preferred Catalog Number	AWDE2P5040KASMBZ3NNNL1X1UARFD290435	Catalog Number				AWDE3 P40 40K MVOLT MS BZ AL3 CL NL1X1 DE UA RFD317874			No Quote			
		Alternates Accepted	NO	Delivery				8-10WKS						
		Inventory Item #	285-056-00016	Unit Price	**N/B**	100	$ -	**$ 1,094.00**	100	$ 109,400.00	$ -	100	$ -	
E-5	ROAM DIMMING NODE CONTROL Acuity Brands REN127-DV1-0 J50(only)	Preferred MFG	ACUITY	MFG				ACUITY						
		Preferred Catalog Number	REN127-DV1-0 J50	Catalog Number				REN127-DV1-0 J50			No Quote			
		Alternates Accepted	NO	Delivery				10-14WKS						
		Inventory Item #	285-055-00001	Unit Price	**N/B**	250	$ -	**$ 203.75**	250	$ 50,937.50	$ -	250	$ -	
Group F Materials - Motor Operators and LineScope Sensors														
F-1	ADMO Class Motor Operator - Reciprocating Motion	Preferred MFG	CLEAVELAND/PRICE	MFG	cleaveland price			CLEAVELAND/PRICE						
		Preferred Catalog Number	#CB29AA04G001	Catalog Number	cb29b1013g001			C29B1013G001			No Quote			
		Alternates Accepted	NO	Delivery	32-34wks			32-34wks						
		Inventory Item #	285-079-00014	Unit Price	**$ 8,195.00**	8	$ 65,560.00	**$ 8,371.00**	8	$ 66,968.00	$ -	8	$ -	
F-2	ADMO Class Motor Operator - Torsional Motion	Preferred MFG	CLEAVELAND/PRICE	MFG	cleaveland price			CLEAVELAND/PRICE						
		Preferred Catalog Number	CB28AA11G01	Catalog Number	c28b1099g001			C28B1099G001			No Quote			
		Alternates Accepted	NO	Delivery	32-34wks			32-34wks						
		Inventory Item #	285-079-00015	Unit Price	**$ 8,335.00**	12	$ 100,020.00	**$ 8,634.00**	12	$ 103,608.00	$ -	12	$ -	
F-3	LINEPROBE CURRENT AND VOLTAGE SENSORS 15KV (SET OF 3)	Preferred MFG	CLEAVELAND/PRICE	MFG	cleaveland price			CLEAVELAND/PRICE						
		Preferred Catalog Number	LineScope LineProbe for RTU, 15kV (only)	Catalog Number	lpc015lg15			LPC015LG15			No Quote			
		Alternates Accepted	NO	Delivery	32-34wks			32-34wks						
		Inventory Item #	285-079-00017	Unit Price	**$ 5,809.00**	5	$ 29,045.00	**$ 6,008.00**	5	$ 30,040.00	$ -	5	$ -	
						$	1,189,504.00		$	1,893,343.00		$	94,676.50	
				AWARD TOTAL		**$**	**508,287.00**		**$**	**1,383,562.50**			**NO AWARD**	

February 27, 2025
Item No. 8.7.
Acquisition of a Data Analytics Consultant

Sponsor: Ty Elliott, City Auditor

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action approving a purchase order for the acquisition of a data analytics consultant from ThirdLine Inc., LLC for a not-to-exceed contract in the amount of $124,910.

Relationship to Strategic Goals:
Good Governance

Recommendation(s): Staff recommends the Council consider the renewal of the contract with ThirdLine for a term of five years for an amount not-to-exceed $124,910.00; with an annual cost of $28,982.00 in the first year and $23,982 for each subsequent year.

Summary: ThirdLine software products leverage advanced analytics to monitor data within public sector enterprise resource planning (ERP) systems, providing recommendations to enhance efficiency, mitigate risks, and strengthen controls. These analytics work seamlessly together, running continuously to review all transactions and assist auditors in identifying and analyzing risks, which is critical for minimizing fraud, waste, and abuse. In our most recent audit projects—Accounts Payable, Vendor Management, and Role-Based Access Controls—we have utilized ThirdLine's tools. These solutions have significantly improved our efficiency, expanded our audit coverage, and reduced resource costs.

Budget & Financial Summary: The total amount of payment, including reimbursements, under the contract may not exceed $124,910.00. The contract term is five years, with an annual cost of $28,982.00 for the first year and $23,982.00 for each subsequent year. By committing to a five-year agreement with ThirdLine rather than a one-year term, we secured a 20% reduction in their pricing. There are adequate funds in the City Internal Auditor's budget – resulting in no increase in the City's budget.

Attachments:
1. ThirdLine_Data Analytics_25300285 ADc (CC 2.27.25)

CONTRACT & AGREEMENT ROUTING FORM

CONTRACT#: 25300285 PROJECT #: _____ BID/RFP/RFQ#: 23-083

Project Name / Contract Description: Data Analytics Consultant

Name of Contractor: ThirdLine, Inc.

CONTRACT TOTAL VALUE: $ 124,910.00 **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)

Consultant was chosen from three responses in RFP-23-083 as the lowest responsible proposer meeting specifications.

This contract is for a 5 year renewal.

Funding is from account 10010120-5301

*(If required)**

CRC Approval Date*: N/A **Council Approval Date*:** 2/27/2025 **Agenda Item No*:** TBD

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

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

SIGNATURES RECOMMENDING APPROVAL

Ty Elliott — 2/19/2025
DEPARTMENT DIRECTOR/ADMINISTERING CONTRACT — DATE

[signature] — 2/19/2025
ASST CITY MGR – CFO — DATE

John A. Haislet — 2/19/2025
LEGAL DEPARTMENT — DATE

APPROVED & EXECUTED

_____ — _____
CITY MANAGER — DATE

N/A — _____
MAYOR (if applicable) — DATE

N/A — _____
CITY SECRETARY (if applicable) — DATE

9.12.23 UPDATED

TECHNOLOGY SERVICES CONTRACT

This Contract is by and between the **City of College Station**, a Texas Municipal Home-Rule Corporation (the "City") and **ThirdLine, Inc.**, an **Oklahoma** Corporation (the "Consultant"), whereby Consultant agrees to perform and the City agrees to pay for the work described herein.

ARTICLE I
SCOPE OF SERVICE

1.01 This Contract is for **the acquisition of a Data Analytics Consultant** (the "Project"). The scope and details of the work to be provided to the City by Consultant for the Project are set forth in **Exhibit "A"** to this Contract and are incorporated as though fully set forth herein by reference (the "Work"). Consultant agrees to perform or cause the performance of all the work described in **Exhibit "A."**

1.02 Consultant agrees to perform the work described in **Exhibit "A"** hereto and the City agrees to pay Consultant a fee based on the rates set forth in **Exhibit "B"** to this Contract for the Work performed by Consultant. The invoices shall be submitted to the City following the 15th day and the last day of each month. The payment terms are net payable within thirty (30) calendar days of the City's receipt of the invoice. Upon termination of this Contract, payments under this paragraph shall cease, provided, however, that Consultant shall be entitled to payments for work performed in accordance with this Contract before the date of termination and for which Consultant has not yet been paid.

ARTICLE II
PAYMENT

2.01 The total amount of payment, including reimbursements, by the City to Consultant for all Work to be performed under this Contract may not, under any circumstances, exceed **One Hundred Twenty Four Thousand Nine Hundred Ten and No/100 Dollars ($124,910.00)**.

2.02 **Fees**. City shall pay Consultant the fees ("**Fees**") as set forth in Exhibit B without offset or deduction according to any undisputed invoices. City shall make all payments hereunder in US dollars according to the Texas Prompt Payment Act as in Exhibit B. If City fails to make any payment when due, without limiting Consultant's other rights and remedies and such failure continues for thirty (30) days or more, Consultant may suspend City's and its Authorized Users' access to any portion or all of the Services until such undisputed amounts are paid in full.

ARTICLE III
CHANGE ORDERS

3.01 The City may from time to time request changes in the scope and focus of the Work to be conducted by Consultant pursuant to this Contract, provided, however, that any such change that in the opinion of Consultant, the City Manager, or the City's Project Manager varies significantly from the scope of the work set out herein and would entail an increase in cost or expense to the

City shall be mutually agreed upon in advance in writing by Consultant and the City's Project Manager.

(a) When the original Contract amount plus all change orders is $100,000 or less, the City Manager or his designee may approve the written change order provided the change order does not increase the total amount set forth in the Contract to more than $100,000. For such contracts, when a change order results in a total contract amount that exceeds $100,000, the City Council of the City must approve such change order prior to commencement of the services or work; and

(b) When the original contract amount plus all change orders is greater than $100,000, the City Manager or his designee may approve the written change order provided the change order does not exceed $50,000 and provided the sum of all change orders does not exceed 25% of the original contract amount. For such contracts, when a change order exceeds $50,000 or when the sum of all change orders exceeds 25% of the original contract amount, the City Council of the City must approve such change order prior to commencement of the services or work. Thereafter, any additional change orders exceeding $50,000 or any additional change orders totaling 25 percent following such council approval, must be approved by City Council; and

(c) **Any request by the Consultant for an increase in the Scope of Work and an increase in the amount listed in paragraph two of this Contract shall be made and approved by the City prior to the Consultant providing such work or the right to payment for such additional work shall be waived.** If there is a dispute between the Consultant and the City respecting any service provided or to be provided hereunder by the Consultant, including a dispute as to whether such Work is additional to the Scope of Work included in this Contract, the Consultant agrees to continue providing on a timely basis all work to be provided by the Consultant hereunder, including any Work as to which there is a dispute.

ARTICLE IV
TIME OF PERFORMANCE

4.01 Except as provided in Article XI hereinbelow, the term of this Contract shall be for five (5) years from the effective date of this Contract. If, for any reason, funds are not appropriated to continue the contract, the contract shall become null and void and shall terminate.

4.02 Time is of the essence of this Contract. The Consultant shall be prepared to provide the Work in the most expedient and efficient manner possible in order to complete the work by the times specified.

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

ARTICLE V
INDEPENDENT CONTRACTOR AND NONSOLICITATION

5.01 Independent Contractor. In all activities or work performed hereunder, the Consultant is an independent contractor and not an agent or employee of the City. The Consultant, as an independent contractor, shall be responsible for the final product contemplated under this Contract. Except for materials furnished by the City, the Consultant shall supply all materials, equipment and labor required for the execution of the Work on the Project. The Consultant shall have ultimate control over the execution of the Work under this Contract. The Consultant shall have the sole obligation to employ, direct, control, supervise, manage, discharge, and compensate all of its employees and subcontractors, and the City shall have no control of or supervision over the employees of the Consultant or any of the Consultant's subcontractors except to the limited extent provided for in this Contract. Consultant shall be liable for any misrepresentations. Any negotiations by the Consultant on the City's behalf are binding on the City only when within the Scope of Work contained herein and approved by the City.

5.02 Nonsolicitation. Consultant recognizes and understands that it will be interacting with City employees when performing Work under this Contract, and that it may cause irreparable harm to the City should one or more City employees perform work for Consultant either directly or indirectly. Because of this, Consultant agrees that it shall not directly or indirectly, personally or through others, solicit or encourage, or attempt to solicit or encourage on Consultant's own behalf or on behalf of any other person or entity for hire or use the work of any employee or other consultant of the City or any of City's agents or officials. Consultant agrees to adhere to this requirement for a minimum of one year following termination of this Contract. This provision shall survive termination of this Contract.

ARTICLE VI
AUTHORIZATION

6.01 The City shall direct Consultant to commence Work on the Project by sending Consultant a "letter of authorization" to begin Work on the Project.

6.02 Upon receipt of the letter of authorization to begin Work on the implementation of the Project, Consultant shall meet with the City for the purpose of determining the nature of the Project, including but not limited to the following: meeting with the City's staff to coordinate Project goals, schedules, and deadlines; coordinating data collection; briefing the City's management staff; documenting study assumptions, methodologies and expectations; devising the criteria to be met for both interim goals and final completion of the Work.

6.03 Consultant shall consult with the City and may, in some limited circumstances, act as the City's representative, but it is understood and agreed by the parties that for all purposes related to this Contract, Consultant shall be an independent consultant at all times and is not to be considered either an agent or an employee of the City.

ARTICLE VII
WARRANTY

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

7.02 Consultant shall keep the City informed of the progress of the Work and shall guard against any defects or deficiencies in its work.

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

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

7.05 **Warranty Disclaimer.** THE CONSULTANT IP IS PROVIDED "AS IS" AND CONSULTANT HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. CONSULTANT SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. CONSULTANT MAKES NO WARRANTY OF ANY KIND THAT THE CONSULTANT IP, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF,

WILL MEET CITY'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM, OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE.

ARTICLE VIII
INDEMNIFICATION AND RELEASE

8.01 Indemnity. The Consultant agrees to indemnify, defend, and hold harmless the City, its officers, employees, volunteers and agents (separately and collectively referred to in this paragraph as "Indemnitee"), from and against any and all claims, losses, damages, causes of action, suits, judgments, settlements made by Indemnitee, and liability of every kind, including all expenses of litigation, court costs, attorney's fees, and other reasonable costs for damage to or loss of use of any property, for injuries to, or sickness or death of any person, including but not limited to Consultant, any of its subconsultants of any tier, or of any employee or invitee of Consultant or of any such subconsultants, that is caused by, arises out of, related to, or in connection with, the negligence of and/or negligent performance of this Contract by Consultant or by any such subconsultants of any tier, under this Contract. There shall be no additional indemnification other than as set forth in this section. All other provisions regarding the same subject matter shall be declared void and of no effect.

8.02 It is agreed with respect to any legal limitations now or hereafter in effect and affecting the validity or enforceability of the indemnification obligation under Paragraph 8.01, 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.

8.03 Release. The Consultant releases, relinquishes, and discharges the City, its officers, agents, volunteers and employees from all claims, demands, and causes of action of every kind and character, including the cost of defense thereof, for any injury to, sickness or death of the Consultant or its employees and any loss of or damage to any property of the Consultant or its employees that is caused by or alleged to be caused by, arises out of, or is in connection with the Consultant's work to be performed hereunder. Both the City and the Consultant expressly intend that this release shall apply regardless of whether said claims, demands, and causes of action are covered, in whole or in part, by insurance and in the event of injury, sickness, death, loss, or damage suffered by the Consultant or its employees, but not otherwise, this release shall apply regardless of whether such loss, damage, injury, or death was caused in whole or in part by the City, any other party released hereunder, the Consultant, or any third party. There shall be no additional release or hold harmless provision other than as set forth in this section. All other provisions regarding the same subject matter shall be declared void and of no effect.

ARTICLE IX

INSURANCE

9.01 General. The Consultant shall procure and maintain at its sole cost and expense for the duration of this Contract insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, volunteers, employees or subconsultants. The policies, limits and endorsements required are as set forth below**:**

9.02 Types. During the term of this Contract Consultant's insurance policies shall meet the minimum requirements of this section.

(a) Commercial General Liability.

(b) Business Automobile Liability.

(c) Workers' Compensation/Employer's Liability.

(d) Professional Liability.

(e) Cyber Liability.

9.03 Certificates of Insurance. For each of these policies, the policy shall be endorsed to show the Consultant's insurance coverage as primary with respect to the City, its officials, agents, employees, and volunteers. Any insurance or self-insurance carried or obtained by the City, its officials, agents, employees, or volunteers, shall be considered in excess of the Consultant's insurance and shall not contribute to it. No term or provision of the indemnification provided by the Consultant to the City pursuant to this Contract shall be construed or interpreted as limiting or otherwise affecting the terms of the insurance coverage. All Certificates of Insurance and endorsements shall be furnished to the City's Representative at the time of execution of this Contract, on the most current State of Texas Department of Insurance-approved forms, attached hereto as **Exhibit C**, and approved by the City *before* work commences.

9.04 Additional Insurance. The Consultant shall include all subconsultants as Additional Insureds under its policies or shall furnish separate certificates and endorsements for each subconsultant. Coverages for subconsultants shall be subject to all requirements stated herein.

9.05 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 shall be accepted.

(b) Deductibles shall be listed on the certificate of insurance and are acceptable only on an "occurrence" basis.

(c) "Claims made" policies are not accepted, except for Professional Liability insurance.

(d) Coverage shall not be suspended, voided, canceled, or reduced in coverage or in limits of liability except after thirty (30) calendar days written notice has been given to the City of College Station.

(e) The Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent. Each certificate shall contain the following provisions and warranties:

i. The licensed insurance company is authorized to do business in the State of Texas

ii. The insurance policy is underwritten on forms provided by the Texas State Board of Insurance or ISO

iii. All endorsements and coverages are included according to the requirements of this Contract

iv. The form of notice of cancellation, termination, or change in coverage provisions is specified in this attachment

(f) The City of College Station, its officials, agents, employees, and volunteers are to be named as Additional Insureds on the Commercial General Liability and Business Automobile Liability Policies. The coverages shall contain no special limitations on the scope of protection afforded the City, its officials, agents, employees, and volunteers.

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

(a) Coverage shall be written by a carrier rated "A: VIII" or better in accordance with the current A. M. Best Key Rating Guide.

(b) Minimum limits of liability of $1,000,000 per occurrence per project with a $2,000,000 annual aggregate limit.

(c) Coverage shall be at least as broad as Insurance Service's Office (ISO) Number CG 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: premises/operations; independent contracts; products/completed operations; contractual liability (insuring the indemnity provided herein); and Host Liquor Liability.

(f) The City shall be named as Additional Insured and policies endorsed to waive rights of subrogation and to be primary and non-contributory with regard to any self-insurance or insurance policy held by the City.

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

(a) Coverage shall be written by a carrier rated "A:VIII" or better in accordance with the current A.M. Best Key Rating Guide.

(b) Minimum Combined Single Limit of $1,000,000 per occurrence for bodily injury and property damage.

(c) The Business Auto Policy must show Symbol 1 in the Covered Autos portion of the liability section in Item 2 of the declarations page.

(d) The coverage shall include owned, leased, or rented autos, non-owned autos, any autos and hired autos.

9.08 Workers' Compensation/Employer's Liability Insurance requirements. The Workers' Compensation/Employer's Liability insurance shall include the following terms:

(a) Employer's Liability limits of $1,000,000 for each accident is required.

(b) "Texas Waiver of Our Right to Recover from Others Endorsement, WC 42 03 04" shall be included in this policy.

(c) Texas must appear in Item 3A of the 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.

9.09 Professional Liability requirements. The following Professional Liability requirements shall apply:

(a) Coverage shall be written by a carrier rated "A:VIII" or better in accordance with the current A. M. Best Key Rating Guide.

(b) Minimum limits of liability of $1,000,000 per occurrence and $2,000,000 aggregate, with a maximum deductible of $100,000 unless otherwise agreed in writing by both parties. Financial statements shall be furnished to the City upon request.

(c) Consultant must continuously maintain professional liability insurance with prior acts coverage for a minimum of two years after completion of the Project or termination of this Contract, as may be amended, whichever occurs later. Coverage under any renewal policy shall include a retroactive date that precedes the earlier of the effective date of this Contract or the first performance of work for the Project. The purchase of an extended discovery period or an extended reporting period on this policy will not be sufficient to comply with the obligations hereunder.

9.10 Cyber Liability. Minimum limits of $3,000,000 for third party losses. Coverage must include:

(a) Event Management;

(b) Unauthorized Access/use;

(c) Computer Virus;

(d) Denial of Service Attack;

(e) Libel, Cyber-libel, Slander, Product Disparagement;

(f) Violation of Right of Privacy;

(g) Regulatory Costs;

(h) Privacy Costs- Privacy Injury and Identity Theft;

(i) Programming Errors & Omissions Liability;

(j) Replacement or Restoration of Electronic Data (First Person);

(k) Extortion Threats;

(l) Business Income and Extra Expense (to $1 million);

(m) Public Relations Expense; and

(n) Security Breach Expense.

ARTICLE X
TECHNOLOGY REQUIREMENTS

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

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

i. Data Classification and privacy;

ii. Security training and awareness;

iii. Systems administration, patching and configuration;

iv. Incident response;

v. Managing workstations, mobile devices, and antivirus applications;

vi. Backups, disaster recovery and business partners and contractors;

vii. Audit and testing schedules;

viii. Requirements for third-party business partners and contractors;

ix. Compliance with information security or privacy laws, rules, regulations, or standards;

x. Evidence of background checks that support security of sensitive or confidential information;

xi. Disclosure of previous data breaches; and

xii. Any other relevant information regarding security policies or procedures.

(b) **Industry Best Practices.** Consultant must provide all services using the best commercially-available security technology and techniques according to industry best practices and standards; the City's security standards, policies and procedures

including those relating to fraud prevention and detection and any other inappropriate system and network use or access, including:

i. Providing secure (SSL, HTTPS, or similar) access to all levels of users as defined by the City via the internet;

ii. Having controls meeting applicable laws and the latest Framework for Improving Critical Infrastructure Cyber security from National Institute of Standards and Technology (NIST) or compatible industry security frameworks;

iii. Completely testing and applying patches for hardware bios/firmware, bare metal operating systems (e.g., VMware ESXi), virtualized server operating systems, and software products before release; and

iv. Having all servers providing work to the City solely physically located within the continental United States of America. Contractor must house all servers and equipment in an operational environment meeting industry standards including a climate-controlled room with a fire and security hazard detection system and a network and electrical redundancy system, including backup Uninterruptable Power Supply (UPS) and automatic fail-over stand-by generators and physical security.

(c) Data Breach.

i. **Notice.** Consultant must immediately notify the City by telephone and email no later than twenty-four (24) hours if there is a reasonable probability of a data security incident. Consultant must send a written letter following up on the data security incident within forty-eight (48) hours following a data breach. The Consultant must:

1. Cooperate with the City's request to investigate and resolve the incident in a timely manner;

2. Promptly implement necessary remedial measures; and

3. Document responsive actions taken related to the data breach, including any post-incident review and actions taken to make changes in business practices in providing the work, if necessary.

ii. Consultant Agreement Breach. If a data breach results from Consultant's breach of the Contract, Consultant must:

1. Bear any costs associated with the investigation and resolution of the data breach

2. Notify individuals, regulators and all others required by Identity Theft Enforcement and Protection Act in the Texas Business and Commerce Code Chapter 521 Unauthorized Use of Identifying Information;

3. Engage a credit monitoring service or identity protection service;

4. Publish a website or toll-free number and call center for affected individuals as required by state or federal law;

5. Complete all corrective actions as reasonably determined based on root cause; and

6. Send the City written findings and remedial measures from the data breach.

(d) Preventive Security Procedures. Consultant must:

i. Provide on-going software updates as they become available complying with the defined maintenance windows. The Consultant must completely test updates; including any bug fixes, patches, and other improvements;

ii. Monitor system and error logs and perform preventive maintenance to minimize and predict system problems, including initiating and completing an appropriate response;

iii. Conduct a third-party independent security/vulnerability assessment at its own expense at least annually and submit the results of such assessment to the City;

iv. Agree to third-party application and vulnerability security scans and schedules;

v. Comply with the City's directions/resolutions to remediate security/vulnerability assessment results aligning with City Security Vulnerability Assessment Standards;

vi. Limit logical and physical access to all system components and provide access only to those individuals with a business need for work provided. Individuals who have access to systems and data must have a criminal background check;

vii. Annually audit the data center through an independent third-party auditor. Audit results must form part of the Consultant's applicable Service Organization Control (SOC) report. The audit results must comply with industry standard controls for data security and disaster recovery that the Consultant shall report to the City in writing; and

viii. Take all necessary measures to protect the data and encryption keys including, but not limited to the off-site servers daily backup according to industry best practices and encryption techniques.

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

(f) Closeout.

i. Agreement Expiration. When the Agreement term expires or terminates, and at any other time at the City's written request, Consultant must promptly

return to the City all intellectual and physical property subject to the Agreement including, but not limited to system configuration data and information in file or document formats in the Contractor's possession or control.

ii. Access. The City will have access to export and retrieve its data for no less than ninety (90) days after the Agreement expiration or termination date. The City must be able to access its data at any time during the Agreement term in a readily readable, structured, and documented format, such as CSV-format or some other standard format offered by the Consultant. The Consultant must provide the City transition work after Agreement expiration or termination at Consultant's then-current and generally-charged hourly rates.

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

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

(a) Requirements: Contract must:

i. Provide the City with its security architecture. The security architecture must at a minimum meet applicable laws and the latest Cybersecurity Framework for Improving Critical Infrastructure from National Institute of Standards and Technology (NIST) or compatible industry security frameworks;

ii. Have data access limited to only required support service;

iii. Evidence of background checks that support security of the City's sensitive or confidential information;

iv. Notify the City within twenty-four (24) hours when any patches resulting from security vulnerability and threats become available;

v. Provide City with all applicable security assessments, audits and certifications related to system security annually;

vi. Train City staff on security-related procedures regarding system operation and maintenance; and

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

(b) Data Breach.

i. **Notice.** Consultant must immediately notify the City by telephone and email no later than twenty-four (24) hours if there is a reasonable probability of a data security incident. Consultant must send a written letter following up on the data security incident within forty-eight (48) hours following a data breach. The Consultant must:

1. Cooperate with the City's request to investigate and resolve the incident in a timely manner;
2. Promptly implement necessary remedial measures; and
3. Document responsive actions taken related to the data breach, including any post-incident review and actions taken to change business practices in providing the work, if necessary.

ii. **Consultant Agreement Breach.** If a data breach results from Consultant's breach of this Agreement, Consultant must:

1. Bear any costs associated with the investigation and resolution of the data breach;
2. Notify individuals, regulators and all others required by Identity Theft Enforcement and Protection Act in the Texas Business and Commerce Code Chapter 521 Unauthorized Use of Identifying Information;
3. Engage a credit monitoring service;
4. Publish a website or a toll-free number and call center for affected individuals as required by state or federal law;
5. Complete all corrective actions as reasonably determined based on root cause; and
6. Send the City written findings and remedial measures from the data breach.

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

10.03 Background Checks. The Consultant agrees to assume all responsibility for and to perform background checks on all its employees, agents and assigns working on the Project. Such background checks include but are not limited to, criminal records and civil judgments, professional license verifications, motor vehicle records, social security number, court records,

military service records, other public records reports, and verifications of employment, and education. This must be done prior to such individuals commencing their work on the Project. Consultant agrees to produce any and all background checks information as described herein when requested to the City. To the degree allowed by applicable law, City agrees to keep such information confidential.

10.04 Change Management. Any major change to the system shall be authorized and approved by the City. The changes will follow the change management process outlined by the City and in accordance with this Contract. All enhancements and upgrades shall be included in the change management scope of work. All changes will be reasonably tested by the vendor in accordance with the requirements of the City. All major upgrades with exception to emergency upgrades, such as to address a vulnerability, will be scheduled on a calendar and back-out plans presented to the City.

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

ARTICLE XI
TERMINATION

11.01 At any time, the City may terminate the Project for convenience, in writing. At such time, the City shall notify Consultant, in writing, who shall cease work immediately. Consultant shall be compensated for the work performed. In the event that the City terminates this Contract for convenience, the City shall pay Consultant for the work performed and expenses incurred prior to the date of termination.

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

ARTICLE XII
MISCELLANEOUS TERMS

12.01 Venue and Applicable Law. This Contract has been made under and shall be governed by the laws of the State of Texas. The parties agree that performance and all matters related thereto shall be in Brazos County, Texas.

12.02 Notices. Notices shall be mailed to the addresses designated herein or as may be designated in writing by the parties from time to time and shall be deemed received when sent postage prepaid U.S. Mail to the following addresses:

CITY:	**CONSULTANT:**
City of College Station	ThirdLine, Inc.
Attn: Ty Elliott	Attn: David Osborn
P.O. Box 9960	12 N Cheyenne Avenue #18
College Station, Texas 77842	Tulsa, OK 74103
telliott@cstx.gov	dosborn@thirdline.io

12.03 Performance of Work. Consultant, its employees, associates or subconsultants shall perform all the Work hereunder. Consultant agrees that all of its associates, employees, or subconsultants who work on this Project shall be fully qualified and competent to do the Work described hereunder. Consultant shall undertake the Work and complete it in a timely manner.

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

12.05 Waiver. No waiver by either party hereto of any term or condition of this Contract shall be deemed or construed to be a waiver of any other term or condition or subsequent waiver of the same term or condition.

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

12.07 Invalidity. If any provision of this Contract shall be held to be invalid, illegal, or unenforceable by a court or other tribunal of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The parties shall use their best efforts to replace the respective provision or provisions of this Contract with legal terms and conditions approximating the original intent of the parties.

12.08 Prioritization. Consultant 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 Consultant to this Contract as exhibits that conflict with such laws, or that conflict with the terms and conditions herein excluding the additions by Consultant. In either case, the applicable law or the applicable provision of this Consultant excluding such conflicting addition by Consultant shall prevail. The parties understand this section comprises part of this Contract without necessity of additional consideration.

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

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

12.11 Effective. This Contract goes into effect when duly approved by all the parties hereto.

12.12 No Boycott Israel. To the extent applicable, this Contract is subject to the following:

(a) Boycott Israel. If this Contract is for goods and services subject to § 2270.002 Texas Government Code, Consultant verifies that it i) does not boycott Israel; and ii) will not boycott Israel during the term of this Contract;

(b) Boycott Firearms. If this Contract is for goods and services subject to § 2274.002 Texas Government Code, Consultant verifies that it i) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and ii) will not discriminate during the term of the contract against a firearm entity or firearm trade association; and

(c) Boycott Energy Companies. Subject to § 2274.002 Texas Government Code Consultant herein verifies that it i) does not boycott energy companies; and ii) will not boycott energy companies during the term of this Contract.

12.13 Use Restrictions. City shall not use the Services for any purposes beyond the scope of the access granted in this Agreement. City shall not at any time, directly or indirectly, and shall not permit any Authorized Users to: (i) copy, modify, or create derivative works of the Services or Documentation, in whole or in part; (ii) rent, lease, lend, sell, license, sublicense, assign, distribute, publish, transfer, or otherwise make available the Services or Documentation; (iii) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to any software component of the Services, in whole or in part; (iv) remove any proprietary notices from the Services or Documentation; or (v) use the Services or Documentation in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person, or that violates any applicable law.

12.14 Force Majeure. In no event shall Consultant be liable to City, or be deemed to have breached this Agreement, for any failure or delay in performing its obligations under this Agreement, if and to the extent such failure or delay is caused by any circumstances beyond Consultant's reasonable control, including but not limited to acts of God, flood, fire, earthquake, pandemics, public health emergencies, explosion, war, terrorism, invasion, riot or other civil unrest, strikes, labor stoppages or slowdowns or other industrial disturbances, or passage of law or any action taken by a governmental or public authority, including imposing an embargo.

12.15 Aggregated Statistics. Notwithstanding anything to the contrary in this Agreement, Consultant may monitor City's use of the Services and collect and compile Aggregated Statistics. As between Consultant and City, all right, title, and interest in Aggregated Statistics, and all intellectual property rights therein, belong to and are retained solely by Consultant. City acknowledges that Consultant may compile Aggregated Statistics based on City Data input into the Services. City agrees that Consultant may (i) make Aggregated Statistics publicly available in compliance with applicable law, and (ii) use Aggregated Statistics to the extent and in the manner

permitted under applicable law; provided that such Aggregated Statistics do not identify City or City's Confidential Information. The following terms apply to Aggregated Statistics.

a. "**Aggregated Statistics**" means data and information related to City's use of the Services that is used by Consultant in an aggregate and anonymized manner, including to compile statistical and performance information related to the provision and operation of the Services.
b. "**City Data**" means, other than Aggregated Statistics, information, data, and other content, in any form or medium, that is submitted, posted, or otherwise transmitted by or on behalf of City or an Authorized User through the Services.

List of Exhibits

- **A.** Scope of Work
- **B.** Payment Schedule
- **C.** Certificates of Insurance

THIRDLINE, INC.

By: David Osborn

Printed Name: David Osborn

Title: CEO

Date: 2/19/2025

CITY OF COLLEGE STATION

By: _____

City Manager

Date: _____

APPROVED:

John A. Haislet

City Attorney

Date: 2/19/2025

_____

Assistant City Manager/CFO

Date: 2/19/2025

Exhibit A
Scope of Work

See attached...

1. City of College Station, TX

ThirdLine Pricing

	1 Year Contract: Annual List Price	Implementation Fee	First Year Total Price + Implementation	10% 3 Year Contract Annual Subscription Price, 10% Discounted	20% 5 Year Contract Annual Subscription Price, 20% Discounted
Software Product					
Roles, Permissions, & SoD	$14,962	$0	$14,962	$13,466	$11,970
Analytics & Reporting					
Accounts Payable	$6,999	$0	$6,999	$6,299	$5,599
Vendor	$6,999	$0	$6,999	$6,299	$5,599
Procurement	$6,999	$0	$6,999	$6,299	$5,599
Purchasing Card	$6,999	$0	$6,999	$6,299	$5,599
General Ledger	$6,999	$0	$6,999	$6,299	$5,599
Payroll	$9,999	$9,999	$19,998	$8,999	$7,999
Software Subscription	$59,956	$9,999	$69,955	$53,960	$47,965
ThirdLine Champion Discount	**50.0%**	50%	**50.0%**	**50.0%**	**50.0%**
Annual Software Subscription Price, Discounted	$29,978		$29,978	$26,980	$23,982
Total Price for Software Subscription + Implementation for the first 12 months		$5,000	$34,978	$31,980	$28,982
Total Contract Price for Software Subscription for Entire Contract Term			$34,978	$85,940	$124,912

2. Firm shall incur no travel or related expenses chargeable to the City without prior approval by an authorized City representative.

All services can be conducted virtually. If College Station determines that in-person training and planning is favorable we would be happy to travel to College Station after approval by an authorized City representative. We follow the GSA Per Diem Rates for the College Station, TX area including Daily Lodging Rates and Meals & Incidentals.

3. Consultants may propose alternate payment methods (ie: task oriented or hourly rates). However, expenses not specifically listed will not be considered.

We propose the pricing in Tab B #1, however, if other process areas, outside of the 11 focus areas listed in Tab B #1, or analytics besides complimentary analytics described in Tab B #1 is desired, below are our hourly rates.

Name	Position	Hourly Rate
Dr. Sam Gallaher	Head of Data Science	$100
David Osborn, CPA	CEO	$100
Nathan Pickard, CIA	Head of Product	$100
Holden Mitchell	CTO	$100
David Paddock	Head of Analytics	$100

4. The actual contract amount will be negotiated after the consultant has been selected and the scope of work finalized.

ThirdLine agrees that the actual contract amount will be negotiated after the consultant has been selected and the scope of work finalized.

TAB C Methodology including technical approach and understanding of the scope of the project.

1. Proposals must include a narrative description of the Firms' plan for accomplishing the work and services to be provided to the City.

Using ThirdLine's no-code analytics, the City Auditor will be able to analyze risk in multiple data sets pulled from its Tyler Munis and other data systems. The City Auditor will be able to analyze the effectiveness of internal controls, reliability of financial data, safeguarded assets, law and regulation compliance, and assessing separation of duties.

ThirdLine focuses on delivering analytics that provide greater insights from financial and accounting data. Our analytics have been developed to answer questions quickly about risk, fraud, and waste with clear, easy-to-understand data visualizations. Our backgrounds and experience performing these audits and delivering ThirdLine analytics to other state and local governments provides State College experts that understand the constraints College Station operates under. ThirdLine recommends tools and analytics that provide the insight College Station needs while also delivering quicker and more thorough results during internal audits. Our modules provide the following benefits for College Station:

- **Increasing audit coverage and assurance by testing larger samples, including 100% of populations.** Our platform automatically applies hundreds of analytics to all transactions, employees, and vendors on Tyler Munis data. Our platform also facilitates risk-based and random sampling for detailed attribute testing. By connecting directly to the data source and reviewing 100% of transactions, ThirdLine will save College Station hundreds of hours a year and help deliver more quality coverage on every audit. Our staff have implemented audit analytics for numerous local governments and created and managed audit analytics teams for the City of Tulsa and the City and County of Denver. The audit analytics from these programs have informed over two dozen audits and decreased the planning and fieldwork for each. For example, in a recent audit of roles and permissions, our analytics reviewed 100% of the users in Tyler Munis across dozens of roles and thousands of permissions in less than two weeks. The entire engagement from initial data connections to report was less than two months during which time ThirdLine reviewed 100% of the population. A typical segregation of duties audit of this scope takes 4-6 months with two auditors and relies on sampling. Now that the connections are made, auditors and IT managers can track changes to the risks identified automatically, saving time on reviewing recommendations and follow-up audits.
- **Provide more effective audit planning and fieldwork.** We have built our platform to summarize the analytics at different levels of analysis including Tyler Munis modules, the organizations department, accounts, employees, and vendors. This allows the user to

quickly identify where the risks are highest and plan accordingly. Our continuous risk assessment feature automatically synthesizes the 250+ analytics across the millions of transactions in Tyler Munis and connects them to employees, vendors, and departments. We visualize the results to show risk over time, risk by types (e.g., fraud risk vs. training risk), and by module (e.g., purchase card or general ledger).

Managers can then scope audits for the riskiest areas within days rather than the typical months for an annual risk assessment. ThirdLine also has a built-in audit flow for performance and financial audits that facilitates identifying high risk areas within a scope of work, developing attribute tests, sampling, and reporting.

- **Improve specificity of results communicated in audit reports using data visualization.** ThirdLine can show through multiple visualizations where risks are within the organization. Users can quickly see risk over time, and identify which risk flags are most common. We use user experience research to identify the best way to show this information to facilitate quality information in an easy to understand format. ThirdLine's workflow adds efficiency to each scoped audit with built-in reporting features to get the attribute testing results into report-ready tables. These workflows and reports instantly show, through built-in graphics, any summary of risk flags, transactions, vendors, or employees, modules, or departments. We instantly provide dozens of graphics that would each hours or days for an auditor to prepare for a report. If a custom graphic is desired, we can create those by request in our software, in Microsoft Power BI, or Tableau.
- **Exponential increase for audit department efficiency and productivity.** ThirdLine is uniquely qualified to address this deliverable in that we have automated nearly every step of the audit analytics process. We deliver a package of queries and work with the Information Technology department or individual to read the Tyler Munis tables into the ThirdLine software. Then, the analytics are automatically applied to the data, summarized, and reported in the risk assessment page. The Audit Department gains hundreds of analytics and a workflow within weeks that normally takes three to five years to develop, saving organizations over $350,000 to implement and $100,000 annually thereafter. Then, auditors can quickly assess data on an ongoing basis, be automatically informed of high risk areas, see changes in risk levels, without needing to code or work with the underlying data.

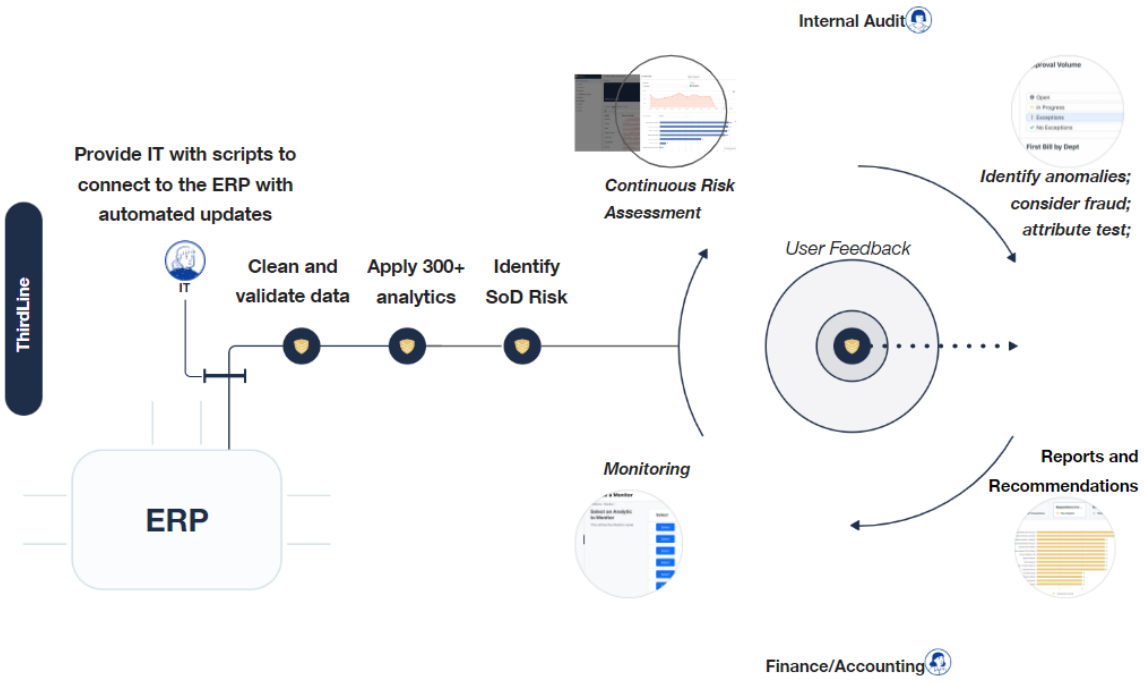
- **Considering Fraud in every audit.** ThirdLine has over 100 analytics that are mapped to the Association of Certified Fraud Examiners fraud schemes. As ThirdLine can provide fraud and risk assessment at the department level, nearly every audit can "consider fraud". We have found true instances of fraud, particularly around vendor takeover fraud. This occurs when a scammer impersonates a vendor, whether by email or phone, and requests that a clerk change a bank account number, payment method, phone number. An invoice is then submitted and payment is sent, often in the hundreds of thousands of dollars.

The end-goal of College Station's desired services include the development and maintenance of the entire data pipeline, as depicted in Figure 1:

- Connecting to the system
- Data cleaning and transformation
- Building analytics across multiple modules' transaction and audit tables
- Merging those with roles and permissions information
- Synthesizing the results through visualizations
- Detect anomalies
- Facilitate risk-based audits
- Automate the communication of the results

The ThirdLine implementation includes providing IT with SQL scripts to acquire the data, validate the process is working, and then the software applies hundreds of analytics, as seen below in **Figure 1. ThirdLine Implementation Process**. Auditors use the continuous risk assessment and reporting features to conduct audits and provide recommendations. Management uses the monitoring to watch for new, high risk transactions. ThirdLine is built to receive user feedback to improve its risk-finding abilities.

Figure 1. ThirdLine Implementation Process



Our services will deliver an organization-wide, risk-based continuous audit platform to the City of College Station City Auditor in a fraction of the time it would take to develop in-house. For example, our implementation is completed in a few months and results in hundreds of risk and control test analytics with automated data refreshes and agile reporting protocols. To do this from the ground-up, organizations spend multiple years to get to this point of functionality. As

such we save organizations an average of $350k to implement and over $100k per year to maintain and build-upon the analytics and reporting functions.

We understand the project as it is divided into four tasks.

Task 1: Access Protocol

ThirdLine will work with the City of College Station Information Technology Department to generate an agreed access protocol, perform the initial configuration, set up users with secure access, and provide management documentation through our knowledge base. ThirdLine is experienced in each of these steps with our customers listed in Tab A Section 3 . As ThirdLine is an expert in Tyler Munis, we provide SQL scripts of exactly what we need from the ERP and will not need IT assistance in a data discovery process. These scripts request only the required information for the analytics and can be edited if College Station does not want to provide certain information. The data is read, transmitted and processed through secure protocols. We will validate the initial refresh and work with the Information Technology Department on any updates needed. We can perform data discovery and develop the scripts required to obtain relevant data from other data systems.

Task 2: Developing/Customizing Tools (duration subject to project scope)

ThirdLine will set up weekly meetings with the City Auditor throughout the implementation process to ensure a successful implementation of each module or process area desired. We implement one module at a time to ensure delivery in a timely manner. Financial process areas like AP, GL, or Purchasing Card, can be set up in as little as 2-3 weeks each, whereas more complex process areas like payroll or human resources take 3-4 weeks to complete the initial implementation. The vast majority of the work is performed by the ThirdLine team. We will develop a project timeline with intermediate deliverables and provide weekly progress updates based on which module College Station would like to start. See Tab C #2 for an example of a suggested project roadmap in the form of a gantt chart and Tab C #3 for a draft version of a Progress Report.

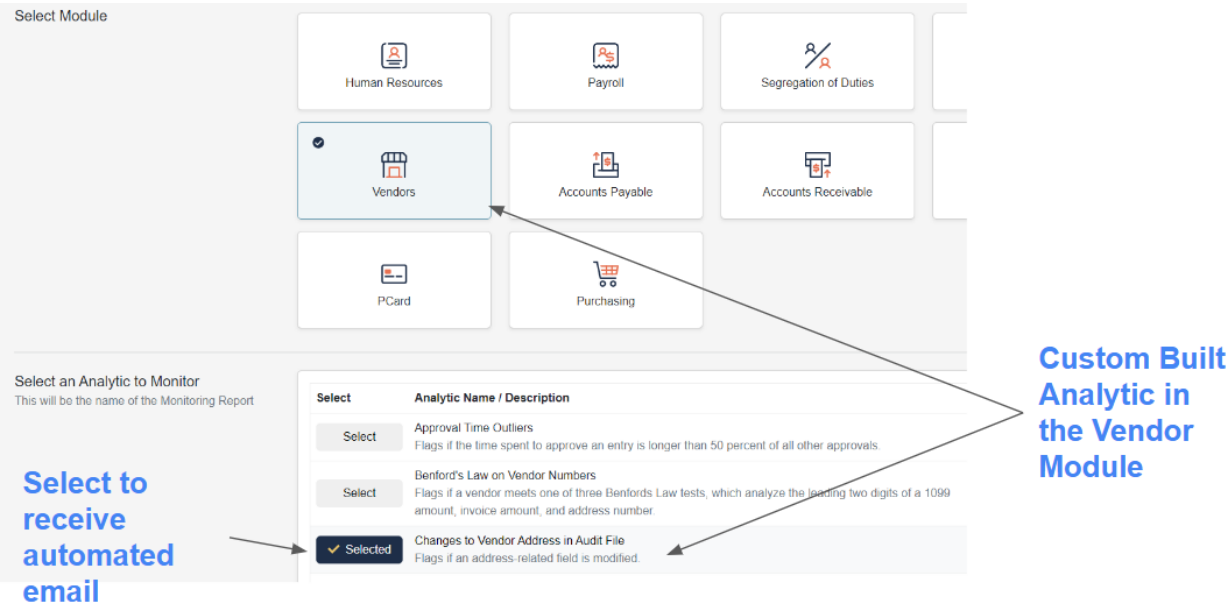
ThirdLine will work with the City of College Station Information Technology Department to define tool requirements and provide documentation to the City Auditor for each set of data analytics. Out-of-the box, we have over 250 analytics across Tyler Munis' Procurement, Accounts Payable, Accounts Receivable, Cash Collections, Purchasing Cards, Travel & Expense, Vendor Management, General Ledger, Roles & Permissions, Payroll & Time Collection, Human Resources, Utility Billing, and Tax modules.

For any additional tool requirements we will work with the Information Technology Department to map those requirements to fields within the data systems and develop the analytics to meet the requirements of the City Auditor. If a process area is implemented and we already have the data, we build new analytics as a complimentary service. For other analytics that require further data

discovery, we can custom build analytics through our services for any specific needs not met by the hundreds of analytics already supplied. This process is completed through our maintenance services.

For example, when a current customer identified a vendor fraud we built a complimentary analytic to identify this fraud behavior. Now this customer, and all our customers, have the analytic to automatically identify similar behavior and the ability to receive an automated email when the analytic is triggered. This analytic is described below in **Figure 2. Complimentary Analytic Example.**

Figure 2. Complimentary Analytic Example. We built a complimentary analytic to identify changes to the vendor address file in the Tyler Munis audit logs. The customer can now select that analytic to monitor and receive an automated email when the analytic is triggered.



Tasks 3 and 4: Ongoing Services and Munis Specific

ThirdLine implements software, manages the data, runs analytics, then takes a white-glove consulting approach to all our clients. Post-implementation we meet with our clients bi-weekly for analytics assistance. As part of our contract and through its duration, ThirdLine will **manage and automate the information architecture that facilitates data-sharing and storage**.

Data Extracting, Transforming, Cleaning, Validating, and Automating

This process will include gathering, merging, data cleaning, normalizing, validation, and automation. We extract data from the Munis audit logs, transaction files, workflow tables, roles, permissions tables, and more. This process includes profiling the data to identify outliers and anomalies that may indicate a data issue; transformation and standardization of data. For example, we conduct completeness checking of data loads and verify the data ranges found in the data match our query parameters, as well as vendor, employee and department counts. We also check ranges of data fields for validity checks and anomalies. Next we use sampling of our analytics as a final protocol to verify the data systems and ThirdLine are connected appropriately.

This process not only validates that the data is correctly used for the analytics but also has led to audit findings for our clients. For example, in the process of validating the roles and permissions, we identified terminated employees with active Tyler Munis accounts and permissions. From this the auditors could begin to scope their audits based on risks identified from within the first week of implementation. An example of this is below in **Figure 3a and 3b. Example of completeness checking.**

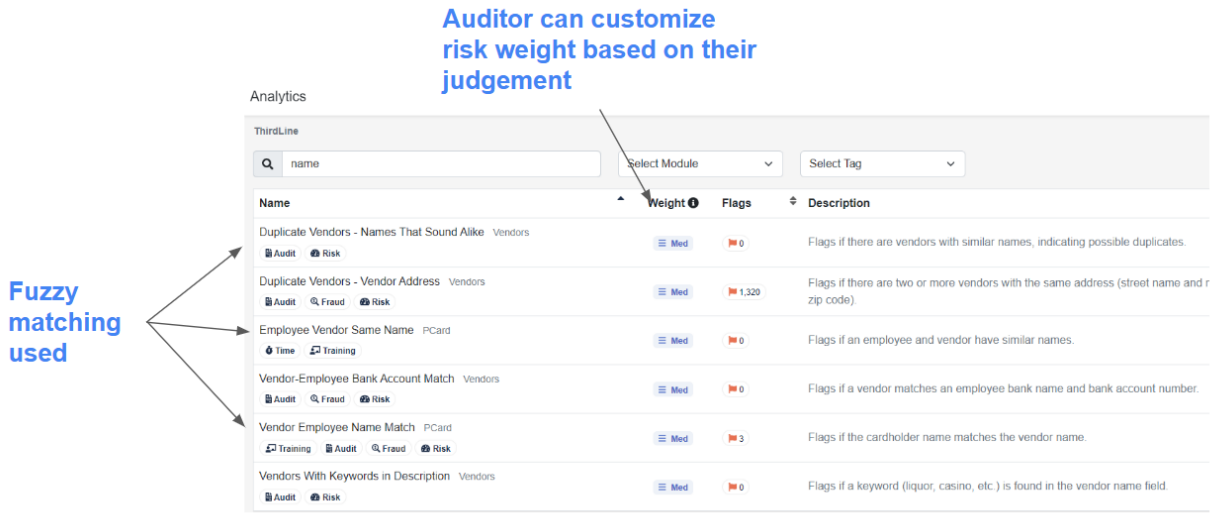
Figure 3a. We examine the total counts read by the SQL queries against the total counts shown in ThirdLine. Here we show 12,123 employees loaded into our database.

Figure 3b. We then check and verify 12,123 employees are loaded into the application.

Pull data from multiple sources, merge, and match.

Our solution and services will gather and pull the requested and relevant data requested by the City Auditor from a variety of sources from which we will clean, merge, and match using unique or fuzzy indicators. This matching process informs multiple analytics. For example, as seen in **Figure 4. Fuzzy Matching and Weighting**, we have fuzzy matching across vendor tables and employee tables. Fuzzy matching is the process of matching two similar looking names together for possible duplicates.

Figure 4. Fuzzy Matching and Weighting.



Review data for anomalies, fraud, and control issues.
Our process will include a review of data within each step and data analytics for anomalies, fraud risk, and control issues at each step. The results of the analysis will be visualized using a variety of charts and graphs and reported within the tool and have the capability to print to multiple formats including Word, PDF, Power BI, Tableau, and Excel. **Figure 5, 6, 7, 8, and 9** illustrate how ThirdLine guides auditors to the highest risk areas.

Figure 5. Continuous Risk Assessment. Use the Continuous Risk Assessment to see how risk changes over time by employee, department, module, or account.

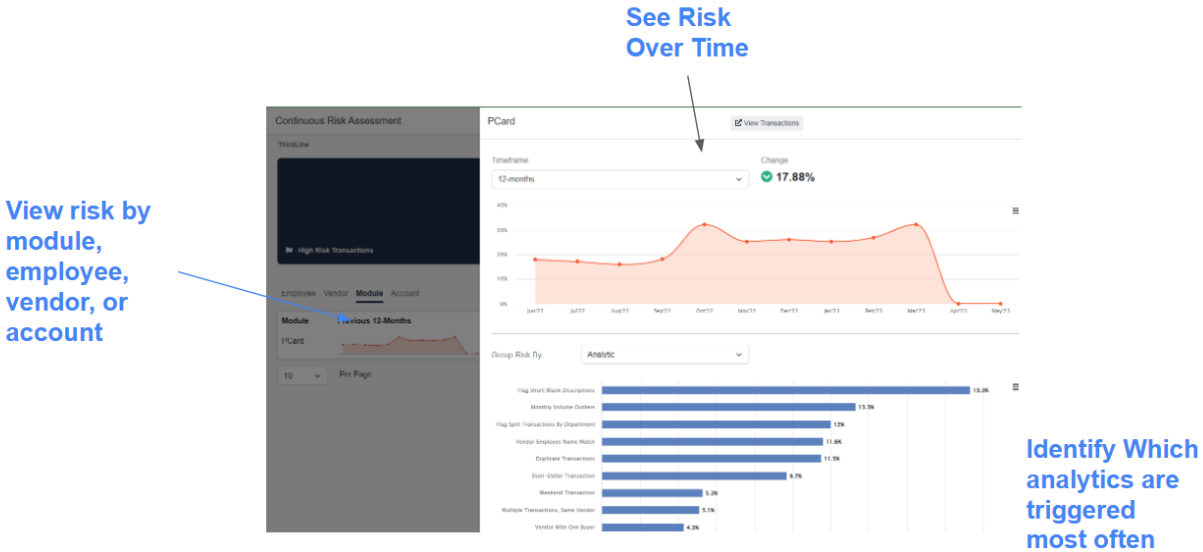


Figure 5. Anomalous Transactions. Identify anomalous transactions using our weighted risk score algorithm.

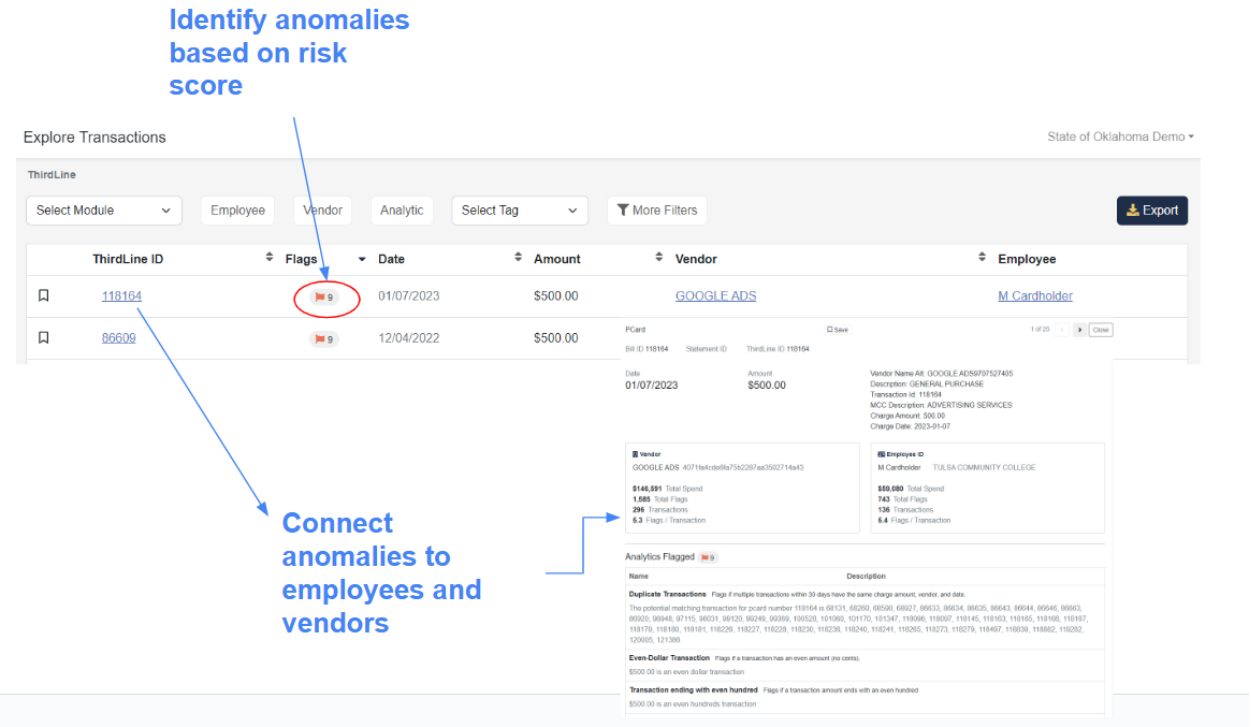


Figure 6. Transaction Review. Review transactions for fraud using our custom fraud analytics

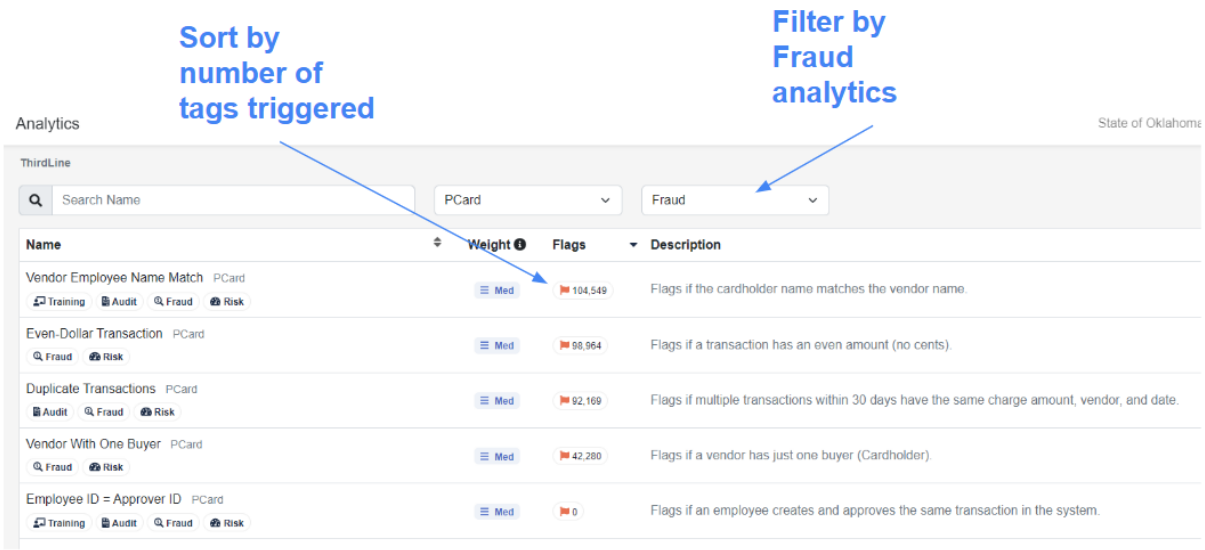
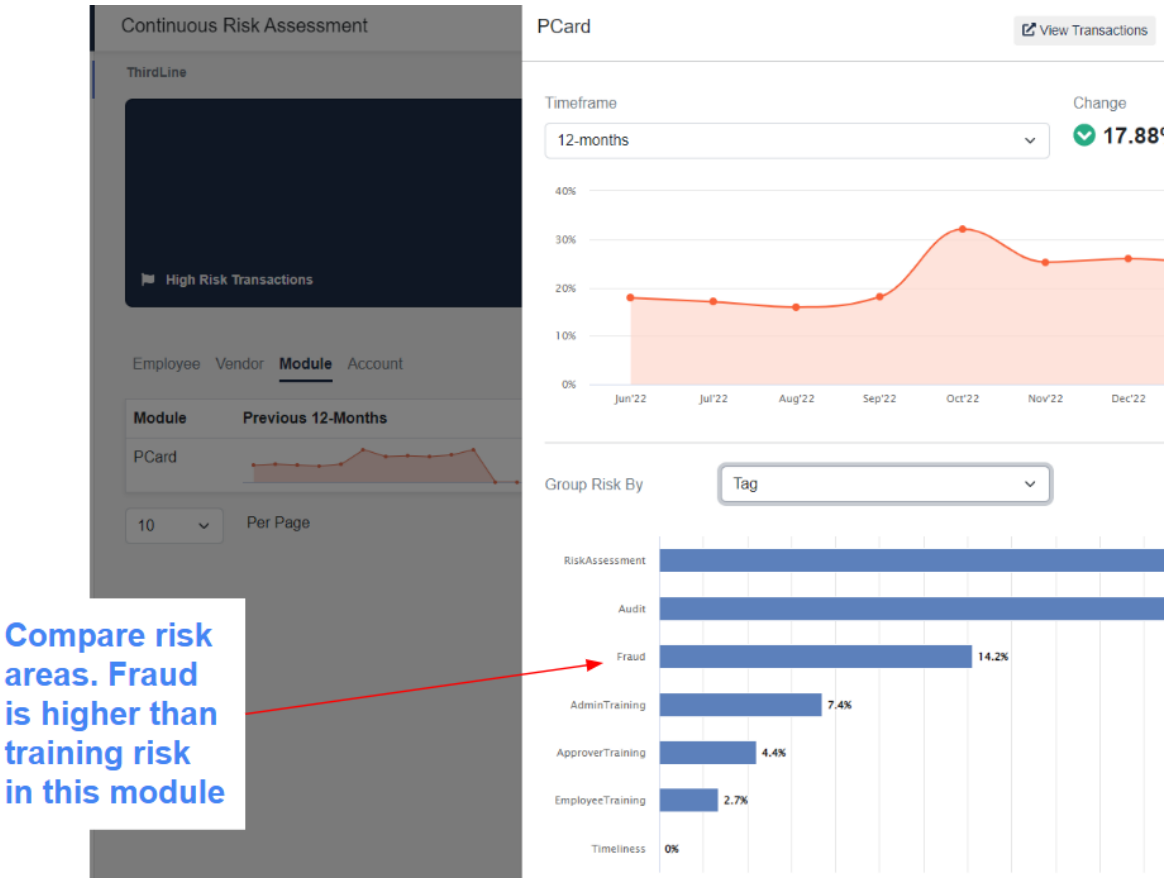


Figure 7. Risk Evaluation. Evaluate employees, modules, vendors, or accounts by type of risk. Here we see fraud risk is relatively high compared to training risks in the Pcard Module



The process for evaluating the data, the analysis, and the reporting will be automated using the processes and tools from Task 1 and Task 2. In ThirdLine we have workflows specifically for internal performance and financial auditors.

Figure 8. Starting a Report. Start a report by selecting analytics and scope of the audit

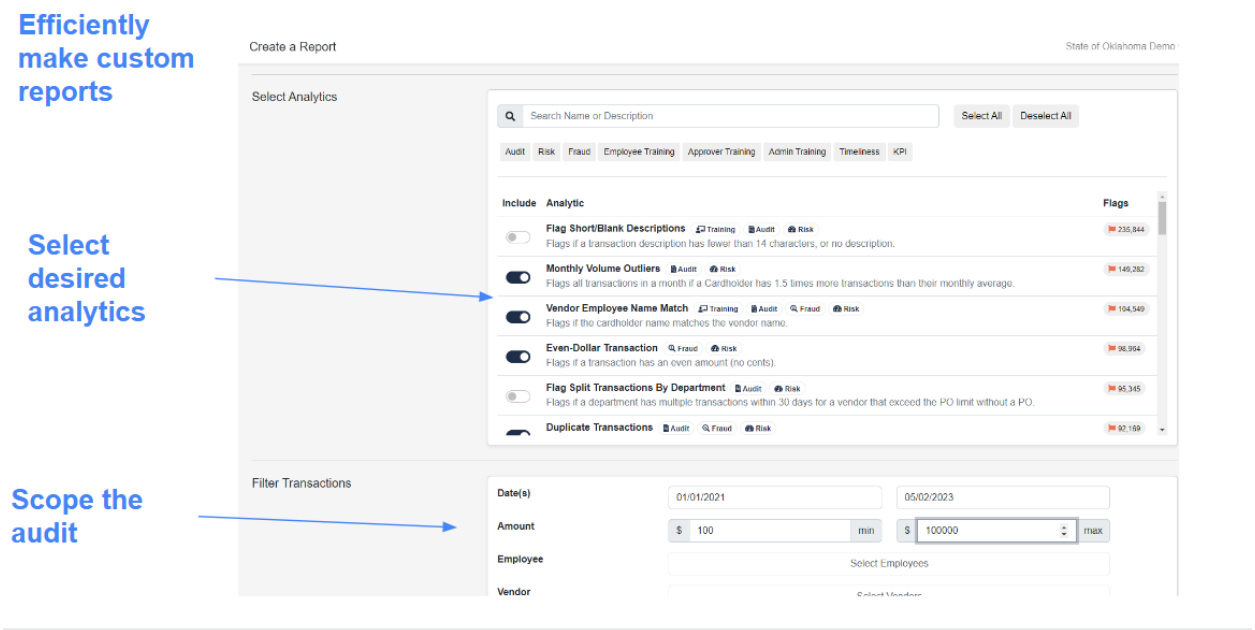
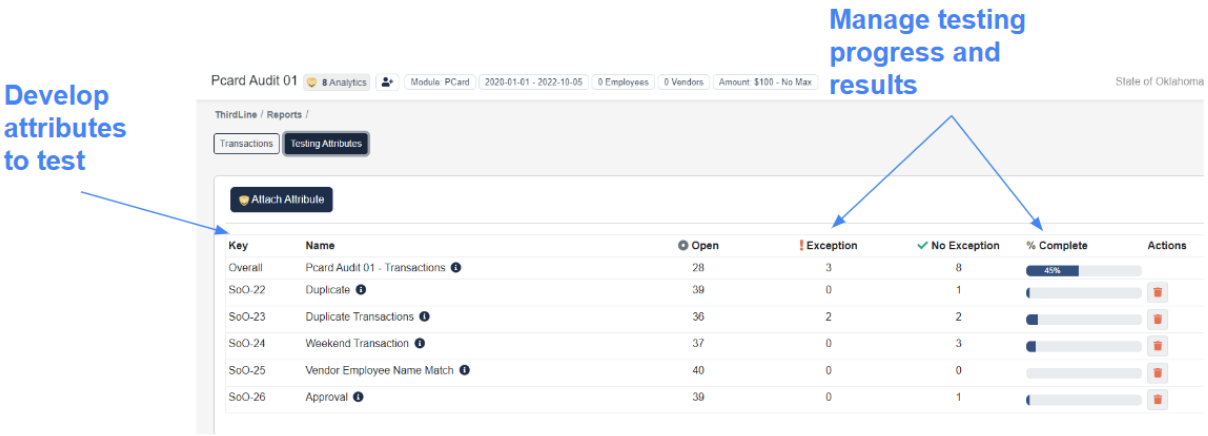


Figure 9. Testing with Custom Attributes and Workflows. Complete testing with custom attributes and workflow tools



Through our ongoing weekly updates and meetings we will collect user feedback and maintain and enhance based on user feedback as needed. We employ this process with our current clients and, as a result, are able to:

1. Address any technical issues
2. Identify priorities for analytics and reporting
3. Give guidance and consultation to the client based on their needs.

For example, from multiple clients we have learned of new kinds of fraud from which we were able to build analytics to identify transactions that could catch this fraud in the future. Further, we

have provided audit planning reviews and aligned their plans to existing and new analytics to facilitate efficient use of the software. Finally, we have provided sampling guidance and review given our expertise in audit methodology.

We understand that the data may include personally identifiable information. We follow state-of-the-art encryption standards for data transfer, storage, use, and disposal. ThirdLine provides the City Auditor with documentation of our data security practices in this proposal. See Exhibit B for our summary of our practices, information security policy, business continuity policy, date retention and disposal policy, and encryption policy.

Reporting Requirements

ThirdLine software tools provide out of the box self-service reporting capabilities. Every transaction in the Tyler Munis and other data systems will be analyzed and assigned analytic flags numbering from between 0 to many. The software then assigns a risk score based on those flags. The risk score for each transaction is attached to each associated employee, vendor, process area, account, department, and time stamp. Users can jump into the software to view:

1. **Continuous Risk Assessment.** The Continuous risk assessment provides up-to-date summaries of all risk scores over time by Vendor, Employee, Department, Fund, GL Account String, or Process area, as seen below in **Figure 10. Continuous Risk Assessment**. All of these can be viewed by risk type including fraud, training, risk, audit, and more. This information is automatically synthesized by the software once implementation of the module is completed. From here the auditor can:
    a. Explore risky transactions and save those for an audit report, with an example in **Figure 11. Anomalous Transactions.**
    b. Explore risky vendors and then scope an audit for high risk vendors.
    c. Explore risky employees and then scope an audit for high risk employees.

Figure 10. Continuous Risk Assessment. Use the Continuous Risk Assessment to see how risk changes over month to month and year to year by employee, department, module, or account.

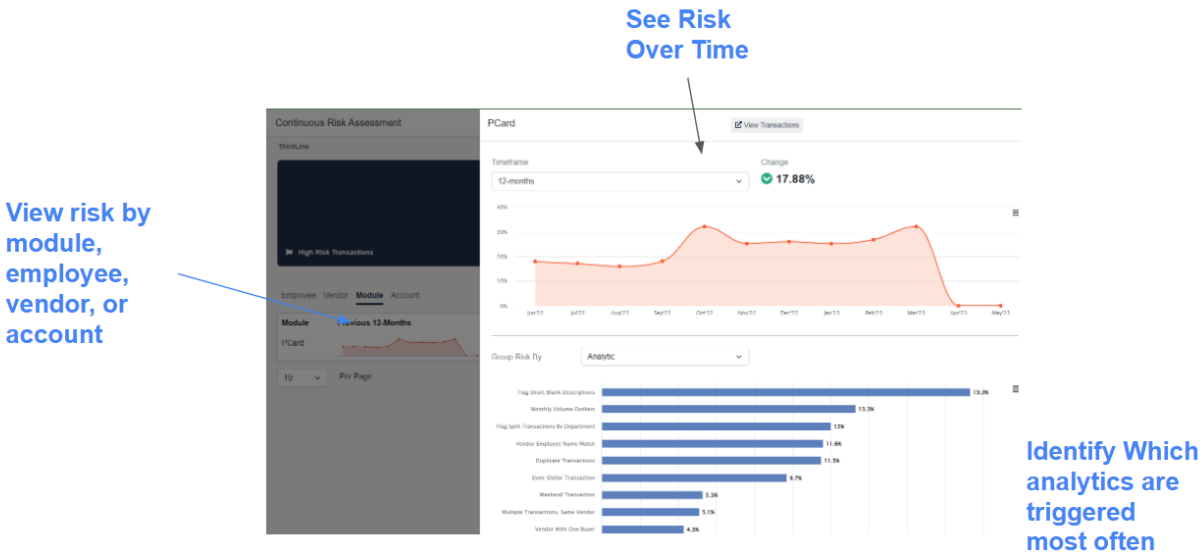
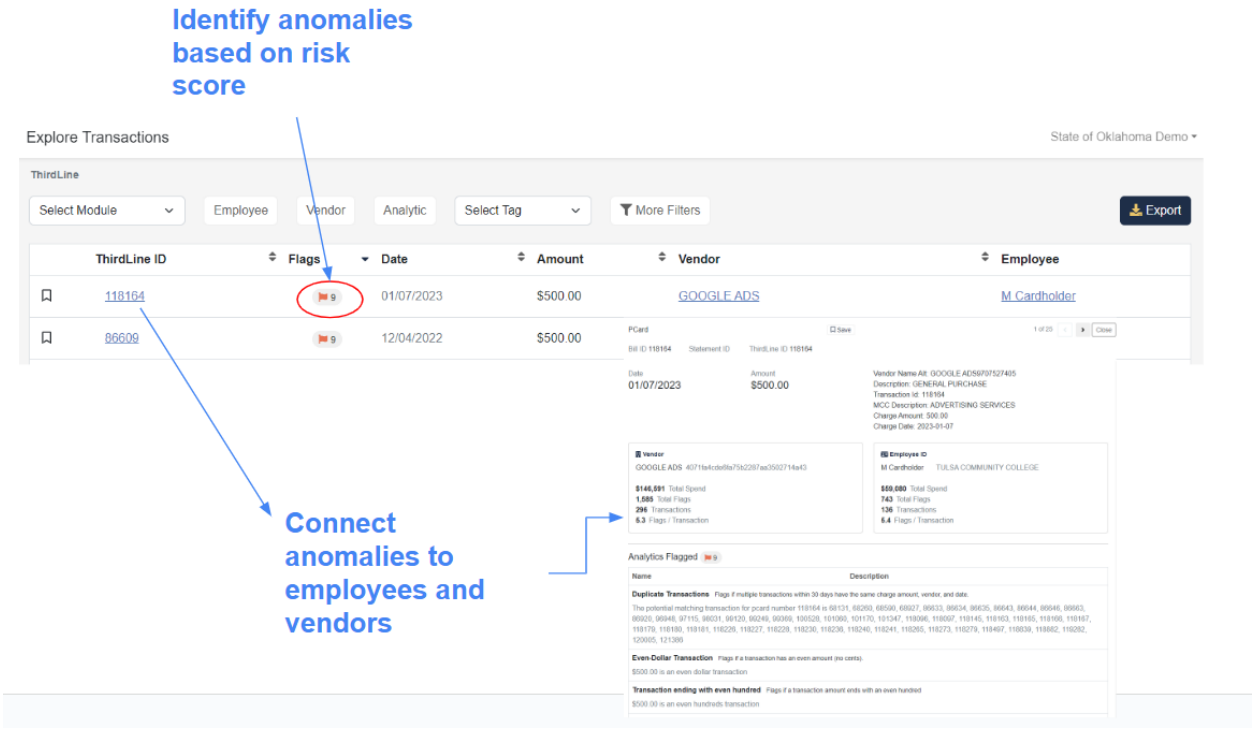


Figure 11. Anomalous Transactions. Identify anomalous and possible fraudulent transactions using our weighted risk score algorithm. Generate exportable reports after finding the desired information.



2. **Audit Reports** are generated in ThirdLine and provide an easy way for the auditor or audit leadership to query more specific areas of risk within the organization using all the transaction data by any criteria: vendor, process area, employee, department, amount, and date. Once the report is scoped to match the scope of the audit, or based on the Continuous Risk Assessment activity noted above, the auditor or manager can create a risk-based sample to audit and also consider fraud on every audit in seconds as seen in **Figure 12. Audit Report**. This report output, as seen in **Figure 13. Audit Report Output.,** is a high-risk sample of transactions that auditors review within the software using attribute testing methodologies. The results of the auditor's tests are easily exported to Excel or image files for an auditor's reporting purposes.

Figure 12. Audit Report. Start an Audit Report by selecting analytics and scope of the audit. If the user began with Continuous Risk Assessment and selected "start and audit", the scoping of that risk assessment will automatically adjust the filters in the Audit Report section.

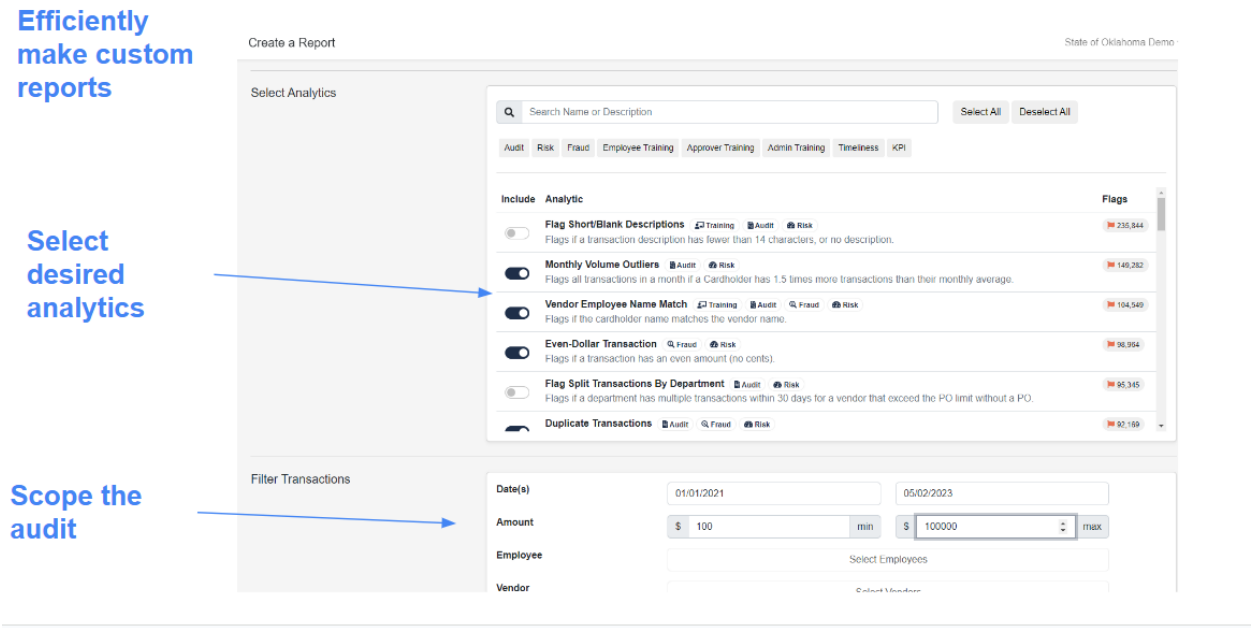
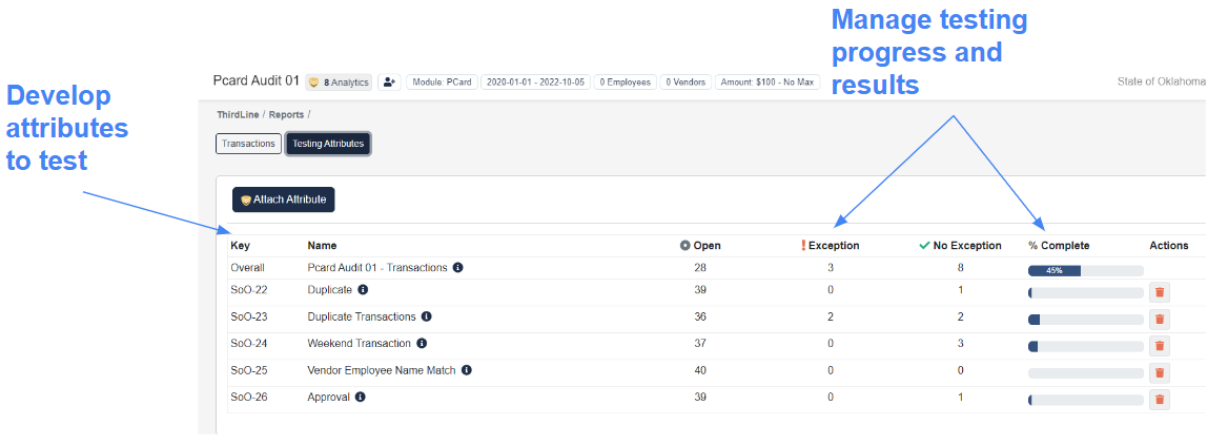
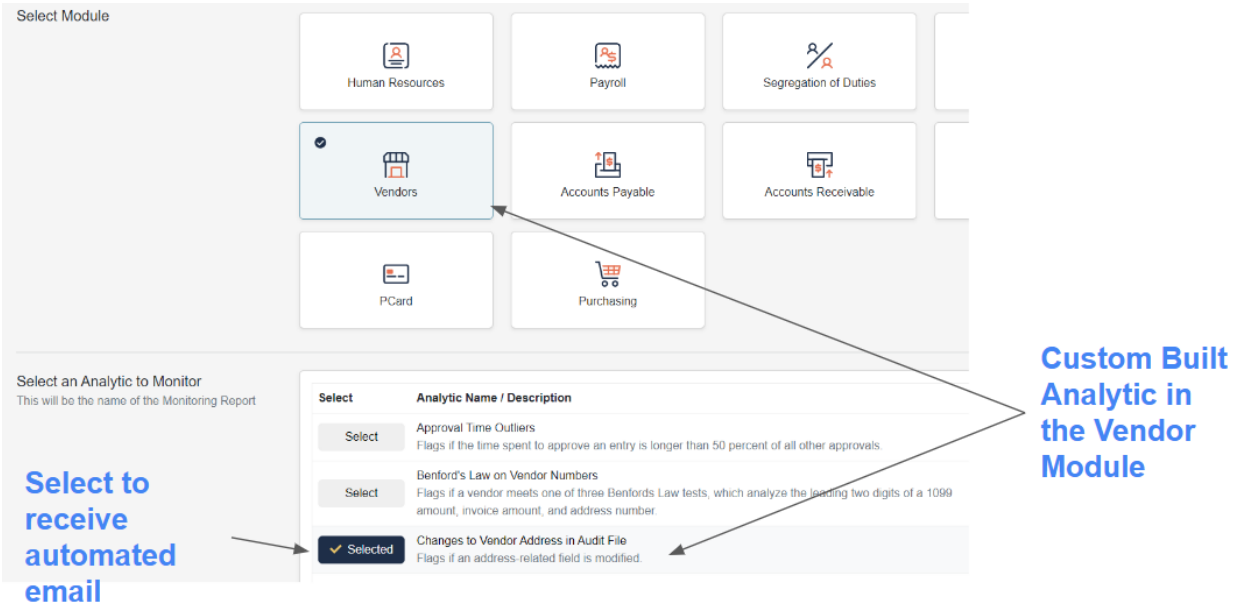


Figure 13. Audit Report Output. Auditors then complete testing with custom attributes and workflow tools. The results can be exported in Excel or an image file for the auditor's purposes.



3. **Monitoring** allows users to set up email alerts that alert them when certain analytics are triggered in the system on a nightly, weekly, monthly, or quarterly basis. For example, if a vendor's payment method is changed, an email can be sent for a user to investigate if it is a legitimate change. ThirdLine will automatically send out a report via email that the recipient clicks on to open up the list of flagged transactions within the ThirdLine application, as seen in **Figure 14. Automated Email Report**. From these monitoring reports, the auditor or manager assesses if the transactions are inappropriate or not and records this information in the software.

Figure 14. Automated Email Report. ThirdLine will send an automated email report with high risk transactions based on the risk flags the user identifies and selects for monitoring..



4. **Segregation of Duties(SoD) Assessment** automatically shows users potential SoD conflicts based on the ISACA standards. The software provides tables and visualizations of the conflicts and shows the user which roles are giving the permissions with the conflicts. ThirdLine also identifies which employees have the most conflicts and which permissions are associated with the most conflicts to help the auditor identify recommendations to address SoD risk. An example of this report with conflict is seen in **Figure 15. SoD Example.** and **Figure 16. Team SoD Example.**

Figure 15. SoD Example. The software reports in this example that Employee 3 has 45 conflict pairs. Three of those permission-pairs are shown in this example.

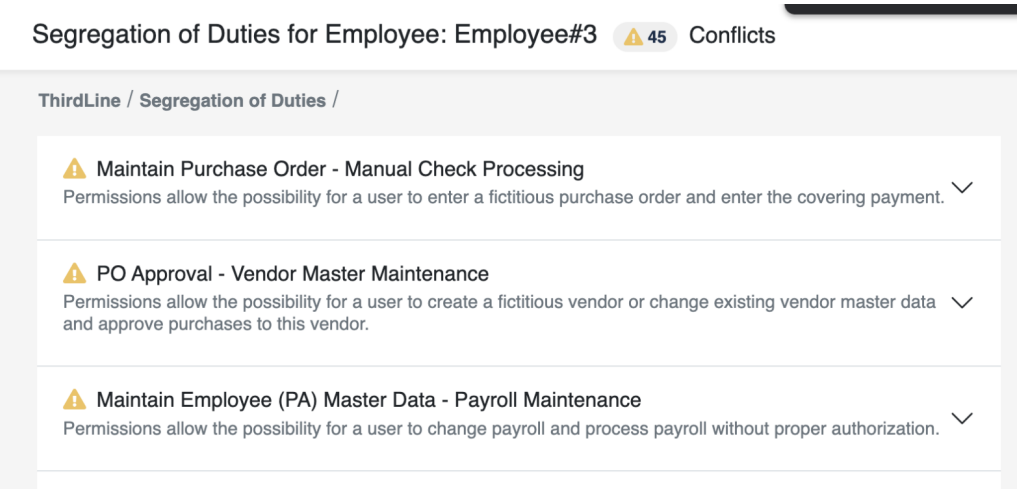
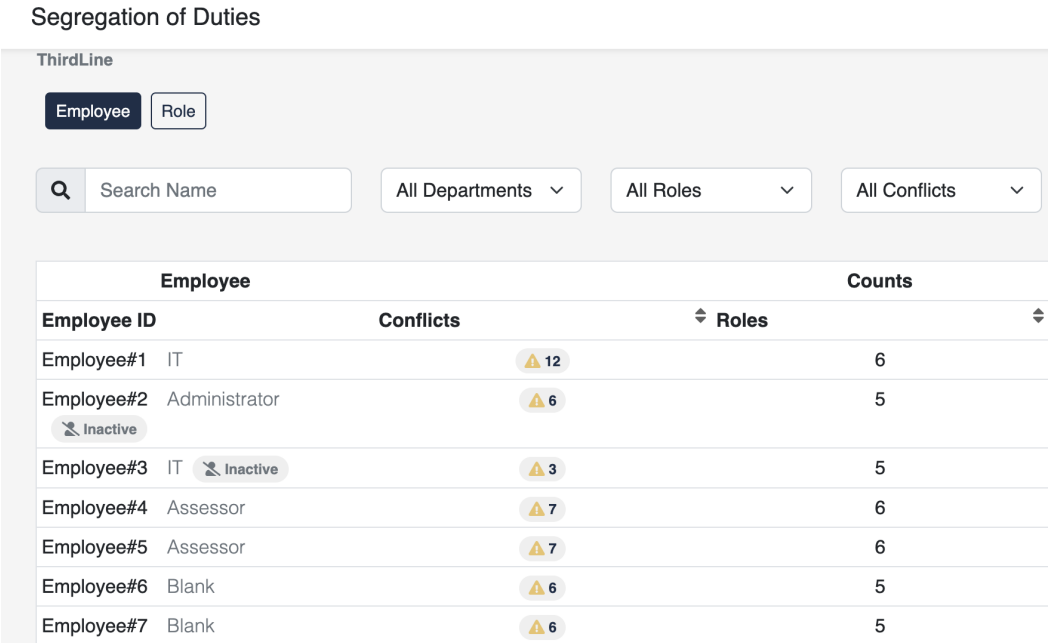


Figure 16. Team SoD Example. Thirdline also provides a report for each employee and shows if the department the employee is in, if the employee is inactive (i.e. terminated), the number of conflicts, and the number of roles of that employee.

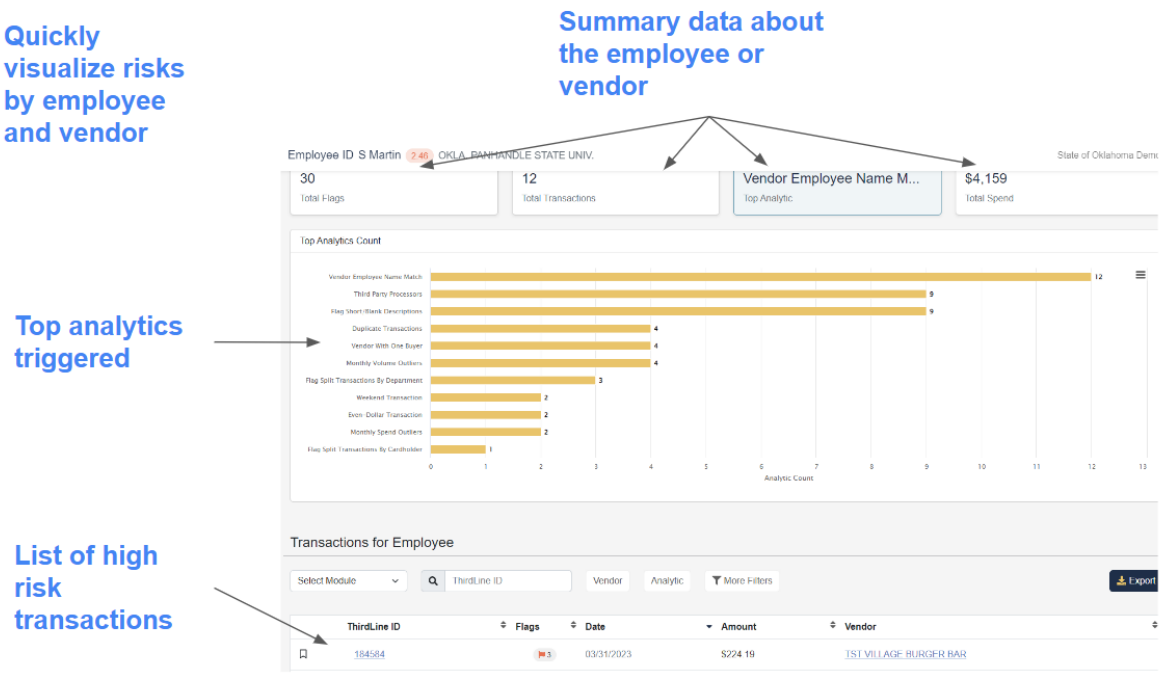


All reports discussed above can be created in a few minutes by ThirdLine or College Station users, and the data is frequently refreshed from Tyler Munis either daily, weekly, monthly, or quarterly based on College Station preferences. Exceptions quickly rise to the top allowing auditors to investigate the riskiest transactions.

For example, a report of high transactions can be generated in minutes that shows the transactions from any module by starting with the Continuous Risk Assessment, then selecting the module of interest, then the transactions. An example of this is below in **Figure 17. Risk Visualization Example.** The user can then export this list to Excel or generate an Audit Report to take a high-risk sample and complete testing within the application.

5. Exporting Data and Visuals: We provide a range of visuals and data that are easily downloadable to excel, csv, or a jpg image.

Figure 17. Risk Visualization Example.

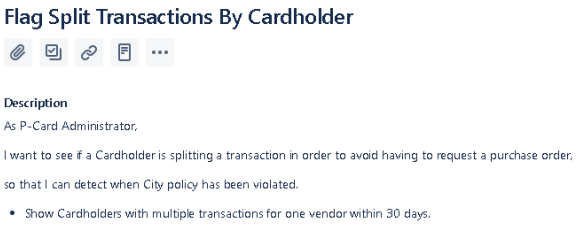


Data Visualization, Reporting, and Exporting

As important as analysis, data science, and accuracy is, so is data visualization, design, and the end user's experience of the represented data. In modern software development this is called user experience and user interface (UI/UX). All **core tables, dashboards, analysis, ongoing studies, and reports are available anytime to the City Auditor via the ThirdLine cloud-based App.**

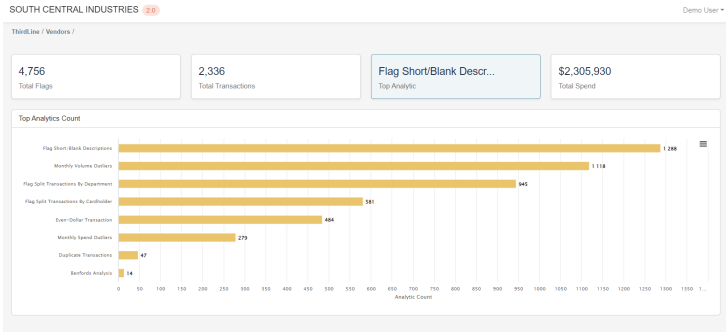
Our philosophy of visualization includes:

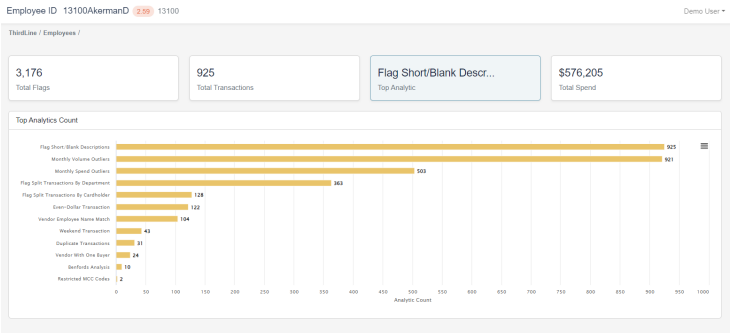
- **Telling a story**: Many analysts and dashboard developers create data visualizations without taking into consideration the end goal of their client. That is why we use best practices rooted in Agile Theory to create User Stories for every analytic we make for our clients. A user story follows the following prompts:
    - As a [end user]
    - I want…
    - So that…
    - Show that…

  On the right is the user story for our "flag split transactions by cardholder" analytic.

- **Visuals that create feedback loops to power data science**: When we began ThirdLine we visualized analytics in Tableau and Microsoft Power BI. We believed their flexibility is fantastic, but we also encountered limitations in a dashboard's ability to receive "feedback" from an end user. Our software has a built-in workflow that enables auditors and management to tell us if transactions are fraudulent or inappropriate. This feeds our data science models and makes College Station even better at finding the riskiest transactions.
- **Consistency in visualization:** Across our software you will find similar visuals so that users become accustomed to a standard x-axis and y-axis. This allows users to navigate and understand quickly. **The images on the right show the same visual for a Vendor and an Employee when viewing the "Top Analytics" of each.**

- **Flexibility in visualization**: We can visualize data in at least three mediums that provide flexibility for our clients. Each provides ample ways to drill down to underlying data and create any chart or visualization required:

    - ThirdLine software: Our software has embedded visuals and reports that have been tested and critiqued under the best practices of UI/UX design by a professional designer. Our software also includes a workflow that auditors and management can use for auditing and monitoring.
    - Microsoft Power BI: Our team includes experts in Power BI who have been using it since it was released by Microsoft. Power BI is extremely flexible and it is easy to make visualization changes based on our client's feedback.
    - Tableau: Our team has experts in Tableau who have been using it for over 10 years. Similar to Power BI, we can easily make changes to visualizations according to our clients request.
- **Flexibility in creating visuals quickly:** Our team follows Agile methodology where we have daily stand-up and weekly or bi-weekly meetings with our clients. As part of Agile, we turn work products around every 2 weeks, enabling quick results and extreme flexibility for our clients.
- **Comparison and Design**: It is important to make visualization as simple as possible when comparing data. As visuals become more complex with multiple lines and bars, it becomes difficult for an end user to understand what is happening. We prefer simplicity over complexity in visualization. An end user should be able to understand what a graph is communicating in 5-10 seconds.
- **Create/print output in various formats (pdf, excel, word, etc.):** All data in the ThirdLine software can be exported to excel, pdf, png, jpeg, svg. Furthermore, as already discussed, all outputs can be visualized in other visualization tools and exported to pdf.

ThirdLine Consulting and white-glove approach

As part of our approach, we are available *anytime* as a general resource to the City Auditor for information and training on continuous monitoring of data as part of the pricing proposed. As audit analysts that help governments across the nation and speak at many internal audit conferences and webinars, we can help identify best practices for College Station's auditing needs. Finally, College Station will gain a team who are experts in Tyler Munis.

Contractual Service Levels

ThirdLine is committed to providing support consistent with contractual service levels that are timely and responsive. For most matters, we provide support 5 days a week 8-6 P.M. CT. More severe matters are governed by our Service Level Agreement. Below is an example of our Support Services from our Service Level Agreement:

1. Support Services. Provider shall perform all First Line Support, Second Line Support, and other Support Services during the Support Hours throughout the Support Period in accordance with the terms and conditions of this Schedule and the Main Agreement, including the Service Levels and other Provider obligations set forth in this Section 1.

1.1 Support Service Responsibilities. Provider shall:

(a) respond to and Resolve all Support Requests in accordance with the Service Levels;

(b) provide unlimited First Line Support to Customer during all Support Hours by means of the telephone number and email address provided to Customer;

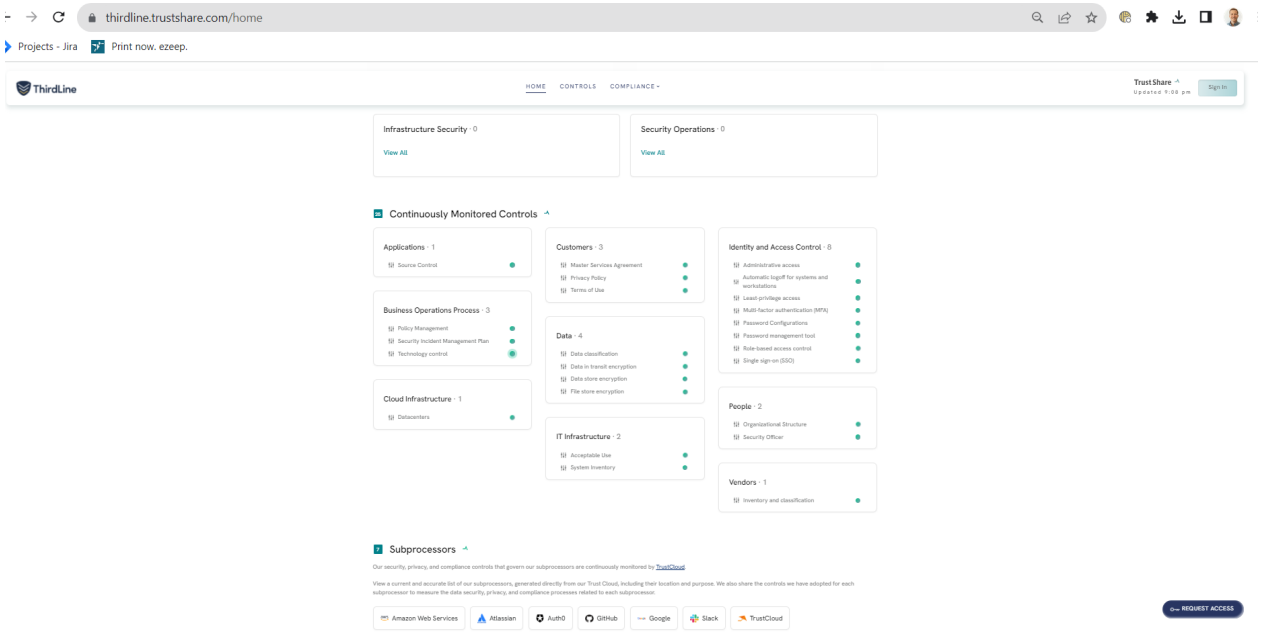
(c) provide Second Line Support to Customer in accordance with this Agreement;

(d) provide Customer with online access to technical support bulletins and other user support information and forums, to the full extent Provider makes such resources available to its other customers; and

(e) provide to Customer all such other services as may be necessary or useful to correct an Error or otherwise fulfill the Service Level requirements, including defect repair, programming corrections, and remedial programming.

Cybersecurity and Data Security practices

ThirdLine uses Trustcloud.ai for our security documentation and monitoring. Our prospective customers can view our Trust Cloud Trust Share to see how we are meeting security requirements including documented Disaster Recovery and Business Continuity Policy Implementation and testing. See Exhibit B for our Business Continuity Policy along with our Information Security Policy, Data Retention and Disposal Policy, and Encryption Policy. ThirdLine maintains Cybersecurity Insurance for all customers. An example of our continuously monitored controls on Trust Share is below:



If required, ThirdLine can undergo Pen Testing within two weeks of notice during the contracting period. With our current setup we expect no issues to pass a Pen test. At the current time we are on the path toward SOC 2 Certification and expect to be SOC 2 certified by March 31, 2024. If required we can expedite the SOC 2 process to be completed within three months. The major systems we use, AWS, Heroku, and Auth0, are all SOC 2 certified among many other certifications.

Data Process

ThirdLine will work with College Station IT to automate an agreed regular export of data:

1. We provide SQL scripts and assist the IT department in automating a job that can export the required Munis or other data on a continuous basis. Most of the data we require is similar to open records request data. We have the ability to hash any sensitive fields. Furthermore, we can eliminate the transfer of certain data fields if College Station desires and provide fewer analytic results.
2. We transmit the data via SFTP (encrypted during transfer) to our secure Amazon Web Services Cloud.
3. ETL and analytics processes are completed within Amazon Web Services where it is encrypted at rest and in transit.
4. The ThirdLine app imports summarized analytics data.
5. The app web traffic is encrypted and requires multi-factor authentication.
6. Data Disposal is governed by our Data Retention and Data Disposal Policy attached in Exhibit B.
7. ThirdLine will work with College Station to meet any other necessary security requirements.

Security

ThirdLine uses AWS S3 private buckets to store all data received from clients. When processing customer data through our analytics platform, we work in AWS where your data never leaves the AWS environment. At ThirdLine, we use multifactor authentication to access all our tools.

ThirdLine Users

Authentication and identity management within the ThirdLine analytics platform is handled through an identity provider platform. This allows us to provide simple secure authentication. All users are required to set up multi-factor authentication.

ThirdLine Support

Help desk support will be available Monday-Friday, 8am-6pm (CST).

2. Proposals must indicate a clear understanding of the scope of work, including a detailed project plan for this engagement outlying major tasks and responsibilities, time frames (project timeline), and staff assigned for each category of the scope of work identified above.

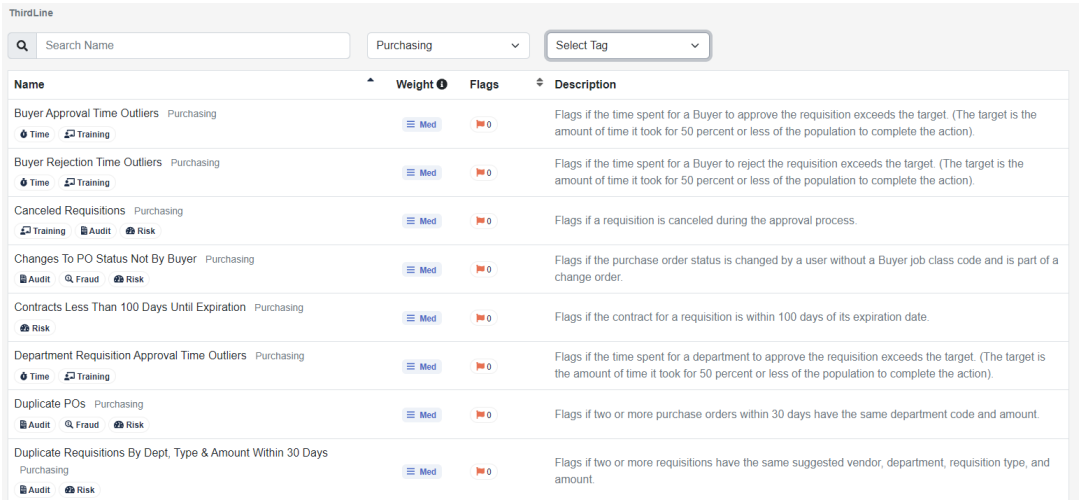
Clear Understanding of Scope of Work

In addition to what was discussed in Tab C #1, we understand the proposal includes 11 focus areas with four tasks each. ThirdLine has a proven process of interviews and facilitated workshops to identify key issues and develop subsequent analytics that matter most to process stakeholders. Currently we have used this understanding to understand key issues in all 11 focus areas. For any other possible focus area, we develop analytics with the City of College Station by engaging in user story interviews and learning sessions with subject matter experts within the city. This is part of our Agile implementation services for a new focus area.

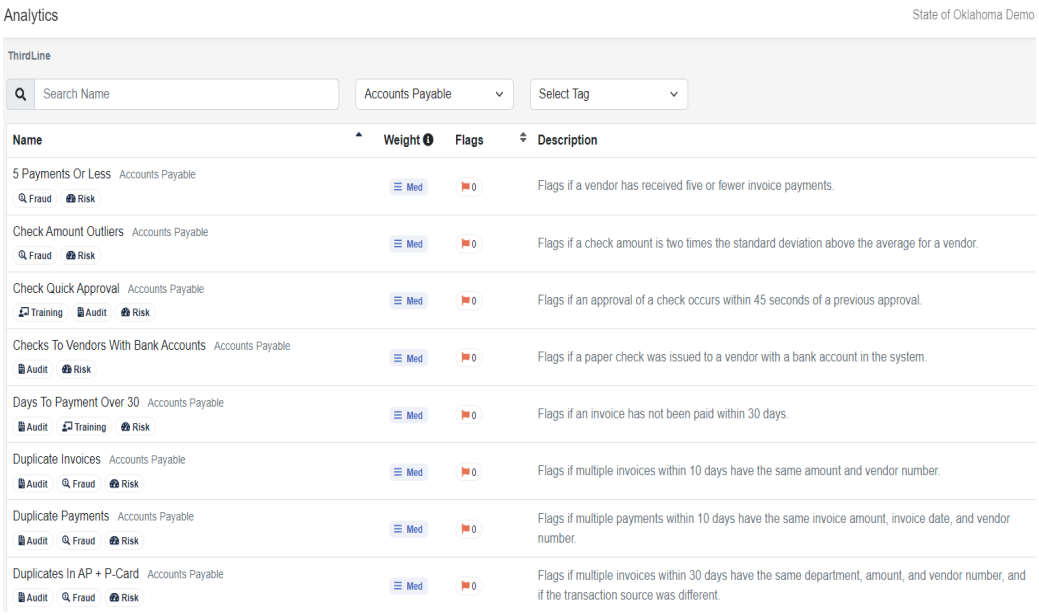
Further, we will use our weekly meetings to identify any additional key issues within each focus area and develop new analytics.

We have a deep understanding of key issues municipal managers and auditors have related to each focus area. This understanding has resulted in a range of analytics and are described in the following list with representative screenshots from the ThirdLine platform.

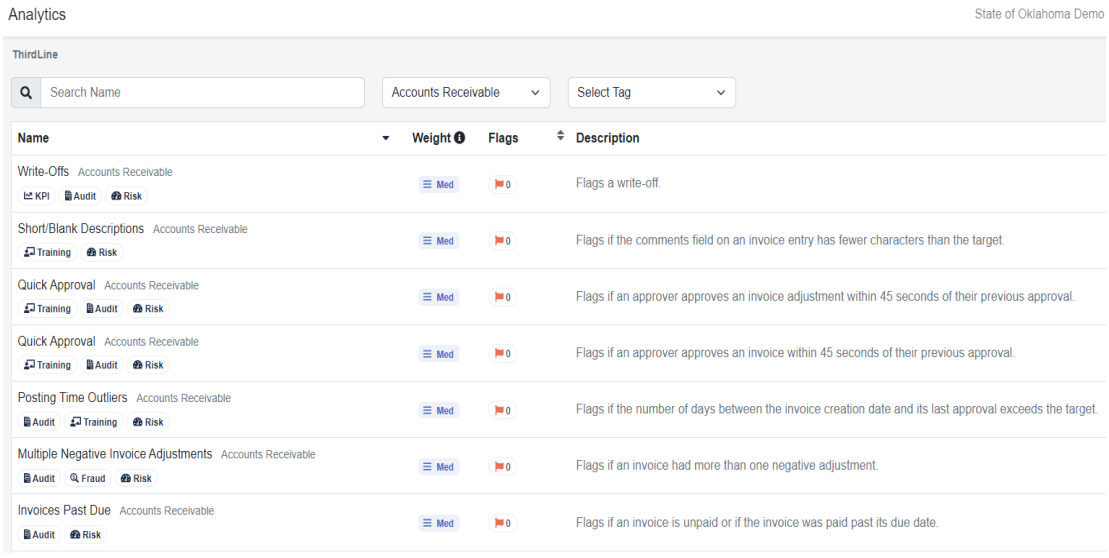
1. Procurement or Purchasing. We have over 20 analytics specific to the purchasing process which includes requisitions and purchase orders. A subset of these are shown in the figure below:



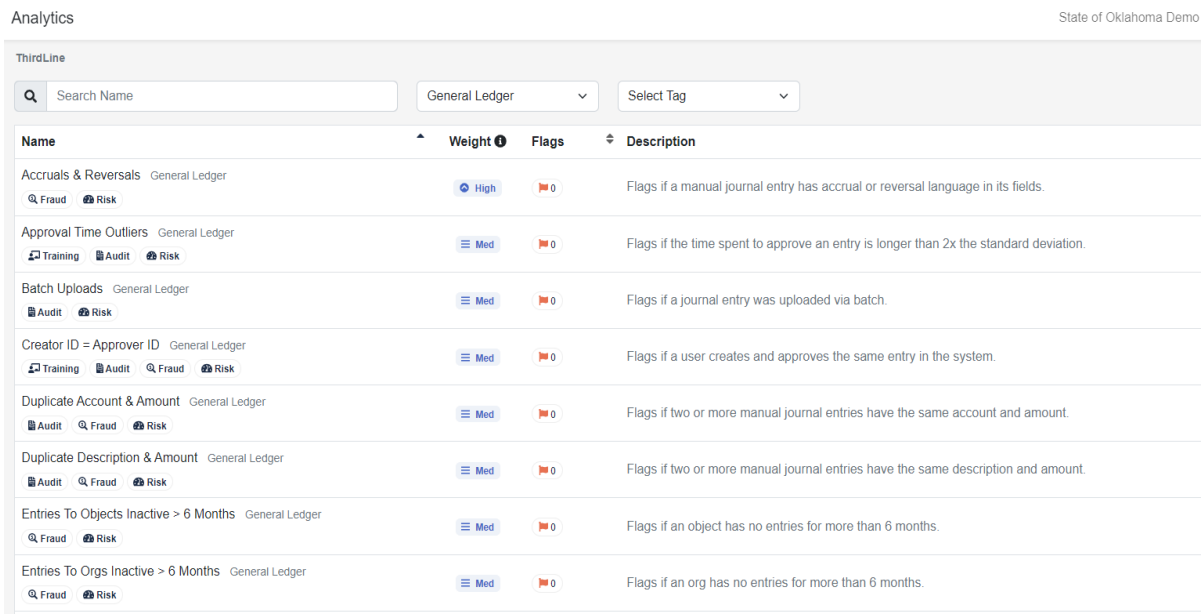
2. Accounts Payable (AP). We have over 20 analytics specific to this focus area. A subset of these are shown in the figure below.



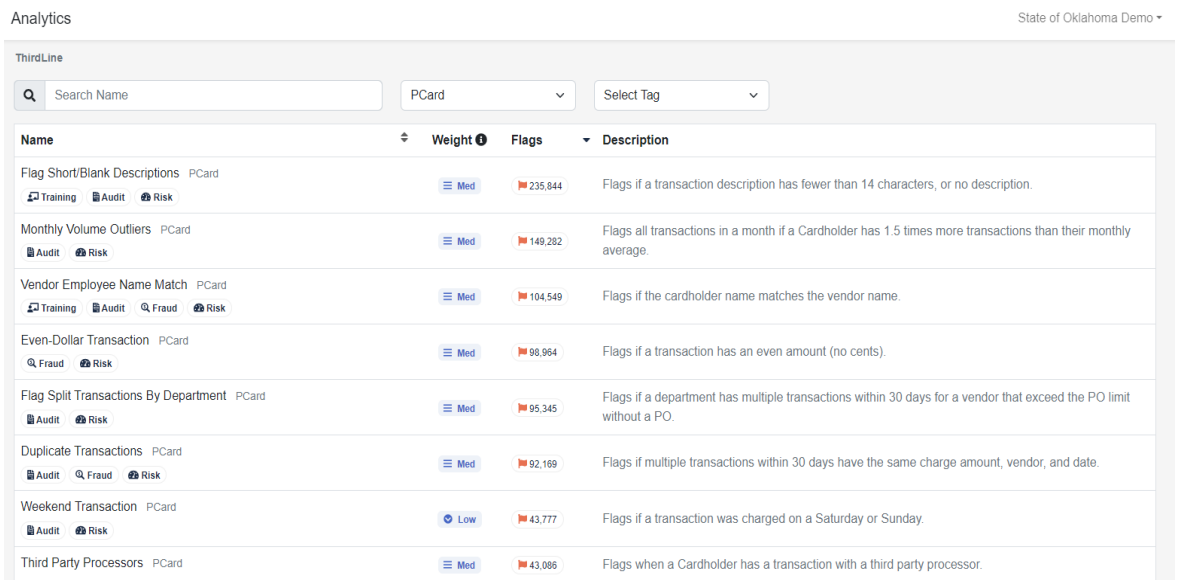
3. Accounts Receivable (AR). We have over 20 analytics specific to this focus area. A subset of these are shown in the figure below.



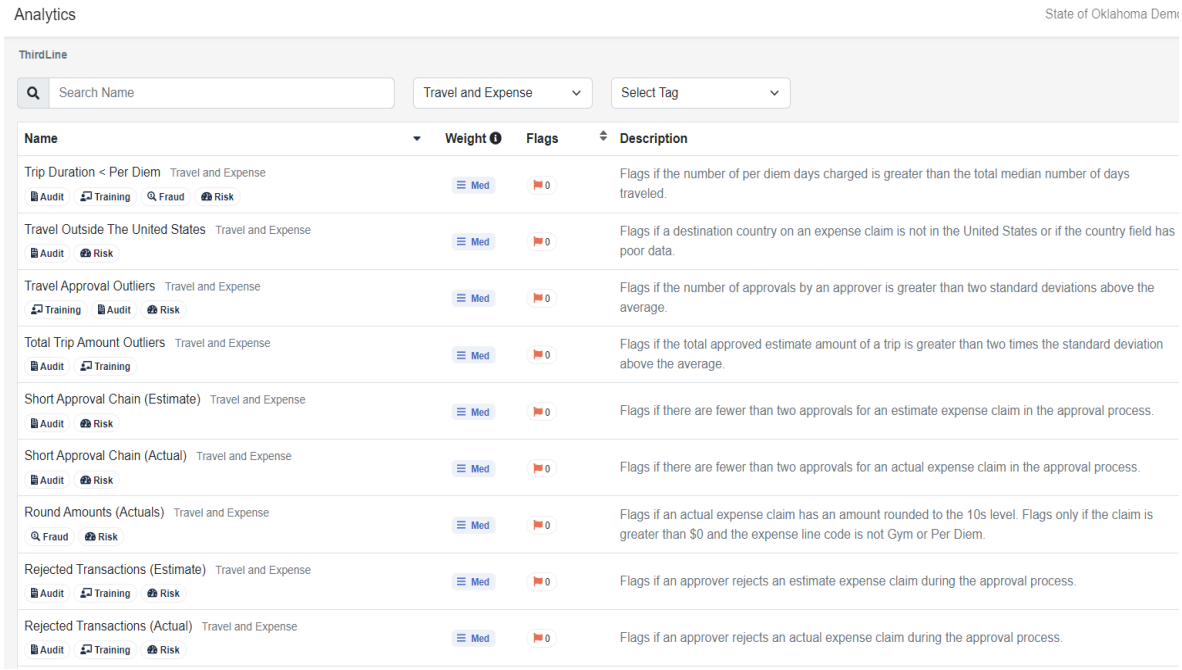
4. General Ledger (GL) and Cash Collections. We have over 25 analytics specific to the general ledger including 3 specific to cash handling. A subset of these are shown in the figure below.



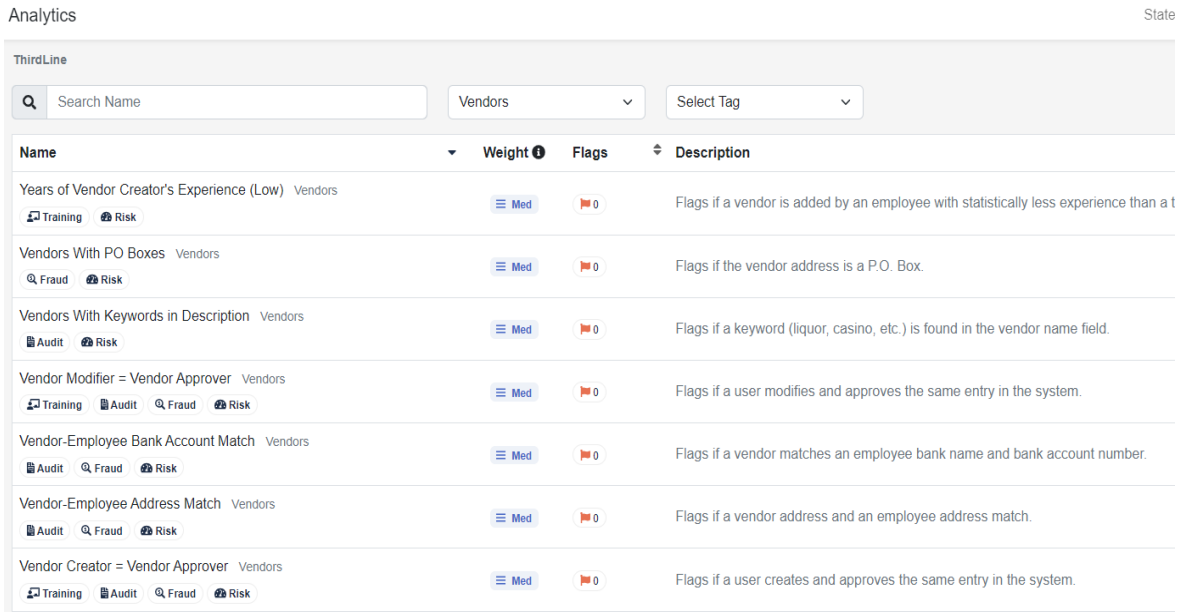
5. Purchasing Card (P-Card). We have over 20 analytics specific to the purchasing cards. A subset of these are shown in the following figure.



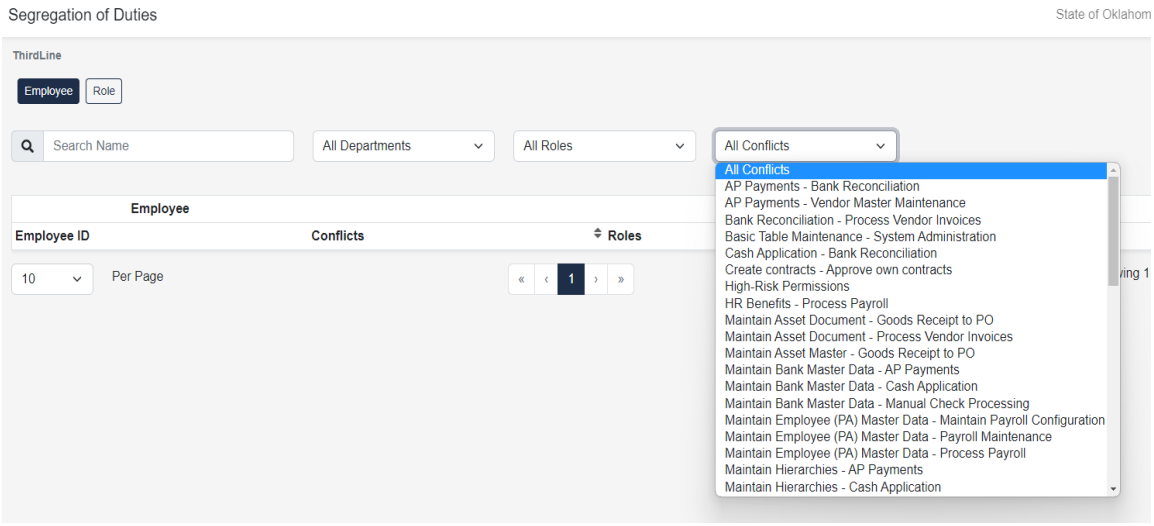
6. Travel & Expense (T&E). We have over 30 analytics specific to travel and expenses. A subset of these are shown in the figure below.



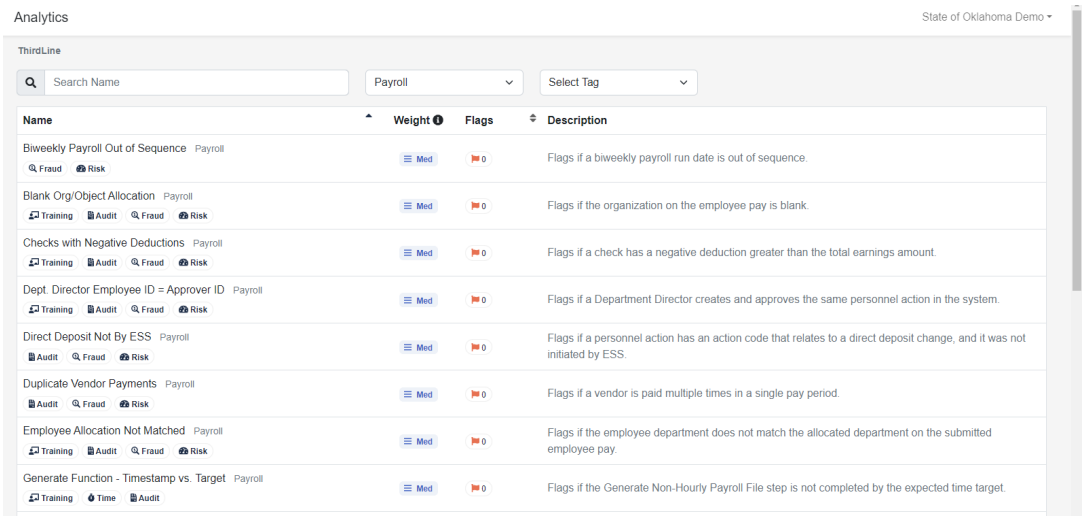
7. Vendor Management. We have over 15 analytics specific to the vendor management. A subset of these are shown in the figure below.



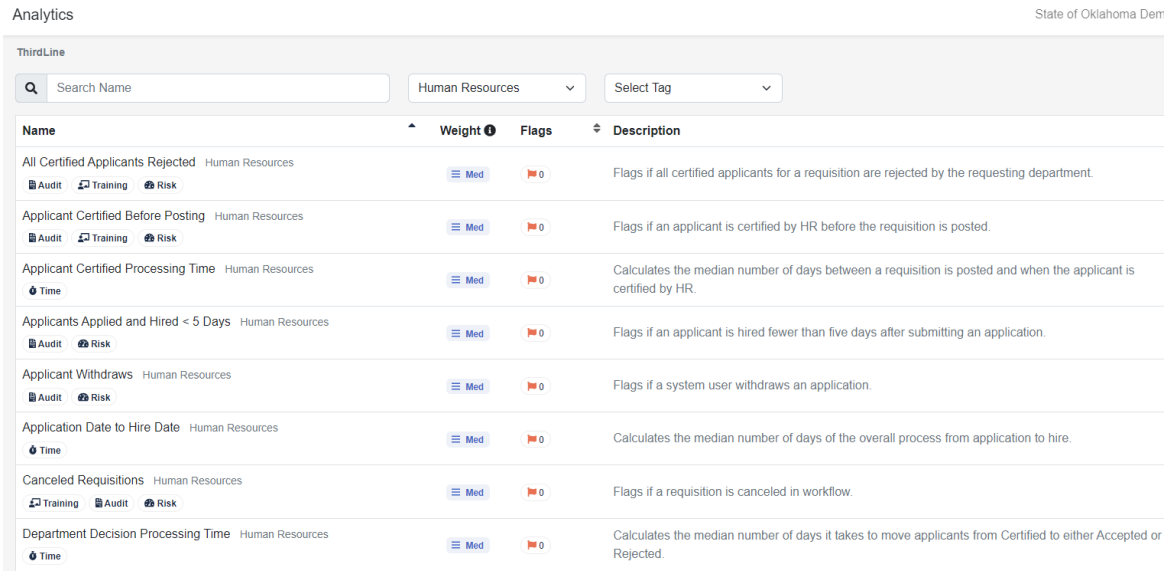
8. Roles & Permissions (Segregation of Duties). We have over 55 analytics looking for specific role and permission combinations that identify potential segregation of duties issues. We understand access control to be either policies or technology-based rules deployed to protect an organization's security needs. Our Segregation of Duties analytics are one such access control. Our clients also use our roles and permissions analytics to assess another access control: the principle of least privilege. We understand these two types of controls to be of high importance in today's climate of data loss and fraud. Below is a screenshot of some of the 55 permission pairs we examine through our software to assess segregation of duties risks.



9. Payroll & Time collection. We have over 15 specific analytics to Payroll and Timecollection. A subset of these are shown in the figure below.



10. Human Resources. We have over 15 specific analytics to Human Resources. A subset of these are shown in this figure.



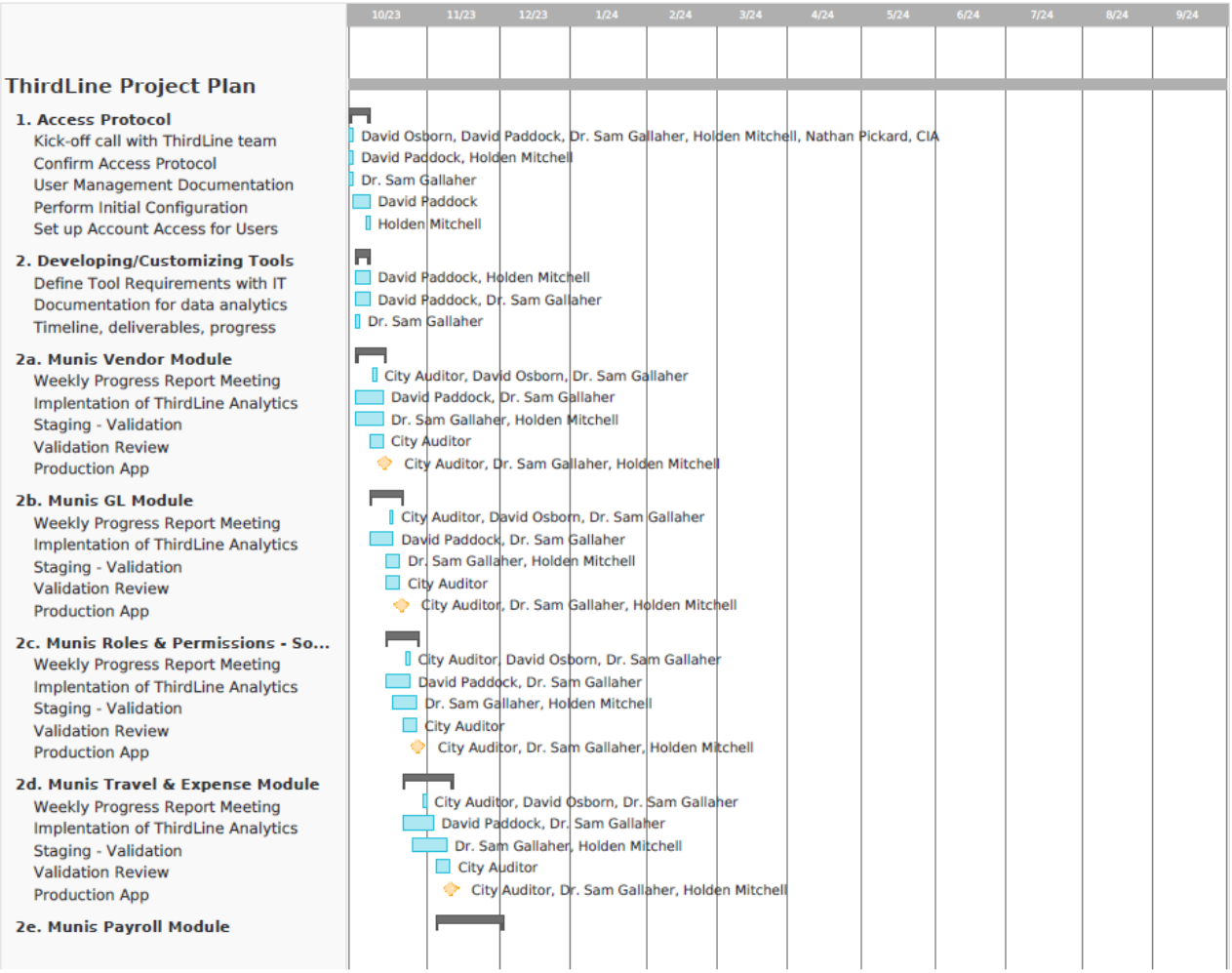
Name	Weight	Flags	Description
All Certified Applicants Rejected Human Resources Audit Training Risk	Med	0	Flags if all certified applicants for a requisition are rejected by the requesting department.
Applicant Certified Before Posting Human Resources Audit Training Risk	Med	0	Flags if an applicant is certified by HR before the requisition is posted.
Applicant Certified Processing Time Human Resources Time	Med	0	Calculates the median number of days between a requisition is posted and when the applicant is certified by HR.
Applicants Applied and Hired < 5 Days Human Resources Audit Risk	Med	0	Flags if an applicant is hired fewer than five days after submitting an application.
Applicant Withdraws Human Resources Audit Risk	Med	0	Flags if a system user withdraws an application.
Application Date to Hire Date Human Resources Time	Med	0	Calculates the median number of days of the overall process from application to hire.
Canceled Requisitions Human Resources Training Audit Risk	Med	0	Flags if a requisition is canceled in workflow.
Department Decision Processing Time Human Resources Time	Med	0	Calculates the median number of days it takes to move applicants from Certified to either Accepted or Rejected.

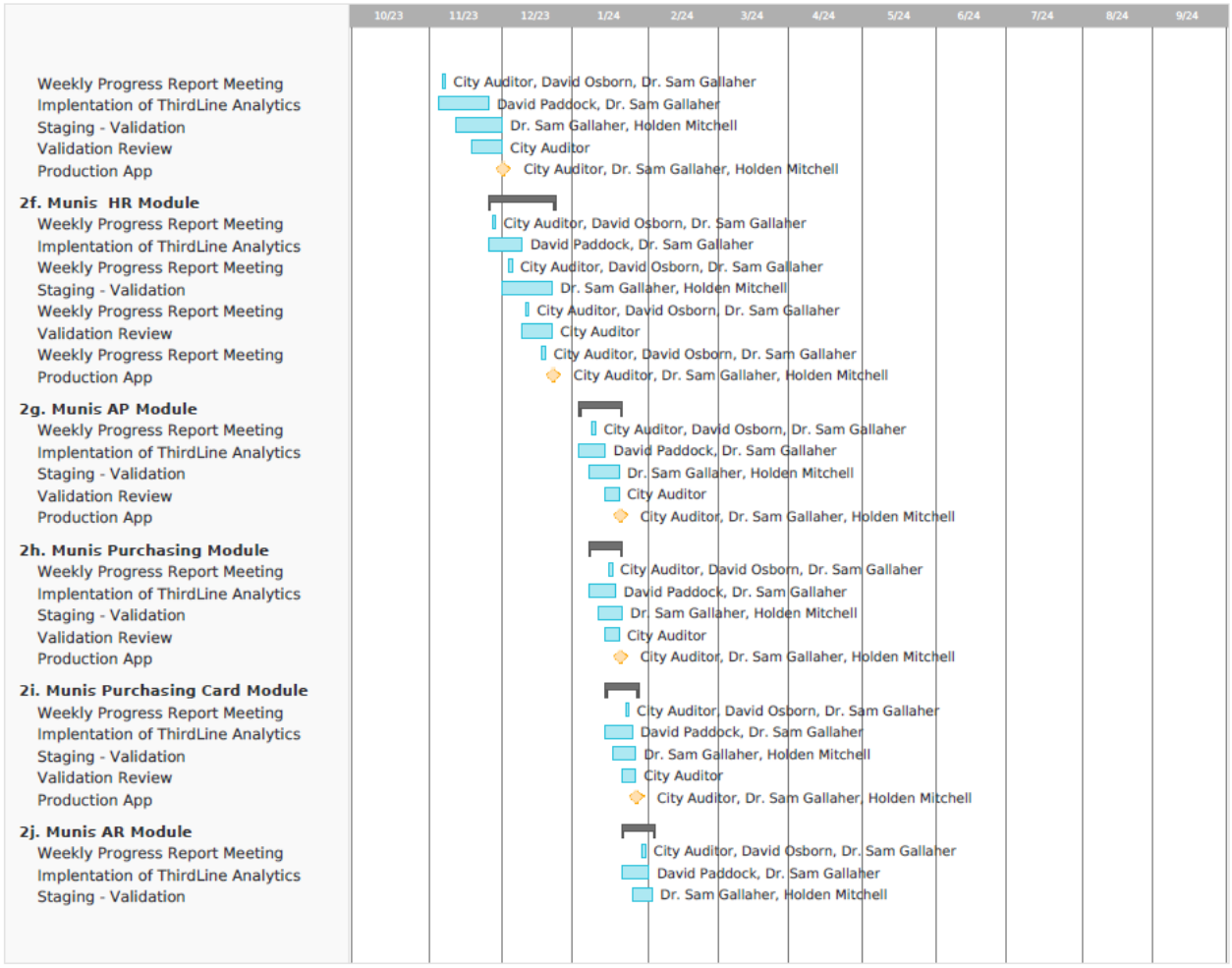
11. Utility Billing and Utility Taxes & Franchise Fees. We have over 15 specific analytics to Utility Billing including:

Name	Weight	Flags	Description
Adjustment Creator Is Approver Utility Billing	Med	0	Flags if a bill was adjusted and approved by the same user.
Billing Estimate Gaps Utility Billing	Med	0	Flags a bill if there were 2 consecutive estimate readings.
Billing Estimate Outliers Utility Billing	Med	0	Flags a bill if the batch of bills contains more than 2 times the average of estimated meter reads.
Billing Outliers Utility Billing	Med	0	Flags a bill if the percent change of the amount from the previous month is 2 times greater than the average percent change.
Consumption Over 30k Utility Billing	Med	0	Flags a bill if the total consumption was over 30k.
Credits Utility Billing	Med	0	Flags a bill if there is a credit applied.
Duplicate Customers Utility Billing	Med	0	Flags bills if a duplicate test on customer id, address, city and sub division is found.
Duplicate Meter Reads Utility Billing	Med	0	Flags a bill if a duplicate match on fields read month, read year, account number, actual read quantity and customer id is found.
Final Bill Write Offs Utility Billing	Med	0	Flags a bill if it is a final bill and has been written off.
Finaled Accounts Balance Due Utility Billing	Med	0	Flags a bill if a if the service is labelled as final, no AR receipt is found and if the bill amount is greater than 0.
Finaled Accounts With Credit Balance Utility Billing	Med	0	Flags a bill if a if the service is labelled as final and a credit is owed to the account.
Late Fee Amount Outliers Utility Billing	Med	0	Flags a bill if the total late fee amount is greater than 2 times the average.

Detailed project plan for this engagement outlying major tasks and responsibilities, time frames (project timeline), and staff assigned for each category of the scope of work identified above.

The following schedule is one option of a project plan, but the final project plan will depend upon which focus areas are the highest priority for College Station. The project plan shows the time for each focus area which ranges from 2 weeks to 4 weeks depending upon the complexity of the specific module.




10/23
11/23
12/23
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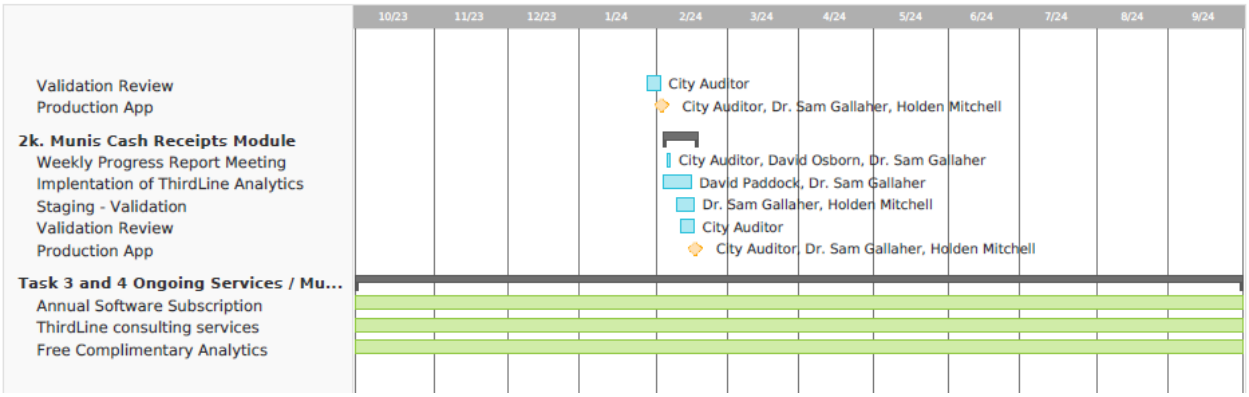
2/24
3/24
4/24
5/24
6/24
7/24
8/24
9/24
Weekly Progress Report Meeting
City Auditor, David Osborn, Dr. Sam Gallaher
Implentation of ThirdLine Analytics
David Paddock, Dr. Sam Gallaher
Staging - Validation
Dr. Sam Gallaher, Holden Mitchell
Validation Review
City Auditor
Production App
City Auditor, Dr. Sam Gallaher, Holden Mitchell
2f. Munis HR Module
Weekly Progress Report Meeting
City Auditor, David Osborn, Dr. Sam Gallaher
Implentation of ThirdLine Analytics
David Paddock, Dr. Sam Gallaher
Weekly Progress Report Meeting
City Auditor, David Osborn, Dr. Sam Gallaher
Staging - Validation
Dr. Sam Gallaher, Holden Mitchell
Weekly Progress Report Meeting
City Auditor, David Osborn, Dr. Sam Gallaher
Validation Review
City Auditor
Weekly Progress Report Meeting
City Auditor, David Osborn, Dr. Sam Gallaher
Production App
City Auditor, Dr. Sam Gallaher, Holden Mitchell
2g. Munis AP Module
Weekly Progress Report Meeting
City Auditor, David Osborn, Dr. Sam Gallaher
Implentation of ThirdLine Analytics
David Paddock, Dr. Sam Gallaher
Staging - Validation
Dr. Sam Gallaher, Holden Mitchell
Validation Review
City Auditor
Production App
City Auditor, Dr. Sam Gallaher, Holden Mitchell
2h. Munis Purchasing Module
Weekly Progress Report Meeting
City Auditor, David Osborn, Dr. Sam Gallaher
Implentation of ThirdLine Analytics
David Paddock, Dr. Sam Gallaher
Staging - Validation
Dr. Sam Gallaher, Holden Mitchell
Validation Review
City Auditor
Production App
City Auditor, Dr. Sam Gallaher, Holden Mitchell
2i. Munis Purchasing Card Module
Weekly Progress Report Meeting
City Auditor, David Osborn, Dr. Sam Gallaher
Implentation of ThirdLine Analytics
David Paddock, Dr. Sam Gallaher
Staging - Validation
Dr. Sam Gallaher, Holden Mitchell
Validation Review
City Auditor
Production App
City Auditor, Dr. Sam Gallaher, Holden Mitchell
2j. Munis AR Module
Weekly Progress Report Meeting
City Auditor, David Osborn, Dr. Sam Gallaher
Implentation of ThirdLine Analytics
David Paddock, Dr. Sam Gallaher
Staging - Validation
Dr. Sam Gallaher, Holden Mitchell


10/23
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3/24
4/24
5/24
6/24
7/24
8/24
9/24
Validation Review
City Auditor
Production App
City Auditor, Dr. Sam Gallaher, Holden Mitchell
2k. Munis Cash Receipts Module
Weekly Progress Report Meeting
City Auditor, David Osborn, Dr. Sam Gallaher
Implentation of ThirdLine Analytics
David Paddock, Dr. Sam Gallaher
Staging - Validation
Dr. Sam Gallaher, Holden Mitchell
Validation Review
City Auditor
Production App
City Auditor, Dr. Sam Gallaher, Holden Mitchell
Task 3 and 4 Ongoing Services / Mu...
Annual Software Subscription
ThirdLine consulting services
Free Complimentary Analytics

3. Proposals shall identify progress reports that will be made available during the process and key decision points.

ThirdLine will host a weekly meeting each week with the City Auditor to provide a progress report and make key decisions. An example of a progress report is below:

College Station Progress Report
Dr. Sam Gallaher and David Osborn, ThirdLine
College Station City Auditor
Oct 24, 2023

Current Sprint: Finish GL Validation & Start Roles and Permissions analysis
Sprint Begin: Oct 16, 2023
Sprint End: Oct 27, 2023

GL Validation

- ThirdLine has validated general ledger (GL) analytics and currently has 21 analytics in the ThirdLine Software
- ThirdLine provided GL training to College Station Auditor
- College Station Auditor is validating a sample of analytics results
- Key decision: are there any analytic tests that are not related to manual journal entries needed?
- College Station Auditor provided one new analytic idea which ThirdLine is implementing as a complimentary analytic
    - Period 13 manual journal entries where the munis user never entered a manual journal entry during the fiscal year - Good idea!
- GL will be validated and in Production App on Oct 27, 2023

Roles and Permissions and segregation of duties

- 55 data analytics are processing this week and the ThirdLine team is validating
- ThirdLine provided City Auditor with 2 user profiles to pull from the front-end of Tyler Munis to validate the analytics results
- Next week: training and validation by City Auditor; push Roles and Permissions analytics into Production App.

4. Proposals shall clearly distinguish the Firms' duties and responsibilities and those of the City. Absence of this distinction shall mean the Firm is assuming full responsibility for all tasks.

As ThirdLine knows the Tyler Munis ERP system, we have already mapped all the fields required to generate hundreds of analytics from Munis data. Approximately 95% of all Tasks will be completed by ThirdLine. Below we discuss any steps that require assistance from College Station.

Task 1: Access Protocol - 90% ThirdLine - 10% College Station

• Confirm access protocol with the City of College Station Information Technology Department.

A meeting with the City of College Station Information Technology Department.

• Perform the initial configuration.

ThirdLine has done all data discovery required for the Tyler Munis ERP system. We provide College Station IT with SQL scripts of the exact tables and fields we need.

ThirdLine provides IT the instructions to automate the recurring feed of data to ThirdLine via SFTP.

College Station IT sets up SQL scripts and SFTP automation in one to two hours.

• ThirdLine sets up account access for users. Provide secure access to the solution for authorized users

.

• ThirdLine provides user management documentation.

Task 2: Developing/Customizing Tools (duration subject to project scope) - 95% ThirdLine - 5% College Station

• A meeting with City of College Station Information Technology Department and ThirdLine to define the tool Requirements.

• ThirdLine provides documentation for each data analytics set.

•ThirdLine provides a project timeline with intermediate deliverables and weekly progress reviews.

Task 3: Ongoing Services: Ongoing services to include the following - 100% ThirdLine - 0% College Station

Ongoing Services are 100% on ThirdLine to maintain the software and data pipeline.

Task 4: Munis Specific - 100% ThirdLine - 0% College Station

Munis specific tasks will be handled by ThirdLine.

Exhibit B
Payment Terms

Payment is a fixed fee in the amount listed in Article II of this Contract. This amount shall be payable by the City pursuant to the schedule listed below and upon completion of the work and written acceptance by the City.

Schedule of Payment for each phase:

Total price for each software subscription + implementation for the first twelve months - $28,982.00 paid net 30 at the beginning of year.

Total annual software subscription for each year thereafter for four additional years - $23,982.00 paid net 30 at the beginning of each year.

Total for 5 year term - $124,910.00

City of College Station, TX

ThirdLine Pricing

	1 Year Contract: Annual List Price	Implementation Fee	First Year Total Price + Implementation	10% 3 Year Contract Annual Subscription Price, 10% Discounted	20% 5 Year Contract Annual Subscription Price, 20% Discounted
Software Product					
Roles, Permissions, & SoD	$14,962	$0	$14,962	$13,466	$11,970
Analytics & Reporting					
Accounts Payable	$6,999	$0	$6,999	$6,299	$5,599
Vendor	$6,999	$0	$6,999	$6,299	$5,599
Procurement	$6,999	$0	$6,999	$6,299	$5,599
Purchasing Card	$6,999	$0	$6,999	$6,299	$5,599
General Ledger	$6,999	$0	$6,999	$6,299	$5,599
Payroll	$9,999	$9,999	$19,998	$8,999	$7,999
Software Subscription	$59,956	$9,999	$69,955	$53,960	$47,965
ThirdLine Champion Discount	**50.0%**	50%	**50.0%**	**50.0%**	**50.0%**
Annual Software Subscription Price, Discounted	$29,978		$29,978	$26,980	$23,982
Total Price for Software Subscription + Implementation for the first 12 months		$5,000	$34,978	$31,980	$28,982
Total Contract Price for Software Subscription for Entire Contract Term			$34,978	$85,940	$124,912

Exhibit C
Certificates of Insurance

THE HARTFORD
BUSINESS SERVICE CENTER
3600 WISEMAN BLVD
SAN ANTONIO TX 78251

January 22, 2025

City of College Station
Risk Management
PO Box 9960
COLLEGE STATION TX 77842

Account Information:

Policy Holder Details :	**ThirdLine**

Contact Us

Need Help?

Chat online or call us at

(866) 467-8730.

We're here Monday - Friday.

Enclosed please find a Certificate Of Insurance for the above referenced Policyholder. Please contact us if you have any questions or concerns.

Sincerely,

Your Hartford Service Team

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 01/22/2025

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

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATIONIS 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	CONTACT NAME:	
AP INTEGO INSURANCE GROUP LLC 76250846 375 WOODCLIFF DRIVE STE 103 FAIRPORT NY 14450	PHONE (A/C, No, Ext): (888) 289-2939	FAX (A/C, No):
	E-MAIL ADDRESS:	
	INSURER(S) AFFORDING COVERAGE	NAIC#
	INSURER A : Hartford Fire and Its P&C Affiliates	00914
INSURED	INSURER B :	
THIRDLINE 100 S CINCINNATI AVE TULSA OK 74103-2814	INSURER C :	
	INSURER D :	
	INSURER E :	
	INSURER F :	

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

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

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/Y YYY)	LIMITS	
	COMMERCIAL GENERAL LIABILITY						EACH OCCURRENCE	
	CLAIMS-MADE OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)	
							MED EXP (Any one person)	
							PERSONAL & ADV INJURY	
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	
	POLICY PRO-JECT LOC						PRODUCTS - COMP/OP AGG	
	OTHER:							
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)	
	ANY AUTO						BODILY INJURY (Per person)	
	ALL OWNED AUTOS / SCHEDULED AUTOS						BODILY INJURY (Per accident)	
	HIRED AUTOS / NON-OWNED AUTOS						PROPERTY DAMAGE (Per accident)	
	UMBRELLA LIAB OCCUR						EACH OCCURRENCE	
	EXCESS LIAB CLAIMS-MADE						AGGREGATE	
	DED RETENTION $							
A	**WORKERS COMPENSATION AND EMPLOYERS' LIABILITY** Y/N ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? **(Mandatory in NH)** If yes, describe under DESCRIPTION OF OPERATIONS below	N/ A		76 WEG AV7XAM	01/11/2025	01/11/2026	X PER STATUTE / OTH-ER	
							E.L. EACH ACCIDENT	$1,000,000
							E.L. DISEASE -EA EMPLOYEE	$1,000,000
							E.L. DISEASE - POLICY LIMIT	$1,000,000

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

Those usual to the Insured's Operations.

CERTIFICATE HOLDER

City of College Station
Risk Management
PO 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

Susan L. Castaneda

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THIRDLI01C BJKERR

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 1/31/2025

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 License # 100102234
INSURICA
1437 S Boulder Towers, Ste 600
Tulsa, OK 74119

CONTACT NAME: Bobbi Jo Kerr
PHONE (A/C, No, Ext): (918) 272-2100 FAX (A/C, No):
E-MAIL ADDRESS: Bobbijo.Kerr@INSURICA.com

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : ACE Fire Underwriters Insurance Company	20702
INSURER B : Hartford Fire Insurance Company	19682
INSURER C : Coalition Insurance Solutions, Inc.	
INSURER D :	
INSURER E :	
INSURER F :	

INSURED
ThirdLine
100 S Cincinnati Ave., Fifth Floor
Tulsa, OK 74103

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

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	X COMMERCIAL GENERAL LIABILITY						EACH OCCURRENCE	$ 1,000,000
	CLAIMS-MADE X OCCUR	X		D97139957	3/9/2024	3/9/2025	DAMAGE TO RENTED PREMISES (Ea occurrence)	$ 1,000,000
							MED EXP (Any one person)	$ 5,000
							PERSONAL & ADV INJURY	$
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	$ 2,000,000
	POLICY X PRO-JECT LOC						PRODUCTS - COMP/OP AGG	$ 2,000,000
	OTHER:							$
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)	$
	ANY AUTO						BODILY INJURY (Per person)	$
	OWNED AUTOS ONLY / SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	HIRED AUTOS ONLY / NON-OWNED AUTOS ONLY						PROPERTY DAMAGE (Per accident)	$
								$
	UMBRELLA LIAB OCCUR						EACH OCCURRENCE	$
	EXCESS LIAB CLAIMS-MADE						AGGREGATE	$
	DED RETENTION $							$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y / N						PER STATUTE OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	N / A					E.L. EACH ACCIDENT	$
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	$
							E.L. DISEASE - POLICY LIMIT	$
B	Professional Liabili			38TE0530727-24	4/11/2024	4/11/2025	Aggregate	2,000,000
C	Cyber Liability			C-4NB1-007973-CYBER-2024	3/17/2024	3/17/2025	Aggregate	3,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
City of College Station is listed as an additional insured if agreed to in a written contract subject to all provisions and limitations of the policy. Coverage is primary and noncontributory.

CERTIFICATE HOLDER

City of College Station
Risk Management
P.O. Box 9960
College Station, TX 77842

CANCELLATION

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

AUTHORIZED REPRESENTATIVE

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THE HARTFORD
BUSINESS SERVICE CENTER
3600 WISEMAN BLVD
SAN ANTONIO TX 78251

January 22, 2025

City of College Station
Risk Management
PO Box 9960
COLLEGE STATION TX 77842

Account Information:

Policy Holder Details :	**ThirdLine**

Contact Us

Need Help?

Chat online or call us at

(866) 467-8730.

We're here Monday - Friday.

Enclosed please find a Certificate Of Insurance for the above referenced Policyholder. Please contact us if you have any questions or concerns.

Sincerely,

Your Hartford Service Team

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 01/22/2025

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PRODUCER	CONTACT NAME:	
AP INTEGO INSURANCE GROUP LLC 76250846 375 WOODCLIFF DRIVE STE 103 FAIRPORT NY 14450	PHONE (A/C, No, Ext): (888) 289-2939	FAX (A/C, No):
	E-MAIL ADDRESS:	
	INSURER(S) AFFORDING COVERAGE	NAIC#
	INSURER A : Hartford Fire and Its P&C Affiliates	00914
INSURED THIRDLINE 100 S CINCINNATI AVE TULSA OK 74103-2814	INSURER B :	
	INSURER C :	
	INSURER D :	
	INSURER E :	
	INSURER F :	

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

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

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/Y YYY)	LIMITS	
	COMMERCIAL GENERAL LIABILITY CLAIMS-MADE OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: POLICY PRO-JECT LOC OTHER:						EACH OCCURRENCE	
							DAMAGE TO RENTED PREMISES (Ea occurrence)	
							MED EXP (Any one person)	
							PERSONAL & ADV INJURY	
							GENERAL AGGREGATE	
							PRODUCTS - COMP/OP AGG	
	AUTOMOBILE LIABILITY ANY AUTO ALL OWNED AUTOS SCHEDULED AUTOS HIRED AUTOS NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident)	
							BODILY INJURY (Per person)	
							BODILY INJURY (Per accident)	
							PROPERTY DAMAGE (Per accident)	
	UMBRELLA LIAB **EXCESS LIAB** OCCUR CLAIMS-MADE DED RETENTION $						EACH OCCURRENCE	
							AGGREGATE	
A	**WORKERS COMPENSATION AND EMPLOYERS' LIABILITY** ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? **(Mandatory in NH)** If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N/ A		76 WEG AV7XAM	01/11/2025	01/11/2026	X PER STATUTE OTH-ER	
							E.L. EACH ACCIDENT	$1,000,000
							E.L. DISEASE -EA EMPLOYEE	$1,000,000
							E.L. DISEASE - POLICY LIMIT	$1,000,000

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

Those usual to the Insured's Operations.

CERTIFICATE HOLDER

City of College Station
Risk Management
PO 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

Susan L. Castaneda

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Contract No. 25300285

Name of Project: Data Analytics Consultant

STATEMENT AFFIRMING NO BUSINESS AUTOS

I, the undersigned, the sole owner, shareholder, principal or partner doing business as ThirdLine, Inc herein verify David Osborn & ThirdLine, Inc Employees does not have Business Autos, nor does it conduct business in any way that would require it to have Business Autos when performing for the City of College Station under the above-referenced contract.

I understand if ThirdLine, Inc. purchases, rents, or otherwise uses Business Autos or does anything to change its obligations under state law with respect to carrying Business Auto liability insurance when performing for the City, it will promptly do so and notify the City of same. ThirdLine, Inc assumes full responsibility for its obligations, if any, under applicable law relating to business auto liability insurance.

Name of Business: ThirdLine, Inc

Telephone No. 918-956-8673

Address: 12 N Cheyenne Ave

City: Tulsa State: OK Zip Code: 74103

Signature of Owner: Date: 2/4/25

RETURN SIGNED FORM TO

Alan Degelman at adegelman@cstx.gov

OR

FAX TO

N/A

February 27, 2025
Item No. 8.8.
Holleman Drive Emergency Culvert Repair

Sponsor: Emily Fisher, Director of Public Works

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action on an emergency construction contract with Larry Young Paving, Inc. in the amount of $486,977.44 plus the City's contingency in the amount of $48,697.74 for a total appropriation of $535,675.18 for emergency repairs to culverts under Holleman Drive. Approval of this item grants authority for the City Manager to authorize expenditures up to the City's contingency amount.

Relationship to Strategic Goals:
1. Core Services and Infrastructure

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

Summary: While addressing an issue with a sanitary sewer line located along Bee Creek near Holleman Drive, it was discovered that one of the 72-inch culverts under the street had collapsed. A collapsed culvert can undermine the structural integrity of the road above. Public Works sought quotes from two contractors with Larry Young Paving, Inc. submitting the lower amount. All culverts and a water line that runs parallel to Holleman Drive will be repaired. The work will not begin until March 1 and will take 4-5 weeks to complete.

Budget & Financial Summary: Funds are available in the Drainage Utility Fund.

Attachments:
1. Holleman Drive Culverts Vendor Signed Contract

CONTRACT & AGREEMENT ROUTING FORM

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

CONTRACT#: 25300305 PROJECT#: _____ BID#: _____ RFP#: _____

Project Name / Contract Description: Holleman Drive Emergency Culvert Repair

Name of Contractor: Larry Young Paving, Inc.

CONTRACT TOTAL VALUE: $ 535,675.18

Grant Funded ☐ Yes ■ No
If yes, what is the grant number: _____

Debarment Check ☐ Yes ☐ No ■ N/A
Section 3 Plan Incl. ☐ Yes ☐ No ■ N/A

Davis Bacon Wages Used ☐ Yes ☐ No ☒ N/A
Buy America Required ☐ Yes ☐ No ☒ N/A
Transparency Report ☐ Yes ☐ No ☒ N/A

■ **NEW CONTRACT** ☐ **RENEWAL #** _____ ☐ **CHANGE ORDER #** _____ ☐ **OTHER** _____

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

Dual 72" Culverts at the 1000 Block of Holleman Drive are in danger of failure and require immediate replacement.

Contractors quote is $486,977.44. Adding 10% (48,697.74) for contingency = $535,675.18

Funds are available in the Drainage Maintenance fund and Water Services fund

CRC Approval Date*: N/A *(If required)** **Council Approval Date*:** 2/27/25 **Agenda Item No*:** _____

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

Insurance Certificates: DDV **Performance Bond:** _____ **Payment Bond:** _____ **Form 1295:** _____

SIGNATURES RECOMMENDING APPROVAL

_____ _____
DEPARTMENT DIRECTOR/ADMINISTERING CONTRACT DATE

_____ _____
LEGAL DEPARTMENT DATE

_____ _____
ASST CITY MGR – CFO DATE

APPROVED & EXECUTED

_____ _____
CITY MANAGER DATE

N/A
_____ _____
MAYOR (if applicable) DATE

N/A
_____ _____
CITY SECRETARY (if applicable) DATE

__Original(s) sent to CSO on _____ Scanned into Laserfiche on _____ ____Original(s) sent to Fiscal on _____

CITY OF COLLEGE STATION
STANDARD FORM OF CONSTRUCTION AGREEMENT

This Agreement is entered into by and between the City of College Station, a Texas home-rule municipal corporation (the "City") and Larry Young Paving, Inc. (the "Contractor") for the construction and/or installation of the following:
Holleman Drive Emergency Culvert Repair.

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: Forty-Eight Thousand Six Hundred Ninety -Seventy and 74 **/100 Dollars ($** 48,697.74).

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: Four Hundred Eighty-Six Thousand Nine Hundred Seventy-Seven and 44 **/100 Dollars ($** 486,977.44).

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 (1) 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 (l) 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 (l) 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 (l) 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 (l) 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 (l) year after the installation or completion. The one (l) year warranty shall cover all Work, equipment, and materials that are part of this Project, whether or not a warranty is specified in the individual section of the Contract Documents that prescribe that particular aspect of the Work.

26. PAYMENT OF EMPLOYEES, SUBCONTRACTORS & SUPPLIERS

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

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

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

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

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

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

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

27. INSURANCE

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

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

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

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

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

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

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

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

(a) General Liability insurance shall be written by a carrier rated "A:VIII" or better in accordance with the current A.M. Best Key Rating Guide.

(b) Limit of $1,000,000.00 per occurrence for bodily injury and property damage with an annual aggregate limit of $2,000,000.00 which limits shall be endorsed to be per Project.

(c) Coverage shall be at least as broad as ISO form GC 00 01.

(d) No coverage shall be excluded from the standard policy without notification of individual exclusions being attached for the City's review and acceptance.

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

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

(a) Business Automobile Liability insurance shall be written by a carrier rated "A:VIII" or better in accordance with the current A.M. Best Key Rating Guide.

(b) Minimum Combined Single Limit of $1,000,000.00 per occurrence for bodily injury and property damage.

(c) The Business Auto Policy must show Symbol 1 in the Covered Autos Portion of the liability section in Item 2 of the declarations page.

(d) The coverage shall include owned autos, leased or rented autos, non-owned autos, any autos and hired autos.

(e) Pollution Liability coverage shall be provided by endorsement MCS-90, with a limit of $1,000,000.00, where such exposures exist.

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

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

27.07 Additional Insured.

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

27.08 Builder's Risk

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

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

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

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

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

(b) Workers' Compensation/ Employer's Liability insurance shall include the following terms:

1. Employer's Liability minimum limits of $1,000,000.00 for each accident/each disease/each

employee are required.

2. "Texas Waiver of Our Right to Recover From Others Endorsement, WC 42 03 04" shall be included in this policy.

3. Texas must appear in Item 3A of the Workers' Compensation coverage or Item 3C must contain the following: All States except those listed in Item 3A and the States of NV, ND, OH, WA, WV, and WY.

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

"A. Definitions:

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

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

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

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

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

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

extended.

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

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

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

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

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

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

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

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

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

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

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

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

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

of coverage ends during the duration of the project;

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

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

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

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

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

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

(a) The company is authorized to do business in the State of Texas.

(b) The insurance policies provided by the insurance company are underwritten on forms that have been provided by the Department of Insurance or ISO.

(c) Original endorsements affecting coverage required by this section shall be furnished with the certificates of insurance.

28. BOND PROVISIONS

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

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

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

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

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

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

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

29. SURETY

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

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

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

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

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

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

30. COMPLIANCE WITH LAW

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

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

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

31. SAFETY PRECAUTIONS

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

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

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

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

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

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

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

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

32. TRENCH SAFETY

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

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

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

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

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

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

33. INDEMNITY

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

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

(a) The City is damaged due to the act, omission, mistake, fault or default of the Contractor.

(b) In the event of any claims for payment for goods or services brought by any material suppliers, mechanics, laborers, or other subcontractors.

(c) In the event of any and all injuries to or claims of adjacent property owners caused by the Contractor, its agents, employees, and representatives.

(d) In the event of any damage to the floor, walls, etc., caused by the Contractor's personnel or equipment during installation.

(e) The removal of all debris related to the Work.

(f) The acts and omissions of the subcontractors it hired.

(g) The Contractor's failure to comply with applicable federal, state, or local regulations, that touch upon or concern the maintenance of a safe and protected working environment and the safe use and operation of machinery and equipment in that working environment, no matter where fault or responsibility lies.

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

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

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

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

34. RELEASE

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

35. PERMITS AND LICENSES

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

36. ROYALTIES AND LICENSING FEES

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

37. BREACH OF CONTRACT & DAMAGES

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

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

(a) If the Contractor shall fail to remedy any default after written notice thereof from City's Representative, as City's Representative shall direct; or

(b) If the Contractor shall fail for any reason other than the failure by City's Representative to make payments called upon when due; or

(c) If the Contractor commits a substantial default under any of the terms, provisions, conditions, or covenants contained in this Agreement.

38. TERMINATION FOR CAUSE

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

(a) If the Contractor becomes insolvent, commits any act of bankruptcy, makes a general assignment for the benefit of creditors, or becomes the subject of any proceeding commenced under any statute or law for the relief of debtors and, after notice, fails to provide adequate assurance that it can remedy all of its defaults; or

(b) If a receiver, trustee, or liquidator of any of the property or income of the Contractor is appointed; or

(c) If the Contractor fails to prosecute the Work or any part thereof with diligence necessary to insure its progress and completion as prescribed by the time schedules; or

(d) If the Contractor fails to remedy any default within ten (10) calendar days after written notice thereof from City's Representative, as City's Representative shall direct; or

(e) If the Contractor fails for any reason other than the failure by City's Representative to make payments called upon when due; or

(f) If the Contractor abandons the Work.

(g) If the Contractor commits a material default under any of the terms, provisions, conditions, or covenants contained in this Agreement.

39. TERMINATION FOR CONVENIENCE

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

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

40. RIGHT TO COMPLETE

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

41. CLOSE OUT

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

(a) Stop the work on the date and to the extent specified in the notice of termination;

(b) Place no further orders or subcontracts for services, equipment, or materials, except as may be necessary for completion of such portion of the Work as is not terminated;

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

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

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

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

42. TERMINATION CONVERSION

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

43. HIRING

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

44. ASSIGNMENT

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

45. EFFECTIVE DATE

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

46. OTHER TERMS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Boycott Israel. If this Contract is for goods and services subject to § 2270.002 Texas Government Code, Contractor verifies that it (i) does not boycott Israel; and (ii) will not boycott Israel during the term of this Contract;

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

(c) Boycott Energy Companies. Subject to § 2274.002 Texas Government Code Contractor herein verifies that it (i) does not boycott energy companies; and (ii) will not boycott energy companies during the term of this Contract.

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

List of Exhibits

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

LARRY YOUNG PAVING, INC.

By: _____

Printed Name: Mark Schinzler

Title: COO

Date: 2/18/2025

CITY OF COLLEGE STATION

By: _____
City Manager
Date: _____

APPROVED:

_____
City Attorney
Date: _____

_____
Assistant City Manager/CFO
Date: _____

EXHIBIT A
DAVIS BACON WAGE RATES

"General Decision Number: TX20250007 01/03/2025

Superseded General Decision Number: TX20240007

State: Texas

Construction Types: Heavy and Highway

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

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

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

If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:	. Executive Order 14026 generally applies to the contract. . The contractor must pay all covered workers at least $17.75 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 2025.
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 $13.30 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 2025.

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 01/03/2025

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 **	

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      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 ($17.75) or 13658
  ($13.30).  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 classifications and wage rates that have been found to be prevailing for the type(s) of construction and geographic area covered by the wage determination. The classifications are listed in alphabetical order under rate identifiers indicating whether the particular rate is a union rate (current union negotiated rate), a survey rate, a weighted union average rate, a state adopted rate, or a supplemental classification rate.

Union Rate Identifiers

A four-letter identifier beginning with characters other than ""SU"", ""UAVG"", ?SA?, or ?SC? denotes that a union rate was prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2024. PLUM is an identifier of the union whose collectively bargained rate 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. The date, 07/01/2024 in the example, is the effective date of the most current negotiated rate.

Union prevailing wage rates are updated to reflect all changes over time that are reported to WHD in the rates in the collective bargaining agreement (CBA) governing the classification.

Union Average Rate Identifiers

The UAVG identifier indicates that no single rate prevailed for those classifications, but that 100% of the data reported for the classifications reflected union rates. EXAMPLE: UAVG-OH-0010 01/01/2024. UAVG indicates that the rate is a weighted union average rate. OH indicates the State of Ohio. The next number, 0010 in the example, is an internal number used in producing the wage determination. The date, 01/01/2024 in the example, indicates the date the wage determination was updated to reflect the most current union average rate.

A UAVG rate will be updated once a year, usually in January, to reflect a weighted average of the current rates in the collective bargaining agreements on which the rate is based.

Survey Rate Identifiers

The ""SU"" identifier indicates that either a single non-union rate prevailed (as defined in 29 CFR 1.2) for this classification in the survey or that the rate was derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As a weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SUFL2022-007 6/27/2024. SU indicates the rate is a single non-union prevailing rate or a weighted average of survey data for that classification. FL indicates the State of Florida. 2022 is the year of the 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. The date,

6/27/2024 in the example, indicates the survey completion date for the classifications and rates under that identifier.

?SU? wage rates typically remain in effect until a new survey is conducted. However, the Wage and Hour Division (WHD) has the discretion to update such rates under 29 CFR 1.6(c)(1).

State Adopted Rate Identifiers

The ""SA"" identifier indicates that the classifications and prevailing wage rates set by a state (or local) government were 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. The date, 01/03/2024 in the example, 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:

a) a survey underlying a wage determination
b) an existing published wage determination
c) an initial WHD letter setting forth a position on a wage determination matter
d) an initial conformance (additional classification and rate) determination

On survey related matters, initial contact, including requests for summaries of surveys, should be directed to the WHD Branch of Wage Surveys. Requests can be submitted via email to davisbaconinfo@dol.gov or by mail to:

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

Regarding any other wage determination matter such as conformance decisions, requests for initial decisions should be directed to the WHD Branch of Construction Wage Determinations. Requests can be submitted via email to BCWD-Office@dol.gov or by mail 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 an initial decision has been issued, then any interested party (those affected by the action) that disagrees with the decision can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Requests for review and reconsideration can be submitted via email to dba.reconsideration@dol.gov or by mail 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 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.

==========

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. 4478444

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

THAT WE, Larry Young Paving, Inc., as Principal, hereinafter called "Contractor" and the other subscriber hereto Markel Insurance Company, as Surety, do hereby acknowledge ourselves to be held and firmly bound to the City of College Station, a municipal corporation, in the sum of Four Hundred Eighty-Six Thousand Nine Hundred Seventy-Seven and 44 /100 Dollars ($486,977.44) 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 Culvert Repairs at Holleman Drive (Emergency),

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. 4478444

FOR THE CONTRACTOR:

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

By: _____

Name: Tracy Lang

Title: Witness

Date: February 27, 2025

LARRY YOUNG PAVING, INC.

By: _____

Name: Herbert L Young, Jr.

Title: President

Date: February 27, 2025

FOR THE SURETY:
ATTEST/WITNESS **(SEAL)**

By: _____

Name: Harper Langston

Title: Witness

Date: February 27, 2025

Markel Insurance Company
(Full Name of Surety)

9500 Arboretum Blvd., Suite 400

Austin, TX 78759
(Address of Surety for Notice)

By: _____

Name: Alexandria Petroski

Title: Attorney-In-Fact

Date: February 27, 2025

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. 25300305
Construction Agreement Over $50,000
Form 04-20-2023

TEXAS STATUTORY PAYMENT BOND

Bond No. 4478444

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

THAT WE, Larry Young Paving, Inc., as Principal, hereinafter called "Principal" and the other subscriber hereto Markel Insurance Company, a corporation organized and existing under the laws of the State of Texas, licensed to business in the State of Texas and admitted to write bonds, as Surety, herein after called "Surety", do hereby acknowledge ourselves to be held and firmly bound to the City of College Station, a municipal corporation, in the sum of Four Hundred Eighty-Six Thousand Nine Hundred Seventy-Seven and 44/100 Dollars ($486,977.44) for payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns jointly and severally.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:

WHEREAS, Principal has entered into a certain contract with the City of College Station, dated the 27th day of February, 2025, for Culvert Repairs at Holleman Drive (Emergency)_____,

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. 4478444

FOR THE CONTRACTOR:

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

LARRY YOUNG PAVING, INC.

By: _____

Name: Tracy Lang

Title: Witness

Date: February 27, 2025

By: _____

Name: Herbert L. Young, Jr.

Title: President

Date: February 27, 2025

FOR THE SURETY:
ATTEST/WITNESS **(SEAL)**

By: _____

Name: Harper Langston

Title: Witness

Date: February 27, 2025

Markel Insurance Company
(Full Name of Surety)

9500 Arboretum Blvd., Suite 400

Austin, TX 78759
(Address of Surety for Notice)

By: _____

Name: Alexandria Petroski

Title: Attorney-In-Fact

Date: February 27, 2025

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. 25300305
Construction Agreement Over $50,000
Form 04-20-2023

POA# 4221009

JOINT LIMITED POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That SureTec Insurance Company, a Corporation duly organized and existing under the laws of the State of Texas and having its principal office in the County of Harris, Texas and Markel Insurance Company (the "Company"), a corporation duly organized and existing under the laws of the state of Illinois, and having its principal administrative office in Glen Allen, Virginia, does by these presents make, constitute and appoint:

Connie Grocholski, Alexandria Petroski, Sally White, Harper Langston

Their true and lawful agent(s) and attorney(s)-in-fact, each in their separate capacity if more than one is named above, to make, execute, seal and deliver for and on their own behalf, individually as a surety or jointly, as co-sureties, and as their act and deed any and all bonds and other undertaking in suretyship provided, however, that the penal sum of any one such instrument executed hereunder shall not exceed the sum of:

Fifty Million and 00/100 Dollars ($50,000,000.00)

This Power of Attorney is granted and is signed and sealed under and by the authority of the following Resolutions adopted by the Board of Directors of SureTec Insurance Company and Markel Insurance Company:

"RESOLVED, That the President, any Senior Vice President, Vice President, Assistant Vice President, Secretary, Assistant Secretary, Treasurer or Assistant Treasurer and each of them hereby is authorized to execute powers of attorney, and such authority can be executed by use of facsimile signature, which may be attested or acknowledged by any officer or attorney, of the company, qualifying the attorney or attorneys named in the given power of attorney, to execute in behalf of, and acknowledge as the act and deed of the SureTec Insurance Company and Markel Insurance Company, as the case may be, all bond undertakings and contracts of suretyship, and to affix the corporate seal thereto."

IN WITNESS WHEREOF, Markel Insurance Company and SureTec Insurance Company have caused their official seal to be hereunto affixed and these presents to be signed by their duly authorized officers on the 25th day of November , 2024 .

SureTec Insurance Company

By: _____
Michael C. Keimig, President

Markel Insurance Company

By: _____
Lindey Jennings, Vice President

State of Texas
County of Harris:

On this 24th day of November , 2024 A. D., before me, a Notary Public of the State of Texas, in and for the County of Harris, duly commissioned and qualified, came THE ABOVE OFFICERS OF THE COMPANIES, to me personally known to be the individuals and officers described in, who executed the preceding instrument, and they acknowledged the execution of same, and being by me duly sworn, disposed and said that they are the officers of the said companies aforesaid, and that the seals affixed to the proceeding instrument are the Corporate Seals of said Companies, and the said Corporate Seals and their signatures as officers were duly affixed and subscribed to the said instrument by the authority and direction of the said companies, and that Resolutions adopted by the Board of Directors of said Companies referred to in the preceding instrument is now in force.

IN TESTIMONY WHEREOF, I have hereunto set my hand, and affixed my Official Seal at the County of Harris, the day and year first above written.

By: _____
Chelsea Turner, Notary Public
My commission expires 7/6/2028

We, the undersigned Officers of SureTec Insurance Company and Markel Insurance Company do hereby certify that the original POWER OF ATTORNEY of which the foregoing is a full, true and correct copy is still in full force and effect and has not been revoked.

IN WITNESS WHEREOF, we have hereunto set our hands, and affixed the Seals of said Companies, on the 27th day of February , 2025 .

SureTec Insurance Company

By: _____
M. Brent Beaty, Assistant Secretary

Markel Insurance Company

By: _____
Andrew Marquis, Assistant Secretary

Any Instrument Issued in excess of the penalty stated above is totally void and without any validity. 4221009
For verification of the authority of this Power you may call (713)812-0800 on any business day between 8:30 AM and 5:00 PM CST.

Markel Insurance Company
THIS BOND RIDER CONTAINS IMPORTANT COVERAGE INFORMATION

Statutory Complaint Notice/Filing of Claims

To obtain information or make a complaint: You may call the Surety's toll free telephone number for information or to make a complaint or file a claim at: 1-866-732-0099. You may also write to the Surety at:

Markel Insurance Company
9500 Arboretum Blvd., Suite
400
Austin, TX 78759

You may contact the Texas Department of Insurance to obtain information on companies, coverage, rights or complaints at 1-800-252- 3439. You may write the Texas Department of Insurance at:

PO Box 149104
Austin, TX 78714-
9104
Fax#: 512-490-1007
Web: http://www.tdi.state.tx.us
Email: ConsumerProtection@tdi.texas.gov

PREMIUM OR CLAIMS DISPUTES: Should you have a dispute concerning your premium or about a claim, you should contact the Surety first. If the dispute is not resolved, you may contact the Texas Department of Insurance.

EXHIBIT C
CERTIFICATES OF INSURANCE AND ENDORSEMENTS

ACORD

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 2/6/2025

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

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

PRODUCER Rollo Insurance Group, Inc 1500 Earl Rudder Freeway S College Station, TX 77840	**CONTACT NAME:** **PHONE (A/C, No, Ext):** (979) 774-2800 **FAX (A/C, No):** (979) 774-2800 **E-MAIL ADDRESS:**
INSURED Larry Young Paving, Inc. Silver Hill Equipt Co, LLC P.O. Box 11779 College Station, TX 77842	**INSURER(S) AFFORDING COVERAGE** — **NAIC #** INSURER A : Arch Insurance Company — 11150 INSURER B : Axis Surplus Insurance Co — 26620 INSURER C : Endurance American Specialty Insurance Company — 41718 INSURER D : INSURER E : INSURER F :

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

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	X COMMERCIAL GENERAL LIABILITY CLAIMS-MADE X OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: POLICY X PRO-JECT LOC OTHER:			ZAGLB1859900	12/18/2024	7/1/2025	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	$ 2,000,000 $ 300,000 $ 10,000 $ 2,000,000 $ 4,000,000 $ 4,000,000
A	AUTOMOBILE LIABILITY X ANY AUTO OWNED AUTOS ONLY SCHEDULED AUTOS HIRED AUTOS ONLY NON-OWNED AUTOS ONLY			ZACAT9324500	12/18/2024	7/1/2025	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$ 2,000,000 $ $ $
B	UMBRELLA LIAB X OCCUR X EXCESS LIAB CLAIMS-MADE DED RETENTION $			P-001-003796890-01	8/23/2024	8/23/2025	EACH OCCURRENCE AGGREGATE	$ 2,000,000 $ 2,000,000
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y / N If yes, describe under DESCRIPTION OF OPERATIONS below	N / A		ZAWCI9799900	12/18/2024	7/1/2025	X PER STATUTE OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	$ 1,000,000 $ 1,000,000 $ 1,000,000
C	Excess Liability			ELD30043365101	8/23/2024	8/23/2025	Excess Liab$5M X $5M	5,000,000

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

The general liability policy includes a blanket automatic additional insured provision that provides additional insured status to the certificate holder, when there is a written contract between the named insured and the certificate holder that requires such status. Waiver of Subrogation as required by written contract. Insurance is Primary and Non Contributory.

CERTIFICATE HOLDER

City of College Station
Attention: Risk Management
P.O. Box 9960
College Station,, TX 77842

CANCELLATION

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

AUTHORIZED REPRESENTATIVE

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The ACORD name and logo are registered marks of ACORD

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.

Holleman Dr. Dual 72" CMP Emergency Repair.

Larry Young Paving, Inc.
P.O. Box 11779
College Station, Texas 77842
(P)(979) 823-4888
(F) (979) 823-4884

Proposal

Date: February 07, 2025

TO: City of College Station

Project: Holleman Dual 72" CMP Emergency Repair

Line Item	Job Description	Quantity	UOM	Unit Price	Amount
1	Mobilization	1	LS	$ 47,050.65	$ 47,050.65
2	Traffic Control (plan provided by COCS)	1	LF	$ 5,489.13	$ 5,489.13
3	Demo area for culvert crossing replacement	1	LF	$ 19,477.29	$ 19,477.29
4	Install two 72" RCP at current grade (78LF each)	156	SY	$ 1,046.57	$ 163,264.92
5	Curb & Gutter	110	SY	$ 120.44	$ 13,248.40
6	Sidewalk Replacement	70	SY	$ 164.45	$ 11,511.50
7	Remove 8" of existing asphalt/base	780	LS	$ 18.29	$ 14,266.20
8	Install 6" Type B Hotmix	780	LS	$ 75.45	$ 58,851.00
9	Install 2" Type D Hotmix	780	LS	$ 29.77	$ 23,220.60
10	Install two new handrails to match existing	1	LS	$ 26,964.49	$ 26,964.49
11	Install two Wing Walls including floors	2	LS	$ 34,637.88	$ 69,275.76
12	Rock rip rap	50		$ 157.15	$ 7,857.50
13	Cut & cap waterline during culvert installation, replace and reconnect 8" DI on each end over culvert.Cut in City supplied 8" valves 50 feet from center of creek, connect back, and replace existing 8" line over top of new culvert pipes and connect on each end. Backfill with stabilized sand.	1	LS	$ 26,500.00	$ 26,500.00
					$ -
	* If tax exempt please provide tax certificate.				
				SubTotal	$ 486,977.44
				Tax	$ -
				New Total	$ 486,977.44

EXHIBIT E
CONSTRUCTION SCHEDULE

Substantial completion is 90 days from notice to proceed.

EXHIBIT F
SCHEDULE OF VALUES

See Attached Proposal

Larry Young Paving, Inc.
P.O. Box 11779
College Station, Texas 77842
(P)(979) 823-4888
(F) (979) 823-4884

Proposal

Date: February 07, 2025

TO: City of College Station

Project: Holleman Dual 72" CMP Emergency Repair

Line Item	Job Description	Quantity	UOM	Unit Price	Amount
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5	Curb & Gutter	110	SY	$ 120.44	$ 13,248.40
6	Sidewalk Replacement	70	SY	$ 164.45	$ 11,511.50
7	Remove 8" of existing asphalt/base	780	LS	$ 18.29	$ 14,266.20
8	Install 6" Type B Hotmix	780	LS	$ 75.45	$ 58,851.00
9	Install 2" Type D Hotmix	780	LS	$ 29.77	$ 23,220.60
10	Install two new handrails to match existing	1	LS	$ 26,964.49	$ 26,964.49
11	Install two Wing Walls including floors	2	LS	$ 34,637.88	$ 69,275.76
12	Rock rip rap	50		$ 157.15	$ 7,857.50
13	Cut & cap waterline during culvert installation, replace and reconnect 8" DI on each end over culvert.Cut in City supplied 8" valves 50 feet from center of creek, connect back, and replace existing 8" line over top of new culvert pipes and connect on each end. Backfill with stabilized sand.	1	LS	$ 26,500.00	$ 26,500.00
					$ -
	* If tax exempt please provide tax certificate.				
				SubTotal	$ 486,977.44
				Tax	$ -
				New Total	$ 486,977.44

February 27, 2025
Item No. 8.9.
Fire Station #6 HVAC

Sponsor: Jennifer Cain, Director Capital Projects

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action on a contract with Baktown, LLC dba Still Creek Mechanical in the amount of $121,200 for the Fire Station 6 HVAC Replacement Project.

Relationship to Strategic Goals:
Core Services and Infrastructure

Recommendation(s): Staff recommends approval.

Summary: This contract is for the replacement of twelve (12) indoor and outdoor complete HVAC systems for the entire Fire Station #6. The existing Lennox systems will be replaced with new updated Lennox systems. The Facility Maintenance Division works to maintain HVAC systems on a 10-year cycle. The existing systems are twelve years old.

This item was advertised as an Invitation to Bid (ITB). A pre-bid meeting was held on 12/3/24. One bid was received on 1/29/25. The bid received was below the anticipated cost estimate and the submitting firm has applicable experience with similar types of work.

Budget & Financial Summary: The Facilites Deferred Maintenance Project in Facilities and Technology Capital Improvement Fund has an approved budget of $5,000,000, with $207, 388 committed or expended to date leaving a balance of $4,792,612 for this contract and related expenses.

Attachments:
1. Fire Station #6 HVAC Vendor Signed Contract

CONTRACT & AGREEMENT ROUTING FORM

CONTRACT#: 25300258 PROJECT #: GG2401 BID/RFP/RFQ#: 25-031

Project Name / Contract Description: Fire Station #6 HVAC Replacement

Name of Contractor: Baktown LLC / dba Still Creek Mechanical

CONTRACT TOTAL VALUE: $ 121,200.00 **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)

Awarded to low bidder meeting specifications of ITB-25-031

Funding from project code GG2401. GG2401 has an approved budget of $5,000,000, with $207,388 committed or expended to date leaving a balance of $4,792,612 for this contract and related expenses.

*(If required)**

CRC Approval Date*: N/A **Council Approval Date*:** 2/27/2025 **Agenda Item No*:** TBD

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

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

SIGNATURES RECOMMENDING APPROVAL

Jennifer Cain — 2/17/2025
DEPARTMENT DIRECTOR/ADMINISTERING CONTRACT — DATE

ASST CITY MGR – CFO — DATE

LEGAL DEPARTMENT — DATE

APPROVED & EXECUTED

CITY MANAGER — DATE

N/A
MAYOR (if applicable) — DATE

N/A
CITY SECRETARY (if applicable) — DATE

9.12.23 UPDATED

CITY OF COLLEGE STATION
STANDARD FORM OF CONSTRUCTION AGREEMENT

This Agreement is entered into by and between the City of College Station, a Texas home-rule municipal corporation (the "City") and Baktown LLC / dba Still Creek Mechanical (the "Contractor") for the construction and/or installation of the following:
Bid# 25-031 Fire Station #6 HVAC Replacement.

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 ($** 0.00).

1.06 Contract Amount. The term "Contract Amount" shall mean the amount of Contractor's lump sum base bid proposal, together with all alternates, as accepted by the City in accordance with the Contractor's Proposal. In the case of a unit price contract, Contract Amount shall mean the sum of the product of all unit prices multiplied by the respective estimated final quantities of work, for all base bid and alternates, as accepted by the City. Except in the event of a duly authorized change order approved by the City as provided in this Agreement, and in consideration of the Contractor's final completion of all Work in conformity with this Agreement, the City shall pay the Contractor an amount not to exceed: one hundred twenty-one thousand two hundred and No **/100 Dollars ($** 121,200.00).

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 (1) 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 (l) 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 (l) 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 (l) 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 (l) 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 (l) year after the installation or completion. The one (l) 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

BAKTOWN LLC / dba STILL CREEK MECHANICAL

By: Troy Baker

Printed Name: Troy Baker

Title: President

Date: 2/17/2025

CITY OF COLLEGE STATION

By: _____
City Manager
Date: _____

APPROVED:

_____
City Attorney
Date: _____

_____
Assistant City Manager/CFO
Date: _____

EXHIBIT A
DAVIS BACON WAGE RATES

"General Decision Number: TX20240234 11/22/2024

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
3	10/18/2024
4	11/22/2024

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

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     (3) Hydraulic cranes 59
     Tons and under.............$ 32.35            13.10
----------------------------------------------------------------
* IRON0084-011 06/01/2024

                                  Rates          Fringes

IRONWORKER, ORNAMENTAL...........$ 28.26             8.13
----------------------------------------------------------------
 PLUM0068-002 10/01/2023

                                  Rates          Fringes

PLUMBER..........................$ 34.86            11.68
----------------------------------------------------------------
 PLUM0211-002 10/08/2024

                                  Rates          Fringes

PIPEFITTER (HVAC Pipe
Installation Only)...............$ 41.14            11.86
----------------------------------------------------------------
 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
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INSULATOR - MECHANICAL (Duct, Pipe & Mechanical System Insulation)	$ 19.77	7.13
IRONWORKER, REINFORCING	$ 13.35 **	0.00
IRONWORKER, STRUCTURAL	$ 20.74	5.25
LABORER: Common or General	$ 11.57 **	0.00
LABORER: Mason Tender - Brick	$ 10.96 **	0.00
LABORER: Mason Tender - Cement/Concrete	$ 9.93 **	0.00
LABORER: Pipelayer	$ 12.49 **	2.13
LABORER: Roof Tearoff	$ 11.28 **	0.00
OPERATOR: Backhoe/Excavator/Trackhoe	$ 14.33 **	0.00
OPERATOR: Bobcat/Skid Steer/Skid Loader	$ 13.93 **	0.00
OPERATOR: Bulldozer	$ 18.29	1.31
OPERATOR: Drill	$ 16.22 **	0.34
OPERATOR: Forklift	$ 15.00 **	0.00
OPERATOR: Grader/Blade	$ 14.34 **	1.68
OPERATOR: Loader	$ 14.01 **	0.44
OPERATOR: Mechanic	$ 17.52	3.33
OPERATOR: Paver (Asphalt, Aggregate, and Concrete)	$ 16.03 **	0.00
OPERATOR: Roller	$ 13.11 **	0.00
PAINTER (Brush, Roller, and Spray)	$ 13.14 **	0.00
ROOFER	$ 13.75 **	0.00
SHEET METAL WORKER, Excludes HVAC Duct Installation	$ 14.62 **	0.00

TILE FINISHER.....$ 11.22 ** 0.00

TILE SETTER.....$ 14.74 ** 0.00

TRUCK DRIVER: Dump Truck.....$ 11.97 ** 1.23

TRUCK DRIVER: Flatbed Truck.....$ 19.65 8.57

TRUCK DRIVER: Semi-Trailer Truck.....$ 12.50 ** 0.00

TRUCK DRIVER: Water Truck.....$ 12.00 ** 4.11

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

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

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

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses

(29CFR 5.5 (a) (1) (iii)).

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

Union Rate Identifiers

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

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

Survey Rate Identifiers

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

date for the classifications and rates under that identifier.

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

Union Average Rate Identifiers

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

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

State Adopted Rate Identifiers

Classifications listed under the ""SA"" identifier indicate that the prevailing wage rate set by a state (or local) government was adopted under 29 C.F.R 1.3(g)-(h). Example: SAME2023-007 01/03/2024. SA reflects that the rates are state adopted. ME refers to the State of Maine. 2023 is the year during which the state completed the survey on which the listed classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 01/03/2024 reflects the date on which the classifications and rates under the ?SA? identifier took effect under state law in the state from which the rates were adopted.

WAGE DETERMINATION APPEALS PROCESS

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

* an existing published wage determination
* a survey underlying a wage determination
* a Wage and Hour Division letter setting forth a position on a wage determination matter
* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests

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

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

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

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

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

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

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

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

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

==========

END OF GENERAL DECISION"

1. Payment greater than prevailing wage rate as listed within this document not prohibited per Texas Government Code, Chapter 2258, Prevailing Wage Rates, Subchapter A. General Provisions.

2. Not less than the following hourly rates shall be paid for the various classifications of work required by this project. Workers in classifications where rates are not identified shall be paid not less than the general prevailing rate of "laborer" for the various classifications of work therein listed.

3. The hourly rate for legal holiday and overtime work shall not be less than one and one-half (1 & 1/2) times the base hourly rate.

4. The rates listed are journeyman rates. Helpers may be used on the project and may be compensated at a rate determined mutually by the worker and employer, commensurate with the experience and skill of the worker but not at a rate less than 60% of the journeyman's wage as shown. Apprentices (enrolled in a federally certified apprentice program) may be used at the percentage rates of the journeyman scale stipulated in their apprenticeship agreement. At no time shall a journeyman supervise more than two (2) apprentices or helpers. All apprentices or helpers shall be under the direct supervision of a journeyman working as a crew.

5. Except for Heavy/Highway Construction, building construction wage rates shall be paid to all workers except those workers engaged in site work and construction beyond five feet of buildings.

EXHIBIT B
PERFORMANCE AND PAYMENT BONDS

PERFORMANCE BOND

Bond No._____108141164_____

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

THAT WE, _____Baktown, LLC DBA Still Creek Mechanical_____, 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 twenty-one thousand two hundred and No /100 Dollars ($121,200.00) 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 Bid# 25-031 Fire Station #6 HVAC Replacement,

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.____108141164_____

FOR THE CONTRACTOR:

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

Teller 7
(SEAL)
FEB 1 3 2025
SouthStar Bank, S.S.B.
BREMOND, TX

TINA R ZAN
Notary ID #132521387
My Commission Expires
June 15, 2028

BAKTOWN LLC dba STILL CREEK MECHANICAL

By: Tina R. Zan

Name: Tina R. Zan

Title: Notary PB

Date: 2/27/2025

By: Troy Baker

Name: Troy Baker

Title: President

Date: 2/27/2025

FOR THE SURETY:
ATTEST/WITNESS (SEAL)

TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA
HARTFORD, CONN.

By: Adriane Maldonado

Name: Adriane Maldonado

Title: Commercial Acct Manager

Date: 2/27/2025

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

3840 Corporate Center Dr

Bryan, TX 77802
(Address of Surety for Notice)

By: Bradley Hurt

Name: Bradley Hurt

Title: Attorney in Fact

Date: 2/27/2025

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._____108141164____

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

THAT WE, ____Baktown, LLC DBA Still Creek Mechanical_____, 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 __Texas____, licensed to business in the State of Texas and admitted to write bonds, as Surety, herein after called "Surety", do hereby acknowledge ourselves to be held and firmly bound to the City of College Station, a municipal corporation, in the sum of one hundred twenty-one thousand two hundred and No /100 Dollars ($ 121,200.00) 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 27th day of February, 20 25, for Bid# 25-031 Fire Station #6 HVAC Replacement, 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. 108141164

FOR THE CONTRACTOR:

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

(SEAL)

Teller 7
FEB 13 2025
SouthStar Bank, S.S.B.
BREMOND, TX

TINA R ZAN
Notary ID #132521387
My Commission Expires
June 15, 2028

BAKTOWN LLC dba STILL CREEK MECHANICAL

By: Tina R. Zan

Name: Tina R. Zan

Title: Notary; PB

Date: 2/27/2025

By: Troy Baker

Name: Troy Baker

Title: President

Date: 2/27/2025

FOR THE SURETY:
ATTEST/WITNESS

(SEAL)

TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA
HARTFORD, CONN.

By: Adriana Maldonado

Name: Adriana Maldonado

Title: commercial acc manager

Date: 2/27/2025

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

3840 Corporate Center Dr
Bryan, TX 77802
(Address of Surety for Notice)

By:

Name: Bradley Hurt

Title: Attorney in Fact

Date: 2/27/2025

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. 25300258
Construction Agreement Over $50,000
Form 04-20-2023

TRAVELERS

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 **BRADLEY HURT** of **BRYAN**, **Texas**, 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 **27th** day of **February**, **2025**.

_____
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.

TRAVELERS

IMPORTANT NOTICE

TO OBTAIN INFORMATION OR MAKE A COMPLAINT:

You may contact Travelers Casualty & Surety Company of America, Travelers Casualty & Surety Company, Travelers Indemnity Company, Standard Fire Insurance Company and/or Farmington Casualty Company for information or to make a complaint at:

Travelers Bond
Attn: Claims
1500 Market Street
West Tower, Suite 2900
Philadelphia, PA 19102

(267) 675-3057
(267) 675-3102 Fax

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

Texas Department of Insurance
P.O. Box 149104
Austin, TX 78714-9104

(800) 252-3439

ATTACH THIS NOTICE TO YOUR BOND. This notice is for information only and does not become a part or a condition of the attached document and is given to comply with Section 2253-021, Government Code, and Section 53.202, Property Code, effective September 1, 2001.

EXHIBIT C
CERTIFICATES OF INSURANCE AND ENDORSEMENTS

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 02/13/2025

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

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

PRODUCER	Service Insurance Group, Inc. PO Box 5753 3840 Corporate Center Dr Bryan TX 77805-5753
CONTACT NAME:	Adriana Maldonado
PHONE (A/C, No, Ext):	(979)774-3900 **FAX (A/C, No):** (979)774-3955
E-MAIL ADDRESS:	adriana@serviceinsgroup.com
INSURER(S) AFFORDING COVERAGE	**NAIC #**
INSURER A :	United Fire & Casualty 19496
INSURER B :	
INSURER C :	
INSURER D :	
INSURER E :	
INSURER F :	
INSURED	Still Creek Mechanical BAKTOWN, LLC dba PO Box 10830 College Station TX 77842-0830

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

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	X COMMERCIAL GENERAL LIABILITY CLAIMS-MADE X OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: POLICY X PRO-JECT LOC OTHER:	X	X	10060459540	03/03/2024	03/03/2025	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG $	$ 1,000,000 $ 100,000 $ 5,000 $ 1,000,000 $ 2,000,000 $ 2,000,000 $
A	AUTOMOBILE LIABILITY X ANY AUTO ALL OWNED AUTOS X SCHEDULED AUTOS HIRED AUTOS NON-OWNED AUTOS	X	X	10060459540	03/03/2024	03/03/2025	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident) $	$ 1,000,000 $ $ $ $
A	UMBRELLA LIAB X OCCUR X EXCESS LIAB CLAIMS-MADE DED RETENTION $		X	10060459540	03/03/2024	03/03/2025	EACH OCCURRENCE AGGREGATE $	$ 2,000,000 $ 2,000,000 $
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y / N N / A (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below						PER STATUTE OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	 $ $ $

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

The General Liability and Auto Liability policies include 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 and Auto Liability policies include a blanket waiver of subrogation endorsement only as required by written contract. The General Liability policy contains a special endorsement with “Primary and Non-Contributory” wording.

30 day notice of cancellation on all policies

CERTIFICATE HOLDER

CITY OF COLLEGE STATION
Risk
P.O. BOX 9960
COLLEGE STATION TX 77842-

Fax: ( )764-3496

CANCELLATION

AI 000701

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

AUTHORIZED REPRESENTATIVE

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Contract No. 25300258

Name of Project: Bid# 25-031 Fire Station #6 HVAC Replacement

REQUEST FOR EXCEPTION TO WORKERS' COMPENSATION REQUIREMENT

I, the undersigned, am the sole owner, shareholder, principal or partner doing business as Baktown LLC / Dba Still Creek Mechanical I herein verify Baktown LLC / Dba Still Creek Mechanical does not have paid employees or subcontractors, nor does it conduct business in any way that would require it to have Workers' Compensation coverage when performing for the City of College Station under the above-referenced contract. Based on this, I request an exception to the City's Workers' Compensation contract insurance requirement be granted for this project.

I understand if Baktown LLC / Dba Still Creek Mechanical hires any employees or does anything to change its obligations under state law with respect to carrying Workers' Compensation insurance when performing for the City, it will promptly do so and notify the City of same. Baktown LLC / Dba Still Creek Mechanical assumes full responsibility for its obligations, if any, under applicable law relating to workers' compensation.

Name of Business: Baktown LLC / Dba Still Creek Mechanical

SSN/FEIN No. 20-4209345 Telephone No. 9793247648

Address/P.O. Box: PO Box 10830

City: College Station State: TX Zip Code: 77842

Signature of Owner: [signature] Date: 2/14/25

Witnessed by: [signature] 2/14/25

RETURN SIGNED FORM TO kjernigan@cstx.gov**, OR**

FAX TO _____.

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-25-031 are hereby incorporated into this contract by reference

EXHIBIT E
CONSTRUCTION SCHEDULE

Substantial completion by June 1, 2025.

EXHIBIT F
SCHEDULE OF VALUES

See attached

Existing HVAC Equipment

SPLIT SYSTEM A.C. UNITS

TAG	INDOOR MODEL No. (GF)	OUTDOOR MODEL No. (GF)	COOLING COIL MODEL No.
GF1	EL195UH070XE36B-01	TSA072S4SN1Y	CH33-36B-2F-3
GF1A	EL195UH070XE36B-01	TSA072S4SN1Y	CH33-36B-2F-3
GF2	EL195UH045XE36B-02	14ACX-024-230-12	CH33-36B-2F-3
GF3	EL195UH045XE36B-02	14ACX-024-230-12	CH33-36B-2F-3
GF4	EL195UH045XE36B-02	14ACX-018-230-12	CH33-25B-2F-3
GF5	EL195UH070XE36B-01	14ACX-24-230-12	CH33-36B-2F-3
GF6	EL195UH070XE36B-01	TSA036H4N42Y	CH33-36B-2F-3
GF7	EL195UH090XE48C-02	TSA036H4N42Y	CH33-49C-2F-3
GF8	EL195UH045XE36B-02	14ACX-036-230-14	CH33-36B-2F-3
GF9	EL195UH070XE36B-01	14ACXSO36--230A22	CH33-36B-2F-3
GF10	EL195UH110XE60C-01	TSA060H4N22Y	CH33-50/60C-2F-3
GF11	EL195UH070XE36B-01	TSA036H4N22Y	CH33-36B-2F-3

Carrier, Lennox or Trane HVAC Equipment - Specify manufacturer and model numbers

SPLIT SYSTEM A.C. UNITS

TAG	INDOOR MODEL No. (GF)	OUTDOOR MODEL No. (GF)	COOLING COIL MODEL No.	PRICE
GF1	ML196UH070XE36BK	ELO72XCSST1Y Twinned 3 phase	CK40HT-36B	$ 13,500
GF1A	ML196UH070XE36BK	ELO72XCSST1Y Twinned	CK40HT-36B	$
GF2	ML196UH045XE36BK	ML14KC1-024	CK40HT-30B	$ 9,500
GF3	ML196UH045XE36BK	ML14KC1-024	CK40HT-30B	$ 9,500
GF4	ML196UH030XE36BK	ML14KC1-018	CK40HT-24B	$ 9,300
GF5	ML196UH070XE36BK	ML14KC1-024	CK40HT-24B	$ 9,500
GF6	ML196UH070XE36BK	ML14XC1-036-233 3 phase	CK40HT-36B	$ 10,200
GF7	ML296UH090XV48CK	ML17XC2-036 2 stage 3 phase	CK40HT-42C	$ 12,400
GF8	ML296UH045XV36BK	ML18XC2-036-233 2 stage	CK40HT-42B	$ 10,200
GF9	ML296UH070XV36BK	ML17XC2-036 2 stage	CK40HT-42B	$ 10,200
GF10	ML196UH110XE60CK	ML14XC1-060-233 3 phase	CK40HT-51/61C	$ 12,500
GF11	ML196UH070XE36BK	ML14XC1-036-233 3 phase	CK40HT-36B	$ 10,200

MIni Split - Lennox MS7-CI-18PIA $4,200

TOTAL $ 121,200

Provide copy of HVAC license for installation

CONTRACTOR'S PROPOSAL

BID SUMMARY
BID NO. 25-031

1. Total Base Bid (from equipment list above) $ 121,200

TOTAL number of calendar days to substantial completion 10

Number of Addenda is hereby acknowledged 1

Additional warranty period if beyond the 1-year requirement N/A

Provide copy of license for HVAC installation.

February 27, 2025
Item No. 8.10.
TIP CMAR Contract

Sponsor: Jennifer Cain, Director Capital Projects

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action on a Construction Manager at Risk (CMAR) Contract with Skanska USA Building, Inc., for the Texas Independence Park Development Project. The anticipated budget for this project is $20,000,000.

Relationship to Strategic Goals:
Core Services and Infrastructure

Recommendation(s): Staff recommends approval.

Summary: This project involves the design, and construction of Texas Independence Park, located at 7300 Rock Prairie Road East. Amenities to Texas Independence Park include Bike Track, Playground, Picnic Areas, Dog Park, Disc Golf, Fishing, and Trails.

The Construction Manager at Risk (CMAR) for pre-construction and construction phase services was solicited via Request for Proposal (RFP) on December 5, 2024. A total of three (3) RFPs were received for RFP 25-019. Interviews were held for all three contractors. After evaluations and interviews, Skanska USA Building Inc was selected as the most qualified, and best value to the city based on the published selection criteria.

Skanska USA Building Inc will provide pre-construction services (construction reviews, material coordination, cost estimating, etc.) during the design phase, in coordination with the design team. Skanska USA Building Inc will also provide construction phase services. Construction will be bid out through the CMAR, following all applicable procurement laws, and presented to the City Council for approval as a Guaranteed Maximum Price (GMP) for each construction phase(s) of the project.

The master plan identified approximately $20M in construction costs for the full build-out. The final project budget and any phasing opportunities will be identified during the design process in conjunction with the CMAR.

Budget & Financial Summary: Budget in the amount of $5,000,000 is included for this project in the Parks Capital Improvement Projects Fund. A total of $1,665,989 has been expended or committed to date, leaving $3,196,482 for this CMAR contract and related costs. The final project budget will be established during the design process.

Attachments:
1. Texas Independence Park Bid Tab
2. Texas Independence Park Map
3. Texas Independence Park CMAR Vendor Signed Contract

Event Number	25-019 Addendum 1
Event Title	RFP for CMAR for Texas Independence Park
Close Date	12/5/2024 02:00:00 PM (CT)

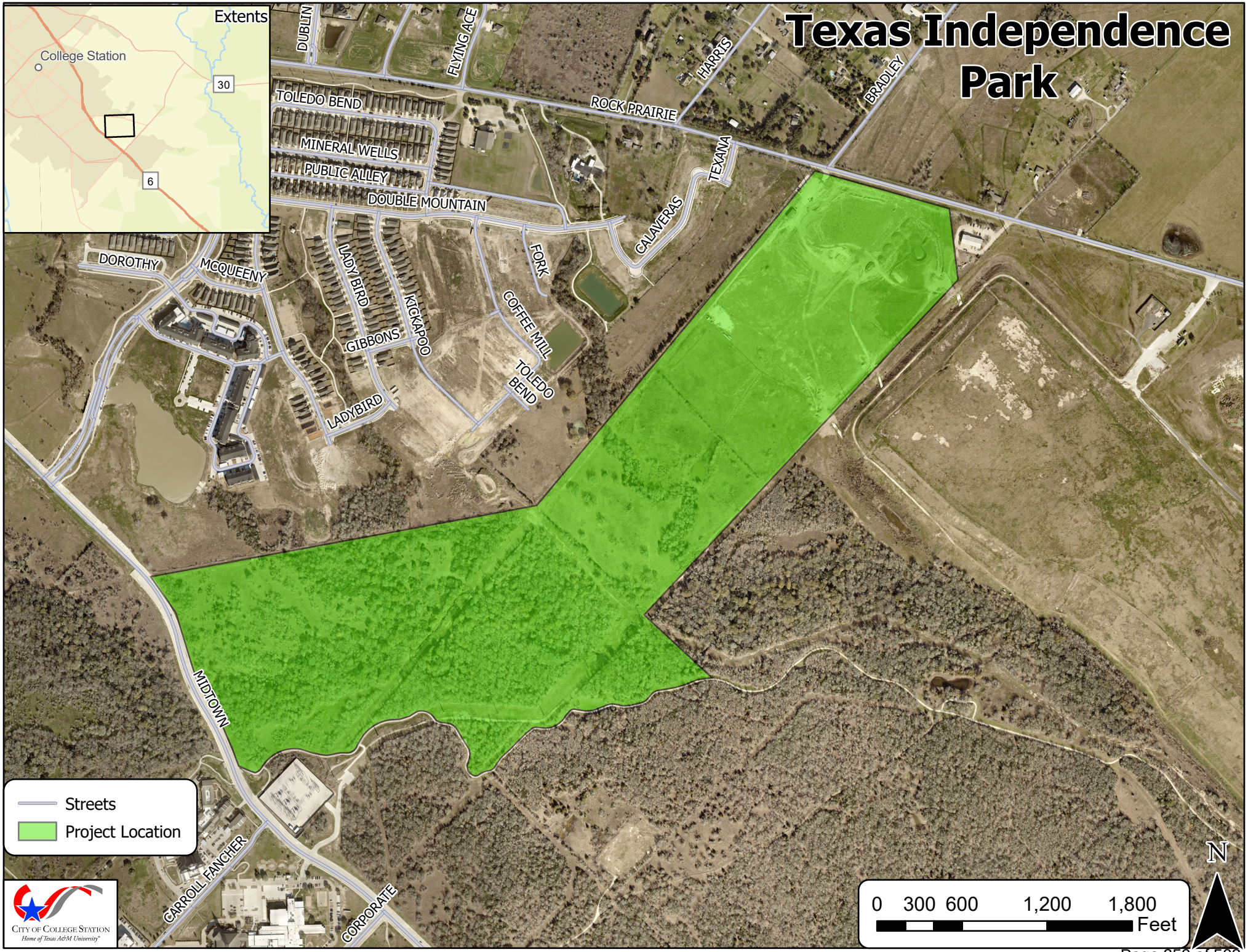
Responding Supplier	City	State	Response Submitted
Dudley Construction	College Station	TX	12/4/2024 02:13:16 PM (CT)
MYCON General Contractors, Inc	College Station	TX	12/5/2024 01:43:13 PM (CT)
Skanska USA Building Inc.	Houston	TX	12/5/2024 10:27:10 AM (CT)

This posting is only intended to notify interested parties of the names of the responding firms, 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 proposals as responsive. All proposals are still subject to evaluation for accuracy, completeness, and compliance with the solicitation specifications by the City. This CSP is now in the evaluation phase. Proposals submitted in compliance with the CSP terms, conditions and specifications will be evaluated and ranked by the City and Consultant. If a contract is awarded, it will be awarded to the Offeror submitting the best value to the City. The City is not bound to accept the lowest priced proposal if that proposal is judged not to be the best value for the City, as solely determined by the City. The weighted criteria for evaluation and selection of the successful Offeror for this award is specified in CSP No. 25-019

Line #	Description	Dudley Construction Costs	MYCON General Contractors, Inc. Costs	Skanska USA Building Inc. Costs
1	Preconstruction Fee	$ 4,500.00	$ 250,000.00	$ 45,000.00
2	General Conditions	$ 911,464.00	$ 1,034,277.00	$ 921,314.00
3	Construction Manager at Risk Fee	2.65%	4.50%	3.00%
	Certification	Y	Y	Y
	Bid Bonds	Y	Y	Y
	Addenda	Y	Y	Y

Line #
1
2
3

Responding Supplier	Signature Full Name	Signature Email	Supplier Notes
Dudley Construction	Mark Dudley	bids@rmdudleyconstruction.com	
MYCON General Contractors, In	Steven Karonka	skaronka@mycon.com	
Skanska USA Building Inc.	Dennis Yung	dennis.yung@skanska.com	


Texas Independence Park
Extents
College Station
30
6
DUBLIN
FLYING ACE
HARRIS
BRADLEY
ROCK PRAIRIE
TOLEDO BEND
MINERAL WELLS
PUBLIC ALLEY
DOUBLE MOUNTAIN
TEXANA
CALAVERAS
FORK
COFFEE MILL
TOLEDO BEND
DOROTHY
MCQUEENY
LADY BIRD
KICKAPOO
GIBBONS
LADYBIRD
MIDTOWN
CARROLL FANCHER
CORPORATE
Streets
Project Location
N
0 300 600 1,200 1,800
Feet
City of College Station
Home of Texas A&M University

CONTRACT & AGREEMENT ROUTING FORM

CONTRACT#: 253000314 PROJECT #: PK2501 BID/RFP/RFQ#: RFP25-019

Project Name / Contract Description: CMAR Contract for Texas Independence Park Development

Name of Contractor: Skanska USA Building Inc

CONTRACT TOTAL VALUE: $ _____ **Grant Funded** Yes ☐ No ☐

If yes, what is the grant number: ☐

Debarment Check ☐ Yes ☐ No ■ N/A
Section 3 Plan Incl. ☐ Yes ☐ No ■ N/A

Davis Bacon Wages Used ☐ Yes ☐ No ■ N/A
Buy America Required ☐ Yes ☐ No ■ N/A
Transparency Report ☐ Yes ☐ No ■ N/A

■ **NEW CONTRACT** ☐ **RENEWAL #** _____ ☐ **CHANGE ORDER #** _____ ☐ **OTHER** _____

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

PK2501 / 41389971-6561

Three (3) proposals were received for this project

A budget of $9,200,000 is available in the Parks Capital Improvement Project Fund.

A total of $1,804,894 has been expended or committed to date, leaving a balance of $7,395,106 for this contract and future expenses.

*(If required)**

CRC Approval Date*: 2/10/25 **Council Approval Date*:** 2/27/25 **Agenda Item No*:** _____

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

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

SIGNATURES RECOMMENDING APPROVAL

Jennifer Cain — 2/13/2025
DEPARTMENT DIRECTOR/ADMINISTERING CONTRACT — DATE

_____ — _____
ASST CITY MGR – CFO — DATE

_____ — _____
LEGAL DEPARTMENT — DATE

APPROVED & EXECUTED

_____ — _____
CITY MANAGER — DATE

N/A — _____
MAYOR (if applicable) — DATE

N/A — _____
CITY SECRETARY (if applicable) — DATE

9.12.23 UPDATED

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

This Agreement is entered into by and between the **City of College Station**, a Texas home-rule municipal corporation (the "City") and Skanska USA Building, Inc., a Texas corporation (the "Construction Manager" or Contractor") for the construction and/or installation of the following City Project: Texas Independence Park, as described in RFP 25-019_, as more particularly described in Paragraph 2.17 of this Agreement.

ARTICLE I.
GENERAL CONDITIONS

1. GENERAL PROVISIONS

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

2. DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

by the City. Acceptance by the City shall not impair or waive any warranty obligation of Contractor.

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

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

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

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

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

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

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

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

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

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

(i) "**Product Data**," as described in Paragraph 5.13, means illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

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

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

(l) "**Shop Drawings**," as described by Paragraph 5.13, mean drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

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

3. THE AGREEMENT DOCUMENTS

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

(a) This signed Agreement.
(b) Addendum to this Agreement.
(c) General Conditions.
(d) Special Conditions.
(e) Technical specifications.
(f) Drawings.
(g) Instructions to Bidders and any other notices to Bidders or Contractor.
(h) Performance bond, Payment bonds, Bid bonds and Special bonds.

(i) Contractor's Proposal.

3.02 Distribution of Agreement Documents. The Contractor shall distribute copies of the plans and specifications to suppliers and subcontractors as necessary. The Contractor shall keep one (1) copy of the plans and specifications accessible at the work site with the latest revisions noted thereon.

3.03 Prohibition of Re-Use. All drawings, specifications, and copies thereof furnished by the City shall not be re-used on other work, and with the exception of one (1) copy of the signed Agreement Documents, all documents, including sets of the plans and specifications and "as built" drawings, are to be returned to the City on request at the completion of the work. All Agreement Documents, models, mockups, or other representations are the property of the City. In the event of inconsistencies within or between parts of the Agreement Documents, the Contractor shall (a) provide the better quality or greater quantity of Work, or (b) comply with the more stringent requirement, either or both in accordance with the City's interpretation.

4. OWNER

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

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

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

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

4.05 Owner's Right to Carry out the Work.

(a) If the Contractor defaults or neglects to carry out the Work in accordance with the Agreement Documents and fails within a seven-day period after receipt of written notice from the City to commence and continue correction of such default or neglect with diligence and promptness, the City may, without prejudice to other remedies the City may

have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the cost of correcting such deficiencies, including compensation for the Architect's additional services made necessary by such default, neglect, or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the City.

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

4.06 Owner's Right to Use or Occupy.

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

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

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

5. CONTRACTOR

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

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

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

5.04 Review of Agreement Documents and Field Conditions by Contractor.

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

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

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

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

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

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

5.05 Supervision And Construction Procedures.

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

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

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

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

5.06 Labor And Materials.

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

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

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

5.07 Warranty.

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

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

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

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

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

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

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

5.08 Permits, Fees and Notices.

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

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

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

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

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

5.09 Allowances.

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

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

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

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

5.11 Contractor's Construction Schedules.

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

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

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

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

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

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

5.13 Shop Drawings, Product Data and Samples.

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

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

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

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

(e) The Contractor shall review for compliance with the Agreement Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples, and similar submittals required by the Agreement Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the City or of separate contractors. Submittals which are not marked as reviewed for compliance with the Agreement Documents and approved by the Contractor may be returned by the Architect without action.

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

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

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

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

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

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

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

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

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

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

(n) The Contractor shall provide composite drawings within three (3) months of Agreement signing showing how all piping, ductwork, lights, conduit, equipment, etc. will fit into the ceiling space allotted, including clearances required by the manufacturer, by code, or in keeping with good construction industry standards and practice. Space for all trade elements must be considered on the same drawing. Drawings shall be at ¼ inch per foot minimum scale and shall include invert elevations and sections required to meet the intended purpose.

5.14 Use of Project Site.

(a) The Contractor shall confine operations at the Project site to areas permitted by law, ordinances, permits and the Agreement Documents and shall not unreasonably encumber the site with materials or equipment.

(b) The Contractor's access to the Project site, parking, field office location, material and equipment storage, and confinement of said areas shall be coordinated with, and approved by the City before the Contractor's mobilization on the site. Once agreed upon, the Contractor shall not adjust or increase any of the above areas without prior consent by the Owner.

5.15 Cutting And Patching.

(a) The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

(b) The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the City or separate contractors by cutting, patching or

otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the City or a separate contractor except with written consent of the City and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the City or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

5.16 Cleaning Up.

(a) The Contractor shall keep the premises and surrounding area mowed and free from accumulation of weeds and waste materials or rubbish caused by operations under the Agreement. At completion of the Work, the Contractor shall remove from and about the Project waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials. The Contractor shall be responsible for protection of the Work and shall repair or replace damaged work at Substantial Completion of the Work. The Contractor shall remove all temporary protections at the completion of the Work.

(b) If the Contractor fails to clean up as provided in the Agreement Documents, the City may do so, and the cost thereof shall be charged to the Contractor.

(c) Prior to the Architect's inspection for Substantial Completion, the Contractor shall: clean exterior surfaces exposed to view; remove temporary labels, stains, and foreign substances; polish transparent and glossy surfaces; clean goods, equipment, and fixtures to a sanitary condition; clean roofs; clean the Project site; sweep paved areas and rake clean other surfaces; and remove trash and surplus materials from the Project site.

5.17 Access To Work. The Contractor shall provide the City and Architect access to the Work in preparation and progress wherever located.

5.18 Royalties, Patents and Copyrights. The Contractor shall pay all royalties and license fees required for the Project. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the City and Architect harmless from loss on account thereof (as described in Paragraph 6), but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Agreement Documents or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the City or Architect. However, if the Contractor has reason to believe that the required design, process, or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

6. INDEMNIFICATION AND RELEASE

6.01 Contractor Not Providing Architectural or Engineering Services. When the Contractor is not providing architectural or engineering services for the Project (such as when such services are not required by the Agreement Documents for a portion of the Work, or when the Contractor does not need to provide such services to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures), then the following indemnity and release provisions apply:

CONTRACTOR SHALL PROTECT, DEFEND, HOLD HARMLESS AND INDEMNIFY THE CITY FROM ANY AND ALL CLAIMS, DEMANDS, EXPENSES, LIABILITY OR CAUSES OF ACTION FOR INJURY TO ANY PERSON, INCLUDING DEATH, AND FOR DAMAGE TO ANY PROPERTY, TANGIBLE OR INTANGIBLE, OR FOR ANY BREACH OF AGREEMENT ARISING OUT OF OR IN ANY MANNER CONNECTED WITH THE WORK DONE BY ANY PERSON UNDER THIS AGREEMENT. IT IS THE INTENT OF THE PARTIES THAT THIS PROVISION SHALL EXTEND TO, AND INCLUDE, ANY AND ALL CLAIMS, CAUSES OF ACTION OR LIABILITY CAUSED BY THE CONCURRENT, JOINT AND/OR CONTRIBUTORY NEGLIGENCE OF THE CITY, AN ALLEGED BREACH OF AN EXPRESS OR IMPLIED WARRANTY BY THE CITY OR WHICH ARISES OUT OF ANY THEORY OF STRICT OR PRODUCTS LIABILITY. THERE SHALL BE NO ADDITIONAL INDEMNIFICATION OTHER THAN AS SET FORTH IN THIS SECTION. ALL OTHER PROVISIONS REGARDING THE SAME SUBJECT MATTER SHALL BE DECLARED VOID AND OF NO EFFECT.

The indemnification contained above shall include but not be limited to the following specific instances:

(a) The City is damaged due to the act, omission, mistake, fault or default of the Contractor.

(b) In the event of any claims for payment for goods or services brought by any material suppliers, mechanics, laborers, or other subcontractors.

(c) In the event of any and all injuries to or claims of adjacent property owners caused by the Contractor, its agents, employees, and representatives.

(d) In the event of any damage to the floor, walls, etc., caused by the Contractor's personnel or equipment during installation.

(e) The removal of all debris related to the Work.

(f) The acts and omissions of the subcontractors.

(g) The Contractor's failure to comply with applicable federal, state, or local regulations, that touch upon or concern the maintenance of a safe and protected working environment and the safe use and operation of machinery and equipment in that working environment, no matter where fault or responsibility lies.

Contractor’s indemnification obligations in this Paragraph 6.01 shall survive termination, completion, abandonment and final payment.

REGARDING THIS RELEASE, THE CONTRACTOR ASSUMES FULL RESPONSIBILITY FOR THE WORK TO BE PERFORMED HEREUNDER, AND HEREBY RELEASES, RELINQUISHES, AND DISCHARGES THE CITY, ITS OFFICERS, AGENTS, AND EMPLOYEES FROM ALL CLAIMS, DEMANDS, AND CAUSES OF ACTION OF EVERY KIND AND CHARACTER, INCLUDING THE COST

OF DEFENSE THEREOF, FOR ANY INJURY TO OR DEATH OF ANY PERSON (WHETHER EMPLOYEES OF EITHER PARTY OR OTHER THIRD PARTIES) AND ANY LOSS OF OR DAMAGE TO ANY PROPERTY (WHETHER PROPERTY OF EITHER OF THE PARTIES HERETO, THEIR EMPLOYEES, OR OF THIRD PARTIES) THAT IS CAUSED BY OR ALLEGED TO BE CAUSED BY, ARISING OUT OF, OR IN CONNECTION WITH THE CONTRACTOR'S WORK TO BE PERFORMED HEREUNDER. THIS RELEASE SHALL APPLY REGARDLESS OF WHETHER SAID CLAIMS, DEMANDS, AND CAUSES OF ACTION ARE COVERED IN WHOLE OR IN PART BY INSURANCE, AND IN THE EVENT OF INJURY, DEATH, PROPERTY DAMAGE, OR LOSS SUFFERED BY THE CONTRACTOR, ANY SUBCONTRACTOR, OR ANY PERSON OR ORGANIZATION DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM TO PERFORM OR FURNISH WORK ON THE PROJECT, THIS RELEASE SHALL APPLY REGARDLESS OF WHETHER SUCH INJURY, DEATH, LOSS, OR DAMAGE WAS CAUSED IN WHOLE OR IN PART BY THE INTENTIONAL OR WILLFUL ACT, NEGLIGENCE, OR GROSS NEGLIGENCE OF THE CITY.

6.02 Contractor Providing Architectural or Engineering Services. When the Contractor is providing architectural or engineering services for the Project (such as when those services are required by the Agreement Documents for a portion of the Work, or when the Contractor needs to provide those services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures), then the following indemnity and release provisions shall apply pursuant to section 271.904 of the Texas Local Government Code, as amended, and other authority.

THE CONTRACTOR, AS THE INDEMNITOR, SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY AGAINST LIABILITY FOR ALL DAMAGE OR LIABILITY (INCLUDING ALL MONETARY DAMAGES AND JUDGMENTS, LEGAL OR EQUITABLE RELIEF, COSTS, EXPENSES, COURT COSTS, INTEREST, REASONABLE ATTORNEY'S FEES, AND JUST AND LAWFUL OFFSETS AND CREDITS) REGARDING THE PROJECT TO THE EXTENT THAT SAID DAMAGE OR LIABILITY IS CAUSED BY OR RESULTS FROM AN ACT OF NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER, AND COMMITTED BY SAID INDEMNITOR OR SAID INDEMNITOR'S AGENT, CONSULTANT UNDER CONTRACT, OR ANOTHER ENTITY OVER WHICH SAID INDEMNITOR EXERCISES CONTROL; HOWEVER, THIS INDEMNITOR OBLIGATION EXPRESSLY DOES NOT APPLY WHEN THE DAMAGE, LIABILITY, CLAIM OR JUDGMENT IS BASED WHOLLY OR PARTLY ON THE NEGLIGENCE OF, FAULT OF, OR BREACH OF CONTRACT BY THE CITY, THE CITY'S EMPLOYEE OR AGENT, OR OTHER PERSON OR ENTITY OVER WHICH THE CITY EXERCISES CONTROL.

REGARDING THIS RELEASE, THE CONTRACTOR ASSUMES FULL RESPONSIBILITY FOR THE WORK TO BE PERFORMED HEREUNDER, AND HEREBY RELEASES, RELINQUISHES, AND DISCHARGES THE CITY, ITS OFFICERS, AGENTS, AND EMPLOYEES FROM ALL CLAIMS, DEMANDS, AND

CAUSES OF ACTION OF EVERY KIND AND CHARACTER, INCLUDING THE COST OF DEFENSE THEREOF, FOR ANY INJURY TO OR DEATH OF ANY PERSON (WHETHER EMPLOYEES OF EITHER PARTY OR OTHER THIRD PARTIES) AND ANY LOSS OF OR DAMAGE TO ANY PROPERTY (WHETHER PROPERTY OF EITHER OF THE PARTIES HERETO, THEIR EMPLOYEES, OR OF THIRD PARTIES) THAT IS CAUSED BY OR ALLEGED TO BE CAUSED BY, ARISING OUT OF, OR IN CONNECTION WITH THE WORK ON THE PROJECT PERFORMED BY THE CONTRACTOR, ANY SUBCONTRACTOR, OR ANY PERSON OR ORGANIZATION DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM TO PERFORM OR FURNISH WORK ON THE PROJECT. THIS RELEASE SHALL APPLY REGARDLESS OF WHETHER SAID CLAIMS, DEMANDS, AND CAUSES OF ACTION ARE COVERED IN WHOLE OR IN PART BY INSURANCE. IN THE EVENT OF INJURY, DEATH, PROPERTY DAMAGE, OR LOSS SUFFERED BY THE CONTRACTOR, ANY SUBCONTRACTOR, OR ANY PERSON OR ORGANIZATION DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM TO PERFORM OR FURNISH WORK ON THE PROJECT, THIS RELEASE SHALL NOT APPLY WHEN SUCH INJURY, DEATH, LOSS, OR DAMAGE WAS CAUSED IN WHOLE OR IN PART BY THE INTENTIONAL OR WILLFUL ACT, NEGLIGENCE, OR GROSS NEGLIGENCE OF THE CITY.

Notwithstanding anything stated to the contrary in this Paragraph 6.02, it is required that: (a) the City shall be included as an additional insured under the Contractor's general liability, business automobile liability, and excess/umbrella liability insurance policies, and the Contractor shall provide any and all defenses to the City as provided by those policies; and (b) a licensed engineer or registered architect performing the professional services of an engineer or architect under the Agreement on behalf of the Contractor, shall perform those professional services (i) with the professional skill and care ordinarily provided by competent Texas engineers or architects practicing under the same or similar circumstances and professional license, and (ii) as expeditiously as is prudent considering the ordinary professional skill and care of a competent Texas engineer or architect.

Contractor's indemnification obligations in this Paragraph 6.02 shall survive termination, completion, abandonment and final payment.

7. REPRODUCIBLE RECORD DRAWINGS

7.01 Drawings. Required as part of Final Completion of the Project, the Contractor shall submit one (1) complete set of drawings with all changes made during construction, including concealed mechanical, electrical, and plumbing items.

8. ANTITRUST VIOLATIONS

8.01 Antitrust Violations. To permit the City to recover damages suffered in antitrust violations, Contractor hereby assigns to Owner any and all claims for overcharges associated with this Agreement which are under the antitrust laws of the United States, 15 U.S.C.A., Sec. 1 et. seq. (1973). The Contractor shall include this provision in its agreements with each Subcontractor and

supplier. Each Subcontractor shall include such provision in agreements with sub-subcontractors and suppliers.

9. ADMINISTRATION OF THE CONTRACT

9.01 Architect.

(a) The Architect is the person lawfully licensed to practice architecture or an entity lawfully practicing architecture identified as such in the Agreement. The term "Architect" means the Architect or the Architect's authorized representative, or such successor Architect as City may appoint by written notice to Contractor from time to time.

(b) City shall notify Contractor when the duties, responsibilities, or limitations of authority of the Architect have been modified.

(c) If the employment of the Architect is terminated, the City may elect to appoint a replacement Architect, or at its option, elect to complete the Project using another consultant or representative to perform the balance of the Architect's functions on the Work.

(d) Except as herein expressly provided, the Contractor shall not be relieved of its obligation to perform the Work in strict accordance with the Agreement Documents by the activities or duties of the Architect.

9.02 Architect's Administration of the Contract.

(a) Certain portions of the administration of the Agreement will be performed by the Architect. The Architect shall not have the authority to act on behalf of the City unless such authority is expressly granted in the Agreement Documents or the City's engagement agreement with the Architect, nor shall such authority be implied from any act or representation of the Architect. The City is free to elect to have some of the administration duties set out for the Architect to perform under the Agreement Documents performed by a Construction Manager or by employees of the City.

(b) The Architect, as a representative of the City, will visit the site at intervals appropriate to the stage of the Contractor's operations (1) to become generally familiar with and to keep the City informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the City against defects and deficiencies in the Work, and (3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Agreement Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Agreement Documents, except as provided in Paragraph 5.05(a) In no event shall City or any other party have control over, be in charge of, or be responsible for construction

means, methods, techniques, sequences, procedures, or for safety precautions and programs in connection with the Work, since these are solely Contractor's responsibilities. City will not be responsible for the Contractor's failure to carry out the Work in accordance with the Agreement Documents. City will not have control over, be in charge of, and will not be responsible for the acts or omissions of Contractor, Subcontractors, or their agents or employees, or of any other persons performing portions of the Work.

(c) The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Agreement Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

(d) Communications Facilitating Agreement Administration. Except as otherwise provided in the Agreement Documents or when direct communications have been specially authorized, the City and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the City.

(e) Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

(f) The Architect and the City (the City in consultation with the Architect), both have the authority to reject Work that does not conform to the Agreement Documents. Whenever the City or Architect considers it necessary or advisable for implementation of the intent of the Agreement Documents, the City or Architect will have authority to require additional inspection or testing of the Work in accordance with Paragraph 21.1 whether or not such Work is fabricated, installed or completed. However, neither this authority of the City or Architect, nor a decision made reasonably and in good faith either to exercise or not to exercise such authority, shall give rise to create or imply the existence of a duty or responsibility of the City or Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

(g) The Architect will review and approve or take other appropriate action upon the Contractor's submittals regarding this Agreement for the Project, including Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Agreement Documents. The Architect's action will be taken with such reasonable promptness, but no longer than fifteen (15) business days, as to cause no delay in the Work or in the activities of the City, Contractor or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other

details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Agreement Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of its obligations. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

(h) Upon direction of the City, the Architect will prepare Change Proposal Requests, Change Orders, and Construction Change Directives, and may authorize minor changes in the Work as provided in Paragraph 13.04.

(i) The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of Final Completion, will receive and forward to the City, for the City's review and records, written warranties and related documents required by the Agreement and assembled by the Contractor, and will issue a final Certificate for Payment upon compliance with the requirements of the Agreement Documents.

(j) If the City and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities, and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Agreement Documents.

(k) The Architect will interpret and decide matters concerning performance under, and requirements of, the Agreement Documents on written request of either the City or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If no agreement is made concerning the time within which interpretations required of the Architect shall be furnished in compliance with this Paragraph 9.02(k), then delay shall not be recognized on account of failure by the Architect to furnish such interpretations until thirty (30) days after written request is made for them.

(l) Interpretations and decisions of the Architect will be consistent with the intent of and reasonably inferable from the Agreement Documents and will be in writing or in the form of drawings.

10. CLAIMS AND DISPUTES

10.01 Definition. A Claim is any demand or assertion by the Contractor that it should be paid more money than the Agreement Sum, as adjusted under the Change Order provisions herein, by the City because of action or inaction on the part of City, Architect, or any party for whom City is responsible, or any party with whom City has separately contracted for other portions of the Project, including but not limited to any demand or assertion that Contractor's performance has been delayed, interrupted or interfered with, that Contractor's performance has been accelerated, constructively accelerated, or suspended, that Contractor's performance has been wrongfully terminated, that the Agreement Documents have been misinterpreted, that here has been a failure

of payment, that Contractor has encountered concealed or unknown conditions, that Contractor has encountered hazardous materials, that there are problems with the Agreement Documents, or the timing of Architectural approvals or decisions, that action of the City have been intentionally wrongful or deceptive in any way to the Work, that the amount of time or money granted in a Construction Change Directive is inadequate, that an item treated as a minor change in the Work should have been treated as a Change Order, that a time extension granted was inadequate, or that Contractor is entitled to any other relief, on any legal theory, related to the Agreement Documents or Work. Nothing contained in this subparagraph shall be construed as creating any Contractor right to make a claim, where no such right otherwise exists.

10.02 Notice Requirement. Within fourteen (14) calendar days of the first occurrence of an event that Contractor has any reason to believe might result in a Claim, or within fourteen (14) calendar days of Contractor's discovery of the first occurrence of the event that Contractor has any reason to believe might result in a Claim (if the first occurrence of the event was willfully hidden from the Contractor), the Contractor shall file a written document clearly captioned "Notice of Claim" with City and Architect. The notice shall clearly set out the specific matter of complaint, and the impact of damages which may occur or have occurred as a result thereof, to the extent the impact or damages can be assessed at the time of the notice. If the impact or damages cannot be assessed as of the date of the notice, the notice shall be amended at the earliest date that is reasonably possible. Furthermore, the following matters are required:

(a) Any Claim or portion of a Claim that has not been made the specific subject of a notice strictly in accordance with the requirements of this Paragraph shall be waived. It is imperative that City have timely, specific notice of any subject, the impact of which City may be in a position to mitigate.

(b) No course of conduct or dealings between the parties, nor implied acceptance of alteration or additions to the Agreement Documents or Work, or changes to the Agreement Documents or Work schedule, shall be the basis for any claim for an increase in the Agreement Sum or change in the Agreement Time.

10.03 Claims Handling During Construction. After receipt of a Notice of Claim, the City may elect to refer the matter to the Architect or another party for review. Contractor will attend meetings called to review and discuss the Claim and mitigation of the problem and shall furnish any reasonable factual backup of the Claim requested. The City may also elect to defer consideration of the Claim until the Work is completed, in which case the same review options shall be available to the City at the completion of the Work. At any stage, the City is entitled to refer a Claim to mediation under the Construction Industry Mediation Rules of the American Arbitration Association, and if this referral is made, Contractor will take part in the mediation process. The filing, mediation or rejection of a Claim does not entitle Contractor to stop performance of the Work. The Contractor shall proceed diligently with performance of the Work during the pendency of any claim, except in the event of termination or Work stoppage directed by City. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof, as follows regarding the alternative dispute resolution requirements of this Agreement:

No suit shall be filed by a Party regarding a dispute arising under or related to this Agreement unless the Parties first attempt to submit the dispute to mediation pursuant to Chapter 2009 of the Texas Government Code and Chapter 154 of the Texas Civil Practice and Remedies Code. Notwithstanding anything to the contrary stated in this Agreement, however, a Party may file suit solely for injunction or mandamus relief regarding an aforesaid dispute without first submitting that dispute to mediation. The mediation shall be held in Brazos County, Texas within 30 days of a Party sending notice to the other Party requesting mediation, unless otherwise agreed in writing by the Parties. Each Party shall pay its own expenses incurred for the mediation, including attorney fees, mediator fees, and travel expenses. The mediator shall be selected by the Parties' agreement; however, should they fail to agree on a mediator, the dispute shall be submitted to the following public institution for assignment of a mediator and the holding of the mediation at that institution: Aggie Dispute Resolution Program, Texas A&M University School of Law, 1515 Commerce Street, Fort Worth, Texas 76102-6509 (800-733-9529 telephone).

10.04 Claims Handling Following Construction. The acceptance of final payment shall constitute a waiver of Claims by the Contractor which have not previously been identified in a timely Notice of Claim and specifically reserved in the final Application for Payment.

10.05 Claims for Concealed or Unknown Conditions. Only if conditions are encountered at the Project site which are (a) subsurface and not revealed or otherwise generally documented in a geotechnical report or other engineering or professional report or document, or otherwise concealed physical conditions which differ materially from those indicated in the Agreement Documents or (b) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Agreement Documents, then Contractor shall be entitled to make a Claim if it can satisfy all of the other requirements of Paragraph 9.

10.06 Claims for Additional Cost. If the Contractor wishes to make a Claim for an increase in the Agreement Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Paragraph 18.04.

10.07 Calculating Claim Amount. In calculating the amount of any Claim, the following standards will apply:

(a) No indirect or consequential damages will be allowed.

(b) All damages must be directly and specifically shown to be caused by a proven wrong. No recovery shall be based on a comparison of planned expenditures to total actual expenditures, or on estimated losses of profits, or materials or labor efficiency, or on a comparison of planned manloading to actual manloading, or any other analysis that is used to show damages indirectly.

(c) Damages are limited to extra costs specifically shown to have been directly caused by a proven wrong.

(d) The maximum daily limit on any recovery for delay shall be the amount established by the Contractor for job overhead costs, defined in the Schedule of Values, divided by the total number of calendar days of Agreement Time called for in the original Contract. Absent an overhead amount in the Schedule of Values, the amount estimated by the Contractor for job overhead costs shall be used.

(e) The maximum amount of all Claims proven by the facts to be due to the Contractor against the City under this Agreement is expressly agreed by the parties not to exceed in any event or set of circumstances an aggregate total of five percent (5%) of the Agreement Sum.

10.08 Liquidated and Other Damages.

(a) The amount of liquidated damages (as hereafter described) for the Construction Manager's failure to meet the deadlines for Substantial and/or Final Completion are fixed and agreed on by the parties because of the impracticability and extreme difficulty in fixing and ascertaining the actual damages that the City would in such an event sustain. The amounts to be charged are agreed to be damages the City would sustain and shall be retained by the City from current periodic estimates for payment or from final payment. As a result of the difficulty in estimation, calculation and ascertainment of City's damages due to a failure of Construction Manager to achieve timely completion of the Work, if the Construction Manager should neglect, fail, or refuse to either Substantially Complete or Finally Complete the Work within the time herein specified, or any proper extension thereof granted by the City's Representative pursuant to the terms of the Agreement Documents, then the Construction Manager does hereby agree as part of the consideration for the awarding of this Agreement that the Owner may permanently withhold from the Construction Manager's total compensation the sum of Five Hundred and NO/100 DOLLARS ($500.00) for each and every calendar day that the Construction Manager shall be in default after the time stipulated for Substantial Completion not as a penalty, but as liquidated damages for the breach of this Agreement. It being specifically understood that the assessment of liquidated damages may be made for any failure to meet either or both deadlines specified for Substantial Completion and/or Final Completion.

(b) Regarding all other conduct, acts, or omissions of the Contractor (being separate and distinct from the liquidated damage-authorizing conduct of the Contractor described in Subparagraph (a) above) that constitute a breach or default of this Agreement, the City may pursue the recovery of all remedies, claims, and causes of action (whether legal, equitable, or mixed), and all damages allowed by law, including, without limitation: Agreement termination; the recovery of all actual direct damages; and the recovery of its incurred attorney's fees, expenses, court costs, interest, and all just and lawful offsets and credits.

(c) Notwithstanding anything to the contrary stated in this Agreement, any conduct, act, or omission committed by the Contractor which constitutes a breach or default of this

Agreement shall survive the: (1) City's acceptance of the Work performed under this Agreement; and (2) termination of the Agreement.

11. SUBCONTRACTORS

11.01 Definitions.

(a) A Subcontractor is a person or entity who has a direct agreement with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

(b) A Sub-subcontractor is a person or entity who has a direct or indirect agreement with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

11.02 Award of Subcontracts and Other Contracts for Portions of the Work.

(a) Unless otherwise stated in the Agreement Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the City through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) and copies of all executed subcontract(s) proposed for each principal portion of the Work of the Project. The Architect will promptly reply (but in no event longer that 30 days from said written notice) to the Contractor in writing stating whether or not the City or the Architect, after due investigation, has reasonable objection to any such proposed person or entity. Failure of the City or Architect to reply promptly shall constitute notice of no reasonable objection.

(b) The Contractor shall not have a contractual agreement for the Project with a proposed person or entity to whom the City or Architect has made reasonable and timely objection. The Contractor shall not be required to have a contractual agreement with anyone to whom the Contractor has made reasonable objection.

(c) If the City or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the City or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Agreement Sum and Agreement Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Agreement Sum or Agreement Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

(d) The Contractor shall not change an approved Subcontractor, person or entity previously selected if the City or Architect makes reasonable objection to such substitute.

(e) The Contractor shall submit the list of proposed Subcontractors on a form approved by the City.

(f) The Contractor and Subcontractors are required to visit the site and completely familiarize themselves with the existing conditions prior to the submission of Proposal(s). No additional increase in the Agreement amount will be provided when existing or known conditions require a certain amount of work to comply with the intent of the Agreement Documents.

11.03 Subcontractual Relations. By appropriate written agreement with the Subcontractor, the Contractor shall require each Subcontractor, to the extent of the Work for the Project to be performed by the Subcontractor, to be bound by the terms of the Agreement Documents, and to assume all obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by the Contract Documents, assumes toward the City and Architect. Each subcontract agreement shall preserve and protect the rights of the City and Architect under the Agreement Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Agreement Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement which may be at variance with the Agreement Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

11.04 Contingent Assignment of Subcontracts.

(a) Each subcontract agreement for a portion of the Work for the Project shall be assigned in writing by the Contractor to the City provided that the:

1. assignment is effective only after termination of the Agreement by the City for cause pursuant to Paragraph 22.02 and only for those subcontract agreements which the City accepts by notifying the Subcontractor and Contractor in writing; and

2. assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Agreement.

(b) City shall only be responsible for compensating Subcontractor for Work done or materials furnished after the date City gives written notice of its acceptance of the assigned subcontract agreement.

(c) Each Subcontract and assignment shall provide that the City shall only be responsible to the Subcontractor for those services and materials furnished by the Subcontractor subsequent to the City's exercise of any rights under this contingent assignment.

11.05 Responsibility. Contractor shall be fully responsible for the performance of its Subcontractor, including those selected or approved by the City.

12. CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

12.01 Owner's Right to Perform Construction and to Award Separate Contracts.

(a) The City reserves the right to perform other construction work, maintenance, and repair work near or adjacent to the Project site during the time period of the Work. Owner may perform other Work with separate contractors. City shall have access to the site at all times.

(b) When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Agreement Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

12.02 Mutual Responsibility.

(a) The Contractor shall afford the City and separate contractors' reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Agreement Documents.

(b) If part of the Contractor's Work depends for proper execution or results upon construction or operations by the City or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor to so report shall constitute an acknowledgment that the City's or separate contractors completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

(c) The City shall be reimbursed by the Contractor for costs incurred by the City which are payable to a separate contractor because of delays, improperly timed activities or defective construction of the Contractor.

(d) The Contractor shall promptly remedy damage wrongfully caused by the Contractor to completed or partially completed construction or to property of the City or separate contractors as provided in Paragraph 18.02(e).

(e) The City and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Paragraph 5.15.

12.03 Owner's Right to Clean Up. If a dispute arises among the Contractor, separate contractors and the City as to the responsibility under their respective contracts for maintaining the premises

and surrounding area free from waste materials and rubbish, the City may clean up and the Architect will allocate the cost among those responsible.

13. CHANGES IN THE WORK

13.01 General.

(a) Changes in the Work may be accomplished after execution of the Agreement, and without invalidating the Agreement, by Change Order, Construction Change Directive or order for a minor change in the Work. The Agreement Sum and/or Agreement Time may be increased for changes in the Work if the provisions of this Paragraph have been met.

1. No change in the Agreement Sum and/or Agreement Time will be allowed for a change in the Work unless prior to performing the changed Work, the Contractor has provided the City in writing a proposal for any change in price and/or change in Agreement Time caused by the change in Work, and a Change Order is subsequently executed. A field directive or field order shall not be recognized as having any impact upon the Agreement Sum or the Agreement Time, and Contractor shall have no Claim therefore, unless it shall, prior to complying with the directive and in any event within fourteen (14) calendar days of receiving the directive, submit a change proposal to the City, and a Change Order is subsequently executed, or Contractor satisfies the requirements of Paragraph 10. Contractor's proposal shall be subject to City's acceptance and remain irrevocable for a period of sixty (60) calendar days after receipt by City. Thereafter, Contractor reserves the right to resubmit such change proposal upon different pricing and time of performance terms.

(b) A Change Order shall be based upon agreement among the City, Contractor, and Architect. A Construction Change Directive requires agreement by the City and Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Architect alone.

(c) Changes in the Work shall be performed under applicable provisions of the Agreement Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work. Except as permitted in Paragraph 13.03, a change in the Agreement Sum or the Agreement Time shall be accomplished only by Change Order.

(d) The Contractor, upon receipt of written notification by the Architect of a proposed item of change in the Work, shall prepare as soon as possible a Change Proposal in such form or forms as directed by the City. The parties further agree as follows:

1. Each separate Change Proposal shall be numbered consecutively and shall include material costs, labor costs, fees, overhead and profit. The Change Proposal shall specify all costs related to the proposed change in the Work, including any disruption or impact on performance.

2. The Subcontractor's itemized accounting shall be included with the Change Proposal.

3. If a Change Proposal is returned to the Contractor for additional information or if the scope of the proposed change in the Work is modified by additions, deletions or other revisions, the Contractor shall revise the Change Proposal accordingly and resubmit the revised Change Proposal to the City and Architect.

4. A revised Change Proposal shall bear the original Change Proposal number suffixed by the letter "R" to designate a revision in the original Change Proposal. If additional revisions to a revised Change Proposal are necessary, each subsequent revision shall be identified by an appropriate numeral suffix immediately following the "R" suffix.

5. Upon written approval of a Change Proposal by the City, the City will prepare a Change Order authorizing such Change in Work.

6. The Contractor shall request extensions of the Agreement Time due to changes in the Work only at the time of submitting its Change Proposal. **Contractor's failure to do so shall represent a waiver of any right to request a time extension**.

13.02 Change Orders.

(a) The Contractor makes a written request for a Change Order by submitting a written Change Proposal. A Change Order is a written instrument prepared by the City and reviewed by the Architect. When finalized, a Change Order is signed by the City, Contractor and Architect, stating their agreement upon all of the following:

1. change in the Work; and

2. the amount of the adjustment, if any, in the Agreement Sum; and

3. the extent of the adjustment, if any, in the Agreement Time.

(b) Pursuant to Section 252.048(d) of the Texas Local Government Code:

1. The Guaranteed Maximum Price ("GMP") may not be increased by more than twenty-five percent (25%). Written change orders that do not exceed twenty-five percent (25%) of the original agreement amount may be made or approved by the City Manager or their delegate if the change order is less than Fifty Thousand Dollars ($50,000.00). Changes in excess of Fifty Thousand Dollars ($50,000.00) must be approved by the City Council prior to commencement of the services or work.

2. For construction contracts funded in whole or in part by Certificates of Obligations, an Agreement with a GMP of $1 million or more may not be increased

by more than twenty-five percent (25%). If a change order for a construction Agreement funded in whole or in part with certificates of obligation that has a GMP of less than $1 million increases the Agreement amount to $1 million or more, subsequent change orders may not increase the revised Agreement amount by more than twenty-five percent (25%). Written change orders may be made or approved by the City Manager or their delegate if the change order is less than Fifty Thousand Dollars ($50,000.00). Changes in excess of Fifty Thousand Dollars ($50,000.00) must be approved by the City Council prior to commencement of the services or work.

(c) Methods used in determining adjustments to the Agreement Sum may include those named below:

1. mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;

2. unit prices stated in Agreement Documents or subsequently agreed upon;

3. a determination in a manner agreed upon by the parties and a mutually acceptable fixed fee, or the percentage fee established at Subparagraph 13.3(f), or

4. as provided in Subparagraph 13.3(g).

(d) Agreement on any Change Order shall constitute a final settlement of all Claims by the Contractor directly or indirectly arising out of or relating to the Change in Work which is the subject of the Change Order, including, but not limited to, all direct and indirect costs and impact costs associated with such change and any and all adjustments to the Agreement Sum and the Agreement Time.

13.03 Construction Change Directives.

(a) A Construction Change Directive is a written order prepared by the Architect and signed by the City and Architect, directing a change in the Work prior to an agreement on adjustment, if any, in the Agreement Sum or Agreement Time, or both. The City may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Agreement consisting of additions, deletions or other revisions, the Agreement Sum and Agreement Time being adjusted accordingly.

(b) A Construction Change Directive shall be used in the absence of a total agreement on the terms of a Change Order.

(c) The Construction Change Directive shall include a unilateral change in the Agreement Sum and/or Agreement Time reflecting the City's view of the appropriate change in the Agreement Sum and/or Agreement Time for the Change in Work covered by the Construction Change Directive. Until an agreement is reached by the City and Contractor on these issues for a Change Order, the changes in Agreement Sum and

Agreement Time set out in the Construction Change Directive shall be used for Schedule of Values, payment and scheduling purposes.

(d) Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Agreement Sum or Agreement Time.

(e) A Construction Change Directive signed by the Contractor indicates the agreement of the Contractor therewith, including adjustment in Agreement Sum and Agreement Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

(f) In the absence of an agreement between City and Contractor on the proper change to the Agreement Sum or Agreement Time because of a change in the Work, Contractor may treat the matter as a Claim under Paragraph 10. In such event, the Contractor shall be entitled to recover only the amount by which the Cost of the Work has been reasonably increased over the Cost of Work without the change in the Work, plus five percent (5%).

(g) Pending final determination of the cost of a Construction Change Directive to the City, amounts not in dispute may be included in Applications for Payment. The amount of credit to be allowed by the Contractor to the City for a deletion or change which results in a net decrease in the Agreement Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

13.04 Minor Changes in the Work. The Architect will have authority to order minor changes in the Work not involving adjustment in the Agreement Sum or extension of the Agreement Time and not inconsistent with the intent of the Agreement Documents. Such changes shall be effected by written order and shall be binding on the City and Contractor. The Contractor shall carry out such written orders promptly.

13.05 Changes Funded by Allowances. Allowances balances may be used to fund changes in the Work. The Contractor will not be allowed an overhead and profit mark-up when changes in the Work are funded by one of the Allowances.

14. TIME

14.01 Definitions.

(a) Unless otherwise provided, Agreement Time is the period of time, including authorized adjustments, allotted in the Agreement Documents for Substantial Completion of the Work.

(b) The date of commencement of the Work is the date established in the Agreement. The date shall not be postponed by the failure to act of the Contractor or of persons, or entities for whom the Contractor is responsible.

(c) The date of Substantial Completion is the date certified by the Architect in accordance with Paragraph 16.

14.02 Progress and Completion.

(a) Time limits stated in the Agreement Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Agreement Time is a reasonable period for performing the Work.

(b) The Contractor shall not knowingly, except by agreement or instruction of the City in writing, prematurely commence operations on the Project site or elsewhere prior to Contractor obtaining all bonds required by the Agreement and before the effective date of insurance required by Paragraph 19 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance. Unless the date of commencement is established by the Agreement Documents or a Notice to Proceed given by the City, the Contractor shall notify the City in writing not less than five days or other agreed period before commencing the Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

(c) The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Agreement Time.

14.03 Delays and Extensions of Time.

(a) If the Contractor is delayed in performing Work that is critical to the overall completion of the Work by an act or neglect of the City or Architect, or a separate contractor employed by the City, or by changes ordered in the Work, or by labor disputes, unavoidable casualties, including fire, or by unusually adverse weather conditions, as defined below, then the Agreement Time shall be extended for a reasonable time to reflect the impact of the delay on Work critical to achieve Substantial Completion within the Agreement Time, provided the performance of the Work was not delayed by any other cause for which the Contractor is not entitled to an extension in the Agreement Time under the Agreement Documents. Adjustments in the Agreement Time will be permitted for a delay only to the extent such delay is not caused or could not have been anticipated by the Contractor and could not be limited or avoided by the Contractor's timely notice to the City of the delay, and only if Contractor satisfies the conditions of Paragraph 14.03(b). Contractor has the burden to prove that any of the foregoing alleged causes of delay significantly impacted construction progress on the critical path, as a condition precedent to any extension of Agreement Time.

(b) Weather delays include "rain days" (days with rainfall in excess of one-tenth of an inch) during the term of this Agreement that exceed the average number of rain days for

such term for this locality, both as determined by the National Weather Service Forecast Office for Easterwood Airport in College Station, Texas (KCLL/CLL).

(c) On or before the fifteenth (15) day of each month of the Work, Contractor shall submit in writing a request for all time extensions to which it believes itself to be entitled for the preceding month, other than time extensions for changes in Work, which are to be submitted in accordance with the requirements of Paragraph 13. If Contractor's request for time extension for changes in the Work is denied and Contractor wishes to pursue the matter, Contractor shall submit in writing a request for that extension by the fifteenth (15) day of the month following the denial. **Any claim for time extension not submitted under the terms of this Subparagraph shall be waived.**

(d) City, after consultation with the Architect, may grant time extensions to the extent it believes them to be proper. Time extensions granted by the City may be incorporated into schedules for completion of the Work. In the event that Contractor believes that it is entitled to additional time extensions beyond those granted by the City, it may make a claim for them provided it can meet the requirements of Paragraph 10.

15. PAYMENTS AND COMPLETION

15.01 Agreement Sum. The Agreement Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the City to the Contractor for performance of the Work under the Agreement Documents

15.02 Schedule of Values. Before the first Application for Payment, the Contractor shall submit to the Architect a Schedule of Values fairly allocating the various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as reasonably required by the Architect. Once approved by the Architect and updated for changes in the Work, the Schedule of Values shall be used as a basis for reviewing the Contractor's Applications for Payment and is not to be taken as evidence of market or other value. The Schedule of Values shall not overvalue early job activities. The Contractor's Fee shall be shown as a single separate item. The Schedule of Values shall follow the trade divisions of the Specification so far as practicable.

In order to facilitate the review of Applications for Payment, the Schedule of Values shall be submitted on forms approved by the Owner, and shall include the following:

(a) Contractor's costs for Contractor's Fee, bonds and insurance, mobilization, etc., shall be named as individual line items.

(b) Contractor's costs for various construction items shall be detailed. For example, concrete work shall be subdivided into footings, grade beams, floor slabs, paving, etc. These subdivisions shall appear as individual line items.

(c) On major subcontracts, such as mechanical, electrical, and plumbing, the Schedule of Values shall indicate line items and amounts in detail (for example: underground, major equipment, fixtures, installation of fixtures, start up, etc.)

(d) Costs for subcontract Work shall be named without any addition of Contractor's costs for overhead, profit or supervisions.

(e) Where payment for stored materials may be requested prior to installation, material and labor shall be named as separate line items.

(f) Sample pages from an approved Schedule of Values are included following this document.

15.03 Applications for Payment.

(a) At the time specified in the Agreement, the Contractor shall submit to the Architect an itemized Application for Payment for operations completed in accordance with the Schedule of Values and an updated project schedule for the Work. Such application shall be notarized and supported by such data fully evidencing and substantiating the Contractor's right to payment. The City requires the submission of copies of requisitions, billings, and invoices from the Contractor, Subcontractor(s) and material suppliers, all self-performed billings and invoices, all applicable payrolls, etc. Applications for Payment should also reflect retainage (if applicable). Unless otherwise agreed, the Contractor shall submit requests for payment in quadruplicate originals using for the "top sheets", originals of APPLICATION AND CERTIFICATE FOR PAYMENT; continuation sheets showing in detail the amounts requested, etc., may be submitted on CONTINUATION SHEET(S) in a format approved by the Architect. All blank spaces must be completed, and the signatures of the Contractor and Notary Public shall be original on each form. By submitting its Application for Payment, the Contractor certifies that the individual signing the application is authorized to do so. Additionally, if the Contractor prepares its Application for Payment utilizing "Excel" spreadsheet software, it shall submit a "thumb drive" or otherwise make such spreadsheet available electronically with each application for payment to facilitate the City's and Architect's review of the application.

1. Such applications may not include requests for payment for portions of the Work for which the Contractor does not intend to pay to a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

(b) Unless otherwise provided in the Agreement Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the City, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing, so long as such location, materials, and equipment also have bond and insurance coverage on Contractor's bonds and insurance policies. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the City to establish the City's title to such materials and equipment or otherwise protect the City's interest, and shall include the costs of applicable insurance, storage, and transportation to the site for such materials and equipment stored off the site. Upon payment by the City of the invoiced cost, title to all such materials and equipment shall irrevocably pass to the City. The Contractor warrants

that title to all materials and equipment covered by an Application for Payment will pass to City upon the receipt of payment by the Contractor. Such title shall be free and clear of all liens, claims, security interests or encumbrances. No work, materials or equipment covered by an Application for Payment shall be subject to an agreement under which an interest is retained, or encumbrance is attached by the seller, the Contractor, or other party.

(c) The Contractor warrants that title to all Work covered by an Application for Payment will pass to the City no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the City shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

15.04 Certificates for Payment.

(a) The Application for Payment will be reviewed first by the Architect who will certify to the City that portion, if any, of the Application for Payment it has determined is properly due. In the event that the Architect believes that payment should be withheld, in whole or in part, it will notify the City and Contractor of the basis of this view as provided in Subparagraph 15.05(a).

(b) The issuance of a Certificate for Payment will constitute a representation by the Architect to the City, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Architect's knowledge, information and belief, the quality of the Work is in accordance with the Agreement Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Agreement Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Agreement Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the City to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Agreement Sum.

(c) The issuance of a Certificate of Payment shall constitute a recommendation to the City in respect to the amount to be paid. This recommendation is not binding on the City if City knows of other reasons under the Agreement why payment should be withheld.

(d) The Architect will affix their signature to the same form described in Paragraph 15.04(a). to signify their certification of payment provided the application is otherwise satisfactory.

15.05 Decisions to Withhold Certification.

(a) The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the City, if in the Architect's opinion the representations to the City required by Paragraph 15.04(b) cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and City as provided in Paragraph 15.04(a). If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the City. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the City from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Paragraph 5.05(b), because of:

1. defective Work not remedied;

2. third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the City is provided by the Contractor;

3. failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;

4. reasonable evidence that the Work cannot be completed for the unpaid balance of the Agreement Sum;

5. damage to the City or another contractor;

6. reasonable evidence that the Work will not be completed within the Agreement Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or

7. persistent failure to carry out the Work in accordance with the Agreement Documents.

(b) When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

15.06 Progress Payments.

(a) After the Architect has issued a Certificate for Payment, the City, upon the City's review and written approval of the Certificate for Payment, shall endeavor to make payment in the manner and within the time provided in the Agreement Documents, and

shall so notify the Architect. If the City believes the Contractor is not current in its legitimate obligations to suppliers, laborers and/or Subcontractors on the Project, City may (but is not obligated to) withhold payment until it receives partial or final releases, or other reasonable proof from the Contractor that this situation does not exist.

(b) The Contractor shall promptly pay each Subcontractor, upon receipt of payment from the City, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of such Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner. City is not obligated to monitor payments to Subcontractors or Sub-subcontractors, and nothing in this paragraph shall create any right on the part of a Subcontractor or Sub-subcontractor against City.

(c) The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and City on account of portions of the Work done by such Subcontractor.

(d) Neither the City nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor or Sub-subcontractor.

(e) Payment to material suppliers shall be treated in a manner similar to that provided in Paragraphs 15.06(b), 15.06(c) and 15.06(d).

(f) A Certificate for Payment, a progress payment, the issuance of Substantial or Final Completion, or partial or entire use or occupancy of the Project by the City shall not constitute acceptance of Work not in accordance with the Agreement Documents.

15.07 Failure of Payment. If the City incurs any costs and expenses to cure any default of the Contractor or to correct defective Work, the City shall have an absolute right to offset such amount against the Agreement Sum under this Contract, and may, in the City's sole discretion, elect either to: (1) deduct an amount equal to that to which the Owner is entitled, or (2) issue a written notice to the Contractor reducing the GMP by an amount equal to that to which the Owner is entitled.

16. SUBSTANTIAL COMPLETION

16.01 General. When the Contractor considers that the Work, or a portion thereof which the City agrees to accept separately, is substantially complete, the Architect and City shall review the punch list prepared by Contractor and supplement the list as necessary. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Agreement Documents.

(a) The Contractor's superintendent shall participate in the preparation of the Contractor's punch list that is submitted to the Architect and City for supplementation. Upon receipt, the Architect and City shall perform a spot review to determine the adequacy

and completeness of the Contractor's punch list. Should the Architect or City determine that the Contractor's punch list lacks sufficient detail or requires extensive supplementation, the punch list will be returned to the Contractor for further inspection and revision. The date of Substantial Completion will be delayed until the punch list submitted is a reasonable representation of the work to be done.

(b) Upon receipt of an acceptable Contractor's punch list, the Contractor's superintendent shall accompany the Architect, its Consultants, and the City (at its discretion) during their inspections and the preparation of their supplements to the Contractor's punch list. The superintendent shall record or otherwise take note of all supplementary items. The Architect shall endeavor to furnish to the Contractor typed, hand written or recorded supplements to the punch list in a prompt manner; however, any delay in the Contractor's receiving said supplements from the Architect shall not be cause for a claim for additional cost or extension of time.

16.02 Inspection. When the Contractor notifies Architect and City that it has completed or corrected items on the punch list, the Architect and City at its discretion will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's and City's inspection discloses any item, whether or not included on the Contractor's punch list, which is not sufficiently complete in accordance with the Agreement Documents so that the City can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect and City to determine Substantial Completion. Any further inspections by the Architect and City for the purpose of determining the Project is Substantially Complete shall be at Contractor's cost and the City may deduct such cost from any amount payable to Contractor hereunder.

16.03 Certificate of Substantial Completion. When the Work or designated portion thereof is substantially complete, and upon the City's concurrence of the same, the Architect will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall establish responsibilities of the City and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Agreement Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

16.04 Approval of Certificate. The Certificate of Substantial Completion shall be submitted to the City and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance, the City, in its sole discretion, may, but is not required to, make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Agreement Documents. If retainage is not released at Substantial Completion, applicable retainage amounts will be released by City upon Contractor obtaining Final Completion.

16.05 Insurance. The Contractor shall keep all required insurance in full force, and utilities on, until the Certificate of Substantial Completion is issued, and accepted by the City in writing, regardless of the stated date of Substantial Completion. Acceptance shall not be unreasonably withheld.

16.06 Partial Occupancy or Use.

(a) The City may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Paragraph 19.03(a) and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the City and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Agreement Documents.

(b) Immediately prior to such partial occupancy or use, the City, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

(c) Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Agreement Documents.

17. FINAL COMPLETION AND FINAL PAYMENT

17.01 General. Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the City and Architect shall endeavor to promptly make such inspection and, when the City and Architect finds the Work acceptable under the Agreement Documents and the Agreement fully performed, the Architect shall endeavor to promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Agreement Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Paragraph 17.02 as precedent to the Contractor's being entitled to final payment have been fulfilled.

Prior to final payment, the Contractor shall submit digitally (mylars for all Water/Wastewater projects as specified in project specifications and bid documents) to the Architect the following completed forms:

1. Contractor's Affidavit of Payment of Debts and Claims;

2. Contractor's Affidavit of Release of Liens;

3. Consent of Surety to Final Payment (if applicable);

4. Subcontractor's Unconditional Releases – each signed and notarized on a single piece of paper;

5. Maintenance and inspection manuals – three (3) sets of each bound in a 3 inch "D-slant" ring binder;

6. Final list of subcontractors;

7. one (1) complete set of marked-up copies of the Drawings and Specifications accurately showing the Project as constructed. Such Specifications and Drawings shall be marked to show all changes and modifications that have been incorporated into the Work as performed;

8. other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the City; and

9. any other "Closeout Documents" required under the Agreement Documents.

17.02 Format. Documents identified as affidavits must be notarized. All manuals will contain an index listing the information submitted. The index sections will be divided and identified by tabbing each section as listed in the index. Upon request, the Architect will furnish the Contractor with blank copies of the forms listed above. Final payment, constituting the entire unpaid balance of the Agreement Sum shall be endeavored to be paid by the City to the Contractor within sixty (60) days after Substantial Completion of the Work, unless otherwise stipulated in the Certificate of Completion, provided the Agreement is fully performed, and Final Certificate of Payment has been issued by the Architect. The City may accept certain portions of the Work as being complete prior to the acceptance of the entire Project. If certain areas are accepted by the City as being completed, and if the Contractor has completed all of the requirements for final payment of the portion of Work, the City may, but is not required to, release retainage for that area/portion of Work. Amounts of retainage shall be agreed upon by both City and Contractor prior to final acceptance of these areas.

17.03 Delay. If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the City shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Agreement Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

17.04 Acceptance of Payment. Acceptance of final payment by the Contractor shall constitute a waiver of claims by Contractor except for any Claims then pending that comply with the requirements of Paragraph 10.

17.05 Time for Final Completion. Contractor shall achieve Final Completion within 30 calendar days of the date of Substantial Completion, failing which, Contractor shall provide a full-time on-site superintendent until Final Completion at its own cost and not as a cost of the Work.

18. Protection of Persons and Property.

18.01 Safety Precautions and Programs. The Contractor shall be responsible for initiating, maintaining, and supervising all necessary safety precautions and programs in connection with the performance of the Contract.

18.02 Safety of Persons and Property.

(a) The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

1. employees on the Work, Project site, and other persons who may be affected thereby including but not limited to the City's employees, invitees and the general public;

2. the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and

3. other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation or replacement in the course of construction.

(b) The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations, and lawful orders of public authorities (including without limitation all State, federal, and local governmental authorities or agencies with regulatory or supervisory jurisdictional authority regarding the land or activities of the Project, including the City) bearing on safety of persons or property or their protection from damage, injury or loss.

(c) The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

(d) When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel. When use or storage of explosives or other hazardous materials or equipment or unusual

construction methods are necessary, the Contractor shall give the City and Architect reasonable advance notice of the presence or use of such materials, equipment, or methods.

(e) The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Agreement Documents) to property referred to in Paragraphs 18.02(a)(2) and 18.02(a)(3) caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Paragraphs 18.02(a), except damage or loss attributable to acts or omissions of the City or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Paragraph 6.06.

(f) The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

(g) The Contractor shall not load or permit any part of the construction, Work or site to be loaded so as to endanger its safety.

(h) Suspension of all or a portion of the Work, for any reason, shall not relieve the Contractor of its obligations under Paragraph 18.02.

(i) The Contractor shall promptly report in writing to the City and Architect all accidents arising out of or in connection with the Work which cause death, personal injury, or property damage, giving full details and statement of any witnesses. In addition, if death, serious personal injuries, or serious property damages are caused, the accident shall be reported immediately by telephone or messenger to City and Architect.

(j) The Contractor shall be responsible for the protection and security of the Work and the Project, until it receives written notification that the Substantial Completion of the Work has been accepted by the City unless otherwise provided in the Certificate of Substantial Completion.

18.03 Hazardous Materials. Contractor agrees that it shall not transport to, use, generate, dispose of, or install at the Project site any Hazardous Substance (as defined in 18.03(c)), except in accordance with applicable Environmental Laws. Further, in performing the Work, Contractor shall not cause any release of Hazardous Substances into, or contamination of, the environment, including the soil, the atmosphere, any water course or ground water, except in accordance with applicable Environmental Laws (as hereafter defined at Paragraph 18.03(c)). In the event Contractor engages in any of the activities prohibited in this Paragraph 18.03. **to the fullest extent permitted by law, Contractor hereby indemnifies and holds City, Architect and all of their respective officers, agents and employees harmless from and against any and all claims, damages, losses, causes of action, suits, and liabilities of every kind, including, but not limited**

to, expenses of litigation, court costs, punitive damages and attorneys' fees, arising out of, incidental to or resulting from the activities prohibited in this Paragraph 18.03.

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

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

(c) For purposes of this Agreement, the term "Hazardous Substance" shall mean and include any element constituent, chemical, substance, compound, or mixture, which are defined as a hazardous substance by any local, state or federal law, rule, ordinance, by-law, or regulation pertaining to environmental regulation, contamination, clean-up or disclosure, including, without limitation, The Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), The Resource Conservation and Recovery Act ("RCRA"), The Toxic Substances Control Act ("TSCA"), The Clean Water Act ("CWA"), The Clean Air Act ("CAA"), the Marine Protection Research and Sanctuaries Act ("MPRSA"), The Occupational Safety and Health Act ("OSHA"), The Superfund Amendments and Reauthorization Act of 1986 ("SARA"), or other state superlien or environmental clean-up or disclosure statutes including all state and local counterparts of such laws (all such laws, rules and regulations being referred to collectively as "Environmental Laws"). It is the Contractor's responsibility to comply with Paragraph 18 based on the law in effect at the time its services are rendered and to comply with any amendments to those laws for all services rendered after the effective date of any such amendments.

18.04 Emergencies. In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional

compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Paragraph 10 and Paragraph 13.

19. INSURANCE AND BONDS

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

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

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

- **(a)** Commercial General Liability ("CGL").
- **(b)** Business Automobile Liability.
- **(c)** Excess Liability – required for Agreement amounts exceeding $1,000,000.
- **(d)** Builder's Risk – provides coverage for contractor's labor and materials for a project during construction that involves a structure such as a building or garage, builder's risk policy shall be written on "all risks" form.
- **(e)** Workers' Compensation/Employer's Liability.
- **(f)** Professional Liability
- **(g)** Contractors' Pollution Legal Liability, Asbestos Legal Liability, and Errors and Omissions coverage.
- **(h)** Surety bonds as required and described in this Agreement.

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

- **(a)** Insurance is to be placed with insurers authorized to conduct business in the state of Texas with a current A.M. Best rating of no less than A: VII, unless otherwise accepted in writing by the City. The insurance policies provided by the insurance company/companies are to be underwritten on forms that have been authorized by the Texas Department of Insurance or ISO. Original endorsements affecting coverage required by this Agreement shall be furnished with the certificates of insurance.
- **(b)** Self-insured retentions must be declared to and approved by the City in writing. The City understands that the Contractor's response to the RFP is conditioned upon approval of its standard self-insured retentions and that the Contractor will not be responsible for the cost of reviewing its self-insured retentions, which will be promptly disclosed if the Contractor is selected. The City may require the Contractor to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses

within the retention. The CGL and any policies, including Excess liability policies, may not be subject to a self-insured retention ("SIR") or deductible exceeding $25,000 unless approved in writing by the City. All deductibles and SIRs shall be the sole responsibility of the Contractor or subcontractor who procured such insurance and shall not apply to the Indemnified Additional Insured Parties. The City may deduct from any amounts otherwise due to the Contractor to fund the SIR/deductible. Policies shall NOT contain any SIR provision that limits the satisfaction of the SIR to the Named Insured. The policy must also provide that defense costs, including Allocated Loss Adjustment Expenses, will satisfy the SIR or deductible. The City reserves the right to obtain a copy of any policies and endorsements.

(c) "Claims Made" policies are not accepted, except for Professional Liability insurance, which may be a "Claims Made" policy.

(d) Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days prior written notice has been given to the City of College Station.

(e) For any claims related to this project, the Contractor's insurance coverage shall be primary and non-contributory insurance coverage at least as broad as ISO CG 20 01 04 13 regarding the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute to it. This requirement shall also apply to any Excess or Umbrella liability policies.

(f) Contractor hereby agrees to waive rights of subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents, and subcontractors.

(g) The Contractor shall furnish the City with original certificates and amendatory endorsements effecting coverage required by this Agreement. All certificates and endorsements must be received and approved by the City before work commences. However, failure to obtain the required documents prior to the start of the work shall not waive the Contractor's obligation to provide them. If a bona fide dispute arises between the Parties that could invoke insurance coverage or indemnity, then, prior to the City filing suit, the City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications. To the extent authorized by law, the City will treat the certified copies of the insurance policies it receives pursuant to this provision as "Confidential/Non-Public Information." The City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances. The Contractor will be entitled to recover any additional reasonable costs incurred as a result of any future additional

coverage required.

(h) Contractor shall require and verify that all subcontractors maintain insurance meeting all requirements stated in this Agreement, and Contractor shall ensure that City is an additional insured on insurance required from subcontractors. For CGL coverage, subcontractors shall provide coverage with a form at least as broad as CG 20 38 04 13.

(i) CGL & Excess/Umbrella liability policies for any construction related work, including, but not limited to, maintenance, service, or repair work, shall continue coverage for a minimum of five (5) years for Completed Operations liability coverage. Such Insurance must be maintained, and evidence of insurance must be provided for at least five (5) years after completion of the Work and related obligations thereafter.

(j) City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other circumstances.

(k) The City of College Station, its officers, officials, employees, agents, and volunteers are to be covered as additional insureds on the Business Automobile Liability policy, the Excess Liability/Umbrella policy, and the CGL policy, with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations and automobiles owned, leased, hired, or borrowed by or on behalf of the Contractor. The coverages shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees, agents, or volunteers. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance, at least as broad as ISO Form:

a. CG 20 10 and CG 11 85; **or**

b. **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38; **and** CG 20 37 forms (if later revisions used).

(l) Contractor shall provide the following Surety Bonds:

a. Bid Bond

b. Performance Bond

c. Payment Bond

d. Maintenance Bond

The Payment Bond and the Performance Bond shall be in a sum equal to the Guaranteed Maximum Price (GMP) or the final total dollar value of the Project, whichever is greater, and shall be increased by rider if Project value increases. If the Performance Bond provides for a two-year warranty and provides coverage for other warranty terms as required by the Agreement, then a separate Maintenance Bond is not necessary. If the warranty period specified in the Agreement is for longer than two years, a Maintenance Bond equal to 10% of the final total dollar value of the Project is required. Bonds shall be duly executed by a responsible corporate surety, authorized to issue such bonds in the State of Texas, secured

through an authorized agent with an office in Texas, and approved by the City.

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

(a) Limit of $5,000,000.00 per occurrence for bodily injury and property damage with an annual aggregate limit of $10,000,000.00 which limits shall be endorsed to be per Project.

(b) Coverage shall be at least as broad as ISO form GC 00 01.

(c) No coverage shall be excluded from the standard policy without notification of individual exclusions being attached for the City's review and acceptance.

(d) The coverage shall not exclude the following: premises/operations with separate aggregate; independent contracts; products/completed operations; contractual liability (insuring the indemnity provided herein) Host Liquor Liability, Personal & Advertising Liability; and Explosion, Collapse, and Underground coverage.

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

(a) Business Automobile Liability insurance shall be written by a carrier rated "A: VII" or better in accordance with the current A.M. Best Key Rating Guide.

(b) Minimum Combined Single Limit of $5,000,000.00 per occurrence for bodily injury and property damage.

(c) The Business Auto Policy must show Symbol 1 in the Covered Autos Portion of the liability section in Item 2 of the declarations page.

(d) The coverage shall include owned autos, leased or rented autos, non-owned autos, any autos and hired autos.

(e) Pollution Liability coverage shall be provided by endorsement MCS-90, with a limit of $1,000,000.00 and $2,000,000.00 policy aggregate where such exposures exist.

19.06 Excess Liability**.** The following Excess Liability requirements shall apply:

(a) The Contractor may use Umbrella or Excess Liability Policies to provide the liability limits as required in this Agreement. This form of insurance will be acceptable provided that all Primary and Umbrella or Excess Liability Policies shall provide all the insurance coverages required by this Agreement, including, but not limited to, primary and non-contributory, additional insured, Self-Insured Retentions (SIRs), indemnity, and defense requirements.

(b) The Umbrella or Excess policies shall be provided on a true "following form" or broader coverage basis, with coverage at least as broad as provided on the underlying Commercial General Liability insurance. No insurance policies

maintained by the Additional Insureds, whether primary or excess, and which also apply to a loss covered hereunder, shall be called upon to contribute to a loss until the Contractor's primary and excess liability policies are exhausted.

19.07 Additional Insured.

Those policies set forth in Paragraphs 19.04 Commercial (General) Liability, 19.05 Business Automobile Liability and 19.06 Excess Liability shall contain an endorsement listing the City as Additional Insured and further providing that the Contractor's policies are primary to any self-insurance or insurance policies procured by the City. The additional insured endorsement shall be in a form acceptable to the City. Waiver of subrogation in a form acceptable to the City shall be provided in favor of the City on all policies obtained by the Contractor in compliance with the terms of this Agreement. Contractor shall be responsible for all deductibles which may exist on any policies obtained in compliance with the terms of this Agreement. All coverage for subcontractors shall be subject to the requirements stated herein. All Certificates of Insurance and endorsements shall be furnished to the City's Representative at the time of execution of this Agreement, attached hereto as **Exhibit C**, and approved by the City before Work commences.

19.08 Builder's Risk

Until the Work is completed and accepted by the City, the Contractor shall purchase and maintain builder's risk insurance upon the entire Work at the Project site to the full insurable value thereof. The Contractor shall maintain Builder's Risk (Course of Construction) insurance utilizing an "All Risk" (Special Perils) coverage form, with limits equal to the completed value of the Project and no coinsurance penalty provisions. The builder's risk insurance shall also cover portions of the Work stored off site after written approval of the City of the value established in the approval, and also portions of the Work in transit. This insurance shall include the interests of the City, the Contractor, subcontractors, and sub-subcontractors in the Work and shall insure against the perils of fire, wind, storm, hail, lightning, and extended coverage including flood and earthquake and shall include all-risk insurance for physical loss or damage, including, without duplication of coverage, theft, vandalism and malicious mischief. The insurance shall cover reasonable compensation for City's Consultant's services and expenses required as a result of an insured loss. This must be an all-risk policy incorporating the following language:

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

The insurance policy and related Certificate of Insurance must specifically state that the: (a) Contractor is a named insured party for the insurance coverage described; and (b) City is an additional and named insured party for the insurance coverage described. The deductible under the policy, including that for flood shall not exceed $100,000.00 without the written approval of the

City.

Contractor may submit evidence of Builder's Risk insurance in the form of Course of Construction coverage. Such coverage shall name the City as a loss payee as their interest may appear.

If the Project does not involve new or major reconstruction, at the option of the City, an Installation Floater insurance policy coverage, and/or an endorsement for such coverage, may be acceptable. For such projects, a Property Installation Floater insurance policy coverage, and/or an endorsement for such coverage, shall be obtained that provides for the improvement, remodel, modification, alteration, conversion or adjustment to existing buildings, structures, processes, machinery and equipment. The Property Installation Floater insurance policy coverage, and/or an endorsement for such coverage, and the related Certificate of Insurance, shall: (a) provide property damage coverage for any building, structure, machinery or equipment damaged, impaired, broken, or destroyed during the performance of the Work, including during transit, installation, and testing at the City's site; and (b) comply with the above provision in this Paragraph 19.08 which require that the: (i) Contractor is a named insured party for the insurance coverage described; and (ii) City is an additional and named insured party for the insurance coverage described.

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

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

(b) Workers' Compensation/Employer's Liability insurance shall include the following terms:

1. Employer's Liability minimum limits of $1,000,000.00 for each accident/each disease/each employee are required.

2. "Texas Waiver of Our Right to Recover From Others Endorsement, WC 42 03 04" shall be included in this policy.

3. Texas must appear in Item 3A of the Workers' Compensation coverage or Item 3C must contain the following: All States except those listed in Item 3A and the States of NV, ND, OH, WA, WV, and WY.

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

"A. Definitions:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) obtain from each other person with whom it contracts, and provide

to the Contractor:

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

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

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

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

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

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

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

19.10 Professional Liability.

Professional liability with limits no less than $2,000,000 per occurrence or claim, and $2,000,000 policy aggregate.

19.11 Contractors' Pollution Legal Liability.

Contractors' Pollution Legal Liability, Asbestos Legal Liability, and Errors and Omissions liability coverage with limits no less than $1,000,000 per occurrence or claim, and $2,000,000 policy aggregate.

19.12 Property Insurance.

(a) Partial occupancy or use in accordance with Paragraph 16.06 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The City and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance.

(b) The City, at the City's option, may purchase and maintain such insurance as will insure the City against loss of use of the City's property due to fire or other hazards, however caused.

(c) If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the City shall, at City's option, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

(d) If during the Project construction period the City insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the City shall waive all rights for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

(e) A loss insured under City's property insurance shall be adjusted by the City and made payable to the City for the insureds, as their interests may appear, subject to requirements of Paragraph 19.03. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

(f) If after such loss no other special agreement is made and unless the City terminates the Agreement for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Paragraph 13.

(g) The Owner shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the City's exercise of this power; if such objection is made, the dispute shall be resolved as provided in Paragraph 10.

(h) If the Contractor maintains broader coverage and/or higher limits than the minimums shown above, the City requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

19.12 Performance Bond and Payment Bond.

(a) Pursuant to applicable provisions of Chapters, 2253, 2254, and 2269 of the Texas Government Code, for all public works contracts with governmental entities: a payment bond is required if the Agreement Amount exceeds $50,000, a performance bond is required if the Agreement Amount exceeds $100,000, and below those amounts, the City may require payment and/or performance bonds for the Project in the exercise of its lawful discretion and best business judgment. The City and Contractor agree that, both a performance and payment bond are required to be properly obtained by the Contractor and timely delivered to the City as described by this Agreement, and such bonds shall be executed in accordance with all requirements of Article 7.19-1 of the Texas Insurance Code, as amended, the authority described in this Agreement, and all other applicable law, and furthermore, the following is required regarding said bonds:

1. The Contractor shall execute the required performance and payment bonds: (a) for the full Agreement Amount in the form and scope described in the bond forms attached hereto as **Exhibit B**; or (b) pursuant to Section 2269.258(a) of the Texas Government Code, if a fixed Agreed Amount or Guaranteed Maximum Price has not been determined at the time the Agreement is awarded, the penal sums of said performance and payment bonds delivered to the City must each be in an amount equal to the construction budget for the Project, as specified in the City's request for proposals or qualifications.

2. The bond surety on said bonds shall be authorized under the laws of the State of Texas to provide a performance and payment bond, and each bond shall have attached proof of authorization of the surety to act regarding all obligations described in each respective bond.

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

4. The required performance and payment bonds shall remain in effect for a minimum period of two (2) years after Final Completion of the Work and shall be extended for any warranty work to cover the warranty period.

5. If at any time during the performance of this Agreement in the required period thereafter, either or both of said bonds become invalid or ineffective for any reason, the Contractor shall promptly supply within ten (10) days of such invalidity

or ineffectiveness a full and complete replacement bond or bonds as the case may be, that shall assure performance or payment as required by this Agreement.

6. Regarding the delivery of said bonds by the Contractor to the City, and pursuant to Section 2269.258(b) of the Texas Government Code: (a) the Contractor shall deliver said bonds not later than the 10th day after the date the Contractor executes the Agreement; or (b) alternatively and subject to the lawful discretion and best business judgment of the City, the Contractor may be allowed by the City to furnish and deliver to the City a bid bond or other financial security which is acceptable to the City to ensure that the Contractor will furnish the required performance and payment bonds when a guaranteed maximum price is established under this Agreement.

(b) The Contractor may make such changes and alterations as the City may require in the Work or any part thereof without affecting the validity of this Agreement and any accompanying bond. If such changes or alterations diminish the quantity or quality of the Work to be done, they shall not constitute the basis for any claim for damages or anticipated profits. If the City makes changes or alterations that render useless any Work already done or material already used in said Work, then the City shall compensate the Contractor for any material or labor so used, and for any actual loss occasioned by such change due to actual expenses incurred in preparation for the work as originally planned, provided that said compensation does not constitute additional compensation to that which has been already paid by the City to the Contractor for any Work associated with said changes or alterations.

20. UNCOVERING AND CORRECTION OF WORK

20.01 Uncovering of Work.

(a) If a portion of the Work is covered contrary to the City's or Architect's request or to requirements specifically expressed in the Agreement Documents, it must, if required in writing by the City or Architect, be uncovered for the City's and Architect's examination and be replaced at the Contractor's expense without change in the Agreement Time.

(b) If a portion of the Work has been covered which the City or Architect has not specifically requested to examine prior to its being covered, the City or Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Agreement Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the City's expense. If such Work is not in accordance with the Agreement Documents, correction shall be at the Contractor's expense.

20.02 Correction of Work.

(a) Before or After Substantial Completion. The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Agreement Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including

additional testing and inspections and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

(b) After Substantial Completion. In addition to the Contractor's obligations under Paragraph 5.07, if, within two (2) years after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Paragraph 16.06(a), or by terms of an applicable special warranty required by the Agreement Documents, any of the Work is found to be not in accordance with the requirements of the Agreement Documents, the Contractor shall correct it promptly after receipt of written notice from the City to do so unless the City has previously given the Contractor a written acceptance of such specific condition. The City shall endeavor to give such notice promptly after discovery of the condition. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the City or Architect, the City may correct it in accordance with Paragraph 4.05. The "prompt" correction of defective work by the Contractor after receipt of notification from the City as described above shall be defined as follows:

1. The Contractor shall make written response to the City within twenty-four (24) hours of receipt of the City's notice acknowledging receipt of the notice and providing the proposed schedule to conduct corrective work. Corrective work shall not interfere with the City's normal operation and use of the Project, unless expressly approved by the City;

2. For corrective work which is not a life safety issue, or which will not, by the nature of the defect, cause subsequent damage to the Project, corrective work shall be completed within fourteen (14) calendar days;

3. For corrective work which by its nature may cause subsequent damage to the Project, corrective work required to prevent subsequent damage shall be completed within twenty-four (24) hours, and if such work is a temporary repair, permanent repair of the corrective work shall be completed within seven (7) calendar days. The Contractor shall also correct all subsequent damage caused by such corrective work;

4. For corrective work which affects services to, and ordinary use of the Project, corrective work shall be completed within twenty-four (24) hours, and if such work is a temporary repair, permanent repair of the corrective work shall be completed within seven (7) calendar days; and

5. The time frames stated above for completion of permanent corrective work shall be equitably adjusted as required for legitimate delays caused by weather delays, material acquisition and other factors beyond the Contractor's direct control.

6. The two-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work.

7. These obligations under Subparagraph 20.02(b) shall survive acceptance of the Work under the Agreement and termination of the Contract. The period for any Work corrected pursuant to Paragraph 20.02 shall be extended for a period of two years after the date said corrective work is completed.

(c) The Contractor shall remove from the site portions of the Work which are not in accordance with the requirements of the Agreement Documents and are neither corrected by the Contractor nor accepted by the City.

(d) The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the City or separate contractors caused by the Contractor's correction or removal of Work which is not in accordance with the requirements of the Agreement Documents.

1. Where non-conforming Work is found, the entire area of Work involved shall be corrected unless the Contractor can completely define the limits to the Architect's satisfaction. Additional testing, sampling, or inspecting needed to define nonconforming Work shall be at the Contractor's expense, and performed by the City's testing laboratory if such services are reasonably required by the Architect. All corrected Work shall be retested at the Contractor's expense. Extra architectural or other services required to analyze non-conforming Work shall be paid for by the Contractor.

(e) Nothing contained in Paragraph 20.02 shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Agreement Documents. Nothing contained in Paragraph 20.02 is intended to limit or modify any obligations under the law or under the Agreement Documents, including any warranty obligations, expressed or implied.

20.03 Acceptance of Nonconforming Work. If the City prefers to accept Work which is not in accordance with the requirements of the Agreement Documents, the City may do so instead of requiring its removal and correction, in which case the Agreement Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

21. TEST AND INSPECTIONS

21.01 Tests and Inspections.

(a) Tests, inspections, and approvals of portions of the Work required by the Agreement Documents (or by laws, ordinances, rules, regulations, or orders of public authorities having jurisdictional, regulatory, or supervisory authority regarding the land or activities of the Project) shall be made at appropriate times. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory employed by the City for this purpose, or with the appropriate public authority. City shall bear the normal costs of these services, but not any excess costs attributable to Contractor-caused scheduling problems, or other Contractor

error. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so the Architect may observe such procedures.

(b) If the Architect, City or said public authorities determine that portions of the Work require additional testing, inspection or approval not included under Paragraph 21.1, the Architect will, upon written authorization from the City, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the City, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in this Paragraph 21.01, shall be at the City's expense.

(c) If such procedures for testing, inspection, or approval under this Paragraph 21 reveal failure of the portions of the Work to comply with requirements established by the Agreement Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.

(d) Required certificates of testing, inspection or approval shall, unless otherwise required by the Agreement Documents, be secured by the Contractor, and promptly delivered to the Architect.

(e) If the Architect is to observe tests, inspections or approvals required by the Agreement Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

(f) Tests or inspections conducted pursuant to the Agreement Documents shall be made promptly to avoid unreasonable delay in the Work.

22. TERMINATION OR SUSPENSION OF THE CONTRACT

22.01 Termination by the Contractor.

(a) The Contractor may terminate the Agreement if the Work is stopped for a period of one hundred-twenty (120) consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect Agreement with the Contractor, for any of the following reasons:

1. issuance of an order or decision of a court or other public authority (including without limitation any State, federal, or local governmental authority or agency with regulatory or supervisory jurisdictional authority regarding the land or activities of the Project, including the City) having jurisdiction which requires all Work to be stopped;

2. an act of government, such as a declaration of national emergency which requires all Work to be stopped; or

3. because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Paragraph 15.04(a), or because the City has not made payment on a Certificate for Payment within the time stated in the Agreement Documents, provided notice is given as required under Subparagraph 15.04(a).

(b) The Contractor may terminate the Agreement if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect Agreement with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the City as described in Paragraph 22.03 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

(c) If the Work is stopped for one hundred-twenty (120) consecutive days for any reason described in Paragraph 22.01(a) or 22.01(b), the Contractor may, upon sixty (60) days' written notice to the City and Architect, terminate the Agreement and recover from the City payment for Work already satisfactorily performed by Contractor.

(d) Notwithstanding anything to the contrary contained herein or in the other Agreement Documents, the City shall not be responsible for damages for loss of anticipated profits on Work not performed on account of any termination described in Subparagraphs 22.01(a), 22.01(b) and 22.01(c).

22.02 Termination by the City with or without Cause.

(a) The City may terminate the Agreement if the Contractor:

1. refuses or fails to timely supply enough properly skilled workers, or proper materials or equipment, to perform the Work of the Project;

2. fails to make a payment to Subcontractors for materials, equipment, or labor in accordance with the respective agreements between the Contractor and the Subcontractors for the Work of the Project;

3. disregards or fails to comply with any law, ordinance, rule, regulation, decision, or order regarding the Project that is issued by a court or other public authority (including without limitation a State, federal, or local governmental authority or agency, including the City) with regulatory, supervisory, or jurisdictional authority regarding the land or activities of the Project;

4. commits conduct, an act, or omission which constitutes a breach or default of the Agreement or the Agreement Documents;

5. fails to furnish the City, upon request, with assurances satisfactory to the City evidencing the Contractor's ability to complete the Work in compliance with all the requirements of the Agreement or Agreement Documents;

6. fails to proceed continuously and diligently with the construction and completion of the Work, except as permitted under the Agreement or Agreement Documents; or

7. fails to provide all policies of insurance, permits, and/or bonds required to be obtained by the Contractor for the Project pursuant to the Agreement or Agreement Documents.

(b) When any of the above Paragraph 22.02(a) reasons exist, the City may, without prejudice to any other rights or remedies of the City and after giving the Contractor and the Contractor's surety, if any and applicable, seven (7) days' written notice, terminate the engagement and appointment of the Contractor under this Agreement, and may, subject to any prior rights of an applicable surety:

1. take possession of the Project site and of all materials, equipment, tools, and construction equipment and machinery thereon owned or possessed by the Contractor;

2. accept assignment of subcontracts pursuant to Paragraph 11.04;

3. make demand upon Contractor's applicable surety, if any, to complete the Work;

4. finish the Work by whatever reasonable method the City may deem, in its sole discretion and best business judgment, to be expedient or advisable; and/or

5. initiate and complete litigation against the Contractor, and against all other necessary or desired parties (including Contractor's sureties and insurance carriers), for the recovery of all remedies, claims and causes of action (whether legal, equitable, or mixed), and all damages, as allowed by law and this Agreement, including without limitation: Agreement termination; the recovery of all actual and consequential damages; the recovery of certain liquidated damages under this Agreement; and the recovery of the City's incurred attorney's fees, expenses, court costs, interest, and all just and lawful offsets and credits

(c) When the City terminates the Agreement for a reason stated in Paragraph 22.02(a), the Contractor shall not be entitled to receive further payment until the Work is finished.

(d) If the unpaid balance of the Agreement Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the City and not expressly waived, including attorney's fees, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the City. This obligation for payment shall survive termination of the Contract.

(e) If a Performance Bond has been furnished and the Contractor is declared by the City to be in default under the Agreement, the Surety shall promptly, and in no event more

than 30 days, remedy the default by commencing and continuing to perform the remaining work of the Agreement in accordance with its terms and conditions, or by obtaining a bid or bids for the Work in accordance with the Agreement's terms and conditions. At City's election, upon determination by the City and the Surety of the lowest responsible bidder, the Surety will complete the Work or will arrange for an Agreement between such bidder and the City, and make available sufficient funds to pay the cost of completion less the balance of the Agreement Sum, but not exceeding the Penal Sum of the bond. The phrase "balance of the Agreement Sum" as used herein shall mean the total amount payable by the City to the Contractor under the Agreement, including any adjustments thereto made in accordance with the terms and conditions of this Agreement, and amendments thereto less the amount previously paid by the City to the Contractor.

(f) Also, notwithstanding anything to the contrary herein stated, the City may terminate this Agreement pursuant to one or more of the circumstances and procedures stated in Paragraph 30 for City termination of this Agreement.

22.03 Suspension by the City for Convenience.

(a) The City may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the City may determine.

(b) If City suspends the Contractor's performance for convenience, an adjustment shall be made to the Agreement Sum as calculated under Paragraph 13 and shall include profit. No adjustment shall be made to the extent:

1. that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or

2. that an equitable adjustment is made or denied under another provision of the Agreement.

22.04 Termination by the City for Convenience.

(a) The City may, at any time, terminate the Agreement, in whole or in part, for the City's convenience and without cause.

(b) Upon receipt of written notice from the City of such termination for the City's convenience, the Contractor shall:

1. cease operations as directed by the City in the notice;

2. take actions necessary, or that the City may direct, for the protection and preservation of the Work; and

3. except for Work not so terminated and/or directed to be performed prior to the effective date of termination stated in the notice, terminate all existing

subcontracts, and purchase orders and enter into no further subcontracts and purchase orders.

(c) In the event of a termination under Paragraph 22.04, the Contractor shall be paid the value of its Work to the date of termination plus such sums as are reasonably required to cover the cost to Contractor, its Subcontractors, and suppliers, to shut down the Project. City shall not be responsible for damages for loss of anticipated profits on Work not performed on account of any termination.

(d) Upon determination by a court of competent jurisdiction that termination of the Contract, pursuant to Paragraph 22.02 was wrongful, such termination will be deemed converted to a termination for convenience pursuant to Paragraph 22.04, and Contractor's remedy for wrongful termination shall be limited to the recovery of the payments permitted for termination for convenience as set forth in Paragraph 22.04.

23. GENERAL CONSTRUCTION MANAGER'S RESPONSIBILITIES.

23.01 General. The Contractor (or Construction Manager) shall perform all services described in this Agreement to be performed by the Contractor. The services to be provided under Paragraphs 23.02 and 23.03 constitute the Preconstruction Phase services. If the City and Contractor agree, the Construction Phase may commence before the Preconstruction Phase is completed, in which case both phases will proceed concurrently.

23.02 Preconstruction Phase.

(a) Preliminary Evaluation. The Contractor shall provide a preliminary evaluation of the City's program and Project budget requirements, each in terms of the other.

(b) Consultation. The Contractor with the Architect shall jointly schedule and attend regular meetings with the City. The Contractor shall consult with the City and Architect regarding site use and improvements and the selection of materials, building systems and equipment. The Contractor shall provide recommendations on construction feasibility; actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation and construction completion; and factors related to construction cost, including estimates of alternative designs or materials, preliminary budgets and possible economies.

(c) Preliminary Project Schedule. When Project requirements described in Paragraph 24.01(a) have been sufficiently identified, the Contractor shall prepare, and periodically update, a preliminary Project schedule for the Architect's review and the City's approval. The Contractor shall coordinate and integrate the preliminary Project schedule with the services and activities of the City, Architect and Contractor. As design proceeds, the preliminary Project schedule shall be updated to indicate proposed activity sequences and durations, Milestone Dates for receipt and approval of pertinent information, submittal of a Guaranteed Maximum Price proposal, preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead-time procurement, City's occupancy requirements showing portions of the Project having occupancy priority, and

proposed date of Substantial Completion. If preliminary Project schedule updates indicate that previously approved schedules may not be met, the Contractor shall make appropriate recommendations to the City and Architect.

(d) Phased Construction. The Contractor shall make recommendations to the City and Architect regarding the phased issuance of Drawings and Specifications to facilitate phased construction of the Work, if such phased construction is appropriate for the Project, taking into consideration such factors as economies, time of performance, availability of labor and materials, and provisions for temporary facilities.

(e) Preliminary Cost Estimates. When the City has sufficiently identified the Project requirements and the Architect has prepared other basic design criteria, the Contractor shall prepare, for the review of the Architect and approval of the City, a preliminary cost estimate utilizing area, volume, or similar conceptual estimating techniques.

1. When Schematic Design Documents have been prepared by the Architect and approved by the City, the Contractor shall prepare, for the review of the Architect and approval of the City, a more detailed estimate with supporting data. During the preparation of the Design Development Documents, the Contractor shall update and refine this estimate at appropriate intervals agreed to by the City, Architect and Contractor.

2. When Design Development Documents have been prepared by the Architect and approved by the City, the Contractor shall prepare a detailed estimate with supporting data for review by the Architect and approval by the City. During the preparation of the Construction Documents, the Contractor shall update and refine this estimate when the Construction Documents are fifty percent (50%) complete, ninety percent (90%) complete (unless the Guaranteed Maximum Price has been established), and at any other appropriate intervals agreed to by the City, Architect and Contractor.

3. If any estimate submitted to the City exceeds previously approved estimates or the City's budget, the Contractor shall make appropriate recommendations to the City and Architect.

(f) Subcontractors and Suppliers. The Contractor shall seek to develop subcontractor interest in the Project and shall furnish to the City and Architect for their information a list of possible subcontractors, including suppliers who are to furnish materials or equipment fabricated to a special design, from whom proposals will be requested for each principal portion of the Work. The Architect will promptly reply in writing to the Contractor if the Architect or City know of any objection to such subcontractor or supplier. The receipt of such list shall not require the City or Architect to investigate the qualifications of proposed subcontractors or suppliers, nor shall it waive the right of the City or Architect later to object to or reject any proposed subcontractor or supplier.

(g) Long-Lead-Time Items. The Contractor shall recommend to the City and Architect a schedule for procurement of long-lead-time items which will constitute part of the Work

as required to meet the Project schedule. If such long-lead-time items are procured by the City, they shall be procured on terms and conditions acceptable to the Contractor. Upon the City's acceptance of the Contractor's Guaranteed Maximum Price proposal, all contracts for such items shall be assigned by the City to the Contractor, who shall accept responsibility for such items as if procured by the Contractor. The Contractor shall expedite the delivery of long-lead-time items.

(h) Extent of Responsibility. The Contractor does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The recommendations and advice of the Contractor concerning design alternatives shall be subject to the review and approval of the City and the City's professional consultants. It is not the Contractor's responsibility to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. However, if the Contractor recognizes that portions of the Drawings and Specifications are at variance therewith, the Contractor shall promptly notify the Architect and City in writing.

(i) Equal Employment Opportunity and Affirmative Action. The Contractor shall comply with applicable laws, regulations, and special requirements of the Agreement Documents regarding equal employment opportunity and affirmative action programs.

23.03 Guaranteed Maximum Price Proposal and Agreement Time.

(a) When the Drawings and Specifications are sufficiently complete, the Contractor shall propose a Guaranteed Maximum Price (depending on Project requirements, at the City's request, multiple Guaranteed Maximum Price packages may be provided to phase or group the work, however, all packages shall be totaled together to arrive at the final Guaranteed Maximum Price), which shall be the sum of the estimated Cost of the Work and the Contractor's Fee. Provided, however, Contractor understands such estimates are relied upon by the City in making various Project determinations, and, therefore, should Contractor's Guaranteed Maximum Price proposal exceed the City's applicable budget by more than 10%, all pre-construction services rendered thereafter to render the Project within 10% of the budget by Contractor shall be at the sole cost of the Contractor.

(b) As the Drawings and Specifications may not be finished at the time the Guaranteed Maximum Price proposal is prepared, the Contractor shall provide in the Guaranteed Maximum Price for further development of the Drawings and Specifications by the Architect that is consistent with the Agreement Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds, and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

(c) The estimated Cost of the Work shall include the Contractor's contingency, being a sum established by the Contractor for its exclusive use to cover costs arising under Paragraph 23.03(b) and other costs which are properly reimbursable as Cost of the Work but not the basis for a Change Order.

(d) Basis of Guaranteed Maximum Price. The Contractor shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include:

1. A list of the Drawings and Specifications, including all addenda thereto and the Conditions of the Contract, which were used in preparation of the Guaranteed Maximum Price proposal.

2. A list of allowances and a statement of their basis.

3. A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal to supplement the information contained in the Drawings and Specifications.

4. The proposed Guaranteed Maximum Price, including a statement of the estimated cost organized by trade categories, allowances, contingency, and other items and the Fee that comprise the Guaranteed Maximum Price.

5. The Date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based, and a schedule of the Construction Documents issuance dates upon which the date of Substantial Completion is based.

6. A list of any exclusions.

(e) The Contractor shall meet with the City and Architect to review the Guaranteed Maximum Price proposal and the written statement of its basis. In the event that the City or Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Contractor, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

(f) Unless the City accepts the Guaranteed Maximum Price proposal in writing on or before the date specified in the proposal for such acceptance and so notifies the Contractor, the Guaranteed Maximum Price proposal shall not be effective without written acceptance by the Contractor and the City.

(g) Prior to the City's acceptance of the Contractor's Guaranteed Maximum Price proposal and issuance of a Notice to Proceed, the Contractor shall not incur any cost to be reimbursed as part of the Cost of the Work, except as the City may specifically authorize in writing.

(h) Upon acceptance by the City of the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price and its basis shall be set forth in Amendment No. 1. The Guaranteed Maximum Price shall be subject to additions and deductions by a change in the Work as provided in the Agreement Documents, and the Date of Substantial Completion shall be subject to adjustment as provided in the Agreement Documents.

(i) The City shall authorize and cause the Architect to revise the Drawings and Specifications to the extent necessary to reflect the agreed-upon assumptions and

clarifications contained in Amendment No. 1. Such revised Drawings and Specifications shall be furnished to the Contractor in accordance with schedules agreed to by the City, Architect and Contractor. The Contractor shall promptly notify the Architect and City if such revised Drawings and Specifications are inconsistent with the agreed-upon assumptions and clarifications.

23.04 Construction Phase.

(a) General. The Construction Phase shall commence on:

1. the City's acceptance of the Guaranteed Maximum Price proposal and issuance of a Notice to Proceed, and

2. the City's first authorization to the Contractor to:

(i) award a subcontract, or

(ii) undertake construction Work with the Contractor's own forces, or

(iii) issue a purchase order for materials or equipment required for the Work.

(b) Administration.

1. Notwithstanding anything to the contrary stated in this Agreement, and regarding any Contractor self-performed work authorized for the Project pursuant to this Agreement, it is expressly agreed by the parties that any Contractor self-performed work for the Project must be awarded, if at all, pursuant to the following procedure: (i) first, a written proposal must be submitted by the Contractor to the City for said work, before any competitive bid procedure is thereafter conducted for that proposed and subject work of the Project; (ii) next, a lawful competitive bid procedure shall be conducted to third-parties (not the Contractor) for that proposed and subject work of the Project; (iii) next, an analysis shall be conducted by the City and the Contractor regarding the Contractor's written proposal for the proposed self-performed work and the competitive bids received from third-parties for the proposed and subject Project work, in order for the City, using its discretion and best business judgment, to determine the lowest cost and best construction solution for said work; and (iv) finally and upon the aforesaid analysis conducted by the City, an award by the City in writing is made to the Contractor for the proposed Contractor self-performed work because that solution was determined by the City to represent the lowest cost and best construction solution for said proposed work for the Project.

2. Those portions of the Work that the Contractor does not customarily perform with its own personnel shall be performed under subcontracts or by other

appropriate agreements with the Contractor. The Contractor shall obtain public bids in accordance with the applicable requirements of Chapter 2269 of the Texas Government Code from Subcontractors and from suppliers of materials or equipment fabricated to a special design for the Work from the list previously reviewed and, after analyzing such bids, shall deliver such bids to the City and Architect. The City will then determine, with the non-binding advice and comment of the Contractor and Architect, which bids will be accepted. The City may designate specific persons or entities from whom the Contractor shall obtain bids; however, if the Guaranteed Maximum Price has been established, the City may not prohibit the Contractor from obtaining bids from other qualified bidders.

3. If the Guaranteed Maximum Price has been established and a specific bidder among those whose bids are delivered by the Contractor to the City and Architect (1) is recommended to the City by the Contractor; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid which conforms to the requirements of the Agreement Documents without reservations or exceptions, but the City requires that another bid be accepted, then the Contractor may require that a change in the Work be issued to adjust the Agreement Time and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the City by the Contractor and the amount of the subcontract or other agreement actually signed with the person or entity designated by the City.

4. Subcontracts and agreements with suppliers furnishing materials or equipment fabricated to a special design shall conform to the payment provisions of Paragraphs 28.01(h) and 28.01(i) and shall not be awarded on the basis of cost plus a fee without the prior consent of the City.

5. The Contractor shall schedule and conduct meetings with appropriate Subcontractors at which the City, Architect, Contractor and appropriate Subcontractors can discuss the status of the Work. The Contractor shall prepare and promptly distribute meeting minutes.

6. Promptly after the City's acceptance of the Guaranteed Maximum Price proposal, the Contractor shall prepare a schedule in accordance with Paragraph 5.11, General Conditions, including the City's occupancy requirements.

7. The Contractor shall provide monthly written reports to the City and Architect on the progress of the entire Work. The Contractor shall maintain a daily log containing a record of weather, Subcontractors working on the site, number of workers, Work accomplished, problems encountered and other similar relevant data as the City may reasonably require. The log shall be available to the City and Architect. The Contractor shall promptly inform City in writing of any circumstance or development that is likely to delay Substantial Completion of the Project in accordance with the schedule.

8. The Contractor shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates

for uncompleted tasks and proposed changes. The Contractor shall identify variances between actual and estimated costs and report the variances to the City and Architect at regular intervals.

(c) Professional Services**.** Paragraph 5.013(j), General Conditions shall apply to both the Preconstruction and Construction Phase.

(d) Hazardous Materials. Paragraph 18.03, General Conditions shall apply to both the Preconstruction and Construction Phases.

END OF GENERAL CONDITIONS

ARTICLE II.
ADDITIONAL CONDITIONS

24. OWNER'S RESPONSIBILITIES

24.01 Information And Services

(a) The City shall provide information in a timely manner regarding the requirements of the Project, including a program which sets forth the City's objectives, constraints, and criteria, including space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements.

(b) The City shall establish and update an overall budget for the Project, based on consultation with the Contractor and Architect, which shall include contingencies for changes in the Work and other costs which are the responsibility of the City.

(c) Structural And Environmental Tests, Surveys and Reports. In the Preconstruction Phase, the City shall furnish the following with reasonable promptness and at the City's expense. Except to the extent that the Contractor knows of any inaccuracy, or should have reasonably discovered such error or inaccuracy, the Contractor shall be entitled to rely upon the accuracy of any such information, reports, surveys, drawings, and tests described in Paragraphs 24.01(d) through 24.01(g) but shall exercise customary precautions relating to the performance of the Work.

(d) Reports, surveys, drawings, and tests concerning the conditions of the site which are required by law.

(e) Surveys describing physical characteristics, legal limitations, and utility locations for the site of the Project, and a written legal description of the site.

(f) The services of a geotechnical engineer when such services are requested by the Contractor and are reasonably required by the scope of the Project, as determined by the City or Architect. Such services may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate professional recommendations.

(g) Structural, mechanical, chemical, air and water pollution tests, tests for hazardous materials, and other laboratory and environmental tests, inspections and reports which are required by law.

(h) The services of other consultants when such services are reasonably required by the scope of the Project, as determined by the City or Architect, and are requested by the Contractor.

24.02 Owner's Designated Representative. The City shall designate in writing City's Representative who shall have express authority, subject to the limitations set forth in the General Conditions, to bind the City with respect to all matters requiring the City's approval or authorization. This City's Representative shall have the authority to make decisions on behalf of the City concerning estimates and schedules, construction budgets, and changes in the Work, and shall render such decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Contractor. Except as otherwise provided in Paragraph 9.02(a), General Conditions, the Architect does not have such authority.

24.03 Architect. The City shall retain an Architect to provide basic services, including normal structural, mechanical, and electrical engineering services, and any other disciplines as required. The City must authorize, in writing, and cause the Architect to provide additional service, requested by the Contractor which must necessarily be provided by the Architect for the Preconstruction and Construction Phases of the Work. The Contractor has no authority to request services from the Architect on the City's behalf. Such services shall be provided in accordance with time schedules agreed to by the City, Architect and Contractor. Upon request of the Contractor, the City shall furnish to the Contractor a copy of the City's Agreement with the Architect.

25. COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES.

The City shall compensate and make payments to the Contractor for Preconstruction Phase services as follows:

25.01 Compensation.

(a) For the services described in Paragraphs 23.02 and 23.03, the Contractor's compensation shall be calculated as follows:

(State basis of compensation, whether a stipulated sum, multiple of Direct Personnel Expense, actual cost, etc. Include a statement of reimbursable cost items as applicable.)

Stipulated lump sum of $45,000.00.

(b) If compensation is based on a multiple of Direct Personnel Expense, Direct Personnel Expense is defined as the direct salaries of the Contractor's personnel engaged in the Project and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, pensions and similar contributions and benefits.

25.02 Payments.

(a) The City shall endeavor to make payments monthly (as described below) following presentation of the Contractor's invoice and supporting documents and, where applicable,

shall be in proportion to services performed and the amounts of Work substantiated by Contractor's supporting documentation.

(b) The City will endeavor to make payments no later than thirty (30) calendar days from the date the Contractor's invoice is approved by the City, unless otherwise agreed in writing by the parties.

(c) The City stipulates that it is an exempt organization as defined by the Limited Sales, Excise and Use Tax Act and, as such, is exempt from the payment of the sales tax on materials and supplies used in the performance of this Agreement. The Contractor shall issue exemption certificates to its Subcontractors and suppliers in lieu of said sales tax for all such materials and supplies, complying with all applicable State Comptroller's Rulings.

26. COMPENSATION FOR CONSTRUCTION PHASE SERVICES.

The City shall compensate the Contractor for Construction Phase services as follows:

26.01 Compensation. For the Contractor's performance of the Work as described in Paragraph 23.04, the City shall pay the Contractor in current funds the Agreement Sum consisting of the Cost of the Work as defined in Paragraph 28 and the Contractor's Fee determined as follows:

(State a lump sum, percentage of actual Cost of the Work or other provision for determining the Contractor's Fee and explain how said Fee is to be adjusted for changes in the Work.)

GENERAL CONDITIONS Fee is a proposed cost for General Conditions to accommodate the onsite staff as a lump sum amount. These items will include, but not be limited to, office trailers, phones, furniture, copiers, computers, software, supplies, cleaning, move in/move out, printing expenses, site personnel's radios, pagers, phones, etc., required equipment, insurance premiums, and other items specifically provided for in proposal $921,314.00

CONSTRUCTION MANAGER AT RISK FEE List Offeror's proposed fee as a percentage of construction cost, including all overhead and profit: 3.00% fee of the cost of the work.

26.02 Guaranteed Maximum Price. The sum of the Cost of the Work and the Construction Manager's Fee for the Work are guaranteed by the Contractor not to exceed the amount provided in Amendment No. 1, subject to additions and deductions by changes in the Work as provided in the Agreement Documents. Such maximum sum as adjusted by approved changes in the Work is referred to in the Agreement Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement paid by the City. In the event the Cost of Work plus the Contractor's Fee is less than the Guaranteed Maximum Price ("GMP"), the savings shall accrue one hundred percent (100%) to the City.

(Insert specific provisions if the Construction Manager is to participate in any savings.)

The Parties agree that any cost savings shall accrue one hundred percent (100%) to the City

26.03 Changes in the Work.

(a) Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of Amendment No. 1 may be determined by any of the methods named in Paragraph 13.01(b), General Conditions, subject to the limitations provided in the General Conditions.

(b) In calculating adjustments to subcontracts (except those awarded with the City's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Paragraph 13.01(b)(3), General Conditions and the term "costs" as used in Paragraph 13.03(f), General Conditions shall have the meanings assigned to them in the General Conditions and shall not be modified by this Paragraph 26. Adjustments to subcontracts awarded with the City's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

(c) In calculating adjustments to the Contract, the terms "cost" and "costs" as used in the above-referenced provisions of the General Conditions shall mean the Cost of the Work as defined in Paragraph 27 of this Agreement, and the term "and a reasonable allowance for overhead and profit" shall mean the Contractor's Fee as defined in Paragraph 26.01 of this Agreement.

(d) If no specific provision is made in Paragraph 26.01 for adjustment of the Contractor's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Paragraph 26.01 will cause substantial inequity to the City or Contractor, the Contractor's Fee shall be equitably adjusted on the basis of the Fee established for the original Work.

27. COST OF THE WORK FOR CONSTRUCTION PHASE.

27.01 Costs to be Reimbursed. The term "Cost of the Work" shall mean costs necessarily incurred by the Contractor in the proper performance of the Work. Such costs shall be at rates not higher than those customarily paid at the place of the Project except with prior consent of the City. The Cost of the Work shall include only the items set forth in this Paragraph 27.

27.02 Labor Costs.

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

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

(c) Wages of construction workers directly employed by the Contractor to perform the construction of the Work at the site or, with the City's agreement, at off-site workshops.

(d) Wages or salaries of the Contractor's supervisory and administrative personnel when stationed at the site with the City's agreement.

Classification	**Name**
N/A	N/A

(If it is intended that the wages or salaries of certain personnel stationed at the Contractor's principal office or offices other than the site office shall be included in the Cost of the Work, such personnel shall be identified above)

(e) Wages and salaries of the Contractor's supervisory or administrative personnel engaged, at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work. Further, the time for performance does not necessitate overtime work and the City shall not be required to reimburse the "premium time" portion of any overtime payments by Contractor, unless otherwise approved, in writing, in advance by the City.

(f) Costs paid or incurred by the Contractor for taxes, insurance, contributions, assessments, and benefits required by law or collective bargaining agreements, and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided that such costs are based on wages and salaries included in the Cost of the Work under Paragraphs 27.02(a) through 27.02(d).

27.03 Subcontract Costs. Payments made by the Contractor to Subcontractors in accordance with the requirements of the subcontracts.

27.04 Costs of Materials and Equipment Incorporated in the Completed Construction.

(a) Costs, including transportation, of materials and equipment incorporated or to be incorporated in the completed construction.

(b) Costs of materials described in the preceding Paragraph 27.4(a) in excess of those actually installed but required to provide reasonable allowance for waste and for spoilage. Unused excess materials, if any, shall be handed over to the City at the completion of the

Work or, at the City's option, shall be sold by the Contractor; amounts realized, if any, from such sales shall be credited to the City as a deduction from the Cost of the Work.

27.05 Costs of Other Materials and Equipment, Temporary Facilities and Related Items.

(a) Costs, including transportation, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the Contractor at the site and fully consumed in the performance of the Work; and cost less salvage value on such items if not fully consumed, whether sold to others or retained by the Contractor. Cost for items previously used by the Contractor shall mean fair market value.

(b) Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the Contractor at the site, whether rented from the Contractor or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be subject to the City's prior approval.

(c) Costs of removal of debris from the site.

(d) Reproduction costs, postage and express delivery charges, telephone at the site and reasonable petty cash expenses of the site office.

(e) That portion of the reasonable travel and subsistence expenses of the Contractor's personnel incurred while traveling in discharge of duties connected with the Work.

27.06 Miscellaneous Costs.

(a) That portion directly attributable to this Agreement of premiums for insurance and bonds.

(If charges for self-insurance are to be included, specify the basis of reimbursement.)

(b) Fees and assessments for the building permit and for other permits, licenses, and inspections for which the Contractor is required by the Agreement Documents to pay.

(c) Fees of testing laboratories for tests required by the Agreement Documents, except those related to nonconforming Work other than that for which payment is permitted by Paragraph 27.08.

(d) Royalties and license fees paid for the use of a particular design, process or product required by the Agreement Documents; the cost of defending suits or claims for infringement of patent or other intellectual property rights arising from such requirement by the Agreement Documents; payments made in accordance with legal judgments against the Contractor resulting from such suits or claims and payments of settlements made with the City's consent; provided, however, that such costs of legal defenses, judgment and settlements shall not be included in the calculation of the Contractor's Fee or the

Guaranteed Maximum Price and provided that such royalties, fees and costs are not excluded by the last sentence of Paragraph 6.01, General Conditions or other provisions of the Agreement Documents.

(e) Data processing costs related to the Work.

(f) Deposits lost for causes other than the Contractor's negligence or failure to fulfill a specific responsibility to the City set forth in this Agreement.

27.07 Other Costs. Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by the City.

27.08 Included. The costs described in Paragraphs 27.01 through 27.07 shall be included in the Cost of the Work notwithstanding any provision of General Conditions of the Agreement which may require the Contractor to pay such costs, unless such costs are excluded by the provisions of Paragraph 27.09.

27.09 Costs not to be Reimbursed.

(a) The Cost of the Work shall not include:

1. Salaries and other compensation of the Contractor's personnel stationed at its principal office or offices other than the site office, except as specifically provided in Paragraphs 27.02(a) and 27.02(b).

2. Expenses of the Contractor's principal office and offices other than the site office, except as specifically provided in Paragraph 27.01.

3. Overhead and general expenses, except as may be expressly included in Paragraph 27.01.

4. The Contractor's capital expenses, including interest on the Construction Manager's capital employed for the Work.

5. Rental costs of machinery and equipment, except as specifically provided in Paragraph 27.05(b).

6. Costs due to the negligence of the Contractor or to its failure to fulfill a specific responsibility to the City set forth in this Agreement.

7. Costs incurred in the performance of Preconstruction Phase Services.

8. Except as provided in Paragraph 27.07, any cost not specifically and expressly described in Paragraph 27.01.

9. Costs which would cause the Guaranteed Maximum Price to be exceeded.

27.10 Discounts, Rebates and Refunds.

(a) Cash discounts obtained on payments made by the Contractor shall accrue to the City if (1) before making the payment, the Contractor included them in an Application for Payment and received payment therefor from the City, or (2) the City has deposited funds with the Contractor with which to make payments; otherwise, cash discounts shall accrue to the Contractor. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the City, and the Contractor shall make provisions so that they can be secured.

(b) Amounts which accrue to the City in accordance with the provisions of Paragraph 27.010(a) shall be credited to the City as a deduction from the Cost of the Work.

27.11 Accounting Records. The Contractor shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Contract. The accounting and control systems shall be satisfactory to the City. The City and the City's accountants shall be afforded access to the Contractor's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda, and other data relating to this Project. The Contractor shall preserve these for a period of four (4) years after final payment or for such longer period as may be required by law.

28. CONSTRUCTION PHASE.

28.01 Progress Payments.

(a) Based upon Applications for Payment submitted to the Architect by the Contractor, in a form acceptable to City and the Architect, and Certificates for Payment approved by the City and issued by the Architect, the City shall endeavor to make progress payments on account of the Agreement Sum to the Contractor as provided below and elsewhere in the Agreement Documents.

(b) The period covered by each Application for Payment shall be one (1) calendar month ending on the last day of the month.

(c) Provided an Application for Payment is received by the Architect not later than the 30th day of a month, the City, upon approval of the Application for Payment, shall endeavor to make payment to the Contractor not later than the 30th day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall endeavor to be made by the City not later than thirty (30) days after the Architect receives the Application for Payment and after the City approves the Application for Payment.

(d) With each Application for Payment, the Contractor shall submit detailed payrolls, detailed petty cash accounts, detailed receipted invoices or detailed invoices with check vouchers attached and any other evidence required by the City or Architect to demonstrate that cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed (1) progress payments already received by the Contractor; less (2) that portion of those payments attributable to the Contractor's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

(e) Each Application for Payment shall be based upon the most recent schedule of values submitted by the Contractor in accordance with the Agreement Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Contractor's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the City and Architect may require. This schedule, unless objected to by the City or Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

(f) Applications for Payment shall show the percentage completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed or (2) the percentage obtained by dividing (a) the expense which has actually been incurred by the Contractor on account of that portion of the Work for which it has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

(g) Subject to other provisions of the Agreement Documents, the amount of each progress payment shall be computed as follows:

1. First, take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Next, pending final determination of cost to the City of changes in the Work, amounts not in dispute may be included as provided in Paragraph 13.03(g), General Conditions, even though the Guaranteed Maximum Price has not yet been adjusted by Change Order;

2. Next, add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work or, if approved in advance by the City, suitably stored off the site at a location agreed upon in writing;

3. Next, add the Construction Manager's Fee, less retainage of: (i) ten percent (10%) where the GMP is less than $400,000; or (ii) five percent (5%) where the GMP is $400,000 or more. Next, the Contractor's Fee shall be computed upon the Cost of the Work described in the two preceding Paragraphs at the rate stated in Paragraph 25.01(a) or, if said Fee is stated as a fixed sum in that Paragraph, said Fee shall be an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work in the two preceding Paragraphs bears to a reasonable estimate of the probable Cost of the Work upon its completion;

4. Next, subtract the aggregate of previous payments made by the City;

5. Next, subtract the shortfall, if any, indicated by the Contractor in the documentation required by Paragraph 28.01(d) to substantiate prior Applications

for Payment, or resulting from errors subsequently discovered by the City's accountants in such documentation;

6. Next, subtract amounts, if any, for which the City or Architect has withheld or nullified a Certificate for Payment as provided in Paragraph 15.05, General Conditions.

(h) Except with the City's prior approval, payments to Subcontractors shall be subject to retention of not less than five percent (5%). The City and Contractor shall agree upon a mutually acceptable procedure for review and approval of payments and retention for subcontracts.

(i) Except with the City's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

(j) In taking action on the Contractor's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Paragraph 28.01(d) or other supporting data, that the Architect has made exhaustive or continuous on-site inspections or that the Architect has made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the City, will be performed by the City's accountants acting in the sole interest of the City.

28.02 Final Payment.

(a) Final payment shall be made by the City to the Contractor when (1) the Agreement has been fully performed by the Contractor except for its responsibility to correct punch list items or nonconforming Work, as provided in Paragraph 20.02(b), General Conditions, and to satisfy other requirements, if any, which necessarily survive final payment; (2) a final Application for Payment and a final accounting for the Cost of the Work have been submitted by the Contractor and reviewed by the City's accountants; and (3) a final Certificate for Payment has then been approved by the City and issued by the Architect; such final payment shall endeavor to be made by the City not more than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

(b) The amount of the final payment shall be calculated as follows:

1. First, take the sum of the Cost of the Work substantiated by the Contractor's final accounting and the Contractor's Fee, but not more than the Guaranteed Maximum Price;

2. Next, subtract amounts, if any, for which the Architect withholds or the City is entitled to withhold under this Agreement, in whole or in part, a final Certificate

for Payment as provided in Paragraph 15.05(a), General Conditions or other provisions of the Agreement Documents**;**

3. Next, subtract the aggregate of previous payments made by the Owner.

If the aggregate of previous payments made by the City exceeds the amount due the Contractor, the Contractor shall reimburse the difference to the City.

(c) The City's accountants will endeavor to review and report in writing on the Contractor's final accounting within sixty (60) days after delivery of the final accounting to the Architect by the Contractor, together with all backup documentation reasonably required by the City. Based upon such Cost of the Work as the City's accountants shall report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Paragraph 28.02(a) have been met, the Architect will endeavor within seven days after receipt of the written report of the City's accountants, either issue to the City a final Certificate for Payment with a copy to the Contractor or notify the Contractor and City in writing of the Architect's reasons for withholding a certificate as provided in Paragraph 15.05(a), General Conditions. The time periods stated in this Paragraph 28 supersede those stated in Paragraph 15.04(a), General Conditions.

(d) If the City's accountants report the Cost of the Work as substantiated by the Contractor's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to proceed in accordance with Paragraph 29 without a further decision of the Architect. Unless agreed to otherwise, a demand for mediation of the disputed amount shall be made by the Contractor within 30 days after the Contractor's receipt of a copy of the Architect's final Certificate for Payment. Failure to make such demand within this 30-day period shall result in the substantiated amount reported by the City's accountants becoming binding on the Contractor. Pending a final resolution of the disputed amount, the City shall pay the Contractor the amount certified in the Architect's final Certificate for Payment.

If, subsequent to final payment and at the City's request, the Contractor incurs costs described in Paragraph 27.01 and not excluded by Paragraph 27.09(a) to correct nonconforming Work or (2) arising from the resolution of disputes, the City shall reimburse the Contractor such costs and the Contractor's Fee, if any, related thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Contractor has participated in savings, the amount of such savings shall be recalculated, and appropriate credit given to the City in determining the net amount to be paid by the City to the Contractor.

29. DISPUTE RESOLUTION.

29.01 Dispute Resolution. During both the Preconstruction and Construction Phases, claims, disputes or other matters in question between the parties to this Agreement shall be resolved as provided in Paragraph 10, General Conditions, except that, during the Preconstruction Phase, no decision by the Architect shall be a condition precedent to mediation.

30. TERMINATION OR SUSPENSION.

30.01 Termination Before Establishing Guaranteed Maximum Price.

(a) Before execution by both parties of Amendment No. 1 establishing the Guaranteed Maximum Price, the City may terminate this Agreement at any time without cause, and the Contractor may terminate this Agreement for any of the reasons described in Paragraph 22.01(a), General Conditions.

(b) If the City or Contractor terminates this Agreement pursuant to Paragraph 9.01 prior to commencement of the Construction Phase, the Contractor shall be equitably compensated for Preconstruction Phase Services performed prior to receipt of notice of termination; provided, however, that the compensation for such services shall not exceed the compensation set forth in Paragraph 25.01(a).

(c) If the City or Contractor terminates this Agreement pursuant to Paragraph 30.01 after commencement of the Construction Phase, the Contractor shall be paid, in addition to the compensation provided in Paragraph 30.1(b), an amount calculated as follows:

1. First, take the Cost of the Work incurred by the Contractor;

2. Next, add the Contractor's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Paragraph 26.01 or, if said Fee is stated as a fixed sum in that Paragraph, an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;

3. Next, subtract the aggregate of previous payments made by the City on account of the Construction Phase.

The City shall also pay the Contractor fair compensation, either by purchase or rental at the election of the City, for any equipment owned by the Contractor which the City elects to retain and which is not otherwise included in the Cost of the Work under Paragraph 30.01(c)(1). To the extent that the City elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Contractor shall, as a condition of receiving the payments referred to in Paragraph 30, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Contractor, as the City may require for the purpose of fully vesting in the City the rights and benefits of the Contractor under such subcontracts or purchase orders.

Subcontracts, purchase orders and rental agreements entered into by the Contractor with the City's written approval prior to the execution of Amendment No. 1 shall contain provisions permitting assignment to the City as described above. If the City accepts such assignment, the City shall reimburse the Contractor with respect to all valid and properly payable costs arising under the subcontract, purchase order or rental agreement except those which would not have been

reimbursable as Cost of the Work if the agreement had not been terminated. If the City elects not to accept the assignment of any subcontract, purchase order or rental agreement which would have constituted a Cost of the Work had this agreement not been terminated, the Contractor shall terminate such subcontract, purchase order or rental agreement and the City shall pay the Contractor the costs necessarily and reasonably incurred by the Contractor by reason of such termination, but in no event to include any overhead or profit on work not performed.

30.02 Termination Subsequent to Establishing Guaranteed Maximum Price. Subsequent to execution by both parties of Amendment No. 1, the Agreement may be terminated as provided in Paragraph 22, General Conditions.

(a) In the event of such termination by the City, the amount payable to the Contractor pursuant to Paragraph 22.01(c), General Conditions shall not exceed the amount the Contractor would have been entitled to receive pursuant to Paragraphs 30.01(a) and 30.01(c) of this Agreement.

(b) In the event of such termination by the Contractor, the amount to be paid to it under Paragraph 22.01(c), General Conditions shall not exceed the amount the Contractor would have been entitled to receive under Paragraphs 30.01(b) and 30.01(c) above. In no event shall Contractor nor any supplier or subcontractor be entitled to any fee or lost profits for work not performed.

30.03 Suspension. The Work may be suspended by the City as provided in Paragraph 22, General Conditions, and in such case, the Guaranteed Maximum Price, if established, shall be increased as provided in Paragraph 22.03(b), General Conditions, except that the term "cost of performance of the Contract" in that Paragraph shall be understood to mean the Cost of the Work and the term "profit" shall be understood to mean the Contractor's Fee as described in Paragraphs 26.01 and 26.03(d) of this Agreement.

31. OTHER CONDITIONS AND SERVICES.

31.01 Licensing, Permits, Registrations, and Approvals. Contractor represents to the City that it has, and will keep in effect at all times during the term of this Agreement, any licenses, permits, registrations, and approvals which are legally required for the Contractor to practice its trade.

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

31.03 Authority to Contract. Each party represents that it has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each party has been properly authorized and empowered to enter into this Agreement. The persons executing this Agreement hereby represent that they have authorization to sign on behalf of their respective entity. However, notwithstanding anything stated to the contrary in this Agreement, the parties acknowledge and agree that this Agreement is subject to the proper application of, and to all

protections afforded to the City pursuant to, the doctrine of governmental immunity under Texas law.

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

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

31.06 Presumption Against Waiver. No waiver by either party hereto of any one or more defaults by the other party hereto in the performance of this Agreement shall be construed as a waiver of any future defaults whether of a like or different character. No waiver of a default of this Agreement occurs if the non-defaulting party fails to immediately declare a default or otherwise delays in taking any action regarding a default committed by the defaulting party of this Agreement.

31.07 Owner's Reserved Rights. The City shall have the rights by its officers, employees, or agents to examine and inspect the Contractor Work regarding the Project and the business records and financial records of the Contractor regarding the Project, at any time, to verify Contractor's compliance with the terms of this Agreement. Any approval by City or acceptance of the Contractor's Work shall not waive any obligation of the Contractor to correct defective work or to later provide additional business records or financial records regarding portions of the Project approved or accepted by the City.

31.08 Benefit. Subject to a proper application of the doctrine of governmental immunity under Texas law, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns where permitted by this Agreement. Nothing in this Paragraph shall be construed to waive the conditions elsewhere contained in this Agreement applicable to assignment by the Contractor. Nothing contained in this Agreement shall be construed to confer any benefit upon any subcontractor or any other third party.

31.09 Headings, Gender, Number. The headings are used in this Agreement for convenience and reference purposes only and are not intended to define, limit, or describe the scope or intent of any provision of this Agreement and shall have no meaning or effect upon its interpretation.

31.10 Agreement Read. The parties acknowledge that they have had the opportunity to consult with counsel of their choice, have read, understand, and intend to be bound (subject to the proper application of the doctrine of governmental immunity under Texas Law) by the terms and conditions of this Agreement.

31.11 Written Notice. Written notice shall be deemed to have been served only if the writing is hand-delivered to the addressees and addresses set out below, or if delivered by courier or delivered by United States Postal Service mail (certified USPS mail delivery required) to that address:

City:	City of College Station
	Attn: Capital Projects – Rusty Warncke
	rwarncke@cstx.gov
	PO Box 9960
	College Station, TX
Contractor:	Skanska USA Building, Inc.
	Attn: Dennis Yung, Exec. VP – General Manager
	800 Capitol Street
	Houston, TX 77002

31.12 Extent of Contract. This Agreement (and its attached or incorporated documents and exhibits) represents the entire and integrated agreement between the City and the Contractor regarding the Project and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the City and Contractor. If anything in any document or exhibit attached to or incorporated into this Agreement is inconsistent with this Agreement, this Agreement shall govern.

Ownership and Use of Documents. Paragraph 3.4, General Conditions, shall apply to both the Preconstruction and Construction Phases.

31.13 Governing Law. The parties expressly agree that: (a) this Agreement shall be governed and interpreted pursuant to the laws of the State of Texas; (b) the Performance, Work, and all matters pertaining to this Agreement and the Project shall be expressly performed in Brazos County, Texas, United States of America; and (c) venue in any lawsuit or legal proceeding regarding or relating to this Agreement or Project shall be in a court of competent jurisdiction in Brazos County, Texas, United State of America, or the appropriate United States District Court designated for Brazos County.

31.14 Assignment. Subject to a proper application of the doctrine of governmental immunity under Texas law, the City and Construction Manager respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Agreement Documents. Neither party to the Agreement shall assign the Agreement in whole or in part without the written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

31.15 Effective Date. This Agreement goes into effect when duly approved by all the parties hereto and is contingent upon Contractor obtaining and maintaining the insurance and bonds required herein throughout the duration of the Project and applicable warranty periods.

31.16 Verification or Representations Regarding Certain Statutory Matters. To the extent applicable, this Agreement is subject to the following:

(a) No Boycott of Israel. Pursuant to applicable provisions of Chapter 2271 of the Texas Government Code, the Contractor verifies that it (1) does not boycott Israel, and (2) will not boycott Israel during the term of this Agreement;

(b) No Boycott of Firearms. Pursuant to applicable provisions of Chapter 2274 of the Texas Government Code, the Contractor verifies that it (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, and (2) will not discriminate during the term of the Agreement against a firearm entity or firearm trade association;

(c) No Boycott of Energy Companies. Pursuant to applicable provisions of Chapter 2276 of the Texas Government Code, the Contractor verifies that it (1) does not boycott energy companies, and (2) will not boycott energy companies during the term of this Agreement; and

(d) Conflicts Disclosure. Before the approval of this Agreement, and in timely performance with the statutes hereafter described, the Contractor has submitted to the City: (1) a properly executed Form CIQ/Conflicts of Interest Questionnaire pursuant to Chapter 176 of the Texas Local Government Code and other authority; and (2) a properly executed Form 1295/Texas Ethics Commission Certificate of Interested Parties pursuant to Section 2252.908 of the Texas Government Code.

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

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

List of Exhibits

- **A.** Davis Bacon Wage Rates
- **B.** Performance and Payment Bonds
- **C.** Certificates of Insurance and Endorsements
- **D.** Technical Specifications & Plans

SKANSKA USA BUILDING, INC._

By: Dennis Yung

Printed Name: Dennis Yung

Title: EVP - GM

Date: 2/13/2025

CITY OF COLLEGE STATION

By:_____

City Manager

Date: _____

APPROVED:

_____

City Attorney

Date:_____

_____

Assistant City Manager/CFO

Date:_____

EXHIBIT A

DAVIS BACON WAGE RATES

"General Decision Number: TX20250007 01/03/2025

Superseded General Decision Number: TX20240007

State: Texas

Construction Types: Heavy and Highway

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

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

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

If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:	. Executive Order 14026 generally applies to the contract. . The contractor must pay all covered workers at least $17.75 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 2025.
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 $13.30 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 2025.

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	01/03/2025

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 **	

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      Roller, Asphalt.............$ 12.78 **
      Roller, Other...............$ 10.50 **
      Scraper.....................$ 12.27 **
      Spreader Box................$ 14.04 **
      Trenching Machine, Heavy....$ 18.48

  Servicer.........................$ 14.51 **

  Steel Worker
      Reinforcing.................$ 14.00 **
      Structural..................$ 19.29

  TRAFFIC SIGNALIZATION:
  Traffic Signal Installation
      Traffic Signal/Light Pole
      Worker......................$ 16.00 **

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

  WELDER...........................$ 15.97 **
  ---------------------------------------------------------------

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

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  ** Workers in this classification may be entitled to a higher
  minimum wage under Executive Order 14026 ($17.75) or 13658
  ($13.30).  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
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(29CFR 5.5 (a) (1) (iii)).

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

Union Rate Identifiers

A four-letter identifier beginning with characters other than ""SU"", ""UAVG"", ?SA?, or ?SC? denotes that a union rate was prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2024. PLUM is an identifier of the union whose collectively bargained rate 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. The date, 07/01/2024 in the example, is the effective date of the most current negotiated rate.

Union prevailing wage rates are updated to reflect all changes over time that are reported to WHD in the rates in the collective bargaining agreement (CBA) governing the classification.

Union Average Rate Identifiers

The UAVG identifier indicates that no single rate prevailed for those classifications, but that 100% of the data reported for the classifications reflected union rates. EXAMPLE: UAVG-OH-0010 01/01/2024. UAVG indicates that the rate is a weighted union average rate. OH indicates the State of Ohio. The next number, 0010 in the example, is an internal number used in producing the wage determination. The date, 01/01/2024 in the example, indicates the date the wage determination was updated to reflect the most current union average rate.

A UAVG rate will be updated once a year, usually in January, to reflect a weighted average of the current rates in the collective bargaining agreements on which the rate is based.

Survey Rate Identifiers

The ""SU"" identifier indicates that either a single non-union rate prevailed (as defined in 29 CFR 1.2) for this classification in the survey or that the rate was derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As a weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SUFL2022-007 6/27/2024. SU indicates the rate is a single non-union prevailing rate or a weighted average of survey data for that classification. FL indicates the State of Florida. 2022 is the year of the 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. The date,

6/27/2024 in the example, indicates the survey completion date for the classifications and rates under that identifier.

?SU? wage rates typically remain in effect until a new survey is conducted. However, the Wage and Hour Division (WHD) has the discretion to update such rates under 29 CFR 1.6(c)(1).

State Adopted Rate Identifiers

The ""SA"" identifier indicates that the classifications and prevailing wage rates set by a state (or local) government were 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. The date, 01/03/2024 in the example, 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:

a) a survey underlying a wage determination
b) an existing published wage determination
c) an initial WHD letter setting forth a position on a wage determination matter
d) an initial conformance (additional classification and rate) determination

On survey related matters, initial contact, including requests for summaries of surveys, should be directed to the WHD Branch of Wage Surveys. Requests can be submitted via email to davisbaconinfo@dol.gov or by mail to:

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

Regarding any other wage determination matter such as conformance decisions, requests for initial decisions should be directed to the WHD Branch of Construction Wage Determinations. Requests can be submitted via email to BCWD-Office@dol.gov or by mail 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 an initial decision has been issued, then any interested party (those affected by the action) that disagrees with the decision can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Requests for review and reconsideration can be submitted via email to dba.reconsideration@dol.gov or by mail 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 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.

==========

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

EXHIBIT 4

SECURITY BOND

Surety Bond No. N/A

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

That we, Skanska USA Building Inc., as Principal (the CMAR), and Federal Insurance Company, as Surety, are hereby held and firmly bound unto the **City of College Station, Texas**, as Obligee (the City), and its successors and assigns, in the Penal Sum of **Five Percent (5%)** of amount bid and no/100 Dollars ($----------5%----------), the Construction Budget, for a total Penal Sum of five percent of amount bid and no/100 Dollars ($----------5%----------), for the Project defined hereinbelow, for payment whereof the said Principal and Surety bind themselves, their heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

WHEREAS, the Principal has executed a Construction Manager at Risk contract, dated December 5, 2024, with Obligee, Contract No. 25-019 (the "Contract"), for the Texas Independence Park Project (the "Project").

NOW THEREFORE, the condition of this obligation is such that, if the aforesaid Principal shall execute a Guaranteed Maximum Price Proposal acceptable to the Obligee, and the said Obligee executes the Contract Amendment in connection therewith and, the principal fails to execute the Contract Amendment or fails to deliver Performance and Payment Bonds within the time required by the Contract, to secure the performance of the terms and conditions of the Contract, the Principal and surety will pay the Obligee the difference in money between the amount of the partially executed Contract Amendment, the Guaranteed Maximum Price, as may be applicable (or all of them in the case of multiple Contract Amendments and/or Guaranteed Maximum Prices), of the said Principal and the amount for which the Obligee contracts with another party to perform the work of the partially executed Contract Amendment and/or Guaranteed Maximum Price, if the latter amount be in excess of the former (respectively, in the case of multiple Contract Amendments and/or Guaranteed Maximum Prices), and the costs Obligee incurs to reselect a Construction Manager at Risk, including but not limited to the difference in the amount of Principal's Fee and General Conditions costs and the new Construction Manager at Risk's Fee and General Conditions costs, but in no event shall the surety's aggregate liability hereunder exceed the Penal Sum hereof.

PROVIDED, FURTHER, that this Security Bond is effective for the term of twelve months from the time of its execution and will deemed to be automatically extended without amendment for six months from the expiry date hereof, or any future expiration date, unless at least sixty (60) days prior to any expiration date Surety notifies Obligee by registered mail, at the address for notices to Obligee set forth in the Contract, that it elects not to extend the term of this Security Bond for any additional period.

IN WITNESS WHEREOF, the above bounden parties have executed this instrument on the respective dates written below their signatures and under their several seals the name and corporate seal of each entity being hereto affixed, and these presents duly signed by its undersigned representative pursuant to authority of its governing body and have attached a current Power of Attorney.

Bond No. N/A

FOR THE PRINCIPAL/CMAR:

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

By: Angelica Caballero
Name: Angelica Caballero
Title: Office Manager
Date: 11-22-24

Skanska USA Building Inc.
(Name of Principal/CMAR)

By:
Name: Dennis Jung
Title: EVP - General Manager
Date: 11-22-24

FOR THE SURETY:

ATTEST/WITNESS (SEAL)

By: Jean M Feeney
Name: Jean M. Feeney
Title: Witness
Date: November 20, 2024

Federal Insurance Company
(Full Name of Surety)
600 Independence Parkway
Chesapeake, VA 23327

(Address of Surety for Notice)

By:
Name: Nicole Roy
Title: Attorney-in-Fact
Date: November 20, 2024

FOR THE OBLIGEE/CITY:

REVIEWED:

City Attorney

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

City Manager

Have a complaint or need help?
Tiene una queja o necesita ayuda?

IMPORTANT NOTICE

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

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

To get information or file a complaint with CHUBB:

Call Toll-free: ***1-800-36-CHUBB***
Mail: Eastern Claim Service Center
600 Independence Parkway
Chesapeake, VA 23320
Attn: Surety Support
Phone: 800-252-4670 Fax: 800-664-5358
Email: ecsc.claims@chubb.com

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

The Texas Department of Insurance
Call with a question: 1-800-252-3439
File a complaint: www.tdi.texas.gov
E-mail: ConsumerProtection@tdi.texas.gov
Mail: MC-111-1A, P.O. Box 149091
Austin, TX 78714-9091

AVISO IMPORTANTE

Si tiene un problema con un reclamo o las primas, llame primero a la empresa de seguros. Si no puede resolver el problema, el Departamento de Seguros del estado de Tejas puede ayudar.

Si registra una queja con el Departamento de Seguros del estado de tejas, tambien debe presentar una queja o apelacion a traves de su compania de seguros. Si no lo hace puede perder su derecho de apelar.

Para obtener informacion o registro de una queja con CHUBB:

Llame al: ***1-800-36-CHUBB***
Correo: Eastern Claim Service Center
600 Independence Parkway
Chesapeake, VA 23320
Attn: Surety Support
Telefono: 800-252-4670 Fax: 800-664-5358
Correo electronico: ecsc.claims@chubb.com

Para ayuda con una pregunta de seguros o registrar una queja con el estado:

El Departamento de Seguros del Estado de Tejas
Preguntas: 1-800-252-3439
Quejas: www.tdi.texas.gov
Correo electronico: ConsumerProtection@tdi.texas.gov
Correo: MC-111-1A, P.O. Box 149091
Austin, TX 78714-9091

CHUBB

Power of Attorney

Federal Insurance Company | Vigilant Insurance Company | Pacific Indemnity Company
Westchester Fire Insurance Company | ACE American Insurance Company

Know All by These Presents, that FEDERAL INSURANCE COMPANY, an Indiana corporation, VIGILANT INSURANCE COMPANY, a New York corporation, PACIFIC INDEMNITY COMPANY, a Delaware corporation, WESTCHESTER FIRE INSURANCE COMPANY and ACE AMERICAN INSURANCE COMPANY corporations of the Commonwealth of Pennsylvania, do each hereby constitute and appoint Nicole Roy

Surety Bond No. Bid Bond

Obligee: City of College Station

each as their true and lawful Attorney-in-Fact to execute under such designation in their names and to affix their corporate seals to and deliver for and on their behalf as surety thereon or otherwise, bonds and undertakings and other writings obligatory in the nature thereof (other than bail bonds) given or executed in the course of business, and any instruments amending or altering the same, and consents to the modification or alteration of any instrument referred to in said bonds or obligations.

In Witness Whereof, said FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, PACIFIC INDEMNITY COMPANY, WESTCHESTER FIRE INSURANCE COMPANY and ACE AMERICAN INSURANCE COMPANY have each executed and attested these presents and affixed their corporate seals on this 1st day of October, 2024.

Rupert HD Swindells, Assistant Secretary

Warren Eichhorn, Vice President

STATE OF NEW JERSEY
County of Hunterdon ss.

On this 1st day of October, 2024 before me, a Notary Public of New Jersey, personally came Rupert HD Swindells and Warren Eichhorn, to me known to be Assistant Secretary and Vice President, respectively, of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, PACIFIC INDEMNITY COMPANY, WESTCHESTER FIRE INSURANCE COMPANY and ACE AMERICAN INSURANCE COMPANY, the companies which executed the foregoing Power of Attorney, and the said Rupert HD Swindells and Warren Eichhorn, being by me duly sworn, severally and each for himself did depose and say that they are Assistant Secretary and Vice President, respectively, of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, PACIFIC INDEMNITY COMPANY, WESTCHESTER FIRE INSURANCE COMPANY and ACE AMERICAN INSURANCE COMPANY and know the corporate seals thereof, that the seals affixed to the foregoing Power of Attorney are such corporate seals and were thereto affixed by authority of said Companies; and that their signatures as such officers were duly affixed and subscribed by like authority.

Notarial Seal

Albert Contursi
NOTARY PUBLIC OF NEW JERSEY
No 50202369
Commission Expires August 22,2027

Notary Public

CERTIFICATION

Resolutions adopted by the Boards of Directors of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY on August 30, 2016; WESTCHESTER FIRE INSURANCE COMPANY on December 11, 2006; and ACE AMERICAN INSURANCE COMPANY on March 20, 2009:

"RESOLVED, that the following authorizations relate to the execution, for and on behalf of the Company, of bonds, undertakings, recognizances, contracts and other written commitments of the Company entered into in the ordinary course of business (each a "Written Commitment"):

(1) Each of the Chairman, the President and the Vice Presidents of the Company is hereby authorized to execute any Written Commitment for and on behalf of the Company, under the seal of the Company or otherwise.

(2) Each duly appointed attorney-in-fact of the Company is hereby authorized to execute any Written Commitment for and on behalf of the Company, under the seal of the Company or otherwise, to the extent that such action is authorized by the grant of powers provided for in such person's written appointment as such attorney-in-fact.

(3) Each of the Chairman, the President and the Vice Presidents of the Company is hereby authorized, for and on behalf of the Company, to appoint in writing any person the attorney-in-fact of the Company with full power and authority to execute, for and on behalf of the Company, under the seal of the Company or otherwise, such Written Commitments of the Company as may be specified in such written appointment, which specification may be by general type or class of Written Commitments or by specification of one or more particular Written Commitments.

(4) Each of the Chairman, the President and the Vice Presidents of the Company is hereby authorized, for and on behalf of the Company, to delegate in writing to any other officer of the Company the authority to execute, for and on behalf of the Company, under the Company's seal or otherwise, such Written Commitments of the Company as are specified in such written delegation, which specification may be by general type or class of Written Commitments or by specification of one or more particular Written Commitments.

(5) The signature of any officer or other person executing any Written Commitment or appointment or delegation pursuant to this Resolution, and the seal of the Company, may be affixed by facsimile on such Written Commitment or written appointment or delegation.

FURTHER RESOLVED, that the foregoing Resolution shall not be deemed to be an exclusive statement of the powers and authority of officers, employees and other persons to act for and on behalf of the Company, and such Resolution shall not limit or otherwise affect the exercise of any such power or authority otherwise validly granted or vested."

I, Rupert HD Swindells, Assistant Secretary of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, PACIFIC INDEMNITY COMPANY, WESTCHESTER FIRE INSURANCE COMPANY and ACE AMERICAN INSURANCE COMPANY (the "Companies") do hereby certify that

(i) the foregoing Resolutions adopted by the Board of Directors of the Companies are true, correct and in full force and effect.
(ii) the foregoing Power of Attorney is true, correct and in full force and effect.

Given under my hand and seals of said Companies at Whitehouse Station, NJ, this November 20, 2024.

Rupert HD Swindells, Assistant Secretary

IN THE EVENT YOU WISH TO VERIFY THE AUTHENTICITY OF THIS BOND OR NOTIFY US OF ANY OTHER MATTER, PLEASE CONTACT US AT:
Telephone (908) 903- 3493 Fax (908) 903- 3656 e-mail: surety@chubb.com

Pursuant to Tex. Gov't Code Sec. 2269.258:

(a) No Bid Bond Provided – If the GMP has not yet been determined and the CMAR did not provide an acceptable bid bond, the CMAR shall provide at contract award either **(1)** Payment and Performance Bonds in an amount equal to the total Construction Budget contained in the RFP or **(2)** the CMAR shall provide another financial security acceptable to the City ensuring that CMAR will furnish the required performance and payment bonds when a GMP is established. A bond rider that increases the amount of all Payment and Performance Bonds is required for each additional GMP that is issued.

(b) Bid Bond Provided – If the GMP has not yet been determined and the CMAR has provided an acceptable bid bond, the CMAR shall provide Payment and Performance Bonds upon the City's acceptance and approval of the Guaranteed Maximum Price. A bond rider that increases the amount of all Payment and Performance Bonds is required for each additional GMP that is issued.

Project No. _____

PERFORMANCE BOND

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

THAT WE, _____, as Principal, hereinafter called "Contractor" and the other subscriber hereto _____, a corporation organized and existing under the laws of the State of _____, licensed to do business in the State of Texas and admitted to write bonds, as Surety, herein after called "Surety", do hereby acknowledge ourselves to be held and firmly bound to the City of College Station, Texas ("City"), a municipal corporation, in the sum of _____ _____ ($_____) for the payment of which sum, well and truly to be made to the City of College Station and its successors, the said Contractor and Surety do bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally pursuant to the obligations and payment of this Performance Bond ("Bond") as follows:

THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:

WHEREAS, the Contractor has on or about this day executed an Agreement (as used herein including the Agreement Documents) in writing with the City of College Station for the following City Project ("Project'):

_____,

with all of the work ("Work") for the Project to be done as set out in full in said Agreement therein referred to and adopted by the City Council of the City of College Station, Texas, all of which documents, as amended, are incorporated by reference for all purposes and made a part of this instrument as fully and completely as if set out in full herein.

NOW THEREFORE, if the Contractor shall faithfully and strictly perform Agreement in all its terms, provisions, and stipulations in accordance with its true meaning and effect, and in

accordance with the Agreement Documents described therein, and shall comply strictly with each and every provision of the Agreement, as amended, including all warranties and indemnities therein, and with this Bond, then this Bond obligation shall become null and void and shall have no further force and effect; otherwise this Bond obligation is to remain in full force and effect.

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

It is further expressly agreed by Surety that the City or its representatives are at liberty at any time, without notice to the Surety, to make any change in the Agreement, the Agreement Documents, and in the Work of the Project to be done thereunder, as provided in the Agreement, and in the terms and conditions thereof, or to make any change in, addition to, or deduction from the Work of the Project to be done thereunder; and that such changes, if made, shall not in any way vitiate, terminate, or diminish the (1) Surety's obligations in this Bond and undertaking, or (2) release the Surety therefrom. Surety, for value received, hereby stipulates, acknowledges, and agrees that any change in Agreement Time or Agreement Sum shall not in any way affect its obligations and duties to the City as the Surety under this bond, and Surety does hereby waive notice of any such change in the Agreement Time or Agreement Sum.

It is further expressly agreed and understood that by the parties to this Bond that the Contractor and Surety will fully indemnify, defend, and hold harmless the City from any liability, claim, cause of action, judgment, loss, cost, expense, or damage arising out of or in connection with the Work for the Project done or to be done by the Contractor under the Agreement. In the event that the City shall bring any lawsuit or other proceeding at law or equity regarding or related to the Agreement or this Bond or both, the Contractor and Surety agree to pay to the City the actual amounts of attorneys' fees, costs, and expenses incurred by the City in connection with such lawsuit or other proceeding.

The parties to this instrument expressly agree to and acknowledge the following: (1) this Bond and all obligations of the Surety and Contractor created hereunder are expressly performable in Brazos County, Texas; (2) this Bond shall be governed and interpreted pursuant to the laws of the State of Texas; (3) venue in any lawsuit or legal proceeding regarding or relating to this Bond shall be in a court of competent jurisdiction in Brazos County, Texas, United State of America, or the appropriate United States District Court designated for said county; (4) this Bond is given in compliance with the applicable provisions of Chapters 2253, 2254, and 2269 of the Texas

Government Code, as amended, which is incorporated herein by this reference. However, all of the express provisions hereof shall be applicable whether or not within the scope of said statutes.

Notices required or permitted hereunder shall be in writing and shall be deemed delivered when actually received (1) by hand or courier delivery (no e-mails or facsimile submissions of notice are allowed), or (2) by United State Postal Service mail (being certified mail, return receipt required), said notice being addressed to the respective other party at the address described below in this Bond, or at such other address as the receiving party may hereafter prescribe by written notice to the sending party. A copy of the Surety agent "Power of Attorney" also must be attached to this Bond instrument.

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

CONTRACTOR EXECUTION:

ATTEST, SEAL OF CONTRACTOR: (if a corporation)

WITNESS: (if not a corporation)

By: _____

Name: _____

Title:_____

Date:_____

(Name of Contractor)

By: _____

Name: _____

Title: _____

Date: _____

Address of Contractor: _____

_____

SURETY EXECUTION:

ATTEST, SEAL OF SURETY: (if a corporation)

WITNESS: (if not a corporation)

By: _____

Name: _____

Title:_____

Date:_____

(Name of Surety)

By: _____

Name: _____

Title: _____

Date: _____

Address of Surety: _____

_____

ACCEPTANCE BY CITY:
REVIEWED:

_____
City Attorney's Office
Date: _____

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

_____
City Manager
Date: _____

Pursuant to Tex. Gov't Code Sec. 2269.258:

(a) No Bid Bond Provided – If the GMP has not yet been determined and the CMAR did not provide an acceptable bid bond, the CMAR shall provide at contract award either **(1)** Payment and Performance Bonds in an amount equal to the total Construction Budget contained in the RFP or **(2)** the CMAR shall provide another financial security acceptable to the City ensuring that CMAR will furnish the required performance and payment bonds when a GMP is established. A bond rider that increases the amount of all Payment and Performance Bonds is required for each additional GMP that is issued.

(b) Bid Bond Provided – If the GMP has not yet been determined and the CMAR has provided an acceptable bid bond, the CMAR shall provide Payment and Performance Bonds upon the City's acceptance and approval of the Guaranteed Maximum Price. A bond rider that increases the amount of all Payment and Performance Bonds is required for each additional GMP that is issued.

Project No. _____

TEXAS STATUTORY PAYMENT BOND

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

THAT WE, _____, as Principal, hereinafter called "Principal" and the other subscriber hereto _____, a corporation organized and existing under the laws of the State of _____, licensed to do business in the State of Texas and admitted to write bonds, as Surety, hereinafter called "Surety", do hereby acknowledge ourselves to be held and firmly bound to the City of College Station, Texas ("City"), a municipal corporation, in the sum of _____ _____ ($_____) for payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, pursuant to the obligations and payment of this Texas Statutory Payment Bond ("Bond") as follows:

THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:

WHEREAS, Principal has entered into a certain Agreement ("Agreement" including the Agreement Documents, as amended) in writing with the City of College Station for the following City Project ("Project') dated the ____ day of _____, 20____: _____, with all of the work ("Work") for the Project to be done as set out in full in said Agreement, as amended, therein referred to and adopted by the City Council of the City of College Station, Texas, all of which documents are incorporated by reference for all purposes and made a part of this instrument as fully and completely as if set out in full herein.

NOW THEREFORE, the condition of this Bond obligation is such that if Principal shall pay all claimants supplying labor, equipment, and/or material to Principal for the Project, or to a

subcontractor for the Project, regarding he performance and prosecution of the Work of the Project provided for in the Agreement, as amended, then, this Bond obligation shall be null and void; otherwise this Bond obligation is to remain in full force and effect.

PROVIDED, HOWEVER, that this Bond is executed pursuant to the provisions of Chapters 2253, 2254, and 2269 of the Texas Government Code and all liabilities on this Bond shall be determined in accordance with the provisions, conditions and limitations of said Code to the same extent as if it were copied at length herein.

It is further expressly agreed by Surety that the City or its representatives are at liberty at any time, without notice to the Surety, to make any change in the Agreement, the Agreement Documents, and in the Work of the Project to be done thereunder, as provided in the Agreement, and in the terms and conditions thereof, or to make any change in, addition to, or deduction from the Work of the Project to be done thereunder; and that such changes, if made, shall not in any way vitiate, terminate, or diminish the (1) Surety's obligations in this Bond and undertaking, or (2) release the Surety therefrom.

It is further expressly agreed and understood that by the parties to this Bond that the Contractor and Surety will fully indemnify, defend, and hold harmless the City from any liability, claim, cause of action, judgment, loss, cost, expense, or damage arising out of or in connection with the Work for the Project done or to be done by the Contractor under the Agreement. In the event that the City shall bring any lawsuit or other proceeding at law or equity regarding or related to the Agreement or this Bond or both, the Contractor and Surety agree to pay to the City the actual amounts of attorneys' fees, costs, and expenses incurred by the City in connection with such lawsuit or other proceeding.

The parties to this instrument expressly agree to and acknowledge the following: (1) this Bond and all obligations of the Surety and Contractor created hereunder are expressly performable in Brazos County, Texas; (2) this Bond shall be governed and interpreted pursuant to the laws of the State of Texas; (3) venue in any lawsuit or legal proceeding regarding or relating to this Bond shall be in a court of competent jurisdiction in Brazos County, Texas, United State of America, or the appropriate United States District Court designated for said county; (4) this Bond is given in compliance with the applicable provisions of Chapters 2253, 2254, and 2269 of the Texas Government Code, as amended, which is incorporated herein by this reference. However, all of the express provisions hereof shall be applicable whether or not within the scope of said statutes.

Notices required or permitted hereunder shall be in writing and shall be deemed delivered when actually received (1) by hand or courier delivery (no e-mails or facsimile submissions of notice are allowed), or (2) by United State Postal Service mail (being certified mail, return receipt required), said notice being addressed to the respective other party at the address described below in this Bond, or at such other address as the receiving party may hereafter prescribe by written notice to the sending party.

Surety, for value received, hereby stipulates, acknowledges, and agrees that any change in Agreement Time or Agreement Sum shall not in any way affect its obligations and duties to the City as the Surety under this Bond, and Surety does hereby waive notice of any such change in the

Agreement Time or Agreement Sum. A copy of the Surety agent “Power of Attorney” also must be attached to this Bond instrument.

IN WITNESS THEREOF, the said Principal and Surety have signed and sealed this instrument on the respective dates written below their signatures and have attached a current Power of Attorney as required by this Bond.

PRINCIPAL EXECUTION:

ATTEST, SEAL OF PRINCIPAL: (if a corporation)

WITNESS: (if not a corporation)

By: _____

Name: _____

Title:_____

Date:_____

(Name of Principal)

By: _____

Name: _____

Title: _____

Date: _____

Address of Principal: _____

_____

SURETY EXECUTION:

ATTEST, SEAL OF SURETY: (if a corporation)

WITNESS: (if not a corporation)

By: _____

Name: _____

Title:_____

Date:_____

(Name of Surety)

By: _____

Name: _____

Title: _____

Date: _____

Address of Surety: _____

_____

ACCEPTANCE BY CITY:
REVIEWED:

_____
City Attorney's Office
Date: _____

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

_____
City Manager
Date: _____

EXHIBIT C

CERTIFICATES OF INSURANCE AND ENDORSEMENTS

CERTIFICATE OF LIABILITY INSURANCE

DATE(MM/DD/YYYY)
01/31/2025

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
Aon Risk Services Northeast, Inc.
New York NY Office
One Liberty Plaza
165 Broadway, Suite 3201
New York NY 10006 USA

CONTACT NAME:
PHONE (A/C. No. Ext): 5163964000 **FAX (A/C. No.):** (800) 363-0105
E-MAIL ADDRESS:

INSURER(S) AFFORDING COVERAGE		NAIC #
INSURER A:	American Zurich Ins Co	40142
INSURER B:	Zurich American Ins Co	16535
INSURER C:	XL Insurance America Inc	24554
INSURER D:		
INSURER E:		
INSURER F:		

INSURED
Skanska USA Building Inc.
800 Capitol Street, Suite 1210
Houston TX 77002 USA

COVERAGES **CERTIFICATE NUMBER:** 570110701039 **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.

Limits shown are as requested

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
B	X **COMMERCIAL GENERAL LIABILITY** CLAIMS-MADE X OCCUR X XCU X 50' RR Exclusion Deleted GEN'L AGGREGATE LIMIT APPLIES PER: POLICY X PRO-JECT X LOC OTHER:			GLO489601817	08/31/2024	08/31/2025	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	$5,000,000 $5,000,000 $5,000 $5,000,000 $10,000,000 $10,000,000
B	**AUTOMOBILE LIABILITY** X ANY AUTO X OWNED AUTOS ONLY X HIRED AUTOS ONLY SCHEDULED AUTOS X NON-OWNED AUTOS ONLY			BAP 6480660 02	08/31/2024	08/31/2025	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$2,000,000
C	UMBRELLA LIAB X OCCUR X **EXCESS LIAB** CLAIMS-MADE DED RETENTION			US00076358LI24A	08/31/2024	08/31/2025	EACH OCCURRENCE AGGREGATE	$5,000,000 $5,000,000
A	**WORKERS COMPENSATION AND EMPLOYERS' LIABILITY** ANY PROPRIETOR / PARTNER / EXECUTIVE OFFICER/MEMBER EXCLUDED? Y / N: N **(Mandatory in NH)** If yes, describe under DESCRIPTION OF OPERATIONS below	N / A		WC489601720	08/31/2024	08/31/2025	X PER STATUTE OTH-ER E.L. EACH ACCIDENT E.L. DISEASE-EA EMPLOYEE E.L. DISEASE-POLICY LIMIT	 $5,000,000 $5,000,000 $5,000,000
B	Contractors Protective Professional Indemnity Liability			EOC508712413 SIR applies per policy terms & conditions	08/31/2024	08/31/2025	Aggregate Per Claim	$50,000,000 $25,000,000

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

Workers' Compensation coverage not included in monopolistic states - OH, ND, WA, WY and Puerto Rico. RE: Project Name: Texas Independence Park, Project Number: 3425002. The City of College Station, its officers, officials, employees, agents and volunteers are Certificate Holder is included as Additional Insured in accordance with the policy provisions of the General Liability policy. General Liability policy evidenced herein is Primary and Non-Contributory to other insurance available to Additional Insured, but only in accordance with the policy's provisions. A Waiver of Subrogation is granted in favor of Certificate Holder in accordance with the policy provisions of the General Liability, Automobile Liability, Excess Liability, Pollution Liability and Workers' Compensation policies. Excess Liability policy is follow form over Automobile Liability,

CERTIFICATE HOLDER

City of College Station
Attn: Brandi Whittenton
PO Box 9960
College Station TX 77842-9960 USA

CANCELLATION

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

AUTHORIZED REPRESENTATIVE

Aon Risk Services Northeast, Inc.

Holder Identifier : @HMUX

Certificate No : 570110701039

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AGENCY CUSTOMER ID: 570000027144
LOC #:

ADDITIONAL REMARKS SCHEDULE

AGENCY	NAMED INSURED
Aon Risk Services Northeast, Inc.	Skanska USA Building Inc.
POLICY NUMBER: See Certificate Number: 570110701039	
CARRIER: See Certificate Number: 570110701039 / NAIC CODE	EFFECTIVE DATE:

ADDITIONAL REMARKS

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

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER	
INSURER	
INSURER	
INSURER	

ADDITIONAL POLICIES If a policy below does not include limit information, refer to the corresponding policy on the ACORD certificate form for policy limits.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS	
	OTHER							
B	Contractors Pollution Liability			CPL981713804	08/31/2024	08/31/2025	Aggregate	$50,000,000
							Per Claim	$25,000,000

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AGENCY CUSTOMER ID: 570000027144

LOC #:

ADDITIONAL REMARKS SCHEDULE

AGENCY	NAMED INSURED
Aon Risk Services Northeast, Inc.	Skanska USA Building Inc.
POLICY NUMBER	
See Certificate Number: 570110701039	
CARRIER / NAIC CODE	EFFECTIVE DATE:
See Certificate Number: 570110701039	

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,

FORM NUMBER: ACORD 25 **FORM TITLE:** Certificate of Liability Insurance

Additional Description of Operations / Locations / Vehicles:

General Liability and Employer's Liability.

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ADDITIONAL REMARKS SCHEDULE

AGENCY		NAMED INSURED
Aon Risk Services Northeast, Inc.		Skanska USA Building Inc.
POLICY NUMBER		
See Certificate Number: 570110701039		
CARRIER	NAIC CODE	EFFECTIVE DATE:
See Certificate Number: 570110701039		

ADDITIONAL REMARKS

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

Excess Liab. cont. 08/31/24-08/31/25

Carrier: Berkshire Hathaway Specialty Insurance Company
NAIC: 22276
Policy No.: 47XSF30284409
Occ/Agg: $12,500,000 po $25,000,000 xs $5,000,000

Carrier: Starr Indemnity & Liability Company
NAIC: 38318
Policy No.: 1000587300241
Occ/Agg: $12,500,000 po $25,000,000 xs $5,000,000

Carrier: Indemnity Insurance Company of North America
NAIC: 43575
Policy No.: XANG47418999002
Occ/Agg: $15,000,000 xs $30,000,000

Carrier: Everest National Insurance Co
NAIC: 10120
Policy No.: XC5EX02073241
Occ/Agg: $10,000,000 xs $45,000,000

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Notification to Others of Cancellation, Nonrenewal or Reduction of Insurance

ZURICH

Policy No.	Eff. Date of Pol.	Exp. Date of Pol.	Eff. Date of End.	Producer No.	Add'l. Prem	Return Prem.
BAP 6480660-02	08/31/2024	08/31/2025	08/31/2024	10463000	$ **INCL**	$

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the:

Commercial Automobile Coverage Part

A. If we cancel or non-renew this Coverage Part by written notice to the first Named Insured for any reason other than nonpayment of premium, we will mail or deliver a copy of such written notice of cancellation or non-renewal:

1. To the name and address corresponding to each person or organization shown in the Schedule below; and

2. At least 10 days prior to the effective date of the cancellation or non-renewal, as advised in our notice to the first Named Insured, or the longer number of days notice if indicated in the Schedule below.

B. If we cancel this Coverage Part by written notice to the first Named Insured for nonpayment of premium, we will mail or deliver a copy of such written notice of cancellation to the name and address corresponding to each person or organization shown in the Schedule below at least 10 days prior to the effective date of such cancellation.

C. If coverage afforded by this Coverage Part is reduced or restricted, except for any reduction of Limits of Insurance due to payment of claims, we will mail or deliver notice of such reduction or restriction:

1. To the name and address corresponding to each person or organization shown in the Schedule below; and

2. At least 10 days prior to the effective date of the reduction or restriction, or the longer number of days notice if indicated in the Schedule below.

D. If notice as described in Paragraphs A., B. or C. of this endorsement is mailed, proof of mailing will be sufficient proof of such notice.

SCHEDULE	
Name and Address of Other Person(s) / Organization(s):	**Number of Days Notice:**
IF WE CANCEL THIS POLICY, NOTICE SHALL BE PROVIDED TO THOSE	30
PERSONS, ORGANIZATIONS OR POLITICAL ENTITIES WITH WHOM YOU	
HAVE CONTRACTUALLY AGREED TO GIVE NOTICE AND FOR WHICH YOU	
HAVE PROVIDED MAILING INFORMATION TO US.	

All other terms and conditions of this policy remain unchanged.

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Notification to Others of Cancellation, Nonrenewal or Reduction of Insurance

Policy No.	Eff. Date of Pol.	Exp. Date of Pol.	Eff. Date of End.	Producer No.	Add'l. Prem	Return Prem.
GLO 4896018-17	08/31/2024	08/31/2025	08/31/2024	69993000	**INCL**	

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the:

Commercial General Liability Coverage Part
Liquor Liability Coverage Part
Products/Completed Operations Liability Coverage Part

A. If we cancel or non-renew this Coverage Part(s) by written notice to the first Named Insured for any reason other than nonpayment of premium, we will mail or deliver a copy of such written notice of cancellation or non-renewal:

1. To the name and address corresponding to each person or organization shown in the Schedule below; and

2. At least 10 days prior to the effective date of the cancellation or non-renewal, as advised in our notice to the first Named Insured, or the longer number of days notice if indicated in the Schedule below.

B. If we cancel this Coverage Part(s) by written notice to the first Named Insured for nonpayment of premium, we will mail or deliver a copy of such written notice of cancellation to the name and address corresponding to each person or organization shown in the Schedule below at least 10 days prior to the effective date of such cancellation.

C. If coverage afforded by this Coverage Part(s) is reduced or restricted, except for any reduction of Limits of Insurance due to payment of claims, we will mail or deliver notice of such reduction or restriction:

1. To the name and address corresponding to each person or organization shown in the Schedule below; and

2. At least 10 days prior to the effective date of the reduction or restriction, or the longer number of days notice if indicated in the Schedule below.

D. If notice as described in Paragraphs **A.**, **B.** or **C.** of this endorsement is mailed, proof of mailing will be sufficient proof of such notice.

SCHEDULE

Name and Address of Other Person(s) / Organization(s):	**Number of Days Notice:**
IF WE CANCEL THIS POLICY, NOTICE SHALL BE PROVIDED TO THOSE	90
PERSONS, ORGANIZATIONS OR POLITICAL ENTITIES WITH WHOM YOU	
HAVE CONTRACTUALLY AGREED TO GIVE NOTICE AND FOR WHICH YOU	
HAVE PROVIDED MAILING INFORMATION TO US.	

All other terms and conditions of this policy remain unchanged.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – DESIGNATED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s):
ANY PERSON, ORGANIZATION, STATE OR POLITICAL ENTITY YOU HAVE AGREED THROUGH
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

A. **Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

1. In the performance of your ongoing operations; or

2. In connection with your premises owned by or rented to you.

However:

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

2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or

2. Available under the applicable limits of insurance;

whichever is less.

This endorsement shall not increase the applicable limits of insurance.

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Additional Insured – Automatic – Owners, Lessees Or Contractors

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.	
Policy No. GLO 4896018 17	Effective Date: 08/31/2024

This endorsement modifies insurance provided under the:

Commercial General Liability Coverage Part

A. Section **II – Who Is An Insured** is amended to include as an additional insured any person or organization whom you are required to add as an additional insured under a written contract or written agreement executed by you, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" and subject to the following:

1. If such written contract or written agreement specifically requires that you provide that the person or organization be named as an additional insured under one or both of the following endorsements:

a. The Insurance Services Office (ISO) ISO CG 20 10 (10/01 edition); or

b. The ISO CG 20 37 (10/01 edition),

such person or organization is then an additional insured with respect to such endorsement(s), but only to the extent that "bodily injury", "property damage" or "personal and advertising injury" arises out of:

(1) Your ongoing operations, with respect to Paragraph **1.a.** above; or

(2) "Your work", with respect to Paragraph **1.b.** above,

which is the subject of the written contract or written agreement.

However, solely with respect to this Paragraph **1.**, insurance afforded to such additional insured:

(a) Only applies if the "bodily injury", "property damage" or "personal and advertising injury" offense occurs during the policy period and subsequent to your execution of the written contract or written agreement; and

(b) Does not apply to "bodily injury" or "property damage" caused by "your work" and included within the "products-completed operations hazard" unless the written contract or written agreement specifically requires that you provide such coverage to such additional insured.

2. If such written contract or written agreement specifically requires that you provide that the person or organization be named as an additional insured under one or both of the following endorsements:

a. The Insurance Services Office (ISO) ISO CG 20 10 (07/04 edition); or

b. The ISO CG 20 37 (07/04 edition),

such person or organization is then an additional insured with respect to such endorsement(s), but only to the extent that "bodily injury", "property damage" or "personal and advertising injury" is caused, in whole or in part, by:

(1) Your acts or omissions; or

(2) The acts or omissions of those acting on your behalf,

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in the performance of:

(a) Your ongoing operations, with respect to Paragraph **2.a.** above; or

(b) "Your work" and included in the "products-completed operations hazard", with respect to Paragraph **2.b.** above,

which is the subject of the written contract or written agreement.

However, solely with respect to this Paragraph **2.**, insurance afforded to such additional insured:

(i) Only applies if the "bodily injury", "property damage" or "personal and advertising injury" offense occurs during the policy period and subsequent to your execution of the written contract or written agreement; and

(ii) Does not apply to "bodily injury" or "property damage" caused by "your work" and included within the "products-completed operations hazard" unless the written contract or written agreement specifically requires that you provide such coverage to such additional insured.

3. If neither Paragraph **1.** nor Paragraph **2.** above apply and such written contract or written agreement requires that you provide that the person or organization be named as an additional insured:

a. Under the ISO CG 20 10 (04/13 edition, any subsequent edition or if no edition date is specified); or

b. With respect to ongoing operations (if no form is specified),

such person or organization is then an additional insured only to the extent that "bodily injury", "property damage" or "personal and advertising injury" is caused, in whole or in part by:

(1) Your acts or omissions; or

(2) The acts or omissions of those acting on your behalf,

in the performance of your ongoing operations, which is the subject of the written contract or written agreement.

However, solely with respect to this Paragraph **3.**, insurance afforded to such additional insured:

(a) Only applies to the extent permitted by law;

(b) Will not be broader than that which you are required by the written contract or written agreement to provide for such additional insured; and

(c) Only applies if the "bodily injury", "property damage" or "personal and advertising injury" offense occurs during the policy period and subsequent to your execution of the written contract or written agreement.

4. If neither Paragraph **1.** nor Paragraph **2.** above apply and such written contract or written agreement requires that you provide that the person or organization be named as an additional insured:

a. Under the ISO CG 20 37 (04/13 edition, any subsequent edition or if no edition date is specified); or

b. With respect to the "products-completed operations hazard" (if no form is specified),

such person or organization is then an additional insured only to the extent that "bodily injury" or "property damage" is caused, in whole or in part by "your work" and included in the "products-completed operations hazard", which is the subject of the written contract or written agreement.

However, solely with respect to this Paragraph **4.**, insurance afforded to such additional insured:

(1) Only applies to the extent permitted by law;

(2) Will not be broader than that which you are required by the written contract or written agreement to provide for such additional insured;

(3) Only applies if the "bodily injury" or "property damage" occurs during the policy period and subsequent to your execution of the written contract or written agreement; and

(4) Does not apply to "bodily injury" or "property damage" caused by "your work" and included within the "products-completed operations hazard" unless the written contract or written agreement specifically requires that you provide such coverage to such additional insured.

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B. Solely with respect to the insurance afforded to any additional insured referenced in Section **A.** of this endorsement, the following additional exclusion applies:

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

1. The preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or

2. Supervisory, inspection, architectural or engineering activities.

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

C. Solely with respect to the coverage provided by this endorsement, the following is added to Paragraph **2. Duties In The Event Of Occurrence, Offense, Claim Or Suit** of Section **IV – Commercial General Liability Conditions**:

The additional insured must see to it that:

(1) We are notified as soon as practicable of an "occurrence" or offense that may result in a claim;

(2) We receive written notice of a claim or "suit" as soon as practicable; and

(3) A request for defense and indemnity of the claim or "suit" will promptly be brought against any policy issued by another insurer under which the additional insured may be an insured in any capacity. This provision does not apply to insurance on which the additional insured is a Named Insured if the written contract or written agreement requires that this coverage be primary and non-contributory.

D. Solely with respect to the coverage provided by this endorsement:

1. The following is added to the **Other Insurance** Condition of Section **IV – Commercial General Liability Conditions**:

Primary and Noncontributory insurance

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured provided that:

a. The additional insured is a Named Insured under such other insurance; and

b. You are required by written contract or written agreement that this insurance be primary and not seek contribution from any other insurance available to the additional insured.

2. The following paragraph is added to Paragraph **4.b.** of the **Other Insurance** Condition under Section **IV – Commercial General Liability Conditions**:

This insurance is excess over:

Any of the other insurance, whether primary, excess, contingent or on any other basis, available to an additional insured, in which the additional insured on our policy is also covered as an additional insured on another policy providing coverage for the same "occurrence", offense, claim or "suit". This provision does not apply to any policy in which the additional insured is a Named Insured on such other policy and where our policy is required by a written contract or written agreement to provide coverage to the additional insured on a primary and non-contributory basis.

E. This endorsement does not apply to an additional insured which has been added to this Coverage Part by an endorsement showing the additional insured in a Schedule of additional insureds, and which endorsement applies specifically to that identified additional insured.

F. Solely with respect to the insurance afforded to an additional insured under Paragraph **A.3.** or Paragraph **A.4.** of this endorsement, the following is added to Section **III – Limits Of Insurance**:

Additional Insured – Automatic – Owners, Lessees Or Contractors Limit

The most we will pay on behalf of the additional insured is the amount of insurance:

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1. Required by the written contract or written agreement referenced in Section **A.** of this endorsement; or

2. Available under the applicable Limits of Insurance shown in the Declarations,

whichever is less.

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

All other terms, conditions, provisions and exclusions of this policy remain the same.

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ENDORSEMENT

Insurance for this coverage part provided by:
AMERICAN ZURICH INSURANCE COMPANY

This endorsement changes the insurance as is afforded by the policy relating to the following:

Named Insured	Policy Number
SKANSKA USA BUILDING, INC.	WC 4896017-20

CANCELLATION AND NON-RENEWAL NOTICE OR

CANCELLATION AND NON-RENEWAL NOTICE OR MATERIAL CHANGE NOTICE ENDORSEMENT

PARAGRAPH D.2. IS DELETED AND REPLACED BY:

2. WE MAY CANCEL THIS POLICY. WE MUST MAIL OR DELIVER TO YOU NOT LESS THAN 90 DAYS ADVANCE WRITTEN NOTICE STATING WHEN THE CANCELLATION IS TO TAKE EFFECT EXCEPT FOR CANCELLATION FOR NONPAYMENT OF PREMIUM. IF WE CANCEL THIS POLICY FOR NON-PAYMENT OF PREMIUM WE MUST MAIL OR DELIVER TO YOU NOT LESS THAN TEN DAYS ADVANCE WRITTEN NOTICE. MAILING THAT NOTICE TO YOU AT YOUR MAILING ADDRESS SHOWN IN ITEM 1 OF THE INFORMATION PAGE WILL BE SUFFICIENT TO PROVE NOTICE. IF WE CANCEL THIS POLICY, NOTICE SHALL BE PROVIDED TO THOSE PERSONS, ORGANIZATION OR POLITICAL ENTITIES WITH WHOM YOU HAVE CONTRACTUALLY AGREED TO GIVE NOTICE AND FOR WHICH YOU HAVE PROVIDED MAILING INFORMATION TO US.

PART SIX - CONDITIONS, PARAGRAPH F. IS ADDED:

F. NON-RENEWAL OR MATERIAL CHANGE NOTICE WE WILL MAIL OR DELIVER TO YOU NOT LESS THAN 90 DAYS ADVANCE WRITTEN NOTICE OF OUR INTENTION TO NON-RENEW OR MAKE ANY MATERIAL CHANGE TO THE CURRENT COVERAGES OR THE RENEWAL COVERAGES ON THIS POLICY. MAILING THAT NOTICE TO YOU AT YOUR MAILING ADDRESS SHOWN IN ITEM 1 OF THE INFORMATION PAGE WILL BE SUFFICIENT TO PROVE NOTICE.

EXHIBIT D

TECHNICAL SPECIFICATIONS AND PLANS

If the plans and specifications from the RFP/CSP 25-019 are not physically inserted here, then they are fully incorporated into this contract by reference.

OFFEROR'S PROPOSAL FORM

Date: December 5, 2024

PROPOSAL FROM: Skanska USA Building Inc.

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

The Undersigned proposes to furnish all labor, services, materials, tools and necessary equipment for the **Construction of Texas Independence Park** and to perform the work required for the construction of said building at the location set out by the Plans and Specifications, in strict accordance with the Proposal/Contract Documents.

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

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

1. PRECONSTRUCTION FEE
   List Offeror's proposed fee for all pre-construction phase services, including pre-planning, cost estimating, scheduling, value engineering, and constructability reviews, as a lump sum amount:

   Dollars $ 45,000

2. GENERAL CONDITIONS
   List Offeror's proposed cost for General Conditions to accommodate the onsite staff as a lump sum amount. These items will include, but not be limited to, office trailers, phones, furniture, copiers, computers, software, supplies, cleaning, move in/move out, printing expenses, site personnel's radios, pagers, phones, etc., required equipment, insurance premiums, and other items specifically provided for in **Attachment 1**:

   Dollars $ 921,314

3. CONSTRUCTION MANAGER AT RISK FEE
   List Offeror's proposed fee as a percentage of construction cost, including all overhead and profit:

   Percent % 3.00

4. NUMBER OF PROPOSED CONSTRUCTION DAYS
List Offeror's proposed number of calendar days from the Notice to Proceed that will be sufficient for performing all work:

Days 365

RECEIPT OF ADDENDA

I hereby acknowledge receipt of the following Addenda: Addendum NO. #1 (Nov 19, 2024)

BY SUBMITTING A PROPOSAL, EACH OFFEROR AUTHORIZES CITY TO PERFORM ALL INVESTIGATIONS INTO THE OFFEROR'S BACKGROUND, CAPABILITIES, PRIOR EXPERIENCE AND OTHER FACTORS PERTAINING TO OFFEROR'S PERFORMANCE OF THE WORK, AS CITY DEEMS NECESSARY IN ITS SOLE DISCRETION, AND FOR THAT PURPOSE, SUBMISSION OF A PROPOSAL SHALL ACT AS OFFEROR'S SPECIFIC AUTHORIZATION TO PERSONS AND ENTITIES CONTACTED BY CITY IN CONNECTION WITH SUCH INVESTIGATIONS ("EVALUATING PARTIES") TO PROVIDE CITY WITH THE INFORMATION REQUESTED BY CITY AND TO DISCUSS AND EXPRESS OPINIONS CONCERNING OFFEROR. FURTHER, BY SUBMISSION OF A PROPOSAL, OFFEROR AGREES TO FULLY AND FOREVER WAIVE AND RELEASE ANY CLAIM (KNOWN OR UNKNOWN) IT HAS OR MAY HAVE AGAINST CITY, ARCHITECT, THE EVALUATING PARTIES AND THEIR RESPECTIVE ATTORNEYS, EMPLOYEES, CONSULTANTS, REPRESENTATIVES, AND AGENTS WHICH IN ANY WAY ARISE OUT OF OR ARE CONNECTED TO THE: (I) ADMINISTRATION, EVALUATION, OR RECOMMENDATION (OR LACK THEREOF) OF ANY PROPOSAL; (II) WAIVER OF ANY REQUIREMENTS UNDER THE PROPOSAL/CONTRACT DOCUMENTS; AND (III) ACCEPTANCE OR REJECTION OF ANY PROPOSAL AND AWARD OF THE CONTRACT.

OFFEROR'S NAME: Dennis Yung

OFFEROR'S SIGNATURE:

ATTACHMENT 1

GENERAL CONDITIONS DETAIL

DESCRIPTION	QTY	UNIT	$ Cost/Unit Including All Burden & Insurance, Etc.	TOTAL
On Site Project Management				
Project Executive	0	MO	$ -	$ -
Project Manager	12	MO	$ 10,922.51	$ 131,070.14
Superintendent(s)	12	MO	$ 15,824.24	$ 189,890.94
Asst. Superintendent	0	MO	$ -	$ -
Office Engineer(s)	12	MO	$ 8,105.76	$ 97,269.12
Project Expeditor	0	MO	$ -	$ -
Scheduler	12	MO	$ 2,294.29	$ 27,531.48
Project Support Staff	12	MO	$ 4,185.36	$ 50,224.37
Cost Engineer	0	MO	$ -	$ -
Bonds and Insurance				
GL, Auto, WC & Builders Risk	1	LS	$ 224,999.00	$ 224,999.00
Payment & Performance Bonds	1	LS	$ 110,500.00	$ 110,500.00
Temporary Project Construction and Utilities for CM Staff				
Dumpsters for CM staff	12	MO	$ 140.00	$ 1,680.00
Monthly Telephone Service	12	MO	$ 450.00	$ 5,400.00
Project Water	12	MO	$ 150.00	$ 1,800.00
Temporary Toilets	12	MO	w/ trailer	
Temporary Fire Protection	12	MO	$ 25.00	$ 300.00
Telephone System Installation	1	LS	$ 3,500.00	$ 3,500.00
Ceremonies	1	LS	$ 5,000.00	$ 5,000.00
Field Offices & Office Supplies for CM Staff				
Job Photos and Videos	12	MO	$ 50.00	$ 600.00
CM Project Specific Signage	1	LS	$ 3,500.00	$ 3,500.00
Postage and Deliveries	12	MO	$ 100.00	$ 1,200.00
Mobilization for Office Trailers	1	LS	$ 3,357.00	$ 3,357.00
Monthly Office Rental Costs	12	MO	$ 1,251.00	$ 15,012.00
Storage Trailers	12	MO	$ 250.00	$ 3,000.00
Field Office Equipment	12	MO	$ 50.00	$ 600.00
Vehicles including Fuel, Maintenance & Ins	12	MO	$ 2,040.00	$ 24,480.00
Safety Equipment	12	MO	$ 50.00	$ 600.00
First Aid Supplies	12	MO	$ 100.00	$ 1,200.00
Job Office Supplies	12	MO	$ 50.00	$ 600.00
Janitorial Supplies	12	MO	$ 50.00	$ 600.00
Project Computers and Software	12	MO	$ 400.00	$ 4,800.00
Field Office Furniture	12	MO	$ 250.00	$ 3,000.00
Copy Machine and Supplies	12	MO	$ 500.00	$ 6,000.00
Communications Equipment	12	MO	$ 300.00	$ 3,600.00
Advertising	0	MO		$ -
TOTAL GENERAL CONDITIONS				$ 921,314.05

CERTIFICATION OF PROPOSAL

The undersigned affirms that they are duly authorized to execute the City of College Station Construction Agreement, that this Proposal has not been prepared in collusion with any other Offeror, and that the contents of this Proposal have not been communicated to any other Offeror prior to the official opening of this Proposal. Additionally, subject to Section 2269.254 of the Code, the undersigned affirms that the firm is willing to sign the enclosed City of College Station Construction Agreement.

Signed By: _____ Title: Exec Vice President - General Manager

Typed Name: Dennis Yung Company Name: Skanska USA Building Inc.

Phone No.: 254.534.1784 Fax No.: 713.401.5290

Email: dennis.yung@skanska.com

Proposal Address:	800 Capitol Street	Houston	TX	77002
	P.O. Box or Street	City	State	Zip
Order Address:	800 Capitol Street	Houston	TX	77002
	P.O. Box or Street	City	State	Zip
Remit Address:	800 Capitol Street	Houston	TX	77002
	P.O. Box or Street	City	State	Zip

Federal Tax ID No.: 22.3752540

Date: December 5, 2024

PROPOSAL NO. 25-019

February 27, 2025
Item No. 8.11.
TAMU and COCS Fire Protection Services ILA

Sponsor: Richard Mann, Chief of Fire and Emergency Services

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action and discussion regarding an interlocal agreement with Texas A&M University to provide fire protection services from the College Station Fire Department to the Texas A&M campus.

Relationship to Strategic Goals:
1. Good Governance
2. Core Services

Recommendation(s): Staff recommends approval of the ILA with TAMU.

Summary: The City of College Station has been in discussions with Texas A&M University to revise and update the current 1971 agreement for the provision of fire service by the City of College Station Fire Department to main campus property. This agreement is based on a user-fee model whereby TAMU annual payment is based on the percentage of the College Station Fire Department budget for the percentage of total incident responses to TAMU campus. The financial payment escalates from 60% to 100% by FY28.

Budget & Financial Summary: The increase in revenue has a not-to-exceed provision as follows:

- FY24 - $750,000
- FY25 - $1 million
- FY26 - $1.2 million
- FY27 - $1.4 million
- FY28 - $1.5 million

Attachments:
1. TAMU Fire ILA 2025

INTERLOCAL AGREEMENT FOR
EMERGENCY SERVICES BETWEEN
THE CITY OF COLLEGE STATION AND TEXAS A&M UNIVERSITY

THIS INTERLOCAL AGREEMENT ("Agreement") is made and entered into by the City of College Station, a Texas Home Rule Municipal Corporation ("College Station or City"), and Texas A&M University**,** ("TAMU") a member of The Texas A&M University System, an agency of the State of Texas; and

WHEREAS, College Station and TAMU ("Parties") are authorized by the Interlocal Cooperation Act, Texas Government Code, Chapter 791, to enter into an interlocal agreement for the performance of governmental functions and services including emergency fire and medical services; and

WHEREAS, College Station currently provides Emergency Fire Protection Services to TAMU in the geographic areas defined as Emergency Fire Protection Map; and

WHEREAS, TAMU as a land-grant University in the State of Texas is exempt from local ad valorem taxation, which funds and supports Emergency Fire Protection to the City of College Station; and

WHEREAS, College Station and TAMU are committed to the promotion of the safety and health of the College Station and TAMU within the bounds of fiscal responsibility; and

NOW, THEREFORE, the Parties, in consideration of the mutual covenants and conditions contained herein, agree as follows:

I. DEFINITIONS

1.1 **Emergency Fire Protection Services** means automatic aid all fire suppression, hazardous materials response and mitigation, and technical rescue services regularly provided by the College Station Fire Department within College Station city limits. Any hazmat consumables used are not covered under the annual payment and are subject to a separate invoice. Emergency Medical Services, fire inspection services, code enforcement and arson investigation are not included in Emergency Fire Protection Services.

1.2 **Incident** means any emergency on TAMU property as shown in Emergency Fire Protection Map in **Exhibit "A"** generating a response by College Station Fire Department. A single incident may require the response of one or more emergency response apparatus based on College Station's standard response profile and policy.

II. EMERGENCY SERVICES

2.1 **Emergency Fire Protection Services.** College Station will provide Emergency Fire Protection Services to all persons, buildings and property within the area shown on the Emergency Fire Protection Map in **Exhibit "A"**.

2.2 **Emergency Medical Servies.** College Station will provide automatic mutual aid Emergency Medical Services to TAMU as shown in **Exhibit "A"** at no direct cost to TAMU. Any person provided Emergency Medical Services is responsible for payment as according to College Station ordinances and policies.

III. PAYMENTS

3.1 **Payment Methodology.** The payment methodology is a pay-for-service-based model determined by the proportion of College Station Emergency Services utilized on TAMU property. College Station shall provide TAMU with an annual report showing the total number of incidents for the College Station Fire Department and the total number of incidents on TAMU property over the past five rolling years. The five-year average determines the percentage of use of Emergency Fire Protection Services for TAMU. Payment is based on an equal percentage of the College Station Fire Department annual budget as adopted by the College Station City Council as shown in **Exhibit "B"**.

3.2 **Public Safety Benefit.** College Station acknowledges during the initial and any renewal term of this Agreement it may derive certain public safety benefits from TAMU, the value of which may offset the annual costs stipulated in 3.2 Payment Terms. The Parties agree to negotiate in good faith to determine the annual consideration before any invoice is submitted in accordance with Section 3.3 below. Any change to the consideration must be recorded in an amendment to the Agreement.

3.3 **Payment Terms.** In consideration for College Station providing TAMU Emergency Fire Protection Services TAMU shall pay College Station the following amounts annually based on the methodology above. This payment structure is implemented gradually with an escalation period with full implementation for full payment by FY 2029:

1. **FY 2024** responses from October 1, 2023 to September 30, 2024 is 60% of the total payment amount and is not to exceed $750,000.

2. **FY 2025** responses from October 1, 2024 to September 30, 2025 is 70% of the total payment amount and is not to exceed $1 million.

3. **FY 2026** responses from October 1, 2025 to September 30, 2026 is 80% of the total payment amount and is not to exceed $1.2 million.

4. **FY 2027** responses from October 1, 2026 to September 30, 2027 is 90% of the total payment amount and is not to exceed $1.4 million.

5. **FY 2028** response from October 1, 2027 to September 30, 2028 is at 100% of the total payment amount and is not to exceed $1.5 million.

6. **FY 2029 and Future Year** responses from October 1st to September 30th of the year is 100% of the total payment amount.

3.4 **Invoice.** College Station will annually invoice TAMU. Payment is due thirty (30) days from the invoice date.

IV. TERM AND TERMINATION

4.1 **Term.** The Agreement term begins on October 1, 2023. The initial Agreement Term is five (5) years. This Agreement may be renewed by mutual written agreement for successive five (5) year terms.

4.2 **Termination.** A Party may terminate this Agreement without cause and for convenience upon one hundred eighty (180) days' written notice. The payment will be prorated, and a final invoice will be sent before the Agreement terminates. If the Agreement is terminated within the first Agreement term, any renewal term, or without the mutual written consent of College Station, TAMU relocates, alters or eliminates Fire Station 4 which in any way hinders or prevents College Station's ability to respond to emergency calls for service to the City of College Station or the Texas A&M University campus, the difference between the calculated payment and the not to exceed amount will be due upon termination.

V. GENERAL TERMS

5.1 **Civil Liability and Indemnity.** College Station and TAMU expressly acknowledge and agree that all activities conducted by College Station constitute or shall be construed as Emergency Fire and Medical Services for which TAMU would have been responsible for furnishing in the absence of this Agreement. TAMU expressly acknowledges and agrees notwithstanding any contrary provisions herein, that it is solely responsible for any civil liability that arises from furnishing of those services in accordance with and pursuant to Texas Government Code §791.006, regardless of whether the services are provided in whole or in part by College Station under this Agreement.

5.2 **No Waiver of Immunity.** College Station expressly acknowledges TAMU is an agency of the State of Texas and TAMU acknowledges College Station is a Texas Home Rule Municipal Corporation. Nothing in this Agreement will be construed as a waiver or relinquishment by TAMU or College Station of its right to claim such exemptions, privileges and immunities as may be provided by the Constitution or the laws of the State of Texas.

5.3 **Interlocal Cooperation Act.** Each Party to this Agreement is either a local government agency or an agency of the State of Texas as defined in the Interlocal Cooperation Act. Nothing in this Agreement will be construed as a waiver or relinquishment by any 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.

5.4 Force Majeure. If the performance of any obligation is delayed by reason of war; civil commotion; acts of God; inclement weather; governmental restrictions, regulations, or interferences; fires; strikes; lockouts, national disasters; riots; material or labor restrictions; transportation problems; or any other circumstances, which are reasonably beyond the control of College Station under the terms of this Agreement, regardless of whether any such circumstance is similar to any of those enumerated or not, College Station shall be excused from doing or performing the same during such period of delay.

5.5 Amendment. This Agreement may not be amended, unless the Parties execute a written amendment.

5.6 Severability. The failure of TAMU or College Station to insist, in one or more instances, on strict performance of any of the requirements of this Agreement will not be construed as a waiver of relinquishment of such requirements in future instances, but will continue and remain in full force and effect.

5.7 Savings Clause. If any provision of the Agreement shall be held to be invalid, illegal, or unenforceable by a court or other tribunal of competent jurisdiction, the validity 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 provisions or provisions of this Agreement with legal terms and conditions approximating the original intent of the parties.

5.8 Waiver. Failure of any Party, at any time, to enforce any 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 any Party thereafter to enforce each and every provision hereof. No term of this Agreement shall be deemed waived, or breach excused, unless the waiver shall be in writing and signed by the Party claimed to have waived. Furthermore, any consent to or waiver of a breach will not constitute consent to or waiver of or excuse of any other different or subsequent breach.

5.9 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 full authority to sign on behalf of their respective governmental bodies.

5.10 Successors and Assign. This Agreement is binding upon College Station and TAMU, their respective legal representatives, successors and assigns.

5.11 Notices. Any official notices by one Party to another Party 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 documented communication.

TAMU: with copy to:

Office of the Vice President and CFO
1181 TAMU
College Station, TX 77843-1181

Department of Contract Administration
1182 TAMU
College Station, TX 77843-1182
contracts@tamu.edu

College Station: with copy to:

Fire Chief
300 Krenek Tap Road
College Station, Texas 77842
(979) 764-3706

City Manager
PO Box 9960 1101 Texas Avenue S
College Station, Texas 77842
(979) 764-3510

5.12 Agreement Not for Third Party Benefit. This Agreement is not intended for benefit of any third party.

5.13 Entire Agreement. 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 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.

5.14 Venue. This Agreement has been made under and shall be governed by the laws of the State of Texas. This Agreement and all matters related thereto shall be performed in Brazos County, Texas. The venue of any lawsuits arising out of this Agreement shall be in Brazos County, Texas.

5.15 Effective Date. This agreement is effective on the last party making the Agreement fully executed.

5.16 Multiple Originals. This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes.

TEXAS A&M UNIVERSITY

By: _____
John W. Crawford, Vice President for Finance and Chief Financial Officer
Date: 2/13/2025

CITY OF COLLEGE STATION

By: _____
Mayor

Date: _____

ATTEST:

_____
City Secretary
Date: _____

APPROVED:

_____
City Manager
Date: _____

_____
City Attorney
Date: _____

_____
Assistant City Manager / CFO
Date: _____

Exhibit "A"
Emergency Fire Protection Map

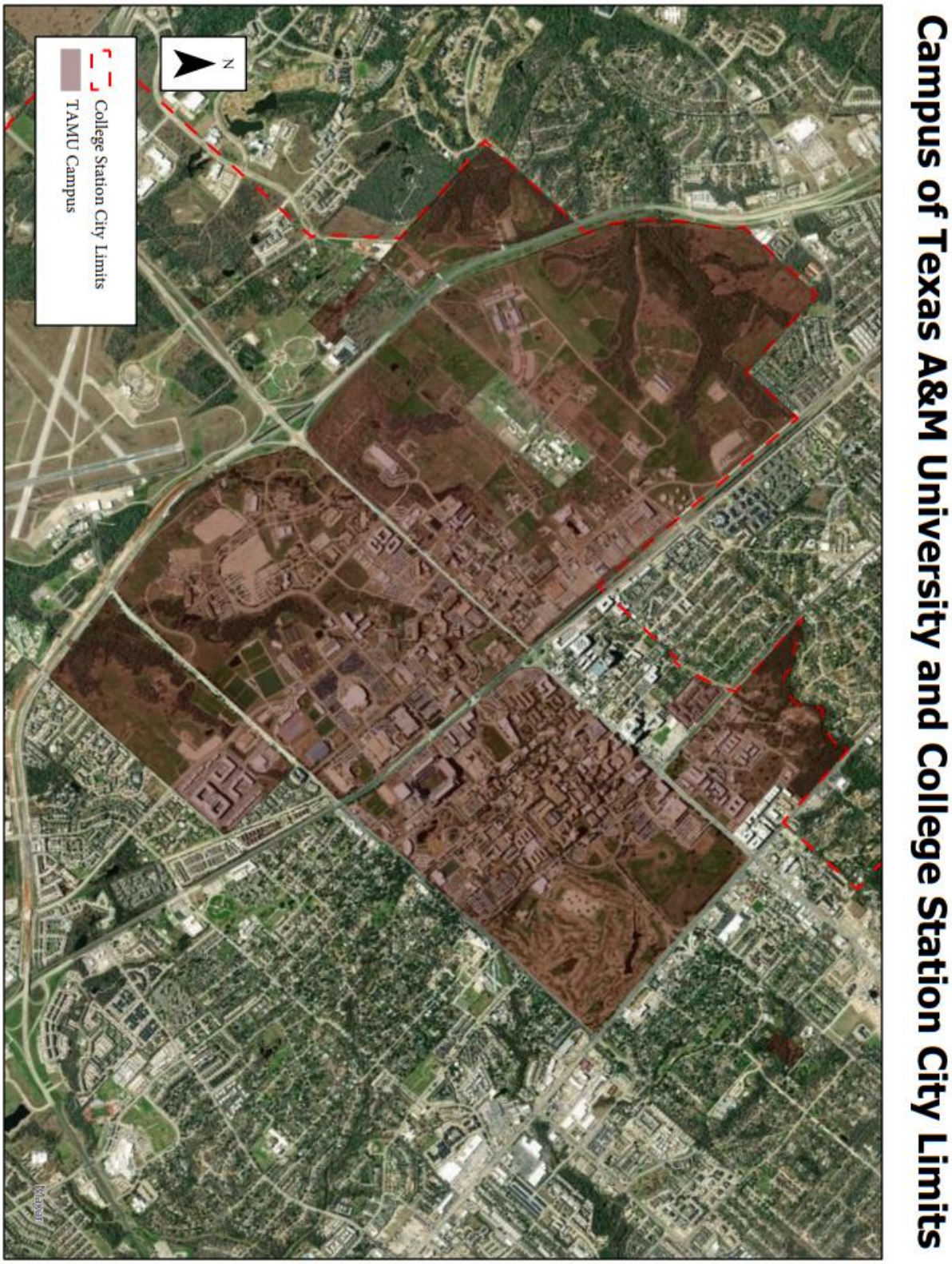


Exhibit "B"
Pay-for-Service-Based Model

	CSFD Budget	*All Incidents*	*TAMU Incidents*	*% TAMU*	*Annual Service Fee*
FY19	$19,751,615	10954	461	4.21%	
FY20	$20,240,460	10745	368	3.42%	
FY21	$20,726,740	13161	536	4.07%	
FY22	$23,436,499	12982	577	4.44%	
FY23	$26,861,036	12591	556	4.42%	
FY24	**$28,993,542**	***5-Year Rolling Average:***		**4.11%**	**$1,191,635**

February 27, 2025
Item No. 9.1.
Over occupancy enforcement

Sponsor: Debbie Eller, Director of Community Services

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action regarding an update of the over occupancy enforcement.

Relationship to Strategic Goals:
Neighborhood Integrity, Core Services and Infrastructure

Recommendation(s): Staff recommends City Council receive the presentation and provide comments and feedback.

Summary: Staff will present information related to over occupancy enforcement.

Budget & Financial Summary: N/A

Attachments:
None

February 27, 2025
Item No. 9.2.
Rec Center Update

Sponsor: Jennifer Prochazka, Assistant City Manager

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action regarding an update on the Recreation Center Feasibility Study.

Relationship to Strategic Goals:
Core Services and Infrastructure

Recommendation(s): Staff recommends the City Council receive the presentation and provide feedback.

Summary: The Council approved a contract with Brinkley, Sargent, Wiginton Architects in October 2023 for a two-phased evaluation of a potential recreation center in College Station. Phase one was presented to the Council in August 2024 and included findings related to a market analysis and needs assessment, including results of a statistically valid survey and extensive public engagement. Phase two includes site concept development, operations assessment, cost pro forma, and engagement of a steering committee.
In this workshop, staff will review the phase one findings and give an update of phase two progress.

Budget & Financial Summary: The Recreation Center Feasibility Study is contracted for $180,768.

Attachments:
None

February 27, 2025
Item No. 9.3.
Convention Center Feasibility Study

Sponsor: Jeremiah Cook, Assistant Director - Tourism

Reviewed By CBC: N/A

Agenda Caption: Presentation, discussion, and possible action regarding the first phase of the Convention Center Feasibility Study.

Relationship to Strategic Goals:
Diverse & Growing Economy

Recommendation(s): Staff recommends council receive the presentation and provide guidance on phase 2 of the study.

Summary: In October 2024, the City Council approved a contract with Hunden Strategic Partners to perform a convention center needs analysis. The analysis is broken into two phases, with phase one determining the potential market demand for a facility, and phase two determining the facility and programming, site evaluation, feasibility, financing options, economic impact analysis, and return on investment. During this workshop, Hunden Strategic Partners will present their findings as it relates to phase one.

Budget & Financial Summary: Phase one of the Convention Center Feasibility Study was conducted at a cost of $40,050. If the City Council chooses to proceed with phase two of the study, the additional cost will be $32,875.

Attachments:
None

February 27, 2025
Item No. 10.1.
Glenhaven Estates Phase 2 ROO

Sponsor: Jeff Howell, Senior Planner

Reviewed By CBC: Planning & Zoning Commission

Agenda Caption: Public Hearing, presentation, discussion, and possible action regarding an ordinance amending Appendix A, Unified Development Ordinance, Article 4, "Zoning Districts," Section 4.2 "Official Zoning Map," of the Code of Ordinances of the City of College Station, Texas, by changing the zoning district boundaries from GS General Suburban to GS General Suburban and ROO Restricted Occupancy Overlay on approximately 11.52 acres being 33 lots within Glenhaven Estates Phase 2 Subdivision, excluding Glenhaven Drive, Fernhaven Circle, Francis Circle, and Springhaven Circle, generally located between Brazoswood Drive and Summerglen Drive.

Relationship to Strategic Goals:
Neighborhood Integrity

Recommendation(s): This item was heard at the February 6th Planning and Zoning Commission meeting where the Commission voted 7-0 to recommend approval.

Summary: This request is to rezone approximately 11.52 acres being 33 lots within Glenhaven Estates Phase 2 Subdivision, save and except Glenhaven Drive, Fernhaven Circle, Francis Circle, and Springhaven Circle from GS General Suburban to GS General Suburban and ROO Restricted Occupancy Overlay. At time of original plat, the streets that are being excepted did not have residential lots, but were only platted as right-of-way.

This request is to add the ROO, which is a single-family overlay zoning district, to the existing base zoning within the Glenhaven Estates Phase 2 subdivision boundaries. The ROO is intended to provide subdivision-specific occupancy regulations – not to exceed two unrelated persons per single-family dwelling or accessory living quarter. The ROO Petition Committee, comprised of Glenhaven Estates Phase 2 property owners, has met all requirements of the ROO application process. The Petition Committee submitted the application materials including the ROO petition for the subdivision. When submitting an application, the fifty (50) percent plus one (1) petition signature threshold of property owners in support of the overlay must be met. City staff were able to verify that the petition met the signature threshold in support of the requested ROO.

REZONING REVIEW CRITERIA

1. Whether the proposal is consistent with the Comprehensive Plan:

The subject areas are designated as Neighborhood Conservation on the Comprehensive Plan Future Land Use & Character Map. The surrounding areas to the north are designated as Neighborhood Conservation with single-family detached dwellings and General Commercial for the developments fronting onto University Drive. The subject properties are also surrounded by Neighborhood Conservation to the south and east. To the west is also Neighborhood Conservation with single-family dwellings as well and Suburban Residential with townhomes. These subject areas are generally bounded by Summerglen Drive to the north and Brazoswood Drive to the south which is an existing major collector and shown on the Comprehensive Plan's Thoroughfare Plan.

The Comprehensive Plan discusses single-family overlay zoning districts in both Chapter 3, Strong Neighborhoods and Chapter 9, Collaborative Partnerships. The plan states that, “various single-family overlay zoning districts have been created to help mitigate the issues associated with tear-downs in established neighborhoods. These include the Neighborhood Conservation Overlay, the Restricted Occupancy Overlay, and the Historic Preservation Overlay.” The plan goes on to state that collaboration between the City and Texas A&M University is vital to proactively address issues caused by the rapid growth of the university and the stressors and potential changes that places on nearby neighborhoods. Single-family overlay zoning is a tool that a neighborhood can choose for itself to help address and mitigate perceived, anticipated, and actual changes within an established single-family neighborhood. While the NCO Neighborhood Conservation and HP Historic Preservation overlays address and mitigate changes to physical property characteristics, the intent of a ROO is to address and mitigate issues associated with over-occupancy. As a tool that a neighborhood can pursue for itself to address issues of over-occupancy and preserve neighborhood character, the request is aligned with the Comprehensive Plan.

2. Whether the uses permitted by the proposed zoning district will be appropriate in the context of the surrounding area:

The subject areas are generally surrounded by GS General Suburban zoned single-family homes, except to the west, which is zoned PDD Planned Development District and is currently developed with townhomes. To the north, along with GS General Suburban a portion is zoned GC General Commercial which contains an existing medical clinic. To the south, the subject area is also adjacent to GS General Suburban with single-family homes, with a portion to the east that includes a ROO Restricted Occupancy Overlay as well. The ROO for Glenhaven Estates Phase 8 subdivision was established in May of 2024. The properties to the east on the other side of Glenhaven Drive are zoned T Townhouse but also contain single-family uses as well. The single-family uses allowed by the GS General Suburban zoning district will remain and the addition of the ROO solely restricts the number of unrelated persons per single-family dwelling or accessory living quarters to no more than two unrelated persons.

As stated in the Unified Development Ordinance (UDO):
Single-family overlay districts create an additional zoning district that is superimposed over the underlying zoning district. Single-family overlay districts are intended to provide additional standards for College Station neighborhoods. These standards promote residential development patterns and are intended to protect and enhance desirable neighborhood characteristics, livability, and harmonious, orderly, and efficient growth and development. The underlying zoning district establishes the permitted uses and standards and shall remain in effect. The requirements of the overlay district are to be applied in addition to the underlying zoning district standards.

The ROO overlay standard is as follows:
Occupancy of either, a detached single-family dwelling or accessory living quarter, shall not exceed two unrelated persons per single-family dwelling or accessory living quarter. Related persons are specified in Section 11.2 ‘Defined Terms’ in the definition of ‘Family.’ Accessory living quarter requirements are further specified in Section 6.5 ‘Accessory Uses’ within the standards for ‘Living Quarters.’

UDO sections 3.3 Zoning Map Amendment (Rezoning), 4.1 Establishment of Districts, and 5.11 Single-Family Overlay Districts detail the application process and regulations for single-family overlay districts and the ROO Process Handbook serves as a policy guide for residents. The process

requires that a subdivision interested in pursuing a ROO form a Petition Committee. That committee is tasked with leading the effort, organizing their neighbors, hosting a neighborhood-led meeting and notifying all neighbors of the meeting via certified mail, collecting the petition signatures, and submitting the completed application and all required materials.

The ROO Petition Committee was comprised of five members: Angie Alaniz, Laurie Chapkin, Robert Chapkin, Francois Gabbai, and Caroline Gallagher. The Petition Committee hosted their neighborhood meeting on September 27, 2024, discussed pursuing the ROO, the overall process, and discussed collecting petition signatures. There were approximately 12 attendees at the meeting, in which all of them were property owners within the subdivision. City staff was present at the meeting.

The Petition Committee finished collecting petition signatures and submitted their complete ROO application on November 13, 2024 . City staff verified that the application was complete, that all requirements were met, and that the ROO petition for the subdivision met the signature threshold. The verified petition signatures in support of the ROO are as follows:

- Glenhaven Estates Phase 2: 20 of 33 lots in support (60.6%)

Staff held a required City-hosted neighborhood meeting for this ROO application request on January 13, 2025. There were approximately 11 attendees, with the majority of questions relating to the overall process, rental registrations, and timeline of the ROO application.

3. Whether the property to be rezoned is physically suitable for the proposed zoning district:

The ROO zoning does not affect any of the physical characteristics of the underlying GS General Suburban zoning district. The existing subdivision meets the dimensional standards for GS General Suburban zoned properties as set forth in the UDO and are already developed as a single-family residential subdivision.

4. Whether there is available water, wastewater, stormwater, and transportation facilities generally suitable and adequate for uses permitted by the proposed zoning district:

The existing water, wastewater, stormwater, and transportation infrastructure is adequate to support the needs of these existing developments. No additional development and subsequent impacts are anticipated from the addition of the ROO zoning designation.

5. The marketability of the property:

The single-family uses allowed by the GS General Suburban zoning district will remain and is marketable as single-family residential homes. The ROO only restricts the number of unrelated persons per single-family dwelling or accessory living quarters to no more than two unrelated persons.

Budget & Financial Summary: N/A

Attachments:

1. Glenhaven ROO Ordinance

2. Aerial and Small Area Map
3. Background Information
4. Rezoning Map
5. Future Land Use Map
6. Original Subdivision Plat
7. Applicant's Supporting Information
8. Petition Committee Members
9. Neighborhood Meeting Materials
10. Petition Signatures

ORDINANCE NO. _____

AN ORDINANCE AMENDING APPENDIX A "UNIFIED DEVELOPMENT ORDINANCE," ARTICLE 4 "ZONING DISTRICTS," SECTION 4.2, "OFFICIAL ZONING MAP" OF THE CODE OF ORDINANCES OF THE CITY OF COLLEGE STATION, TEXAS, BY CHANGING THE ZONING DISTRICT BOUNDARIES AFFECTING APPROXIMATELY 11.52 ACRES BEING 33 LOTS WITHIN GLENHAVEN ESTATES PHASE 2 SUBDIVISION, EXCLUDING GLENHAVEN DRIVE, FERNHAVEN CIRCLE, FRANCIS CIRCLE, AND SPRINGHAVEN CIRCLE 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 27th day of February, 2025.

ATTEST: **APPROVED:**

_____ _____

City Secretary **Mayor**

APPROVED:

_____

City Attorney

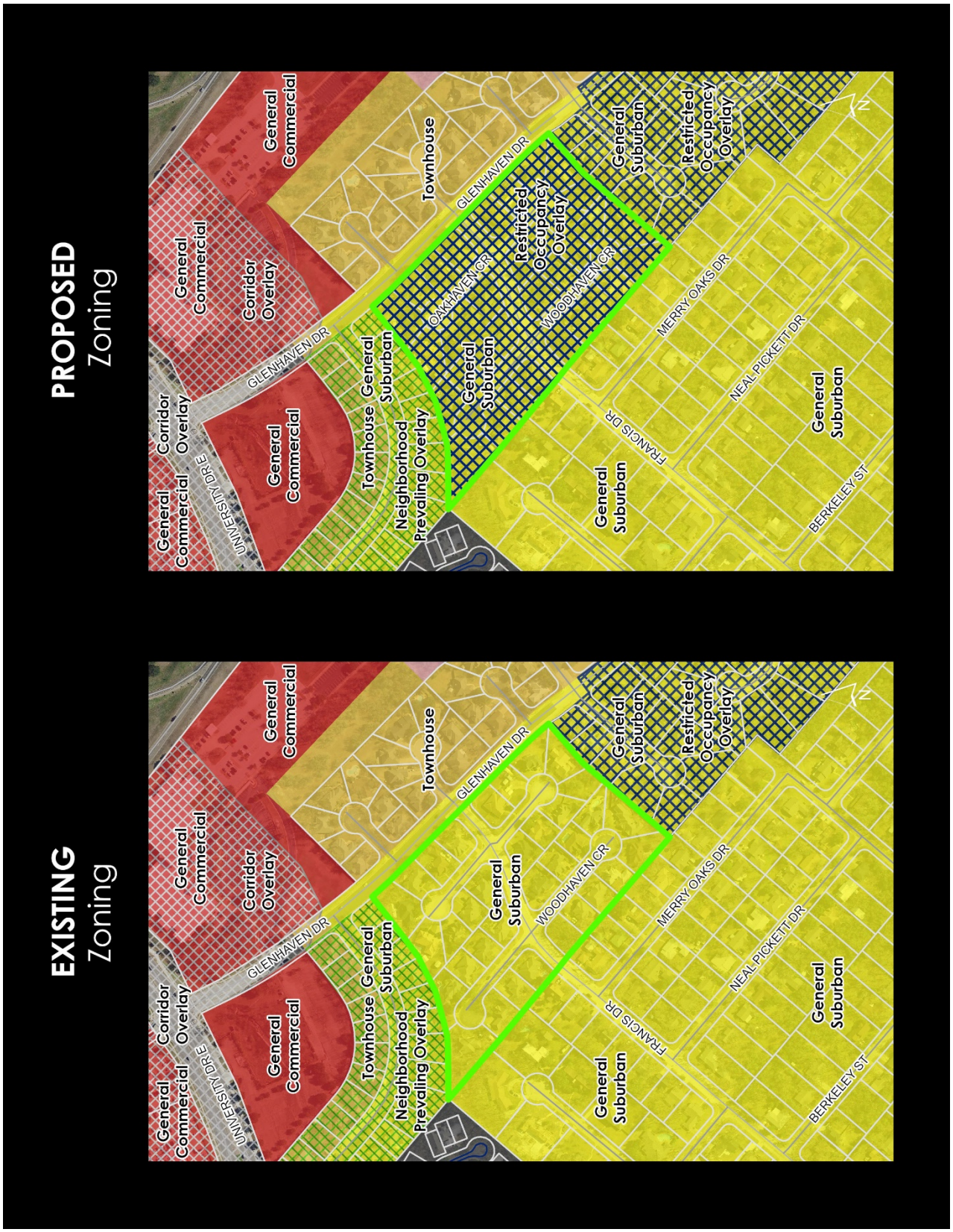
Exhibit A

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 and is to read as follows:

The following properties are rezoned to apply a ROO Restricted Occupancy Overlay zoning as provided in Appendix A, "Unified Development Ordinance," Article 5 "District Purpose Statements and Supplemental Standards", Section 5.11 "Single-Family Overlay Districts":

Approximately 11.52 acres of land, being 33 lots within Glenhaven Estates Phase 2 Subdivision, excluding Glenhaven Drive, Fernhaven Circle, Francis Circle, and Springhaven Circle.

Exhibit B


PROPOSED
Zoning
General Commercial
Corridor Overlay
Townhouse
GLENHAVEN DR
General Suburban
Restricted Occupancy Overlay
OAKHAVEN CR
WOODHAVEN CR
MERRY OAKS DR
NEAL PICKETT DR
FRANCIS DR
BERKELEY ST
UNIVERSITY DR E
Townhouse General Suburban
Neighborhood Prevailing Overlay
EXISTING
Zoning

NORTH

0 245 490 Feet

GLENHAVEN ESTATES PHASE 2 ROO

Case: REZ2024-000028

REZONING

ZONING DISTRICTS (In Grayscale)

Residential
- R Rural
- WE Wellborn Estate
- E Estate
- WRS Wellborn Restricted Suburban
- RS Restricted Suburban
- GS General Suburban
- D Duplex
- T Townhome
- MH Middle Housing
- MF Multi-Family
- MU Mixed-Use
- MHP Manufactured Home Pk.

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

NORTH

0 287.5 575 Feet

GLENHAVEN ESTATES PHASE 2 ROO

Case: REZ2024-000028

REZONING

BACKGROUND INFORMATION

NOTIFICATIONS

Advertised Commission Hearing Date: February 6, 2025
Advertised Council Hearing Date: February 27, 2025

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: 98

Contacts in support: 1 at the time of this report
Contacts in opposition: None at the time of this report
Inquiry contacts: None at the time of this report

ADJACENT LAND USES

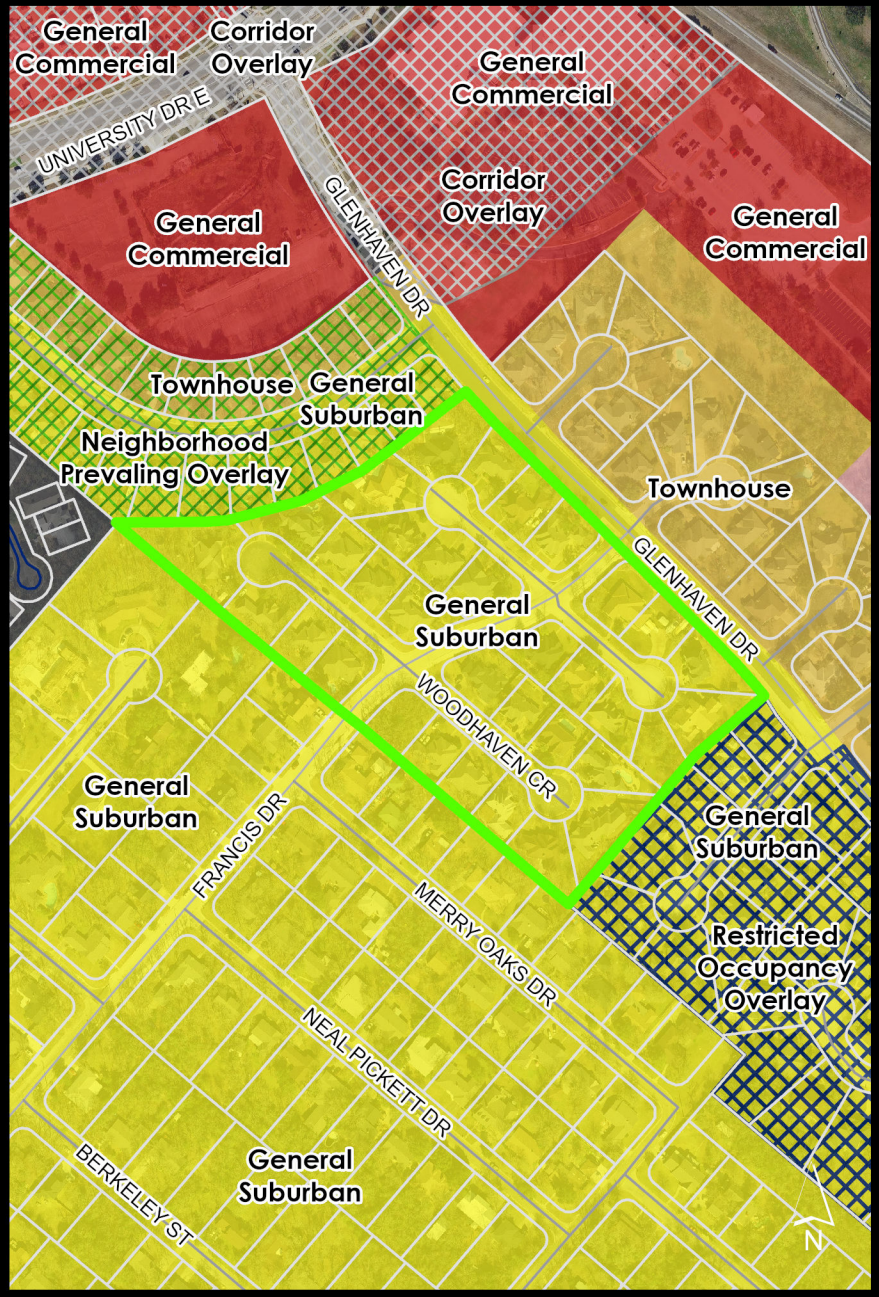
Direction	Comprehensive Plan	Zoning	Land Use
North	Neighborhood Conservation, General Commercial	GS General Suburban, GC General Commercial	Single-family detached, Medical Clinic
South	Neighborhood Conservation	GS General Suburban, GS General Suburban & ROO Restricted Occupancy Overlay	Single-family detached
East	Neighborhood Conservation	T Townhouse	Single-family detached
West	Neighborhood Conservation, Suburban Residential	GS General Suburban, PDD Planned Development District	Single-family detached, Townhomes

DEVELOPMENT HISTORY

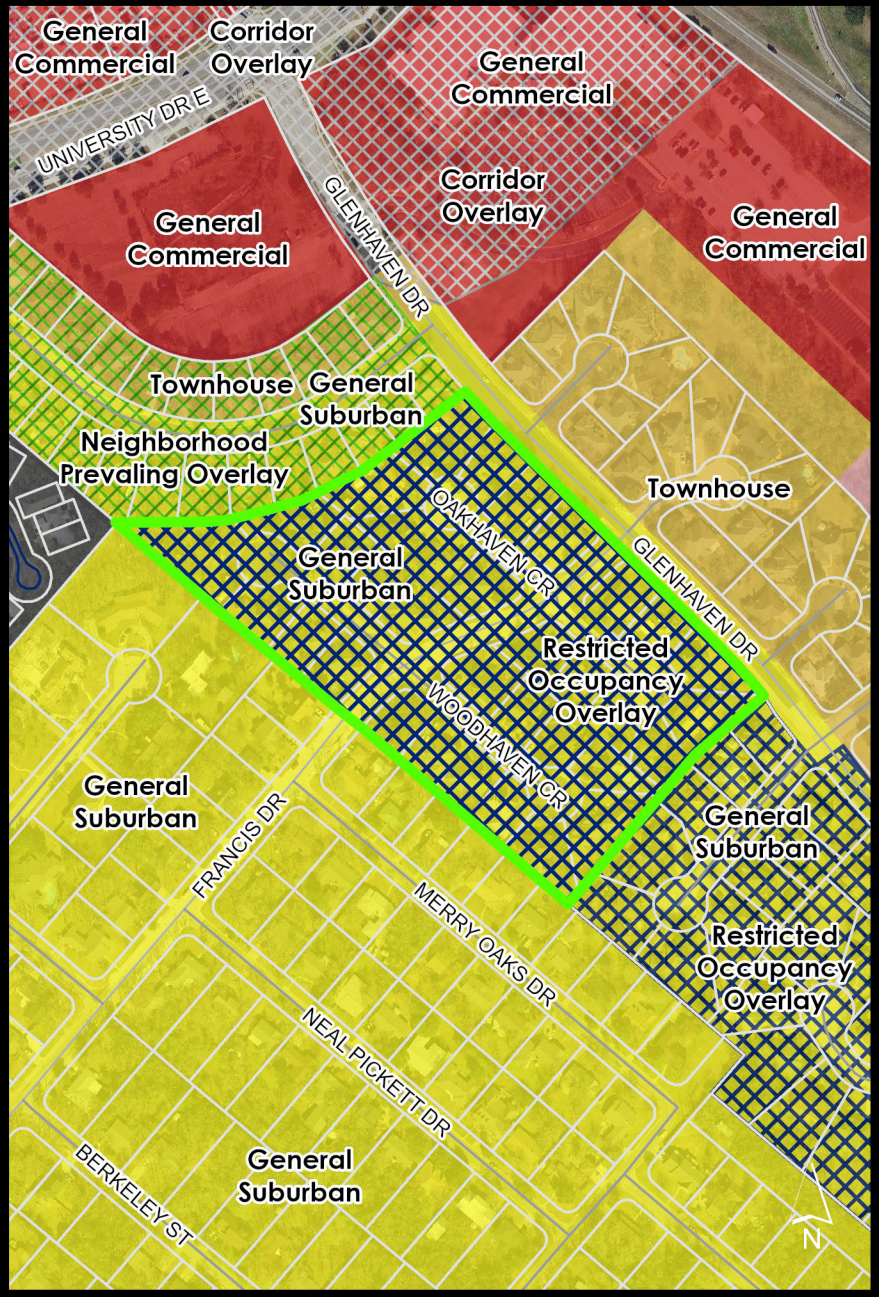
Annexed: August 1958
Zoning: R-1 Single-Family Residential (upon annexation 1958)
R-1 Single-Family Residential renamed to GS General Suburban (2013)

Final Plat: Glenhaven Estates Phase 2 (1984)
Site Development: Single-family detached

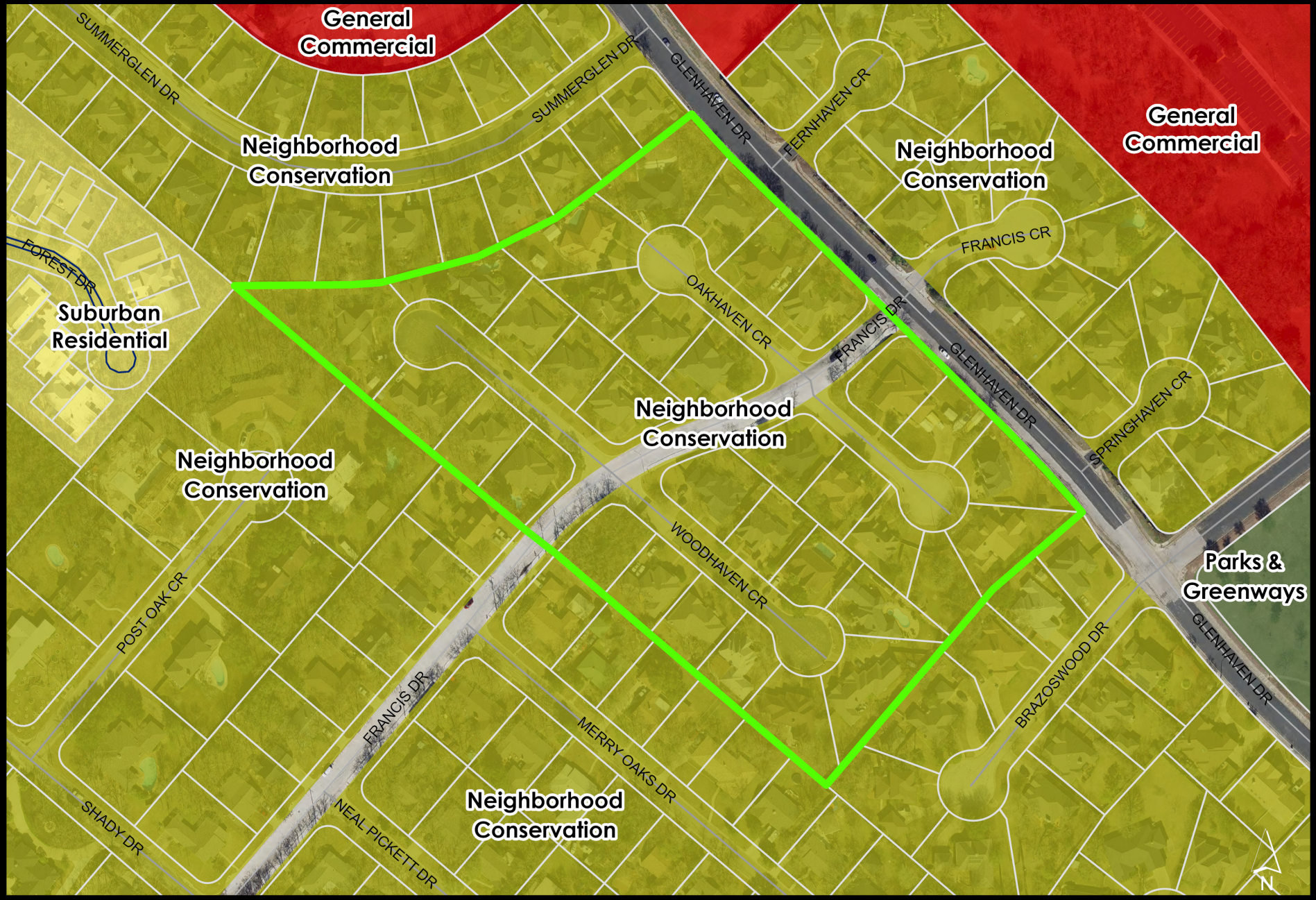
EXISTING
Zoning



PROPOSED
Zoning



EXISTING
Future Land Use



FINAL PLAT
for

GLENHAVEN ESTATES ~ PHASE II
15.115 ACRES
RICHARD CARTER LEAGUE, A-8
COLLEGE STATION, BRAZOS COUNTY, TEXAS

NOTE: LOTS 1, 2, & 3, BLOCK 8 AND LOTS 1, 2, 3, & 4, BLOCK 10, WILL NOT BE ALLOWED ANY ACCESS TO GLENHAVEN DRIVE. ALL ACCESS FOR THE LOTS WILL BE ON OAKHAVEN CIRCLE.

CERTIFICATE OF THE SURVEYOR AND ENGINEER

STATE OF TEXAS ‖
COUNTY OF BRAZOS ‖

I, MARTIN L. RILEY, JR., Registered Public Surveyor No. 4089 and Registered Professional Engineer No. 50316, in the State of Texas, hereby certify that this plat is true and correct and was prepared from an actual survey of the property and that property markers and monuments were placed under my supervision on the ground and that proper engineering consideration has been given this plat.

Martin L. Riley, Jr.
Martin L. Riley, Jr.,
R.P.S. No. 4089
R.P.E. No. 50316

STATE OF TEXAS — MARTIN L. RILEY, JR. — 4089 — REGISTERED PUBLIC SURVEYOR

STATE OF TEXAS — MARTIN L. RILEY, JR. — 50316 — REGISTERED PROFESSIONAL ENGINEER

CERTIFICATE OF OWNERSHIP AND DEDICATION

STATE OF TEXAS ‖
COUNTY OF BRAZOS ‖

I, JAMES C. SMITH, President of Brazosland Properties, Inc., Owner and Developer of the land shown on this plat and designated hereon as GLENHAVEN ESTATES, PHASE II subdivision to the City of College Station, Texas, and whose name is subscribed hereto, hereby dedicate to the use of the public forever all streets, easements and public places thereon shown for the purpose and consideration therein expressed.

James C. Smith, President
Brazosland Properties, Inc.

STATE OF TEXAS ‖
COUNTY OF BRAZOS ‖

Before me, the undersigned authority, on this day personally appeared JAMES C. SMITH, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same as the act of the said corporation and in the capacity therein stated for the purpose and consideration therein expressed.

Given under my hand and seal of office on this the 6th day of January, 19 83.

NOTARY PUBLIC — COUNTY OF BRAZOS, TEXAS

Notary Public, Brazos County, Texas

CERTIFICATE BY THE CITY ENGINEER

I, P. Fuller, City Engineer of the City of College Station, Texas, hereby certify that this subdivision plat conforms to the requirements of the Subdivision Regulations of the City of College Station.

CITY ENGINEER
for David Fuller

APPROVAL OF PLANNING AND ZONING COMMISSION

I, Jim Behling, Chairman of the Planning and Zoning Commission of the City of College Station, hereby certify that the attached plat was duly approved by the Commission on the 16th day of December, 19 82.

ATTEST:
SECRETARY

CHAIRMAN

APPROVAL OF CITY COUNCIL

I, Gary Halter, Mayor of the City of College Station, hereby certify that the attached plat was duly approved by the City Council on the 21st day of December, 19 82.

Pamela P. Jones

MAYOR OF COLLEGE STATION, TEXAS

CERTIFICATE OF THE COUNTY CLERK

STATE OF TEXAS ‖
COUNTY OF BRAZOS ‖

I, Frank Bernske, County Clerk, in and for said county, do hereby certify that this plat together with its certificates of authentication was filed for record in my office the 2 day of July, 19 83, in the Deed Records of Brazos County, Texas in Volume 464, Page 253.

Witness my hand and official Seal, at my office in Bryan, Texas.

Frank Bernske
County Clerk, Brazos County, Texas
by: Karen Murphy Deputy

302914

FILED
83 JUL -2 PM 4:05

BRAZOSLAND PROPERTIES, INC. 5.386 ACRES (R-3)

BRAZOSLAND PROPERTIES, INC. 15.230 ACRES (C-1)

BRAZOSLAND PROPERTIES, INC. 5.332 ACRES (R-3)

BRAZOSLAND PROPERTIES, INC. (FUTURE)

UNIVERSITY DRIVE

GLENHAVEN DRIVE (70'R.O.W.)

FERNHAVEN CIRCLE (50' R.O.W.)

FRANCIS CIRCLE (60' R.O.W.)

SPRINGHAVEN CIRCLE (50' R.O.W.)

BRAZOSWOOD DRIVE

SUMMERGLEN DRIVE

GLENHAVEN ESTATES, PHASE I

FRANCIS DRIVE (60' R.O.W.)

OAKHAVEN CIRCLE (50'R.O.W.)

WOODHAVEN CIRCLE (50'R.O.W.)

BLOCK 10

BLOCK 11

BLOCK 8

BLOCK 9

10' Wide Public Utility Easement and Homeowners Association Maintenance Easement

10' Wide Public Utility Easement and Homeowners Association Maintenance Easement

25' Building Line

10' Public Utility Easement

20' Public Utility Easement

10' Drainage Easement

P.U.E. - PUBLIC UTILITY EASEMENT

POST OAK FOREST SUBD. 326/42

POST OAK ADDITION 253/531

LOT 9D

LOT 8D

LOT 7 CARTER'S GROVE 2nd INST. 228/161

EXISTING FRANCIS DRIVE (60' R.O.W.)

CARTER'S GROVE, 1st. INSTALLMENT 227/597

℄ CURVE DATA

NO.	DELTA	RADIUS	TANGENT	LENGTH
1	11° 37'18"	1,473.96'	150.00'	298.97'
2	7°24'17"	1,545.39'	100.00'	199.72
3	7°21'53"	1,553.81'	100.00'	199.72'
4	32°43'50"	510.80'	150.00'	291.80'
5	28°31'20"	540.97'	137.50'	269.30'
6	35°43'50"	124.10'	40.00'	77.39'

Owned and Developed by:
BRAZOSLAND PROPERTIES, INC.
JAMES C. SMITH, President

Prepared By:
—RILEY ENGINEERING COMPANY—
ROUTE 3, BOX 457
BRYAN, TEXAS PH. 713/589-2457

SCALE: 1" = 50' MARCH, 1983

GLENHAVEN ESTATES PHASE II

REZONING APPLICATION
SUPPORTING INFORMATION

Name of Project: ROO APPLICATION FOR GLENHAVEN ESTATES PHASE II (REZ2024-000028)

Address: 1106 WOODHAVEN CIR

Legal Description: GLENHAVEN ESTATES PH 2, BLOCK 9, LOT 7

Total Acreage: 0

Applicant:: LAURIE CHAPKIN

Property Owner: LAURIE CHAPKIN

List the changed or changing conditions in the area or in the City which make this zone change necessary.

The influx of rentals on nearby streets is changing the character from the single-family neighborhood that has existed. Lots of parked cars make the streets unsafe for neighborhood children to play, for example. Our neighborhood seeks to maintain single-family living.

Indicate whether or not this zone change is in accordance with the Comprehensive Plan. If it is not, explain why the Plan is incorrect.

This zone change is in accordance with the comprehensive plan particularly in regard to distinctive places and strong neighborhoods.

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 neighborhood has been single-family homes since it was developed, but the use in the current zoning district of nearby streets has been altered by rentals to multiple unrelated people, resulting in problems that make it undesirable to family units. Problems like many cars per house parked on the street, less safety for children playing on the street, additional noise and less upkeep of yards. This is not how the neighborhood was designed.

Explain the suitability of the property for uses permitted by the rezoning district requested.

The neighborhood has been single family homes since it was developed. This structure helps feed the local elementary school, College Hills. We strive to maintain this type of housing going forward. Homes that have gone up for resale in the neighborhood have always been quickly purchased by new families.

Explain the suitability of the property for uses permitted by the current zoning district.

The neighborhood has been single family homes since it was developed. This structure helps feed the local elementary school, College Hills. We strive to maintain this type of housing going forward. Homes that have gone up for resale in the neighborhood have always been quickly purchased by new families.

Explain the marketability of the property for uses permitted by the current zoning district.

Rental companies and investors are happy to buy up single-family homes and convert them into rent-by-room housing. The overlay would make this neighborhood even more desirable to families who want to live in town, near the university and good public schools. The overlay preserves this pocket of family living in town thus making it attractive to future residents.

List any other reasons to support this zone change.

Our neighborhood seeks the overlay to maintain a family and retirement environment in our neighborhood, maintain property values, preserve in-town living free from mass housing and the consequences that come with it, as well as maintain desirability of the neighborhood.

Glenhaven Phase II ROO Committee Members Contact Info

Angie Alaniz	1103 Woodhaven Circle abalaniz@outlook.com 979-229-8818
Laurie Chapkin	1106 Woodhaven Circle L-davidson@tamu.edu 979-324-9030
Robert Chapkin	1106 Woodhaven Circle r-chapkin@tamu.edu 979-324-7770
Francois Gabbai	1105 Woodhaven Circle francois@tamu.edu 979-703-0814
Caroline Gallagher	1105 Woodhaven Circle gallagher_c2@yahoo.com 979-739-2156

September 3, 2024

Dear Resident,

We are your neighbors living on Woodhaven Circle. You are invited to a neighborhood meeting to discuss rezoning the Glenhaven Estates Phase II area (Woodhaven Circle and Oakhaven Circle) to include a Restricted Occupancy Overlay (ROO). The ROO is a single-family zoning overlay intended to provide an additional restriction in single-family neighborhoods.

A ROO allows us, as property owners in the subdivision, to petition to limit the number of household occupants to no more than two unrelated persons.

The meeting will take place at:

1105 Woodhaven Circle
Friday, September 27th
6:30 pm

For additional information regarding this discussion, you can find information on our website:

https://tinyurl.com/2kq4d82f

Also, feel free to contact one of the representatives below:

Caroline Gallagher
gallagher_c2@yahoo.com
979-739-2156

Laurie Chapkin
L-davidson@tamu.edu
979-324-9030

Restricted Occupancy Overlay Project for the Glenhaven Estates Phase II Subdivision

Neighborhood Meeting Reminder

Friday, September 27 at 6:30 pm

Hosted by Caroline Gallagher and François Gabbaï

at 1105 Woodhaven Circle

Restricted Occupancy Overlay Project for the Glenhaven Estates Phase II Subdivision

BACKGROUND: 1) Single-family overlay districts are special districts that provide additional standards for College Station neighborhoods. These overlay districts are intended to protect and enhance desirable neighborhood characteristics, livability, and harmonious, orderly, and efficient growth and development. Single-family overlay districts can only be applied to neighborhoods zoned and developed for single-family residences. Creating an overlay zoning district establishes a boundary and the additional regulations only apply to the properties within the boundary. The boundaries of each overlay are determined by the original subdivision, which is also known as a legally recorded subdivision plat. A plat is a map of a subdivision that shows the location and layout of individual parcels of land subdivided into lots with easements, alleys, or streets that is legally recorded with Brazos County. 2) Restricted Occupancy Overlays (ROO) are intended to provide subdivision-specific occupancy regulations in single-family neighborhoods to restrict occupancy to no more than two unrelated persons per single-family dwelling or accessory living quarter.

Plat concerned by this effort

STATEMENT OF OBJECTIVE: This effort aims to designate the Glenhaven Estates Phase II Subdivision as a Single-family Restricted Occupancy Overlay (ROO) district**.**

JUSTIFICATION: Many of the properties in adjacent areas are being taken over by rent-by-the-room investors. High occupancy rentals change the character of the neighborhood and make it unattractive to families.

PETITION COMMITTEE: A petition committee of local homeowners has been formed. It includes Angie Alaniz, Robert Chapkin, Laurie Chapkin, Francois Gabbai, and Caroline Gallagher.

ADDITIONAL INFORMATION: Please visit our webpage at https://tinyurl.com/2kq4d82f, which is also accessible with the following QR code. You can also contact us with questions at the following email address: GlenhavenRoo@gmail.com.

STATUS OF THE EFFORT: Those who support the ROO will be able to sign the petition at the upcoming neighborhood meeting, which will be held on Friday, September 27, at 6:30 pm at 1105 Woodhaven Circle. We will also be walking around the neighborhood to collect signatures from others who cannot attend.

IMPORTANT LINKS: We have created a Frequently Asked document that details the process, answers common questions, and addresses misconceptions. This document can be accessed via the above-mentioned webpage, which also provides a link to the City ROO Process Handbook.

Required Sign-In Sheet

DATE 9-27-24

MEETING # _____

RESTRICTED OCCUPANCY OVERLAY MEETING SIGN-IN

	NAME	ADDRESS	EMAIL/PHONE	SIGNATURE
1.	CAROLINE GALLAGHER	1105 WOODHAVEN CIR	979 739 2156	Caroline Gallagher
2.	Laurie Chapkin	1106 Woodhaven Cir.	979-324-9030	Laurie Chapkin
3.	Robert Chapkin	1106 Woodhaven Cir	979-324-7770	Robert Chapkin
4.	FRANCOIS GABBA	1105 WOODHAVEN CIR	979-703-0814	
5.	Angie Mann	1103 Woodhaven Cir	979-229-8818	Angie Mann
6.	Glenda Ross	1003 Oakhaven Cir	979-220-8683	Glenda Ross
7.	Jeff Howell	1101 Texas Ave	979 764 3679	jhowell@cstx.gov
8.	Charles Gilreath	1005 Woodhaven CIR	979 260 4155	Charles Gilreath
9.	Elizabeth Donathen	1110 Woodhaven Cir	979-777-9598	Elizabeth Donathen
10.	Timothy Donathen	1110 Woodhaven Cir	979.777.7509	Timothy Donathen
11.	Lupita S. Aguirre	1108 Woodhaven Cir.	512-665-9361	Lupita S. Aguirre
12.	Rachael Behden	1101 Woodhaven Cir.	979-219-4858	Rachael Behden
13.	Justin Behden	1101 Woodhaven Cir	248-392-5414	Justin Behden
14.				
15.				
16.				
17.				
18.				
19.				
20.				
21.				
22.				
23.				
24.				
25.				
26.				

Glenhaven Estates Phase II Subdivision Neighborhood Meeting
Friday, September 27, 2024, at 6:30 p.m.
Hosted by Caroline Gallagher and Francois Gabbai at 1105 Woodhaven Circle

Meeting Minutes

I. Introduction

Francois Gabbai welcomed guests and then introduced Robert Chapkin, a Neighborhood Petition Committee member and Treasurer, who would facilitate the meeting.

Robert then introduced the Neighborhood Petition Committee Members who include Co-Chairs Laurie Chapkin and Caroline Gallagher, Secretary Angie Alaniz, and Francois as the Vice Chair. He also introduced Jeff Howell, Senior Planner with the City of College Station, who was present to answer any technical questions for the group. Attendees then introduced themselves. (See attached sign-in sheet.)

After introductions, Robert informed the group that the goal of the Neighborhood Petition Committee is to pursue Restricted Occupancy Overlay (ROO) zoning designation for the Glenhaven Estates Phase II Subdivision. He continued by presenting an overview the of City of College Station's ROO zoning district option that aims to limit home occupancy to no more than two unrelated persons in single-family neighborhoods. Referencing the City of College Station's ROO Process Handbook, Robert discussed the process and timeline for applying for ROO zoning. He reminded attendees that the meeting invitation letter included a link to the Glenhaven Estates Phase II ROO website that has a Frequently Asked Questions section that includes a process overview, answers to frequent questions, and a link to the city's ROO handbook.

II. Discussion

Following the presentation of the ROO application process, Robert asked attendees if they had any questions or concerns about submitting a ROO application to the city. Questions included the following:

1. Is there an application fee?

   A: Yes, the fee is approximately $1,600. If all homeowners contributed to the cost, it would be about $50 a household. However, it is expected that not all homeowners will want to support the petition and/or contribute to the application fee. Jeff also noted that the application fee is anticipated to increase within the next few weeks.

2. How can homeowners contribute to the application fee?

   A: The committee is asking that residents who are willing to contribute provide a pledge, with a suggested contribution of $50. If able and willing, additional funds may be pledged in anticipation that not all homeowners will contribute. After the application is submitted, the committee will request the financial commitment pledged, or less if pledges exceed the amount needed.

3. Will current rental property be "grandfathered" in?

   A: Yes, houses currently registered as rental property will remain as such. If the property is sold in the future, the new owner would be required to maintain the rental designation, or it would revert to single-family status.

4. If homeowners have unrelated guests that stay with them for a period, would this situation be restricted under the ROO designation?

   A: No, these individuals are temporary guests.

5. If a family is living in a house, how many unrelated residents can live in the house?

   A: A family as a group is counted as "1", so one other non-related individual may reside at the home.

6. If a resident has a live-in caretaker, is that counted as part of the "family" group or as a separate unrelated person?

   A: A caretaker would be counted in the "family" group. Per the Unified Development Ordinance, Section 11.2 "When counting the number of unrelated persons in a single dwelling unit, a maximum of one (1) group of persons related by blood, adoption, guardianship, marriage, an authorized caretaker, or members of a group home for disabled persons shall be permitted, provided that all other persons shall each count as one (1) unrelated person."

7. How many signatures are needed for the petition to move forward?

   A: Fifty percent (50%) +1 of property owners' signatures are required for the application to be considered.

8. If a home is jointly owned, do both signatures "count" towards the 50% +1 signature required for the application to be considered?

   A: No, only one signature each lot and block (address) count toward the 50%+1

9. Who should a homeowner contact if they want to sign the petition?

   Homeowners may contact Caroline Gallagher to sign the petition. She may also be contacted to commit a financial pledge.

Robert wrapped up the discussion by inquiring interest in moving forward. The consensus was to pursue the ROO designation. Robert presented the petition document so that attendees could sign the petition immediately after the meeting if desired. He reiterated that there was no pressure for any attendee to support or sign the petition.

III. Next Steps

Robert summarized the next steps which include:

- Collection of the necessary number of petition signatures to submit the ROO application and submission of the application within a two-month period;
- The city staff's review and confirmation that all application requirements are met;
- The city-hosted neighborhood meeting;
- The planning and zoning committee's consideration and recommendation to the City of College Station regarding the ROO application; and
- The College Station City Council's decision on whether to approve the application.

There being no further questions or discussion, Robert ended the meeting by thanking all the homeowners for attending the meeting and stating that the committee would continue to be in touch with homeowners to provide status updates on the process.

RECEIVED
NOV 25 2024

Restricted Occupancy Overlay Petition

By signing below, I agree that the Restricted Occupancy Overlay (ROO) ordinance will limit occupancy to no more than two unrelated persons in a detached single-family dwelling or in an accessory living quarters in **Glenhaven Estates Phase II**.

I understand that related persons are related by blood, adoption, guardianship, marriage, are an authorized caretaker, or members of a group home for disabled persons, as defined in UDO Section 11.2 Defined Terms in the definition of "Family."

I understand that at least 50% + 1 of the total number of single-family zoned or developed building plots in the original subdivision are required to submit the ROO application for consideration.

I understand that submitting an application does not guarantee ROO approval.

A signer may not withdraw the signature from a petition on or after the petition is received by the authority of whom it is required to be filed. Before that date, a signer may withdraw the signature by deleting the signature from the petition or by filing with the authority with whom the petition is required to be filed an affidavit requesting that the signature be withdrawn from the petition.

Date: 9/27/2024

Full Subdivision Name: Glenhaven Estates Phase II

Address	Legal Description	Property Owner Name	Signature	Date
1106 Woodhaven	Block 9 Lot 7	Robert & Laurie Crapkin	Laurie Crapkin	9/27/24
1005 WOODHAVEN	BLOCK 11 LOT 1	Charles L Gilreath	Charles L. Gilreath	9/27/2024
1002 Oakhaven	Block 10, Lot 5	Delph & Glenda Ross	Glenda Ross	9-27-24
1103 Woodhaven	Block 9, Lot 2	Angela Alaniz	Angela Alaniz	9/27/24

RECEIVED
NOV 25 2024

Address	Legal Description	Property Owner Name	Signature	Date
1101 Woodhaven	Block 9 Lot 1	Benden, Justin		9/27/24
1110 Woodhaven Cir.	Block 9 Lot 5	Donathen, Timothy		9.27.24
1105 WOODHAVEN CIR	Block 9 Lot 3	GABBAI, FRANCOIS		9.27.24
1008 Woodhaven CIR	Block 11, Lot 8	RICHARD & TAVLINA TAVEL		10-5-24
1001 Woodhaven	Block 11, Lot 3	Rachel Forester		10/5/24
1000 Woodhaven	Block 11, Lot 4	Judy Stevener		10/5/24
1107 Woodhaven Cir	Block 9, Lot 4	Frances J McLaurie		10/6/24
Oakhaven	Block 8 Lot 5	Frances J McLaurie		10/6/24
1003 OAKHAVEN	Block 10 Lot 2	Don Langford		10/20/24
1002 Woodhaven Cir	Phz Block 11 Lot 5	Elizabeth Tripp		10/3/24
1004 Woodhaven	Block 11 Lot 6	Frank Duchmaxlo		1-3-24

RECEIVED
NOV 25 2024

Restricted Occupancy Overlay Petition

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Date: 9/29/2024

Full Subdivision Name: Glenhaven Estates Phase II

Address	Legal Description	Property Owner Name	Signature	Date
1104 Woodhaven Circle	Block 9, Lot 8	Tok H. Oliver	T H Oliver	9-29-2024
1108 WOODHAVEN CIR	Block 9, Lot 6	JUAN CARLOS RAMIREZ PAZ		10-04-2024

RECEIVED
NOV 25 2024

Restricted Occupancy Overlay Petition

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Date: 11/1/24

Full Subdivision Name: Glenhaven Estates Phase II

Address	Legal Description	Property Owner Name	Signature	Date
1001 Oakhaven	Block 10 Lot 3	Josh Neta		11/1/24
1108 Oakhaven	Block 8 Lot 4	Judy Sutherland		11/1/24

RECEIVED
NOV 25 2024

Restricted Occupancy Overlay Petition

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Date: 11 - 12 - 24

Full Subdivision Name: Glenhaven Estates Phase II

Address	Legal Description	Property Owner Name	Signature	Date
1000 Oakhaven Cir College Station TX 77840	Block 10 Lot 4	Joe Morales		11 - 12 - 24

February 27, 2025
Item No. 10.2.
Brazos Moving & Storage #6 Expansion

Sponsor: Jeff Howell, Senior Planner

Reviewed By CBC: Planning & Zoning Commission

Agenda Caption: Public Hearing, presentation, discussion, and possible action regarding an ordinance amending the Comprehensive Plan - Future Land Use & Character Map from Estate Residential to Neighborhood Commercial for approximately 3.60 acres at 3768 McCullough Road, generally located northeast of the intersection of Wellborn Road and McCullough Road.

Relationship to Strategic Goals:
Diverse & Growing Economy

Recommendation(s): This item was heard at the February 6th Planning and Zoning Commission meeting where the Commission voted 7-0 to recommend approval.

Summary: The applicant is requesting an amendment to the Comprehensive Plan Future Land Use and Character Map from Estate Residential to Neighborhood Commercial for approximately 3.60 acres, generally located northeast of the intersection of Wellborn Road and McCullough Road. Neighborhood Commercial is defined as areas of commercial activities that cater primarily to nearby residents. These areas tend to be smaller format than general commercial and located adjacent to major roads along the fringe of residential areas. Design of these structures is compatible in size, architecture, and lot coverage with surrounding residential uses. While a Neighborhood Commercial land use designation would allow for several future zoning options, each with their prescribed land use entitlements and development requirements, the applicant states they are pursuing this amendment in order to request a zoning that would allow the expansion of a planned, adjacent self-storage use onto 3.60 acres currently part of the existing Wellborn Baptist Church property.

REVIEW CRITERIA

1. Changed or changing conditions in the subject area of the City: The subject property and those directly abutting it have a future land use designation of Estate Residential and Neighborhood Commercial. The Estate Residential land use designation is primarily single-family residential areas that have a low level of development activities and appropriate for low-density residential lots. The purpose of the Estate Residential is to support a wide range of lot sizes with building located further from the street with connectivity between adjacent developments.

The adjacent property was rezoned to PDD and as part of the process amended the Comprehensive Plan to Wellborn Commercial. While much of the area on the east side of Wellborn Road (FM 2154) is not subdivided, it is already designated as Neighborhood Commercial, and only until recently has some development started to take place closer to McCullough Road.

The subject property is located within the Wellborn District Plan, which was adopted by City Council in October of 2023. The Wellborn Community Plan centers on the unique, rural character of the area. As part of the Community Plan, the sub-districts identified for particular properties, which included Wellborn Commercial that was changed to Neighborhood Commercial.

2. Compatibility with the existing uses, development patterns, and character of the

immediate area concerned, the general area, and the City as a whole: An amendment to the Future Land Use and Character Map to Neighborhood Commercial would allow for a future rezoning request for suburban commercial or office zoning. In the immediate area (200 ft) of the subject property, there is an existing PDD Planned Development District which was approved in 2020. There is also single-family residential development on either side of this development with about 10 acre lots.

In the general area (1/4 mile) of the subject property, there is existing single-family development as well as commercial development towards McCullough Road along Wellborn Road. The extent of the Neighborhood Commercial designation is along Wellborn Road approximately 900-1,000 on the north side of Victoria Avenue. With the inclusion of the 3.60 acre property, this request is consistent with extent of the corridor development.

The applicant held a neighborhood meeting on December 12, 2024. All property owners within 200 feet of the subject property were notified of the neighborhood meeting, and no members of the public were in attendance. Attendees were only the applicant, property owners and City Staff.

The proposal is compatible with the character of the area as it allows for commercial development that is compatible with the surrounding area.

3. Impact on environmentally sensitive and natural areas: There is no FEMA designated floodplain on the property. While not within the subject property, there are existing waterbodies and Peach Creek South located in the general area. There is no anticipated impact to these features.

4. Impacts on infrastructure including water, wastewater, drainage, and the transportation network: Wastewater will be provided by College Station Utilities. Water is provided by Wellborn SUD and fire flow for the site will be sourced from an existing Wellborn SUD line located along Wellborn Road. Drainage and all other infrastructure required with site development shall be designed and constructed in accordance with the B/CS Unified Design Guidelines.

The subject property is located near the intersection of Wellborn Road and McCullough Road. The designation of Wellborn Road is identified as a future 4-lane Major Arterial, while McCullough Road is a future 2-lane Minor Collector on the Thoroughfare Plan. Currently Wellborn Road is constructed as a 2-lane roadway, while the other is more narrow. The proposed Neighborhood Commercial designation would likely increase the potential traffic generated in comparison to the existing Estate Residential designation, however a Traffic Impact Analysis was not required. Additional right-of-way along Wellborn Road will need to be dedicated as part of the plat.

5. Consistency with the goals and strategies set forth in the Comprehensive Plan: The intent of College Station's Future Land Use and Character Map is to create a community with strong, unique neighborhoods, protected rural areas, special districts, distinct corridors, and a protected and enhanced natural environment. The subject property and immediate properties to the north, south, and east are identified as Estate Residential. The properties to the west and those along Wellborn Road are identified as Neighborhood Commercial.

The proposed amendment to Neighborhood Commercial, defined as areas of commercial activities that cater primarily to nearby residents. These areas tend to be smaller format than general commercial and located adjacent to major roads along the fringe of residential areas. While this property would be partially surrounded by larger lot single-family and agricultural uses and generally

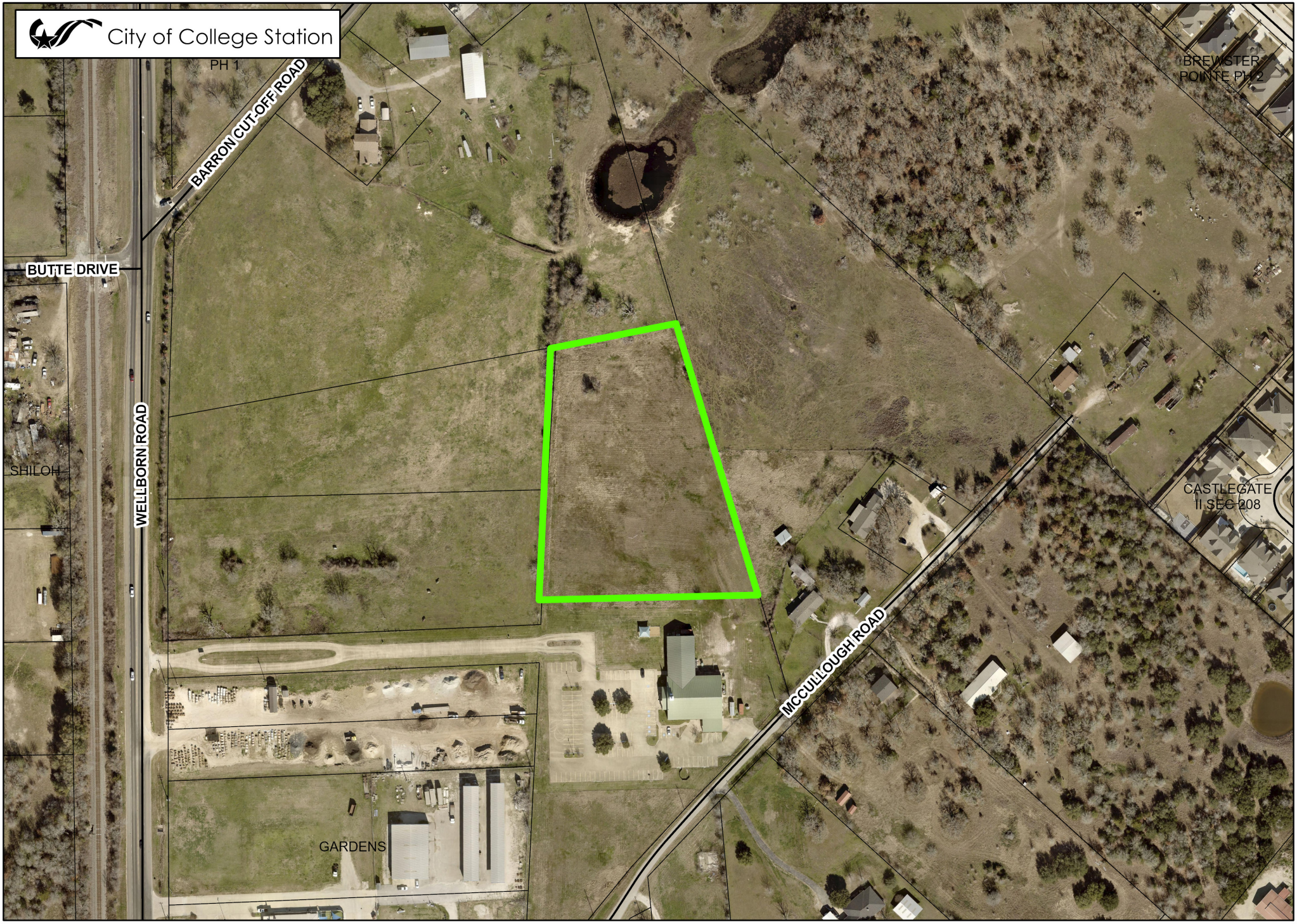
more rural in character, the Neighborhood Commercial designation already exists on the adjacent property that is proposed to be expanded

The Neighborhood Commercial land use designation is appropriate for this property as much of the surrounding properties along the Wellborn Road corridor are designated as Neighborhood Commercial. The current Estate Residential land use designation is defined as low density development with low levels of development activity, which includes lots greater than one acre. This property, as well as much of the surrounding area is zoned as R Rural. As stated in the Comprehensive Plan, rural areas tend to be more sensitive than other character areas to intrusions from incompatible development. However, the development at this time is proposed to be an expansion of the existing concept plan as part of the adjacent property currently zoned PDD Planned Development District. As an expansion of the Neighborhood Commercial planning area that would be to a similar depth along the corridor of Wellborn Road and taking access through the existing property which fronts onto Wellborn Road, it would be consistent with the goals set forth in the Comprehensive Plan.

Budget & Financial Summary: N/A

Attachments:

1. Aerial and Small Area Map
2. Comprehensive Plan Exhibit
3. Background Information
4. Applicant’s Supporting Information
5. Comprehensive Plan Amendment Map
6. McCullough Ordinance



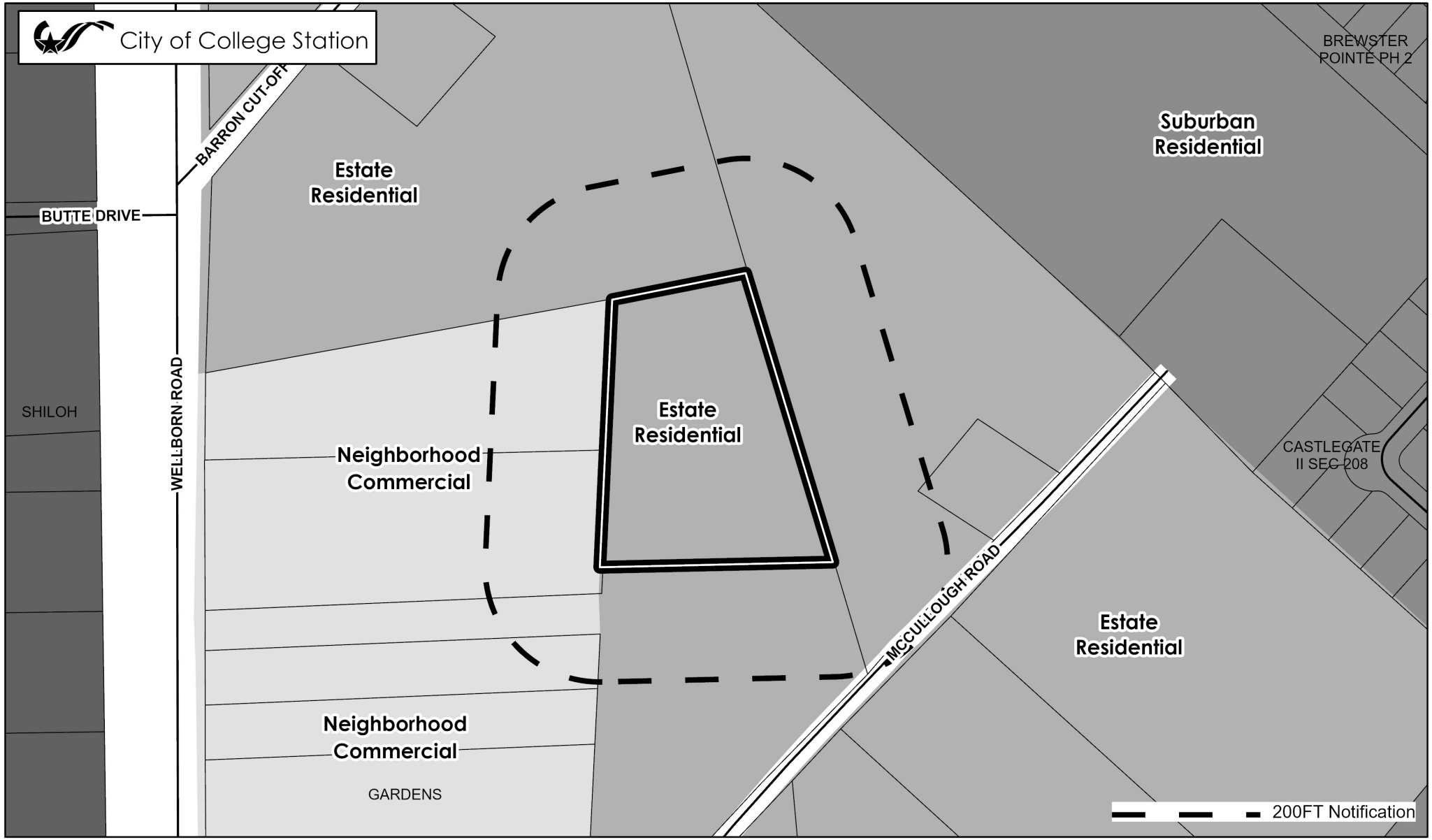
NORTH

0 225 450 Feet

BRAZOS MOVING & STORAGE
#6 EXPANSION

Case: CPA2024-000004

COMPREHENSIVE PLAN AMENDMENT



FUTURE LAND USE DISTRICTS (In Grayscale)

Residential
Urban Residential
Mixed Residential
Suburban Residential
Estate Residential
Rural
Neighborhood Conservation

Non-Residential
General Commercial
Neighborhood Commercial
Business Center
Medical

Combined Centers
Urban Center
Neighborhood Center

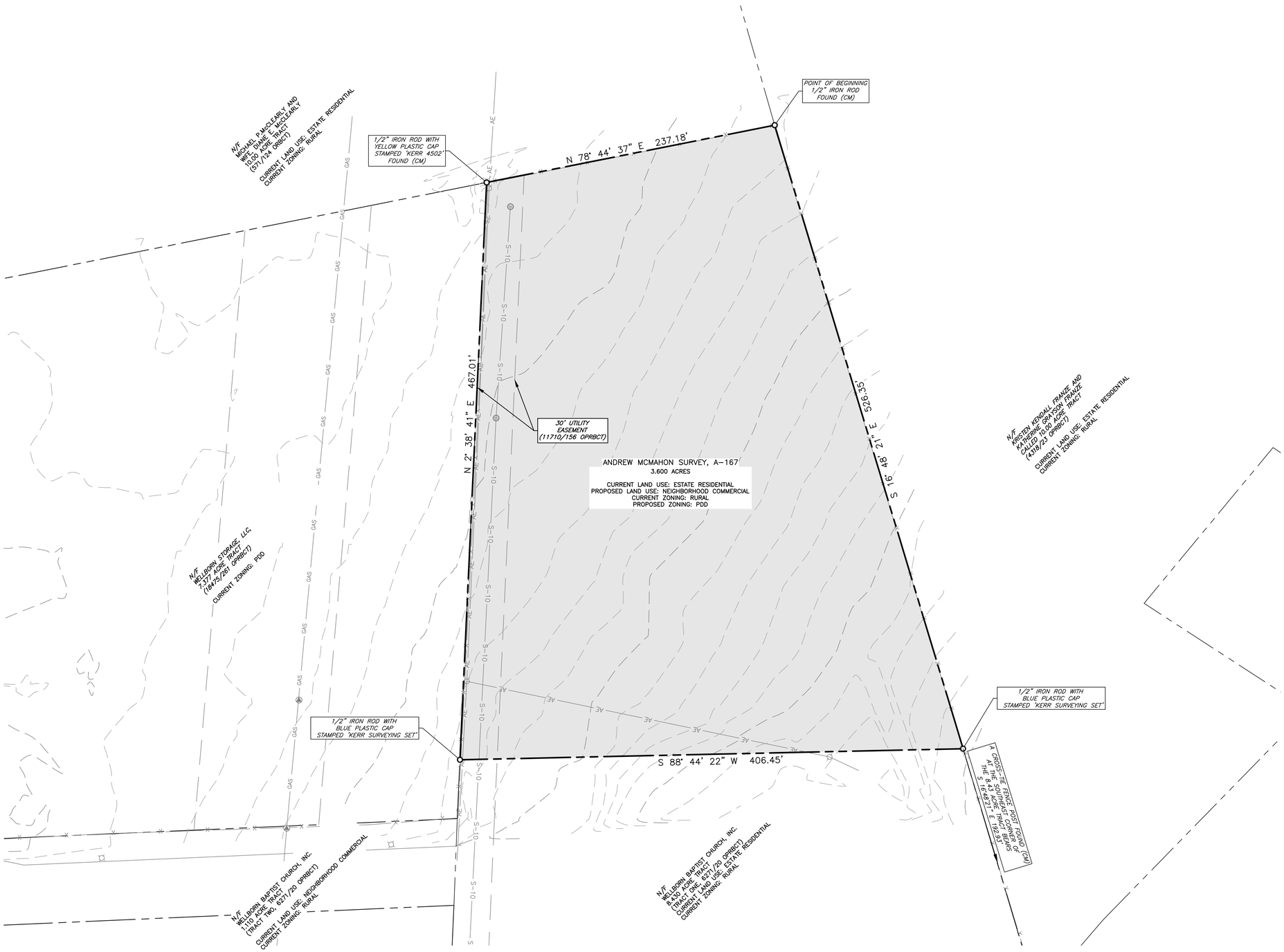
Other
Institutional/Public
TAMU
Parks & Greenways
Natural & Open Areas
Redevelopment Areas

NORTH 0 235 470 Feet

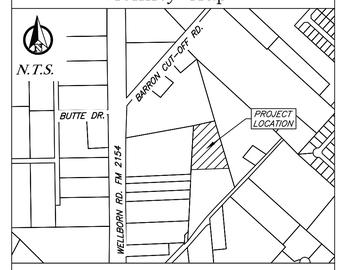
BRAZOS MOVING & STORAGE #6 EXPANSION

Case: CPA2024-000004

COMPREHENSIVE PLAN AMENDMENT



Vicinity Map



General Notes:

1. Bearing system shown hereon is based on the Texas Coordinate System of 1983, central zone (4203), grid North as established from GPS observation using the Leica Smartnet NAD83 (NA2011) EPOCH 2010 multi-year CORS Solution 2 (MYCS2).
2. Distances shown hereon are surface distances in US survey feet and decimals (ex. 363.90') unless otherwise noted. To obtain grid distances (not areas) divide by a combined scale factor of 1.00009773886574 (calculated using GEOID12B).
3. This tract does not lie within a designated 100-YR floodplain according to the FIRM Maps, Panel No. 48041C0325E revised date: May 16, 2012.
4. 1/2" iron rods with yellow plastic cap stamped "KERR Surveying" will be set at all angle points and lot corners unless otherwise stated.
5. All minimum building setbacks shall be in accordance with the City of College Station Code of Ordinances.
6. All utilities shown are approximate location.

COMPREHENSIVE PLAN EXHIBIT

Andrew McMahon Survey, A-167, -3.600 AC

McMahon A-167 (ICL), Tract 10, 9.54 acres
College Station, Brazos County, Texas
December 2024

Owner:
Wellborn Baptist Church Inc.
14575, FM 2154
College Station, TX 77845

Engineer:
14 Engineering
PO Box 5192
Bryan, TX 77805
979-739-0567
TBPE F-9951

Surveyor:
Kerr Surveying, LLC
409 N. Texas Ave.
Bryan, TX 77803
979-268-3195
TBPELS #10018500
Proj # 19-226

J4 Engineering 11/21/2024 Revised Brazos M&S 6-Layout.dwg J4E Project # 23-027

BACKGROUND INFORMATION

NOTIFICATIONS

Advertised Commission Hearing Date: February 6, 2025
Advertised Council Hearing Date: February 27, 2025

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: 5

Contacts in support: None at the time of this report
Contacts in opposition: None at the time of this report
Inquiry contacts: None at the time of this report

ADJACENT LAND USES

Direction	Comprehensive Plan	Zoning	Land Use
North	Estate Residential	R Rural	Single-family detached, Agricultural
South	Estate Residential	R Rural	Church
East	Estate Residential	R Rural	Single-family detached, Mobile home
West	Neighborhood Commercial	PDD Planned Development District	Vacant

DEVELOPMENT HISTORY

Annexed: April 2011
Zoning: A-O Agricultural-Open (upon annexation 2011)
A-O Agricultural-Open renamed to R Rural (2013)

Final Plat: Unplatted
Site Development: Vacant, Church

COMP PLAN APPLICATION
SUPPORTING INFORMATION

Name of Project: BRAZOS MOVING & STORAGE #6 EXPANSION (CPA2024-000004)

Address: 3768 MCCULLOUGH RD

Legal Description: A016701, A MCMAHON A-167 (ICL), TRACT 10, 9.54 ACRES

Total Acreage: 3.6

Applicant: J4 ENGINEERING

Property Owner: WELLBORN BAPTIST CHURCH INC

What element of the Comprehensive Plan and at what location is requested to be amended?

Land Use

What is the amendment requested?
Change the land use to Neighborhood Commercial

What is the reason for the amendment?
There is an existing PD 14565 FM2154 and this property is along the rear property line. The purpose of this Comp Plan Amendment is to add this property to the existing PD and extend the development.

How will this change be compatible with the existing uses, development patterns, and character of the immediate area concerned, the general area, and the city as a whole?

This property is landlocked without direct access to a public road and is currently un-developed. It has to be added to one of the adjacent properties in order to be viable for development. By extending the PD and including this property within the development along Wellborn road, this property will achieve its highest and best use.

Explain the impact on environmentally sensitive and natural areas and infrastructure, including water, wastewater, drainage and transportation network.

Neighboring property is undeveloped, pasture land with a church from whom the property is being purchased from. The PD requires a landscape buffer along the property line which will mitigates the rural zoning on neighboring properties.

Explain how this change will be consistant with the goals and strategies set forth in the Comprehensive Plan.

Neighboring property is undeveloped, pasture land with a church from whom the property is being purchased from. The PD requires a landscape buffer along the property line which will mitigates the rural zoning on neighboring properties.

List any other reasons to support this zone change.

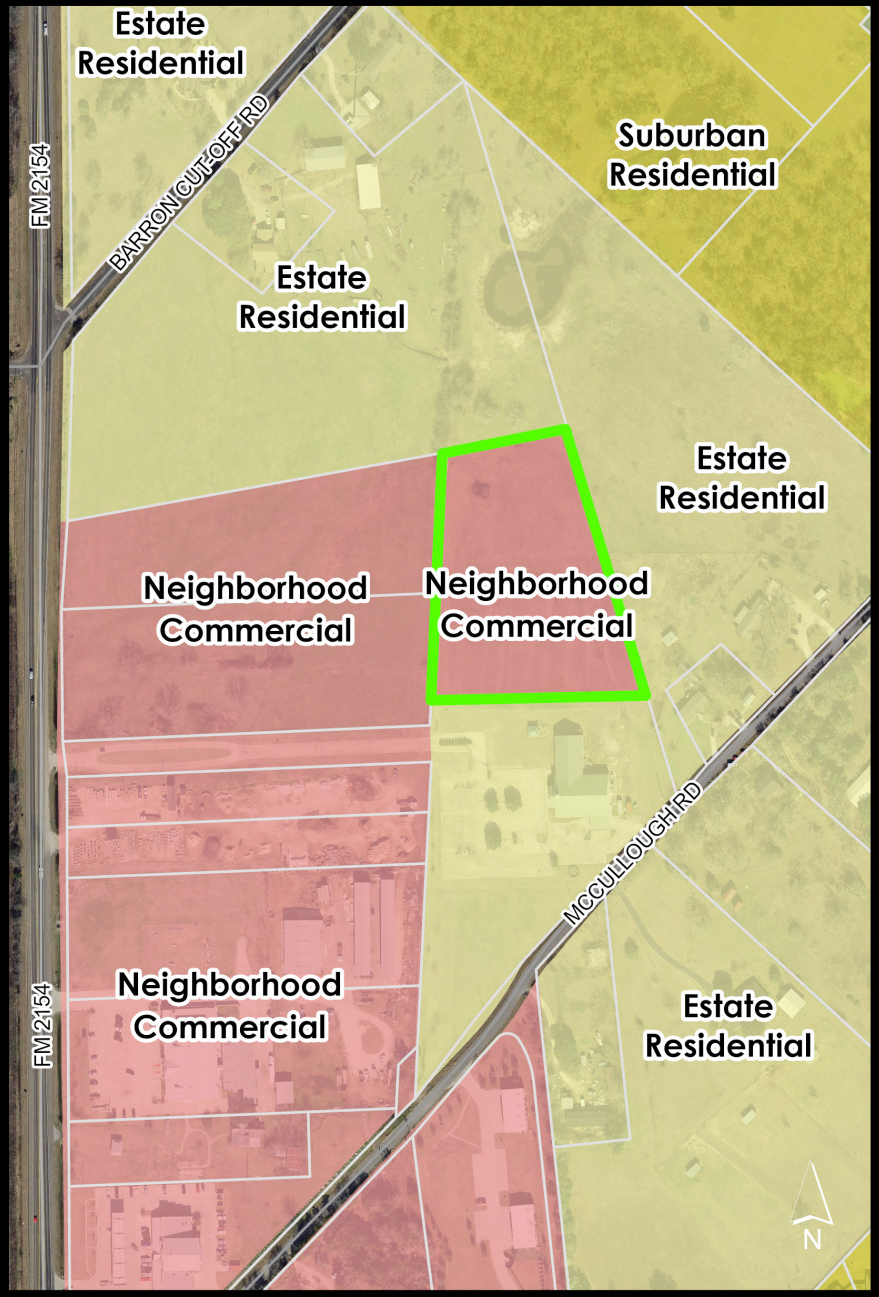
N/A

List any other additional properties.

N/A

EXISTING
Future Land Use

PROPOSED
Future Land Use



ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF COLLEGE STATION, TEXAS, AMENDING THE OFFICIAL CITY OF COLLEGE STATION COMPREHENSIVE PLAN BY AMENDING THE COMPREHENSIVE PLAN – FUTURE LAND USE & CHARACTER MAP FROM ESTATE RESIDENTIAL TO NEIGHBORHOOD COMMERCIAL FOR APPROXIMATELY 3.60 ACRES OF LAND, GENERALLY LOCATED AT 3768 MCCULLOUGH ROAD; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE; AND CONTAINING OTHER PROVISIONS RELATED THERETO.

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

PART 1: That the "Official City of College Station Comprehensive Plan" is hereby amended by adding new Subsection "E.1.k." of Exhibit "A" thereto as set out in Exhibit "A" attached hereto and made a part hereof; and as set out in Exhibit "B" attached hereto and made a part hereof.

PART 2: That if any provisions of any section of this Ordinance shall be held to be void or unconstitutional, such holding shall in no way affect the validity of the remaining provisions or sections of this Ordinance, which shall remain in full force and effect.

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

PASSED, ADOPTED and APPROVED this _____ day of ____, 2025.

ATTEST: **APPROVED:**

_____ _____

City Secretary **Mayor**

APPROVED:

_____

City Attorney

EXHIBIT A

That Ordinance No.4303 adopting the "Official City of College Station Comprehensive Plan" as amended, is hereby amended by adding Subsection "E.1.k." to Exhibit "A" of said plan for Exhibit "A" to read in its entirety as follows:

A. Comprehensive Plan

The Official City of College Station Comprehensive Plan (Ordinance 4303) is hereby adopted and consists of the following:

1. Plan Foundation;
2. Distinctive Places;
3. Strong Neighborhoods;
4. A Prosperous Economy;
5. Engaging Spaces;
6. Integrated Mobility;
7. Exceptional Services;
8. Managed Growth;
9. Collaborative Partnerships; and
10. Plan Implementation

B. Master Plans

The following Master Plans are hereby adopted and made a part of the Official City of College Station Comprehensive Plan:

1. The Northgate Redevelopment Plan dated November 1996;
2. The Revised Wolf Pen Creek Master Plan dated 1998;
3. Northgate Redevelopment Implementation Plan dated July 2003;
4. Bicycle, Pedestrian, and Greenways Master Plan dated January 2010;
5. Parks, Recreation, and Open Spaces Master Plan dated July 2011;
6. Medical District Master Plan dated October 2012;
7. Economic Development Master Plan dated May 2020;
8. The Water System Master Plan dated April 2017; and
9. The Wastewater System Master Plan dated April 2017; and
10. Northeast Gateway Redevelopment Plan dated September 2023; and
11. Wellborn District Plan dated October 2023.

C. Master Plan Amendments

The following Master Plan Amendments to the Official City of College Station Comprehensive Plan are as follows:

1. Expiring the East College Station Transportation Study dated May 2005 – Ordinance 4404, dated November 10, 2022.
2. Expiring the Central College Station Neighborhood Plan dated June 2010 – Ordinance 4404, dated November 10, 2022.
3. Expiring the Eastgate Neighborhood Plan dated June 2011 – Ordinance 4404, dated November 10, 2022.
4. Expiring the Southside Area Neighborhood Plan dated August 2012 – Ordinance 4404, dated November 10, 2022.
5. Expiring the South Knoll Neighborhood Plan dated September 2013 – Ordinance 4404, dated November 10, 2022.
6. Amended as shown in the Northeast Gateway Redevelopment Plan for Map 5.4 Proposed Bicycle Facilities and Map 5.5 Proposed Pedestrian Facilities within the Bicycle, Pedestrian, and Greenways Master Plan – Ordinance 4470, dated September 28, 2023.
7. Amended as shown in the Wellborn District Plan for Map 5.4 Proposed Bicycle Facilities and Map 5.5 Proposed Pedestrian Facilities within the Bicycle, Pedestrian, and Greenways Master Plan – Ordinance 4474, dated October 12, 2023.

D. Text Amendments

The following Text Amendments to the Official City of College Station Comprehensive Plan are as follows:

1. Text Amendments:
    a. *Chapter 2. Distinctive Places* by amending the text regarding the Neighborhood Center future land use description, intent, and generally appropriate zoning districts – Ordinance 4351, dated April 28, 2022.
    b. *Chapter 2. Distinctive Places* by amending the text regarding the Planning Areas description to remove expired plans – Ordinance 4404, dated November 10, 2022.
    c. *Chapter 2. Distinctive Places* by amending the text regarding the Planning Areas description to rename the Texas Avenue & University Drive (FM 60) Redevelopment Area to the Northeast Gateway Redevelopment Plan – Ordinance 4470, dated September 28, 2023.

d. *Chapter 2. Distinctive Places* by amending the text regarding the Planning Areas description to update it to the Wellborn District Plan, to revise the Future Land Use & Character descriptions to remove the Wellborn future land use and incorporate it and the Wellborn-specific zoning districts into the Neighborhood Commercial, Suburban Residential, and Estate Residential future land use descriptions and generally appropriate zoning districts – Ordinance 4474, dated October 12, 2023.

E. Map Amendments

The following Map Amendments to the Official City of College Station Comprehensive Plan are as follows:

1. Future Land Use & Character Map:
    a. Approximately 5 acres of land generally located at 2354 Barron Road from Suburban Residential to Neighborhood Commercial – Ordinance 4365, dated June 23, 2022.
    b. Approximately 17 acres of land generally located at 400 Double Mountain Road from Medical to Urban Residential – Ordinance 4378, dated August 11, 2022.
    c. Approximately 0.19 acres of land generally located at 106 Southland Street from Suburban Residential to Neighborhood Commercial – Ordinance 4388, dated September 8, 2022.
    d. Approximately 2.611 acres of land, generally located at 100 - 170 Graham Road from Business Center to Neighborhood Commercial – Ordinance 4435, dated May 15, 2023.
    e. Amended as shown in the Northeast Gateway Redevelopment Plan – Ordinance 4470, dated September 28, 2023.
    f. Amended as shown in the Wellborn District Plan – Ordinance 4474, dated October 12, 2023.
    g. Approximately 3.25 acres of land generally located west of the intersection of Nantucket Drive and State Highway 6 S from Suburban Residential and Natural and Open Areas to Neighborhood Commercial and Natural and Open Areas – Ordinance 4520, dated May 23, 2024.
    h. Approximately 3 acres of land generally located at located at 116 and 120 Morgans Lane from Urban Residential to General Commercial – Ordinance 4525, dated June 27, 2024
    i. Approximately 11 acres of land generally located at 3182 Holleman Drive South from Mixed Residential and Natural & Open Areas to Urban Residential – Ordinance 4566, dated December 12, 2024
    j. Approximately 1.047 acres of land generally located at 3423 Cain Road and 3197 Holleman Drive South from Mixed Residential to General Commercial – Ordinance 4571, dated January 23, 2025

k. Approximately 3.60 acres of land generally located at 3768 McCullough Road from Estate Residential to Neighborhood Commercial.

2. Planning Areas Map:
   a. Removing the Central College Station Neighborhood Plan, Eastgate Neighborhood Plan, Southside Area Neighborhood Plan, and South Knoll Neighborhood Plan – Ordinance 4404, dated November 10, 2022.
   b. Renaming the Texas Avenue & University Drive (FM 60) Redevelopment Area to the Northeast Gateway Redevelopment Plan – Ordinance 4470, dated September 28, 2023.
   c. Renaming the Wellborn Community Plan to the Wellborn District Plan – Ordinance 4474, dated October 12, 2023.

3. Functional Classification & Context Class Map:
   a. Amended as shown in the Northeast Gateway Redevelopment Plan – Ordinance 4470, dated September 28, 2023.
   b. Amended as shown in the Wellborn District Plan – Ordinance 4474, dated October 12, 2023.

F. General

1. **Conflict.** All parts of the Comprehensive Plan and any amendments thereto shall be harmonized where possible to give effect to all. Only in the event of an irreconcilable conflict shall the later adopted ordinance prevail and then only to the extent necessary to avoid such conflict. Ordinances adopted at the same city council meeting without reference to another such ordinance shall be harmonized, if possible, so that effect may be given to each.

2. **Purpose.** The Comprehensive Plan is to be used as a guide for growth and development for the entire City and its Extraterritorial Jurisdiction ("ETJ"). The Comprehensive Plan depicts generalized locations of proposed future land uses, including thoroughfares, bicycle and pedestrian ways, parks, greenways, and waterlines, and sewer lines that are subject to modification by the City to fit local conditions and budget constraints.

3. **General nature of Future Land Use.** The Comprehensive Plan, in particular the Future Land Use & Character Map and any adopted amendments thereto, shall not be, nor be considered, a zoning map, shall not constitute zoning regulations or establish zoning boundaries, and shall not be site or parcel specific but shall be used to illustrate generalized locations.

4. **General nature of College Station Comprehensive Plan.** The Comprehensive Plan and any additions, amendments, master plans and subcategories thereto depict same in generalized terms including future locations; and are subject to modifications by the City to fit local conditions, budget constraints, cost participation, and right-of-way availability that warrant further refinement as development occurs. Linear routes such as thoroughfares, bikeways, pedestrian ways, greenways, waterlines, and sewer lines that are a part of the Comprehensive Plan may be relocated by the City 1,000 feet from the locations shown in the Comprehensive Plan without being considered an amendment thereto.

5. **Reference.** The term College Station Comprehensive Plan includes all of the above in its entirety as if presented in full herein, and as same may from time to time be amended.

EXHIBIT B

That the "Official City of College Station Comprehensive Plan" is hereby amended by amending a portion of the map titled "Future Land Use & Character" from Estate Residential to Neighborhood Commercial for the following property:

February 27, 2025
Item No. 10.3.
810 Southwest Pkwy E Rezoning

Sponsor: Garrett Segraves, Staff Planner

Reviewed By CBC: Planning & Zoning Commission

Agenda Caption: Public Hearing, presentation, discussion, and possible action regarding an ordinance amending Appendix A, Unified Development Ordinance, Article 4, "Zoning Districts," Section 4.2 "Official Zoning Map," of the Code of Ordinances of the City of College Station, Texas, by changing the zoning district boundaries from R-4 Multi-Family to GC General Commercial on approximately 2.3 acres generally located at 810 Southwest Parkway East.

Relationship to Strategic Goals:
Diverse & Growing Economy

Recommendation(s): Staff recommends approval of the rezoning request. This item was heard at the February 6th Planning & Zoning Commission meeting and was unanimously recommended approval, 7-0.

Summary: This request is to rezone approximately 2.3 acres of land located at 810 Southwest Pkwy E, from R-4 Multi-Family to GC General Commercial. The property is currently being used as a place of worship, but the current plan is to build a new facility at another location. The intent of the rezoning is to increase the marketability of the property and to allow for a future commercial use.

REZONING REVIEW CRITERIA

1. Whether the proposal is consistent with the Comprehensive Plan:
The subject property is located near the thoroughfare intersection of SH 6 and Southwest Parkway. The Comprehensive Plan Future Land Use and Character Map designates the subject property and all surrounding properties as General Commercial. The Comprehensive Plan generally describes the General Commercial land use designation as follows:

Areas of commercial activities that cater to both nearby residents and to the larger community or region. These areas tend to be large and are located along regionally significant roads.

The intent of the district is to:
- Accommodate a wide range of commercial uses
- Concentrate future commercial development at major intersections

The zoning districts that are generally appropriate within the General Commercial land use include: O Office, GC General Commercial, and MU Mixed-Use.

The proposed zoning district of GC General Commercial would be in line with the Comprehensive Plan.

2. Whether the uses permitted by the proposed zoning district will be appropriate in the context of the surrounding area:
The property has frontage to Southwest Pkwy E, which is classified as a Minor Arterial on the Thoroughfare Plan. Adjacent properties are zoned O Office to the north and across Southwest Pkwy E, GC General Commercial to the east, and R-4 Multi-family to the south and southwest.

The properties to the north and across Southwest Pkwy E are office buildings. To the east of the subject property is a Holiday Inn. To the south are several attached multi-family dwelling units

The GC General Commercial zoning district is intended to provide a wide range of commercial uses, connectivity to surrounding bicycle and pedestrian networks, support to multi-family residential as secondary uses on site and encourage shared surface parking.

The proposed zoning district is appropriate for the surrounding area as it would allow for a variety of commercial uses which would provide services to the nearby residential and the larger community.

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 uses allowed within the proposed zoning district. The site has adequate space to meet the minimal dimensional standards for GC General Commercial. There is no floodplain on the property.

4. Whether there is available water, wastewater, stormwater, and transportation facilities generally suitable and adequate for uses permitted by the proposed zoning district:
The existing water and wastewater infrastructure is adequate to support the needs of this development. Detention is required in accordance with the BCS guidelines. Drainage and any other infrastructure required with the site development shall be designed and constructed in accordance with the BCS Unified Design Guidelines.

The subject property has frontage to Southwest Pkwy E which is designated as a 4-lane Minor Arterial on the City's Thoroughfare Plan.

5. The marketability of the property:
Rezoning the property from R-4 Multi-Family to GC General Commercial can provide additional development opportunities in the area, making the property more marketable.

Budget & Financial Summary:

Attachments:
1. Southwest Crossing Ordinance
2. Aerial and Small Area Map
3. Existing Future Land Use
4. Rezoning Exhibit
5. Rezoning Map
6. Background Information
7. Applicant's Supporting Information

ORDINANCE NO. _____

AN ORDINANCE AMENDING APPENDIX A "UNIFIED DEVELOPMENT ORDINANCE," ARTICLE 4 "ZONING DISTRICTS," SECTION 4.2, "OFFICIAL ZONING MAP" OF THE CODE OF ORDINANCES OF THE CITY OF COLLEGE STATION, TEXAS, BY CHANGING THE ZONING DISTRICT BOUNDARIES AFFECTING APPROXIMATELY 2.30 ACRES BEING, PHASE 3, BLOCK 7, LOT 2, OF SOUTHWEST CROSSING; GENERALLY LOCATED AT 810 SOUTHWEST PKWY EAST AS DESCRIBED BELOW; PROVIDING A SEVERABILITY CLAUSE; DECLARING A PENALTY; AND PROVIDING AN EFFECTIVE DATE.

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

PART 1: That Appendix A "Unified Development Ordinance," Article 4 "Zoning Districts," Section 4.2 "Official Zoning Map" of the Code of Ordinances of the City of College Station, Texas, be amended as set out in **Exhibit "A" and Exhibit "B"** attached hereto and made a part of this Ordinance for all purposes.

PART 2: If any provision of this Ordinance or its application to any person or circumstances is held invalid or unconstitutional, the invalidity or unconstitutionality does not affect other provisions or application of this Ordinance or the Code of Ordinances of the City of College Station, Texas, that can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this Ordinance are severable.

PART 3: That any person, corporation, organization, government, governmental subdivision or agency, business trust, estate, trust, partnership, association and any other legal entity violating any of the provisions of this Ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not less than twenty five dollars ($25.00) and not more than five hundred dollars ($500.00) or more than two thousand dollars ($2,000) for a violation of fire safety, zoning, or public health and sanitation ordinances, other than the dumping of refuse. Each day such violation shall continue or be permitted to continue, shall be deemed a separate offense.

PART 4: This Ordinance is a penal ordinance and becomes effective ten (10) days after its date of passage by the City Council, as provided by City of College Station Charter Section 35.

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

ATTEST: **APPROVED:**

_____ _____

City Secretary **Mayor**

APPROVED:

_____

City Attorney

Exhibit A

That Appendix A "Unified Development Ordinance," Article 4 "Zoning Districts," Section 4.2, "Official Zoning Map" of the Code of Ordinances of the City of College Station, Texas, is hereby amended as follows:

The following property is rezoned from R-4 Multi-family to GC General Commercial:

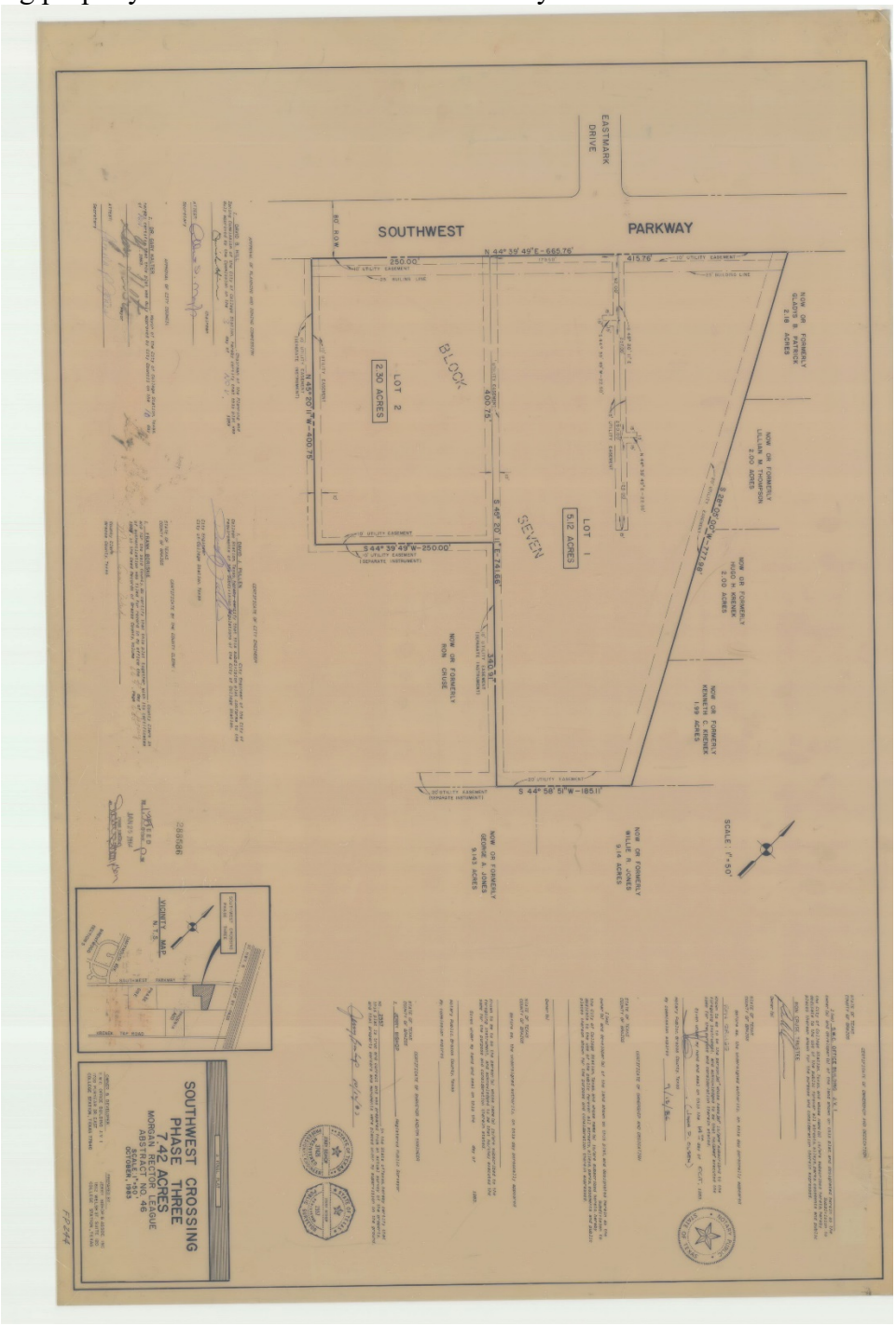
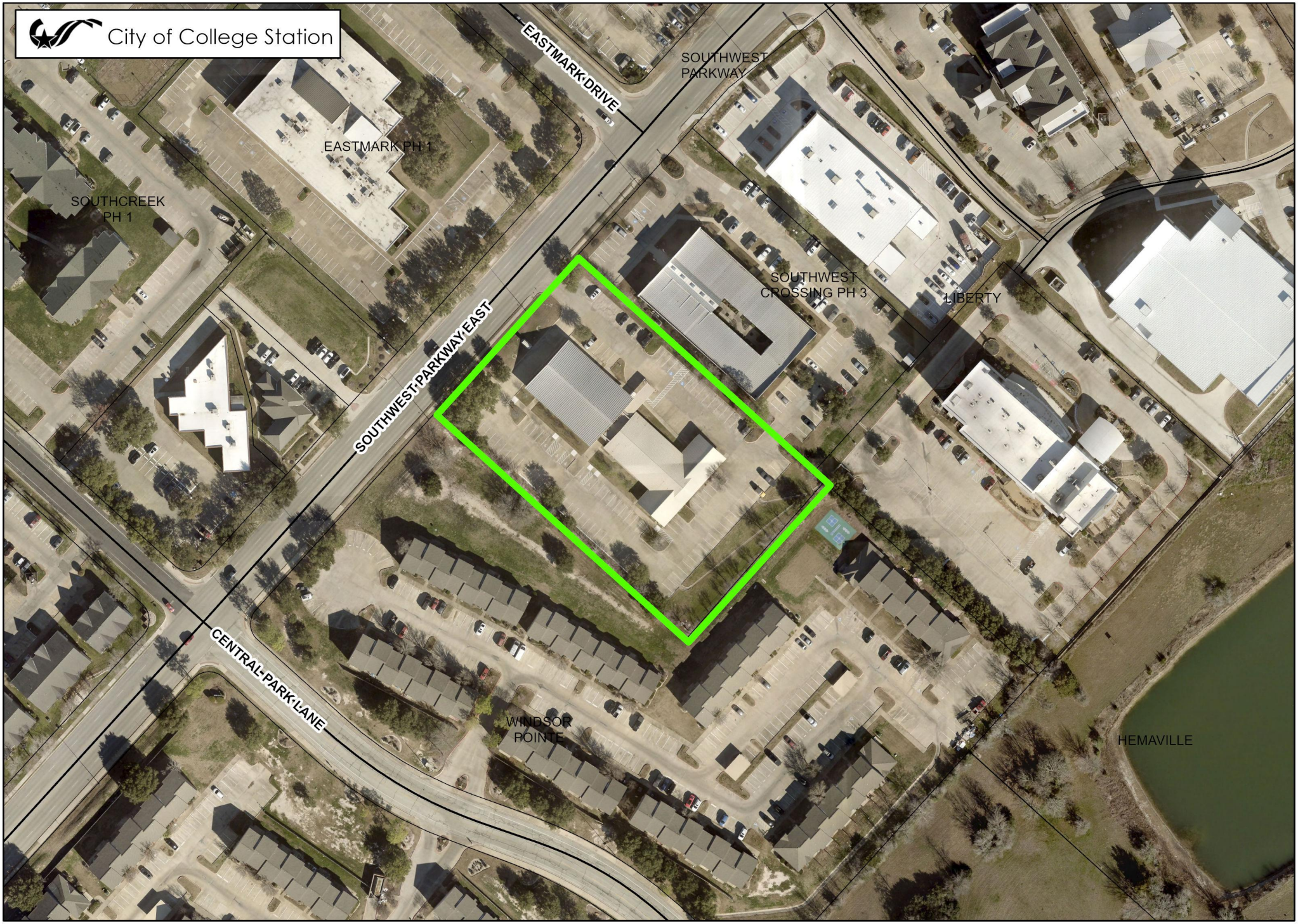


Exhibit B

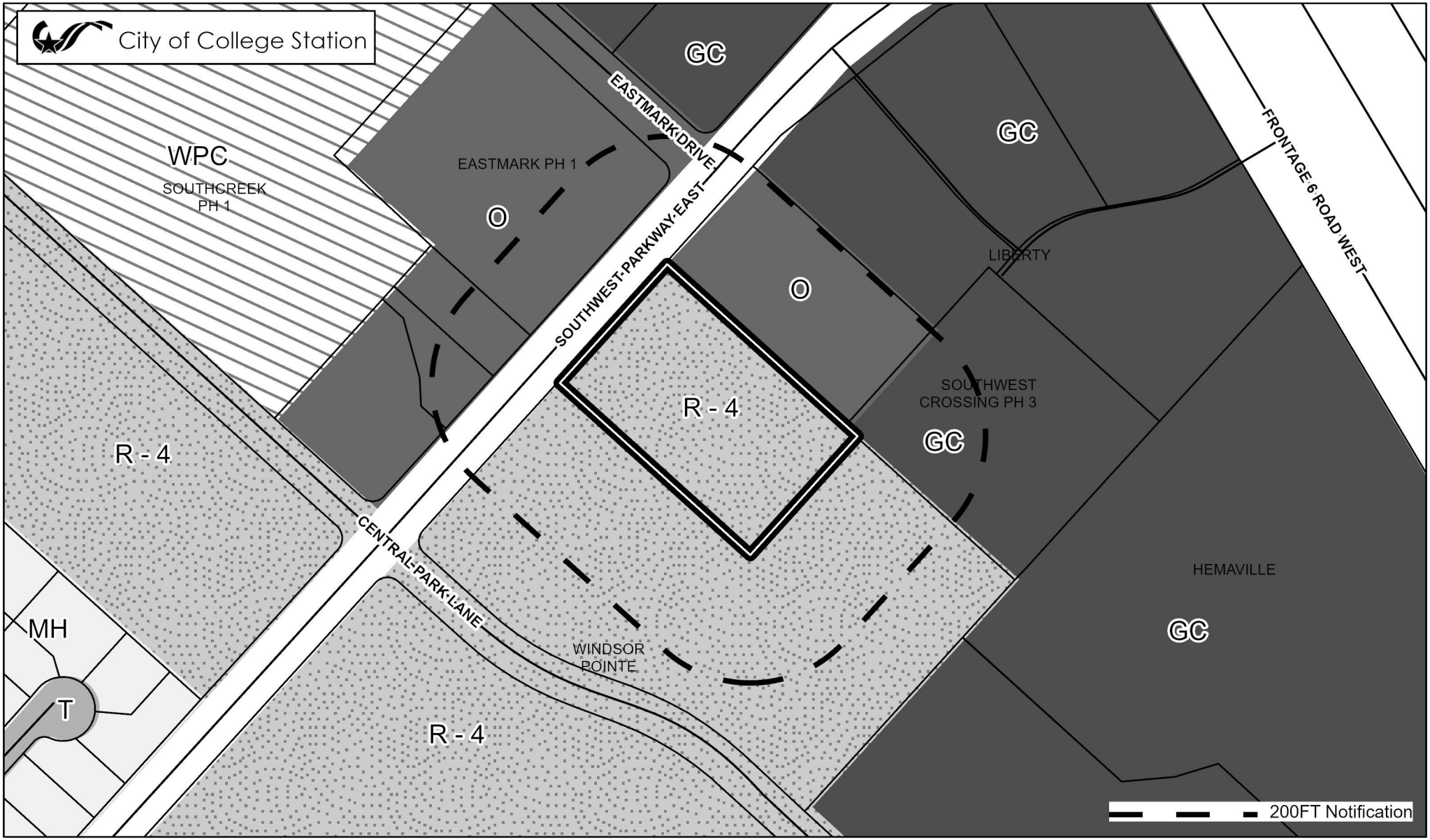
EXISTING
Zoning
PROPOSED
Zoning
Wolf Pen Creek Dev Corridor
General Commercial
Suburban Commercial
Office
Multi-Family
Middle Housing
Townhouse
General Suburban
COLGATE DR
EASTMARK DR
CENTRAL PARK LN
EARL RUDDER FWY S
KRENEK TAP RD
CYPRESS DR
ALLEY
N



NORTH

SOUTHWEST CROSSING PHASE 3
LOT 2 BLOCK 7 REZONING

Case: REZONING
REZ2024-000029



ZONING DISTRICTS (In Grayscale)

Residential

R	Rural
WE	Wellborn Estate
E	Estate
WRS	Wellborn Restricted Suburban
RS	Restricted Suburban
GS	General Suburban
D	Duplex
T	Townhome
MH	Middle Housing
MF	Multi-Family
MU	Mixed-Use
MHP	Manufactured Home Pk.

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

NORTH

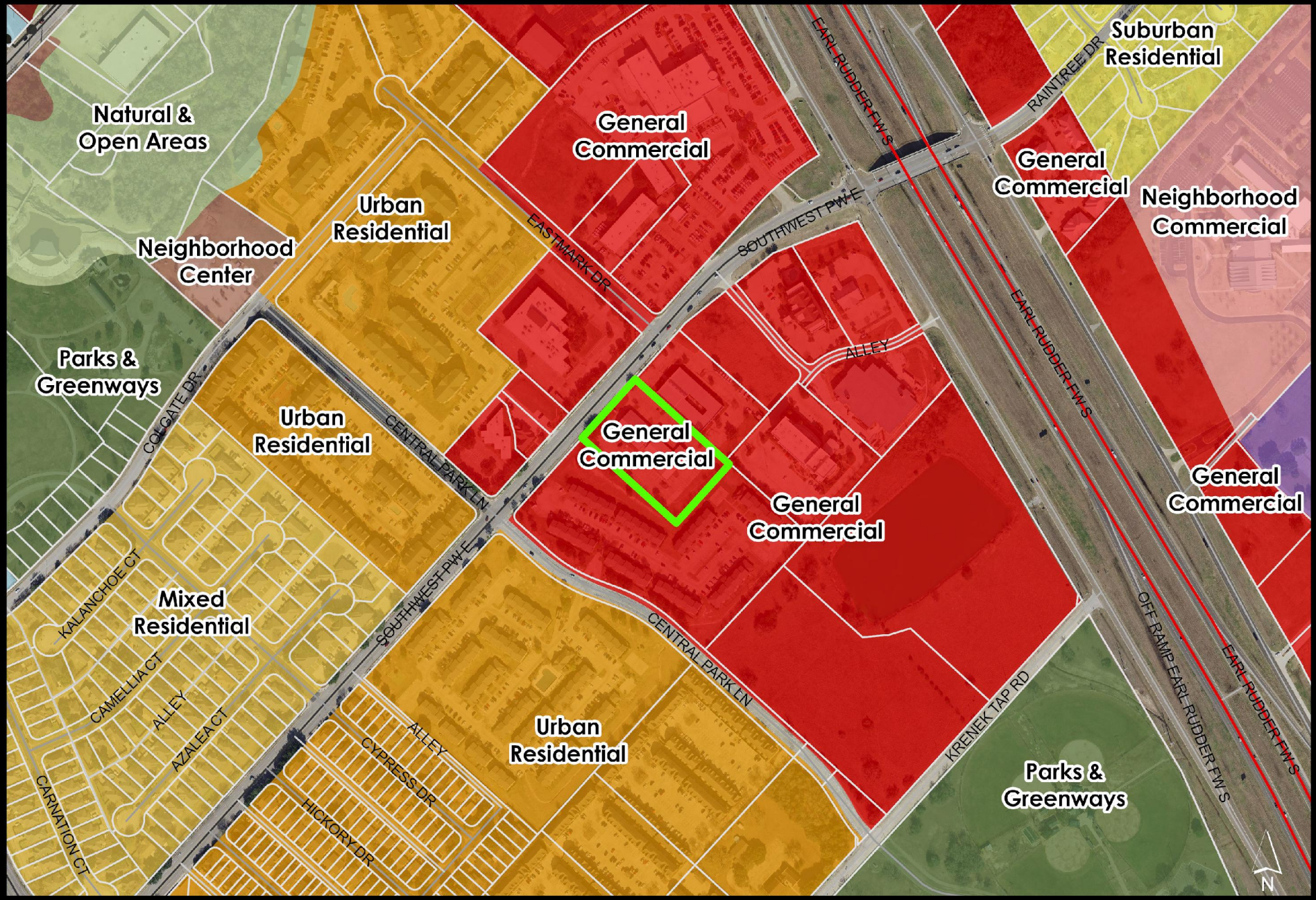
0 210 420 Feet

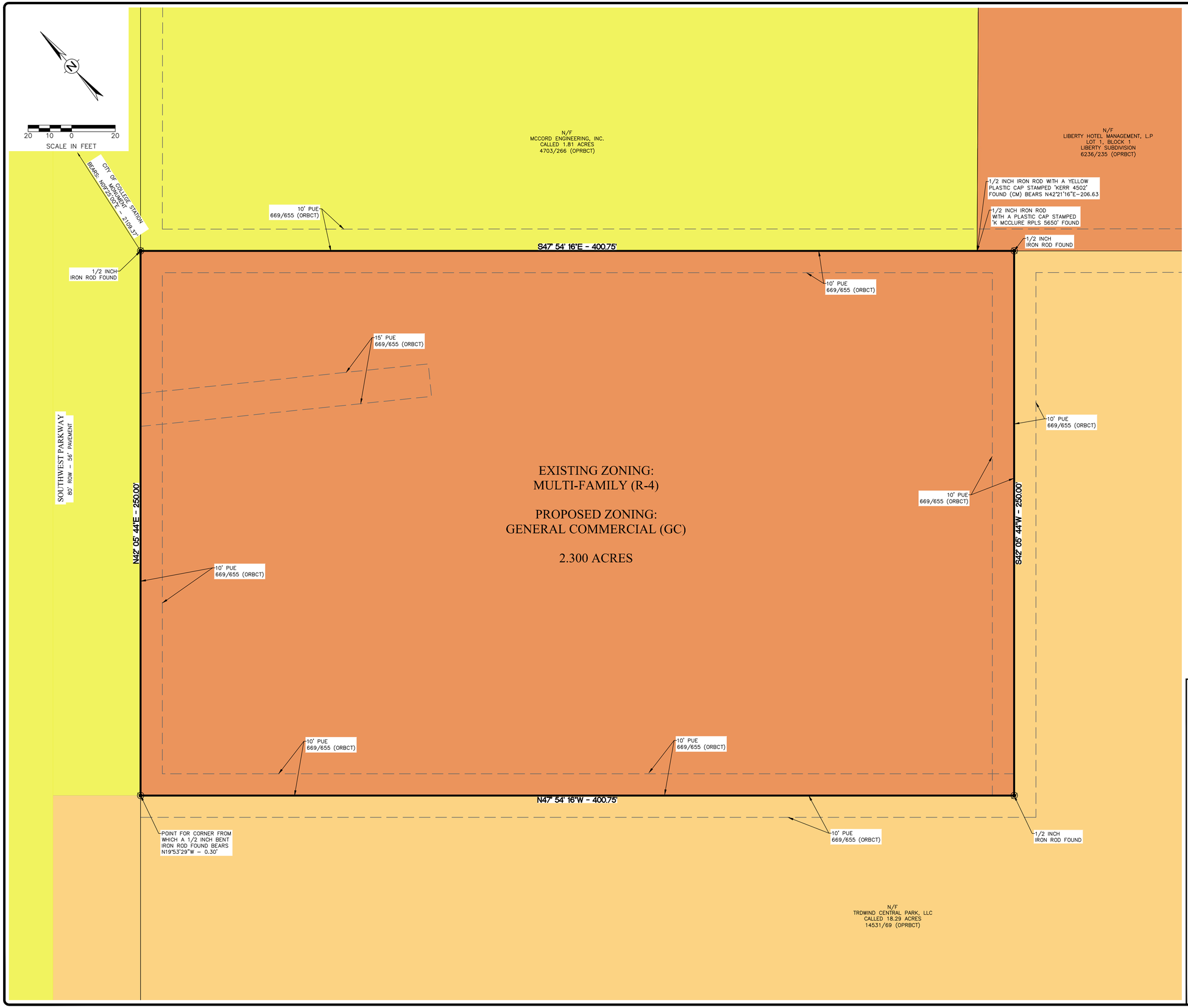
SOUTHWEST CROSSING PHASE 3
LOT 2 BLOCK 7 REZONING

Case: REZ2024-000029

REZONING

EXISTING
Future Land Use





LEGEND

- PROPERTY BOUNDARY
- ADJACENT LOT LINES
- EXISTING PUBLIC ACCESS EASEMENT (P.A.E)
- EXISTING PUBLIC UTILITY EASEMENT (P.U.E)
- PROPERTY CORNER

EXISTING ZONING

- OFFICE (O)
- MULTI FAMILY (R-4)
- GENERAL COMMERCIAL (GC)

PROPOSED ZONING

- GENERAL COMMERCIAL (GC)

NOTES:

1. BEARING SYSTEM SHOWN HEREON IS BASED ON THE TEXAS COORDINATE SYSYEM OF 1983, CENTRAL ZONE (4203), GRID NORTH AS ESTABLISHED FROM GPS OBSERVATION USING THE LEICA SMARTNET NAD83 (NA2011) EPOCH 2010 MULTI-YEAR CORS SOLUTIONS 2 (MYCS2).
2. DISTANCES SHOWN HEREON ARE SURFACE DISTANCES UNLESS OTHERWISE NOTED. TO OBTAIN GRID DISTANCES (NOT AREA) DIVIDE BY A COMBINED SCALE FACTOR OF 1.00010546072209 (CALCULATED USING GEOID12B).
3. (CM) INDICATES CONTROLLING MONUMENT FOUND AND USED TO ESTABLISH PROPERTY BOUNDARIES.
4. THIS TRACT LIES WITHIN FLOOD ZONE 'X' UNSHADED AND DOES NOT LIE WITHIN A SPECIAL FLOOD HAZARD AREA SUBJECT TO THE 1% ANNUAL CHANCE FLOOD (100 YEAR FLOOD PLAIN) ACCORDING TO THE BRAZOS COUNTY FLOOD INSURANCE RATE MAP. COMMUNITY NO. 480083, PANEL NO. 0310F, MAP NO. 48041C0310F, EFFECTIVE DATE: 04-02-2014.
5. STORM WATER DETENTION REQUIREMENTS WILL BE ADDRESSED WITH PLATTING.

810 SOUTHWEST PARKWAY ZONING MAP

LOT 2, BLOCK 7, SOUTHWEST CROSSING PHASE 3, VOLUME 669, PAGE 655 ORBCT

2.300 ACRES

MORGAN RECTOR SURVEY SECTION 4, ABSTRACT 46

COLLEGE STATION, BRAZOS COUNTY, TEXAS

EXISTING ZONING:
MULTI-FAMILY (R-4)
TO
PROPOSED ZONING:
GENERAL COMMERCIAL (GC)

OWNER:

TWIN CITY CHURCH OF CHRIST
810 SOUTHWEST PARKWAY EAST
COLLEGE STATION, TX 77840

SCALE: AS SHOWN
DECEMBER 2024

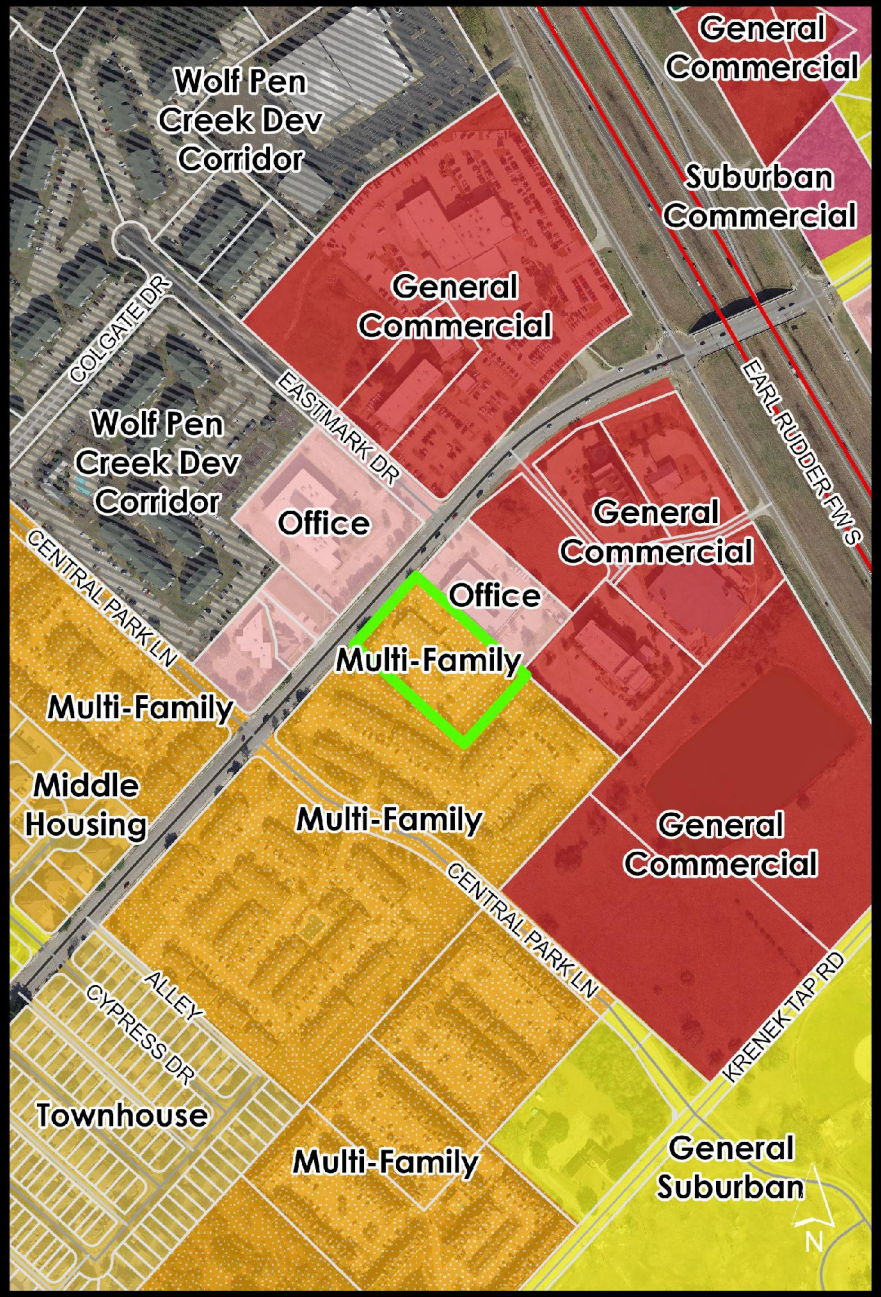
SURVEYOR:

David Powell Brister, RPLS No. 6537
Kerr Surveying, LLC
1718 Briarcrest Dr
Bryan, TX 77802
(979) 268-3195

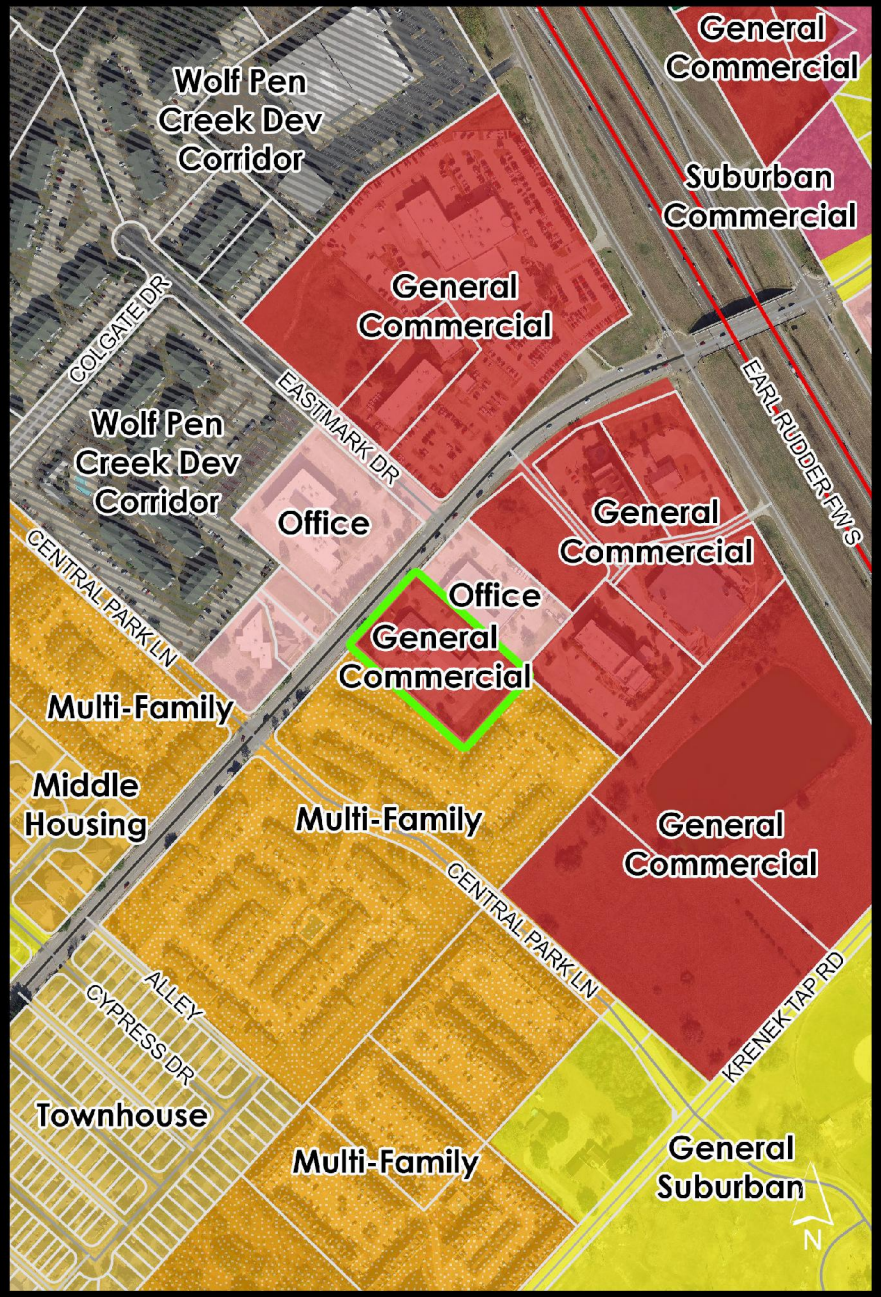
ENGINEER:

Schultz Engineering, LLC
TBPE NO. 12327
911 SOUTHWEST PKWY E.
College Station, Texas 77840
(979) 764-3900

EXISTING
Zoning



PROPOSED
Zoning



BACKGROUND INFORMATION

NOTIFICATIONS

Advertised Commission Hearing Date: February 6, 2025
Advertised Council Hearing Date: February 27, 2025

The following neighborhood organizations that are registered with the City of College Station's Neighborhood Services have received a courtesy letter of notification of this public hearing:

None

Property owner notices mailed: 11
Contacts in support: None at the time of this report
Contacts in opposition: None at the time of this report
Inquiry contacts: None at the time of this report

ADJACENT LAND USES

Direction	Comprehensive Plan	Zoning	Land Use
North	General Commercial	O Office	Office
South	General Commercial	R-4 Multi-family	Multi-family
East	General Commercial	GC General Commercial	Hotel
West	General Commercial	Southwest Pkwy E (4-lane Minor Arterial)	Southwest Pkwy E (4-lane Minor Arterial)

DEVELOPMENT HISTORY

Annexation: 1971
Zoning: R-1 Single Family Residential upon annexation
R-3 Townhouse in April 1981
R-5 Apartment Medium-density in December 1981
Combined to R-4 Multi-family in June 2003
Final Plat: Southwest Crossing Phase 3
Site development: Place of Worship

REZONING APPLICATION
SUPPORTING INFORMATION

Name of Project:	SOUTHWEST CROSSING PHASE 3 LOT 2 BLOCK 7 REZONING (REZ2024-000029)
Address:	810 SOUTHWEST PKWY E
Legal Description:	SOUTHWEST CROSSING PH 3, BLOCK 7, LOT 2
Total Acreage:	2.3
Applicant::	SCHULTZ ENGINEERING
Property Owner:	TWIN CITY CHURCH OF CHRIST

List the changed or changing conditions in the area or in the City which make this zone change necessary.

The church is building a new facility and is selling the property. The owner of the adjacent property would like to buy the property and convert the building for commercial use.

Indicate whether or not this zone change is in accordance with the Comprehensive Plan. If it is not, explain why the Plan is incorrect.

This change is in accordance with the 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 current zoning is multi-family, and the existing building is not suitable for multi-family residential use.

Explain the suitability of the property for uses permitted by the rezoning district requested.

The existing building can be modified to allow for commercial use.

Explain the suitability of the property for uses permitted by the current zoning district.

The existing building can be modified to allow for commercial use.

Explain the marketability of the property for uses permitted by the current zoning district.

With the existing building, the property is not marketable as multi-family residential. The building would have to be demolished for multi-family use.

List any other reasons to support this zone change.

Repurposing of the building instead of it becoming vacant when the church moves to its new facility.

February 27, 2025
Item No. 10.4.
Gilbert St - Prescriptive Right-of-Way Abandonment

Sponsor: Gillian Sitler

Reviewed By CBC: N/A

Agenda Caption: Public Hearing, presentation, discussion, and possible action regarding an ordinance vacating and abandoning a 0.124 acre tract, being all of Gilbert Street (a variable width right-of-way formerly known as Otto Street) located in the Richard Carter League Survey, Abstract 8, College Station, Brazos County, Texas, and being the tract further described as a portion of Lots 11 & 12 of D. A. Smith's Subdivision shown on the plat filed in Volume 49, Page 105-106 of the Deed of Records of Brazos County, Texas, and conveyed to Joe Pasler in a Sheriff's Deed recorded in Volume 81, Page 587 of the Deed Records of Brazos County, Texas.

Relationship to Strategic Goals:

- Core Services & Infrastructure
- Diverse & Growing Economy

Recommendation(s): Staff recommends approval with the conditions that the 6" Sanitary Sewer Line that lies within the prescriptive right-of-way is removed, the 6" Water Line that lies within the prescriptive right-of-way is removed, and the Fire Hydrant Assembly served by the previously mentioned 6" Water Line is removed and replaced.

Summary: The prescriptive right-of-way abandonment is being requested by the applicant as a result of redevelopment of the area. The prescriptive right-of-way was never formally dedicated to the City but is currently being utilized as a right-of-way with pavement for vehicular traffic connecting Turner St. and Pasler St. Public sanitary sewer and domestic water lines currently lie within the prescriptive right-of-way. Proposed redevelopment of the area will be removing the existing water and sanitary sewer infrastructure within the prescriptive right-of-way, and reconstructing to better serve the proposed lot configuration and the remaining public system. The new water lines will be within the existing right-of-way of Turner St, and new public utility easements will be dedicated with the plat to cover new sanitary sewer lines. The removal of the existing public lines has been made a condition of the abandonment ordinance.

The prescriptive right-of-way, commonly known as Gilbert St, is generally 30-foot-wide, extending 223 feet northeast to southwest from Pasler St. to Turner St.

Budget & Financial Summary: N/A

Attachments:

1. Gilbert St. Ordinance
2. Vicinity Map
3. Location Map
4. Applications

ORDINANCE NO. _____

AN ORDINANCE MAKING CERTAIN AFFIRMATIVE FINDINGS AND VACATING AND ABANDONING A 0.124 ACRE TRACT, BEING ALL OF GILBERT STREET (A VARIABLE WIDTH PRESCRIPTIVE RIGHT-OF-WAY FORMERLY KNOWN AS OTTO STREET) LOCATED IN THE RICHARD CARTER LEAGUE SURVEY, ABSTRACT 8, COLLEGE STATION, BRAZOS COUNTY, TEXAS, AND BEING THE TRACT FURTHER DESCRIBED AS A PORTION OF LOTS 11 & 12 OF D.A. SMITH'S SUBDIVISION SHOWN ON THE PLAT FILED IN VOLUME 49, PAGE 105-106 OF THE DEED RECORDS OF BRAZOS COUNTY, TEXAS, AND CONVEYED TO JOE PASLER IN A SHERIFF'S DEED RECORDED IN VOLUME 81, PAGE 587 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 0.124 acre tract, being all of Gilbert Street (A variable width right-of-way formerly known as Otto Street) located in the Richard Carter League Survey, Abstract 8, College Station, Brazos County, Texas, and being the tract further described as a portion of Lots 11 & 12 of D.A. Smith's Subdivision shown on the plat filed in Volume 49, Page 105-106 of the Deed of Records of Brazos County, Texas, and conveyed to Joe Pasler in a Sheriff's Deed recorded in Volume 81, Page 587 of the Deed Rocords of Brazos County, Texas, as described in **Exhibit "A",** attached hereto (such portion hereinafter referred to as the "Right-of-Way"); and

WHEREAS, in order for the Right-of-Way 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 Right-of-Way described in **Exhibit "A"** attached hereto and made a part of this ordinance for all purposes.

1. Abandonment of the Right-of-Way 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 Right-of-Way.

3. There is no anticipated future public need or use for the Right-of-Way.

4. Abandonment of the Right-of-Way will not impact access for all public utilities to serve current and future customers.

PART 2: That the Right-of-Way as described in **Exhibit "A"** be abandoned and vacated by the City after satisfying all of the conditions described in **Exhibit "B"** attached hereto and made a part of this ordinance for all purposes.

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

ATTEST: **APPROVED:**

_____ **_____**
City Secretary **Mayor**

APPROVED:

_____
City Attorney

GILBERT STREET

EXHIBIT 'A'

FIELD NOTES DESCRIPTION
OF A
0.124 ACRE TRACT
RICHARD CARTER LEAGUE SURVEY, ABSTRACT NO. 8
COLLEGE STATION, BRAZOS COUNTY, TEXAS

A FIELD NOTES DESCRIPTION OF 0.124 ACRES IN THE RICHARD CARTER LEAGUE SURVEY, ABSTRACT NO. 8, IN COLLEGE STATION, BRAZOS COUNTY, TEXAS, BEING ALL OF GILBERT STREET (A VARIABLE WIDTH PRESCRIPTIVE RIGHT-OF-WAY FORMERLY KNOWN AS OTTO STREET) AND BEING FURTHER DESCRIBED AS A PORTION OF LOT 11 AND A PORTION OF LOT 12, D.A. SMITH'S SUBDIVISION SHOWN ON THE PLAT FILED IN VOLUME 49, PAGE 105-106 OF THE DEED RECORDS OF BRAZOS COUNTY, TEXAS (DRBCT) CONVEYED TO JOE PASLER IN A SHERIFF'S DEED RECORDED IN VOLUME 81, PAGE 587 (DRBCT); SAID 0.124 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a 1/2 inch iron rod with blue plastic cap stamped 'KERR SURVEYING' found in the southwest line of Pasler Street (a public road shown on the plat of Joe Pasler's partial subdivision of Lots Ten and Eleven of D. A. Smith's Subdivision of 96 Acre Tract filed in Volume 91, Page 583, DRBCT, having an undefined width [actual right-of-way width varies]), at the north corner of a tract of land described as Lot 38, Pasler Addition (unrecorded) in a deed to Ali Jaffar recorded in Volume 19201, Page 71 of the Official Public Records of Brazos County, Texas (OPRBCT) being further described as a 41' x 104' tract of land (Second Tract) in a deed to Lula Mae Thomas, et al, recorded in Volume 345, Page 27 (DRBCT), and the northeast corner hereof, from which a 1/2 inch iron rod found at the occupied and monumented east corner of said Jaffar tract bears S 48° 30' 54" E, a distance of 41.00 feet;

THENCE, with the northwest line of said Jaffar tract, through said Lot 11 and Lot 12, D.A. Smith's Subdivision, **S 41° 25' 17" W**, for a distance of **104.00 feet** to a 1/2 inch iron rod with blue plastic cap stamped 'KERR SURVEYING' found at the west corner of said Jaffar tract;

THENCE, with the southwest line of said Jaffar tract, **S 48° 37' 19" E**, for a distance of **11.80 feet** to a 1/2 inch iron rod with blue plastic cap stamped 'KERR SURVEYING' set for corner, from which a 5/8 inch iron rod found at the occupied and monumented south corner of said Jaffar tract bears S 48° 37' 19" E, a distance of 29.20 feet;

THENCE, leaving said Jaffar tract and continuing across said Lot 12 of D.A. Smith's Subdivision, **S 41° 22' 48" W**, at a distance of 10.53 feet passing a 1/2 inch iron rod with blue plastic cap stamped 'KERR SURVEYING' found at the north corner of a tract of land described as Lot 27 of said unrecorded Pasler Addition in a deed to Salam Investments, LLC recorded in Volume 18475, Page 202 (OPRBCT), the same being further described as a 37.8' x 115' tract of land (First Tract) in said deed to Lula Mae Thomas, et al (345/27, DRBCT), and continuing with the northwest line of said Lot 27 for a total distance of **118.58 feet** to a point for the south corner hereof, from which a 1/2 inch iron rod with orange plastic cap stamped 'H.P. MAYO RPLS 5045' found in the northeast line of Turner Street (a public road shown on the plat of College View [Subdivision] filed in Volume 126, Page 133, DRBCT, and renamed as College Vista [Subdivision] in Volume 135, Page 321, DRBCT, having a variable width right-of-way), same being the southwest

EXHIBIT 'A'

line of said Lot 12 of D.A. Smith's Subdivision, for the west corner of said Lot 27 bears S 41° 22' 48" W, a distance of 6.96 feet and from said iron rod found a 1/2 inch iron rod with blue plastic cap stamped 'KERR SURVEYING' found at the south corner of said Lot 12, same being the east corner of said College Vista subdivision, bears S 48° 12' 57" E, a distance of 295.52 feet;

THENCE, crossing said Gilbert Street, **N 48° 51' 56" W**, for a distance of **29.87 feet** to a point in the southeast line of a called 0.18 acre tract of land described in a deed to Bartin, LLC recorded in Volume 19519, Page 212 (OPRBCT), the same being further described in a deed from Joe Pasler to Otto Seeman recorded in Volume 102, Page 538 (DRBCT), for the west corner hereof, from which a magnail set in asphalt at the south corner of said Bartin tract bears S 41° 18' 26" W, a distance of 6.62 feet;

THENCE, through said Lot 12 of D.A. Smith's Subdivision, with the southeast line of said 0.18 acre tract, **N 41° 18' 26" E**, passing the east corner of said 0.18 acre tract and the south corner of a called 0.13 acre tract of land described in a deed to Bartin, LLC recorded in Volume 19483, Page 233 (OPRBCT), and continuing with the southeast line of said 0.13 acre tract for a total distance of **111.37 feet** to a 1/2 inch iron rod found at the east corner of said 0.13 acre tract and the south corner of a called 0.3379 acre tract of land described in a deed to Brenda D. Hawkins, et al, recorded in Volume 15568, Page 175 (OPRBCT);

THENCE, continuing through said Lot 12 and through said Lot 11 of D.A. Smith's Subdivision, with the southeast line of said Hawkins tract, **N 41° 39' 59" E**, for a distance of **111.37 feet** to a magnail set in asphalt for the north corner hereof, from which the City of College Station GPS monument CS94-122 bears N 02° 49' 52" W, a distance of 1,040.93 feet and a magnail found in gutter on the southwest side of Pasler Street, at the east corner of said Hawkins tract, bears N 41° 39' 59" E, a distance of 17.88 feet;

THENCE, leaving the southeast line of said Hawkins tract and continuing through said Lot 11, D.A. Smith's Subdivision, **S 48° 30' 54" E,** for a distance of **17.74 feet** to the **POINT OF BEGINNING** hereof and containing **0.124 acres**, more or less.

Surveyed on the ground August 2024 under my supervision. See plat prepared September 2024 for other information. The bearing basis for this survey is based on the Texas State Plane Coordinate System of 1983 (NAD83), Central Zone, Grid North as established from GPS observation using the Leica Smartnet NAD83 (NA2011) Epoch 2010 Multi-year CORS Solution 2 (MYCS2). Distances described herein are surface distances. To obtain grid distances (not grid areas) divide by a combined scale factor of 1.0000933393 (calculated using GEOID12B). Reference drawing: 24-977-ROW.dwg.

Michael Konetski 12/4/24
Michael Konetski
Registered Professional Land Surveyor No. 6531
Revised 12/4/2024

KERR SURVEYING

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

EXHIBIT 'A'

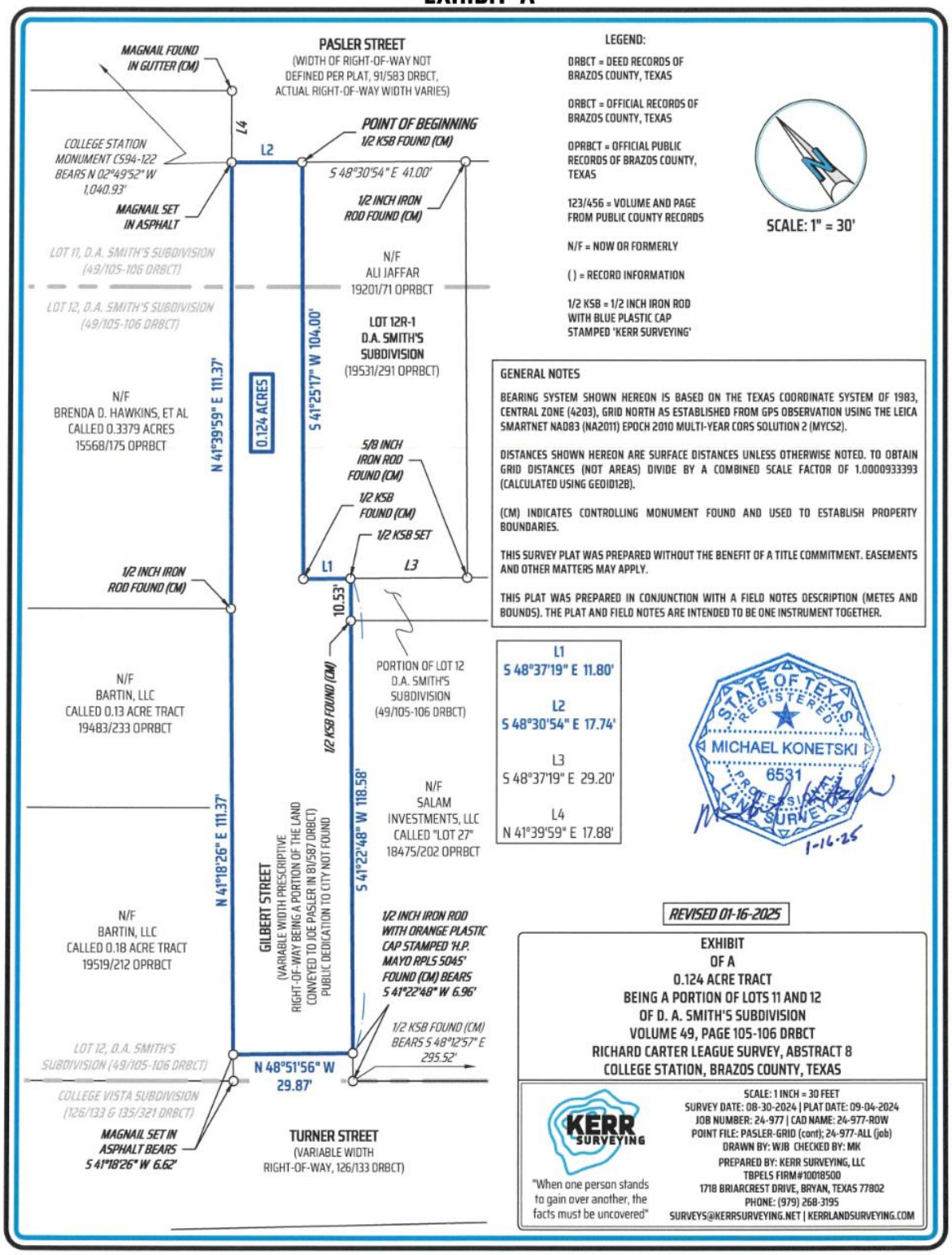
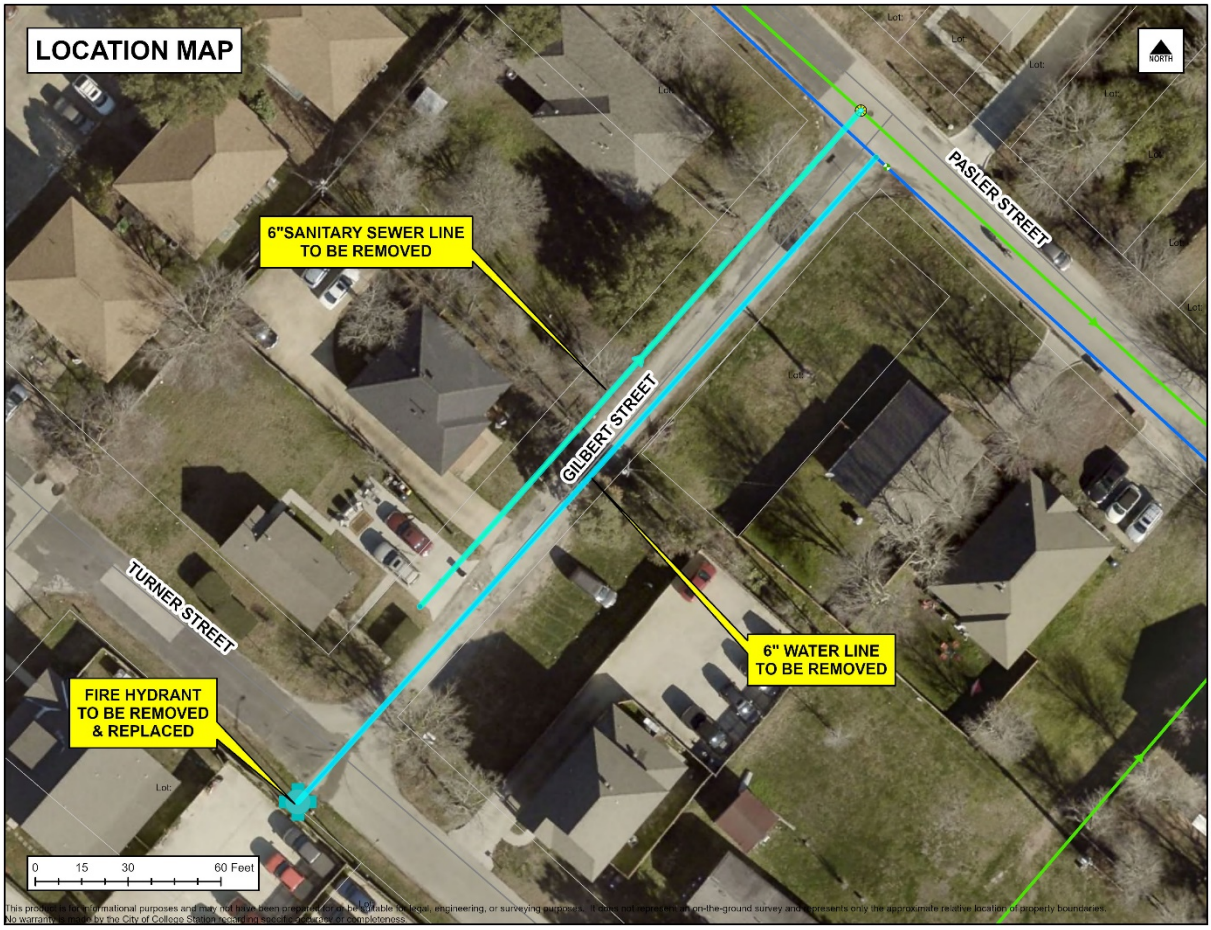
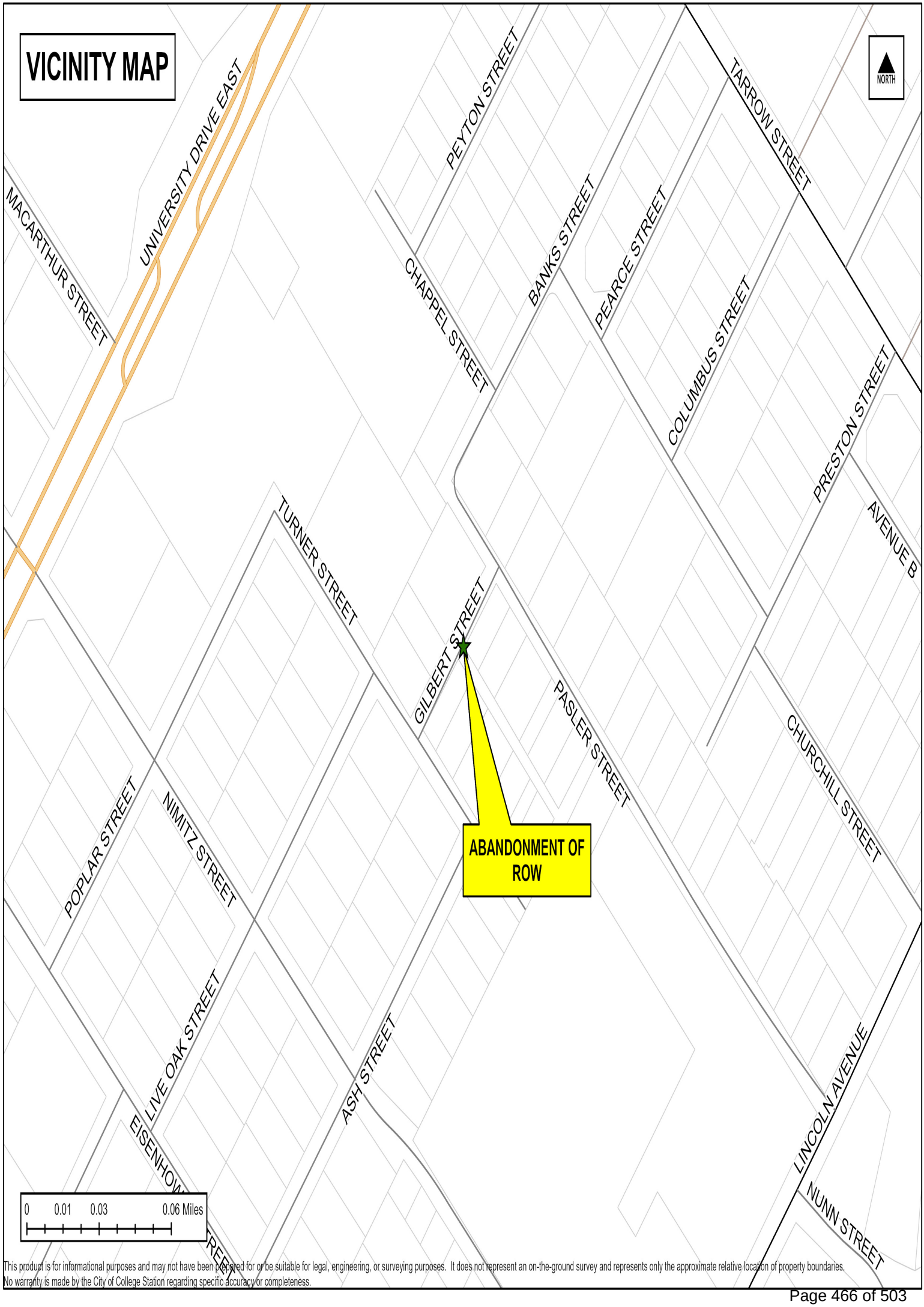

PASLER STREET
(WIDTH OF RIGHT-OF-WAY NOT DEFINED PER PLAT, 91/583 DRBCT, ACTUAL RIGHT-OF-WAY WIDTH VARIES)
MAGNAIL FOUND IN GUTTER (CM)
POINT OF BEGINNING 1/2 KSB FOUND (CM)
COLLEGE STATION MONUMENT C594-122 BEARS N 02°49'52" W 1,040.93'
MAGNAIL SET IN ASPHALT
S 48°30'54" E 41.00'
1/2 INCH IRON ROD FOUND (CM)
L4
L2
LOT 11, D.A. SMITH'S SUBDIVISION (49/105-106 DRBCT)
N/F ALI JAFFAR 19201/71 OPRBCT
LOT 12, D.A. SMITH'S SUBDIVISION (49/105-106 DRBCT)
LOT 12R-1 D.A. SMITH'S SUBDIVISION (19531/291 OPRBCT)
S 41°25'17" W 104.00'
N 41°39'59" E 111.37'
0.124 ACRES
N/F BRENDA D. HAWKINS, ET AL CALLED 0.3379 ACRES 15568/175 OPRBCT
5/8 INCH IRON ROD FOUND (CM)
1/2 KSB FOUND (CM)
1/2 KSB SET
L1
L3
1/2 INCH IRON ROD FOUND (CM)
10.53'
1/2 KSB FOUND (CM)
PORTION OF LOT 12 D.A. SMITH'S SUBDIVISION (49/105-106 DRBCT)
N/F BARTIN, LLC CALLED 0.13 ACRE TRACT 19483/233 OPRBCT
N 41°18'26" E 111.37'
S 41°22'48" W 118.58'
N/F SALAM INVESTMENTS, LLC CALLED "LOT 27" 18475/202 OPRBCT
GILBERT STREET
(VARIABLE WIDTH PRESCRIPTIVE RIGHT-OF-WAY BEING A PORTION OF THE LAND CONVEYED TO JOE PASLER IN 81/587 DRBCT) PUBLIC DEDICATION TO CITY NOT FOUND
N/F BARTIN, LLC CALLED 0.18 ACRE TRACT 19519/212 OPRBCT
1/2 INCH IRON ROD WITH ORANGE PLASTIC CAP STAMPED "H.P. MAYO RPLS 5045" FOUND (CM) BEARS S 41°22'48" W 6.96'
1/2 KSB FOUND (CM) BEARS S 48°12'57" E 295.52'
LOT 12, D.A. SMITH'S SUBDIVISION (49/105-106 DRBCT)
N 48°51'56" W 29.87'
COLLEGE VISTA SUBDIVISION (126/133 & 135/321 DRBCT)
MAGNAIL SET IN ASPHALT BEARS S 41°18'26" W 6.62'
TURNER STREET
(VARIABLE WIDTH RIGHT-OF-WAY, 126/133 DRBCT)
LEGEND:
DRBCT = DEED RECORDS OF BRAZOS COUNTY, TEXAS
ORBCT = OFFICIAL RECORDS OF BRAZOS COUNTY, TEXAS
OPRBCT = OFFICIAL PUBLIC RECORDS OF BRAZOS COUNTY, TEXAS
123/456 = VOLUME AND PAGE FROM PUBLIC COUNTY RECORDS
N/F = NOW OR FORMERLY
( ) = RECORD INFORMATION
1/2 KSB = 1/2 INCH IRON ROD WITH BLUE PLASTIC CAP STAMPED 'KERR SURVEYING'
SCALE: 1" = 30'
GENERAL NOTES
BEARING SYSTEM SHOWN HEREON IS BASED ON THE TEXAS COORDINATE SYSTEM OF 1983, CENTRAL ZONE (4203), GRID NORTH AS ESTABLISHED FROM GPS OBSERVATION USING THE LEICA SMARTNET NAD83 (NA2011) EPOCH 2010 MULTI-YEAR CORS SOLUTION 2 (MYCS2).
DISTANCES SHOWN HEREON ARE SURFACE DISTANCES UNLESS OTHERWISE NOTED. TO OBTAIN GRID DISTANCES (NOT AREAS) DIVIDE BY A COMBINED SCALE FACTOR OF 1.0000933393 (CALCULATED USING GEOID12B).
(CM) INDICATES CONTROLLING MONUMENT FOUND AND USED TO ESTABLISH PROPERTY BOUNDARIES.
THIS SURVEY PLAT WAS PREPARED WITHOUT THE BENEFIT OF A TITLE COMMITMENT. EASEMENTS AND OTHER MATTERS MAY APPLY.
THIS PLAT WAS PREPARED IN CONJUNCTION WITH A FIELD NOTES DESCRIPTION (METES AND BOUNDS). THE PLAT AND FIELD NOTES ARE INTENDED TO BE ONE INSTRUMENT TOGETHER.
L1
S 48°37'19" E 11.80'
L2
S 48°30'54" E 17.74'
L3
S 48°37'19" E 29.20'
L4
N 41°39'59" E 17.88'
STATE OF TEXAS
REGISTERED
MICHAEL KONETSKI
6531
PROFESSIONAL
LAND SURVEYOR
1-16-25
REVISED 01-16-2025
EXHIBIT
OF A
0.124 ACRE TRACT
BEING A PORTION OF LOTS 11 AND 12
OF D. A. SMITH'S SUBDIVISION
VOLUME 49, PAGE 105-106 DRBCT
RICHARD CARTER LEAGUE SURVEY, ABSTRACT 8
COLLEGE STATION, BRAZOS COUNTY, TEXAS
KERR SURVEYING
"When one person stands to gain over another, the facts must be uncovered"
SCALE: 1 INCH = 30 FEET
SURVEY DATE: 08-30-2024 | PLAT DATE: 09-04-2024
JOB NUMBER: 24-977 | CAD NAME: 24-977-ROW
POINT FILE: PASLER-GRID (cont); 24-977-ALL (job)
DRAWN BY: WJB CHECKED BY: MK
PREPARED BY: KERR SURVEYING, LLC
TBPELS FIRM#10018500
1718 BRIARCREST DRIVE, BRYAN, TEXAS 77802
PHONE: (979) 268-3195
SURVEYS@KERRSURVEYING.NET | KERRLANDSURVEYING.COM

Exhibit B

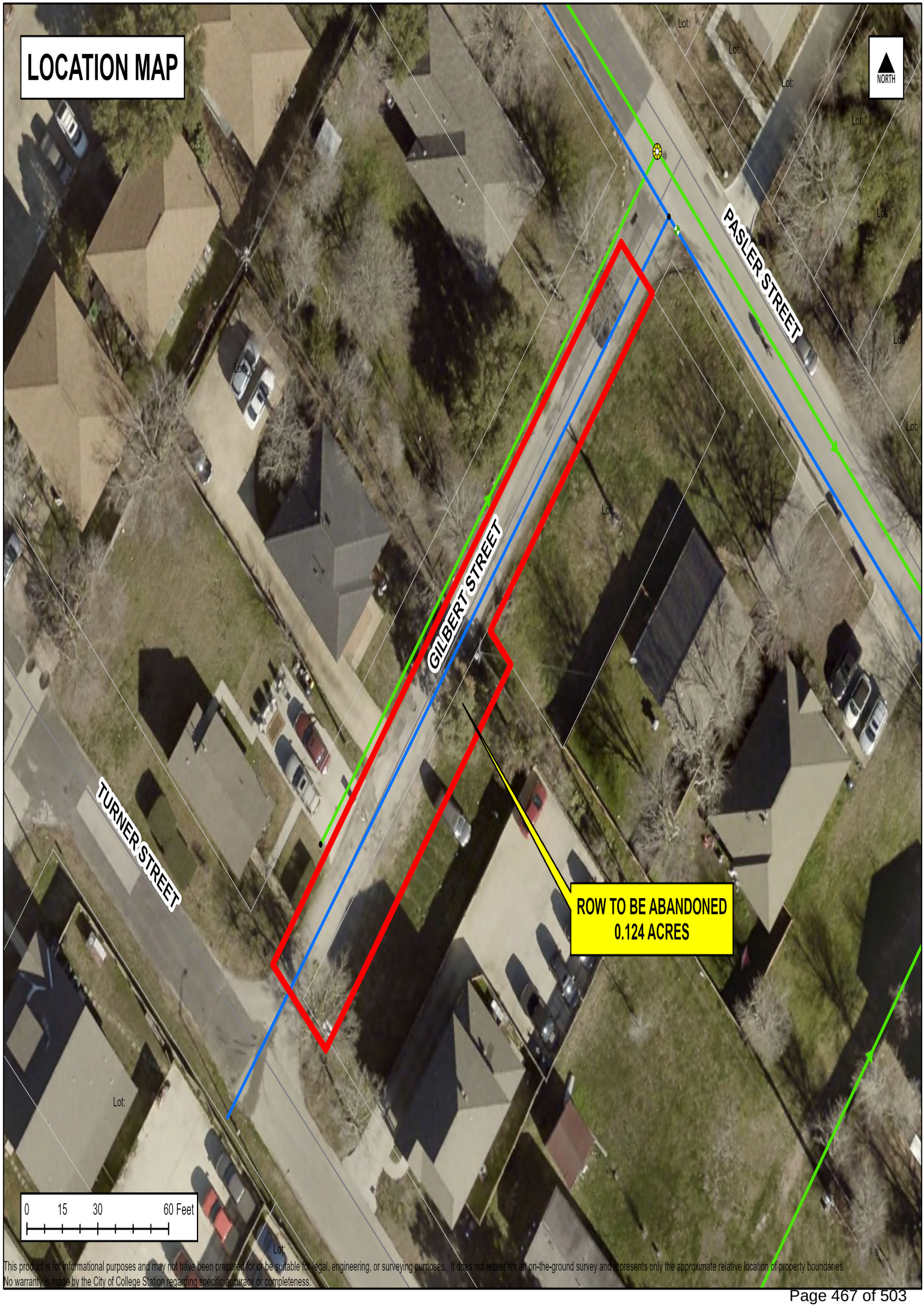
That all of the following conditions must be satisfied before the abandonment becomes effective:

1. Removal of the 6” Sanitary Sewer Line that lies within the prescriptive right-of-way of Gilbert St.; and
2. Removal of the 6” Water Line that lies within the prescriptive right-of-way of Gilbert St.; and
3. Removal and Replacement of the Fire Hydrant Assembly, according to City of College Station Unified Development Ordinance Section 8.3.M.1, or as amended, served by the 6” Water Line that lies within the prescriptive right-of-way of Gilbert St.





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



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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):

Gilbert Street right-of-way, located between Turner Street and Pasler Street.

APPLICANT/PROJECT MANAGER'S INFORMATION (Primary contact for the project):

Name *RME Consulting Engineers (c/o Rabon Metcalf)* E-mail *rabon@rmengineer.com*

Street Address *PO Box 9253*

City *College Station* State *TX* Zip Code *77845*

Phone Number *(979) 764-0704* Fax Number

PROPERTY OWNER'S INFORMATION (ALL owners must be identified. Please attach an additional sheet for multiple owners):

Name *Ali Jaffer (c/o Bartin, LLC, Salam Investments, LLC, Sivals, LLC* E-mail *alijaffarbcs@gmail.com*

Street Address: *4558 Hicks Lane*

City *College Station* State *TX* Zip Code *77845*

Phone Number *(928) 229-9517* 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

11/03/2024

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 *Not applicable.* E-mail _____

Street Address _____

City _____ State _____ Zip Code _____

Reason consent was not obtained: _____

If objecting, points of objection:

Name *Not applicable.* E-mail _____

Street Address _____

City _____ State _____ Zip Code _____

Reason consent was not obtained: _____

If objecting, points of objection:

Name *Not applicable.* 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:
Pasler, Block 2, Lots 23 - 26 currently take access to Gilbert Street. These lots will be replatted/redeveloped to take access to Turner Street.

8. That there is no current public need or use for the easement or right-of-way because:
Pursuant to conversation with CoCS Staff, Gilbert Street is a sub-standard street with insufficient right-of-way. With proposed redevelopment, along Turner Street, no lots will take access to the existing roadway.

9. That there is no anticipated future public need or use for the easement or right-of-way because:
Same as response as Item #8.

10. That all public utilities have access to serve current and future customers because:
All needed water/sewer utilities are located either along Turner Street or Pasler Street.

11. Such public right-of-way/easement has been and is being used as follows:
Mid-block access between Turner Street and Pasler Street along with driveway access for Pasler, Block 2, Lots 23 - 26. These lots will be replatted/redeveloped to take access to Turner Street.

I swear that all of the information contained in this application is true and correct to the best of my knowledge and belief.

Signature and title

11/03/2024
Date

STATE OF ~~TEXAS~~ Florida §
§ ACKNOWLEDGEMENT
COUTY OF ~~BRAZOS~~ Saint Lucie §

Subscribed and sworn to before me, a Notary Public, this 3rd day of November 2024, ~~2009~~ by Ali Issa Jaffar.

ECHARD BIEN-AIME
Notary Public - State of Florida
Commission # HH 153738
Expires on July 14, 2025

Echard bien-aime
Notary Public in and for
the State of ~~Texas~~ Florida

Notarized remotely online using communication technology via Proof.

Application for Abandonment of
a Public Right-of-Way/Easement

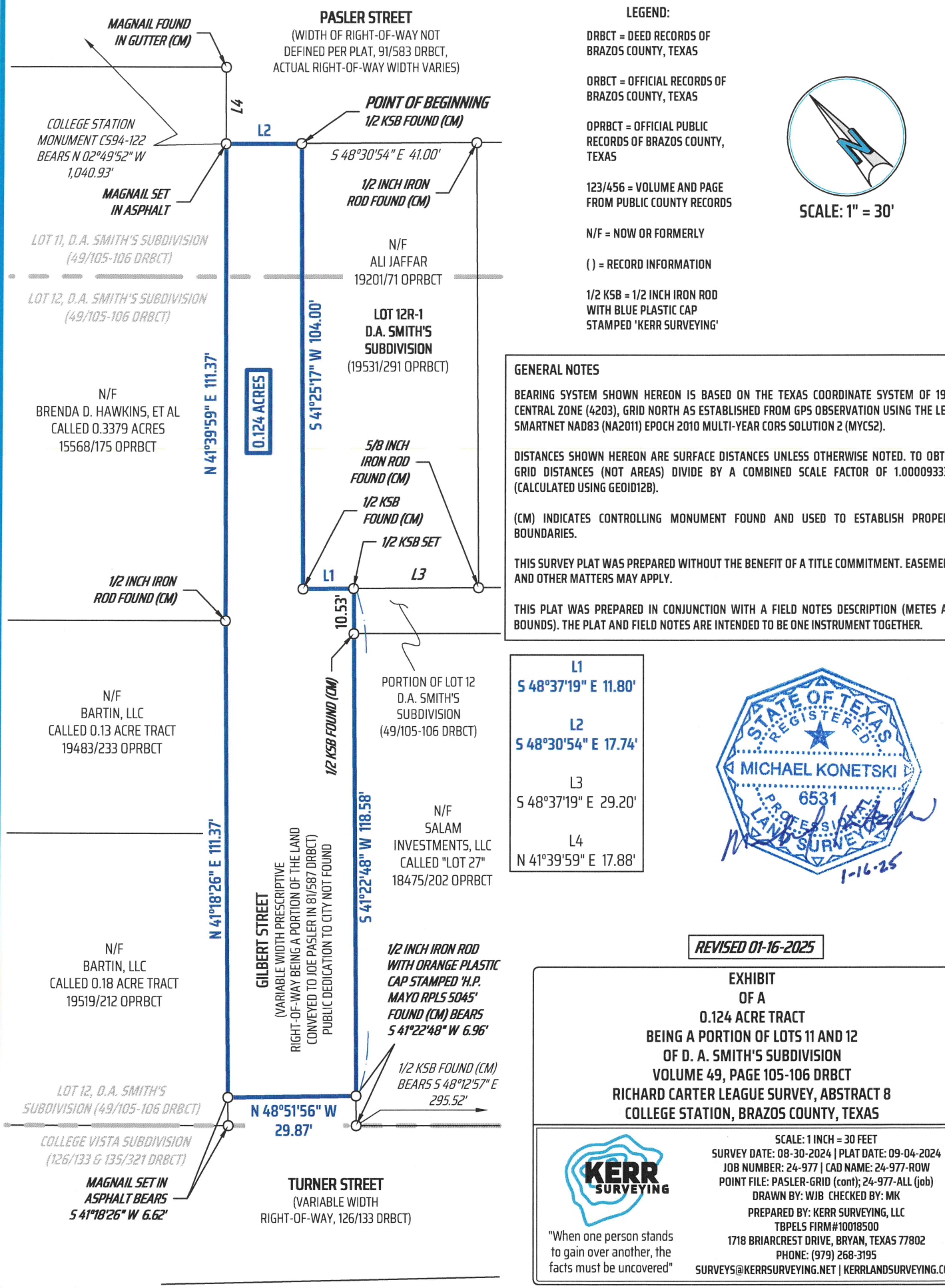
Location: *Gilbert Street*

EXHIBIT NO. 1

Attached is a sealed copy of the metes and bounds description of the public right-of-way/easement situated in

the DA Smith's Subdivision (Volume 49, Page 106), Richard Carter League Survey, A-8

Addition/Subdivision to the City of College Station, Brazos County, Texas, sought to be abandoned.



LEGEND:

DRBCT = DEED RECORDS OF BRAZOS COUNTY, TEXAS

ORBCT = OFFICIAL RECORDS OF BRAZOS COUNTY, TEXAS

OPRBCT = OFFICIAL PUBLIC RECORDS OF BRAZOS COUNTY, TEXAS

123/456 = VOLUME AND PAGE FROM PUBLIC COUNTY RECORDS

N/F = NOW OR FORMERLY

( ) = RECORD INFORMATION

1/2 KSB = 1/2 INCH IRON ROD WITH BLUE PLASTIC CAP STAMPED 'KERR SURVEYING'

SCALE: 1" = 30'

GENERAL NOTES

BEARING SYSTEM SHOWN HEREON IS BASED ON THE TEXAS COORDINATE SYSTEM OF 1983, CENTRAL ZONE (4203), GRID NORTH AS ESTABLISHED FROM GPS OBSERVATION USING THE LEICA SMARTNET NAD83 (NA2011) EPOCH 2010 MULTI-YEAR CORS SOLUTION 2 (MYCS2).

DISTANCES SHOWN HEREON ARE SURFACE DISTANCES UNLESS OTHERWISE NOTED. TO OBTAIN GRID DISTANCES (NOT AREAS) DIVIDE BY A COMBINED SCALE FACTOR OF 1.0000933393 (CALCULATED USING GEOID12B).

(CM) INDICATES CONTROLLING MONUMENT FOUND AND USED TO ESTABLISH PROPERTY BOUNDARIES.

THIS SURVEY PLAT WAS PREPARED WITHOUT THE BENEFIT OF A TITLE COMMITMENT. EASEMENTS AND OTHER MATTERS MAY APPLY.

THIS PLAT WAS PREPARED IN CONJUNCTION WITH A FIELD NOTES DESCRIPTION (METES AND BOUNDS). THE PLAT AND FIELD NOTES ARE INTENDED TO BE ONE INSTRUMENT TOGETHER.

L1	S 48°37'19" E 11.80'
L2	S 48°30'54" E 17.74'
L3	S 48°37'19" E 29.20'
L4	N 41°39'59" E 17.88'

STATE OF TEXAS
REGISTERED
MICHAEL KONETSKI
6531
PROFESSIONAL LAND SURVEYOR
1-16-25

REVISED 01-16-2025

EXHIBIT
OF A
0.124 ACRE TRACT
BEING A PORTION OF LOTS 11 AND 12
OF D. A. SMITH'S SUBDIVISION
VOLUME 49, PAGE 105-106 DRBCT
RICHARD CARTER LEAGUE SURVEY, ABSTRACT 8
COLLEGE STATION, BRAZOS COUNTY, TEXAS

KERR SURVEYING

"When one person stands to gain over another, the facts must be uncovered"

SCALE: 1 INCH = 30 FEET
SURVEY DATE: 08-30-2024 | PLAT DATE: 09-04-2024
JOB NUMBER: 24-977 | CAD NAME: 24-977-ROW
POINT FILE: PASLER-GRID (cont); 24-977-ALL (job)
DRAWN BY: WJB CHECKED BY: MK

PREPARED BY: KERR SURVEYING, LLC
TBPELS FIRM#10018500
1718 BRIARCREST DRIVE, BRYAN, TEXAS 77802
PHONE: (979) 268-3195
SURVEYS@KERRSURVEYING.NET | KERRLANDSURVEYING.COM

KERR SURVEYING

FIELD NOTES DESCRIPTION

OF A

0.124 ACRE TRACT

RICHARD CARTER LEAGUE SURVEY, ABSTRACT NO. 8

COLLEGE STATION, BRAZOS COUNTY, TEXAS

A FIELD NOTES DESCRIPTION OF 0.124 ACRES IN THE RICHARD CARTER LEAGUE SURVEY, ABSTRACT NO. 8, IN COLLEGE STATION, BRAZOS COUNTY, TEXAS, BEING ALL OF GILBERT STREET (A VARIABLE WIDTH PRESCRIPTIVE RIGHT-OF-WAY FORMERLY KNOWN AS OTTO STREET) AND BEING FURTHER DESCRIBED AS A PORTION OF LOT 11 AND A PORTION OF LOT 12, D.A. SMITH'S SUBDIVISION SHOWN ON THE PLAT FILED IN VOLUME 49, PAGE 105-106 OF THE DEED RECORDS OF BRAZOS COUNTY, TEXAS (DRBCT) CONVEYED TO JOE PASLER IN A SHERIFF'S DEED RECORDED IN VOLUME 81, PAGE 587 (DRBCT); SAID 0.124 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a 1/2 inch iron rod with blue plastic cap stamped 'KERR SURVEYING' found in the southwest line of Pasler Street (a public road shown on the plat of Joe Pasler's partial subdivision of Lots Ten and Eleven of D. A. Smith's Subdivision of 96 Acre Tract filed in Volume 91, Page 583, DRBCT, having an undefined width [actual right-of-way width varies]), at the north corner of a tract of land described as Lot 38, Pasler Addition (unrecorded) in a deed to Ali Jaffar recorded in Volume 19201, Page 71 of the Official Public Records of Brazos County, Texas (OPRBCT) being further described as a 41' x 104' tract of land (Second Tract) in a deed to Lula Mae Thomas, et al, recorded in Volume 345, Page 27 (DRBCT), and the northeast corner hereof, from which a 1/2 inch iron rod found at the occupied and monumented east corner of said Jaffar tract bears S 48° 30' 54" E, a distance of 41.00 feet;

THENCE, with the northwest line of said Jaffar tract, through said Lot 11 and Lot 12, D.A. Smith's Subdivision, **S 41° 25' 17" W**, for a distance of **104.00 feet** to a 1/2 inch iron rod with blue plastic cap stamped 'KERR SURVEYING' found at the west corner of said Jaffar tract;

THENCE, with the southwest line of said Jaffar tract, **S 48° 37' 19" E**, for a distance of **11.80 feet** to a 1/2 inch iron rod with blue plastic cap stamped 'KERR SURVEYING' set for corner, from which a 5/8 inch iron rod found at the occupied and monumented south corner of said Jaffar tract bears S 48° 37' 19" E, a distance of 29.20 feet;

THENCE, leaving said Jaffar tract and continuing across said Lot 12 of D.A. Smith's Subdivision, **S 41° 22' 48" W**, at a distance of 10.53 feet passing a 1/2 inch iron rod with blue plastic cap stamped 'KERR SURVEYING' found at the north corner of a tract of land described as Lot 27 of said unrecorded Pasler Addition in a deed to Salam Investments, LLC recorded in Volume 18475, Page 202 (OPRBCT), the same being further described as a 37.8' x 115' tract of land (First Tract) in said deed to Lula Mae Thomas, et al (345/27, DRBCT), and continuing with the northwest line of said Lot 27 for a total distance of **118.58 feet** to a point for the south corner hereof, from which a 1/2 inch iron rod with orange plastic cap stamped 'H.P. MAYO RPLS 5045' found in the northeast line of Turner Street (a public road shown on the plat of College View [Subdivision] filed in Volume 126, Page 133, DRBCT, and renamed as College Vista [Subdivision] in Volume 135, Page 321, DRBCT, having a variable width right-of-way), same being the southwest

line of said Lot 12 of D.A. Smith's Subdivision, for the west corner of said Lot 27 bears S 41° 22' 48" W, a distance of 6.96 feet and from said iron rod found a 1/2 inch iron rod with blue plastic cap stamped 'KERR SURVEYING' found at the south corner of said Lot 12, same being the east corner of said College Vista subdivision, bears S 48° 12' 57" E, a distance of 295.52 feet;

THENCE, crossing said Gilbert Street, **N 48° 51' 56" W**, for a distance of **29.87 feet** to a point in the southeast line of a called 0.18 acre tract of land described in a deed to Bartin, LLC recorded in Volume 19519, Page 212 (OPRBCT), the same being further described in a deed from Joe Pasler to Otto Seeman recorded in Volume 102, Page 538 (DRBCT), for the west corner hereof, from which a magnail set in asphalt at the south corner of said Bartin tract bears S 41° 18' 26" W, a distance of 6.62 feet;

THENCE, through said Lot 12 of D.A. Smith's Subdivision, with the southeast line of said 0.18 acre tract, **N 41° 18' 26" E**, passing the east corner of said 0.18 acre tract and the south corner of a called 0.13 acre tract of land described in a deed to Bartin, LLC recorded in Volume 19483, Page 233 (OPRBCT), and continuing with the southeast line of said 0.13 acre tract for a total distance of **111.37 feet** to a 1/2 inch iron rod found at the east corner of said 0.13 acre tract and the south corner of a called 0.3379 acre tract of land described in a deed to Brenda D. Hawkins, et al, recorded in Volume 15568, Page 175 (OPRBCT);

THENCE, continuing through said Lot 12 and through said Lot 11 of D.A. Smith's Subdivision, with the southeast line of said Hawkins tract, **N 41° 39' 59" E**, for a distance of **111.37 feet** to a magnail set in asphalt for the north corner hereof, from which the City of College Station GPS monument CS94-122 bears N 02° 49' 52" W, a distance of 1,040.93 feet and a magnail found in gutter on the southwest side of Pasler Street, at the east corner of said Hawkins tract, bears N 41° 39' 59" E, a distance of 17.88 feet;

THENCE, leaving the southeast line of said Hawkins tract and continuing through said Lot 11, D.A. Smith's Subdivision, **S 48° 30' 54" E,** for a distance of **17.74 feet** to the **POINT OF BEGINNING** hereof and containing **0.124 acres**, more or less.

Surveyed on the ground August 2024 under my supervision. See plat prepared September 2024 for other information. The bearing basis for this survey is based on the Texas State Plane Coordinate System of 1983 (NAD83), Central Zone, Grid North as established from GPS observation using the Leica Smartnet NAD83 (NA2011) Epoch 2010 Multi-year CORS Solution 2 (MYCS2). Distances described herein are surface distances. To obtain grid distances (not grid areas) divide by a combined scale factor of 1.0000933393 (calculated using GEOID12B). Reference drawing: 24-977-ROW.dwg.

Michael Konetski 12/4/24

Michael Konetski
Registered Professional Land Surveyor No. 6531
Revised 12/4/2024

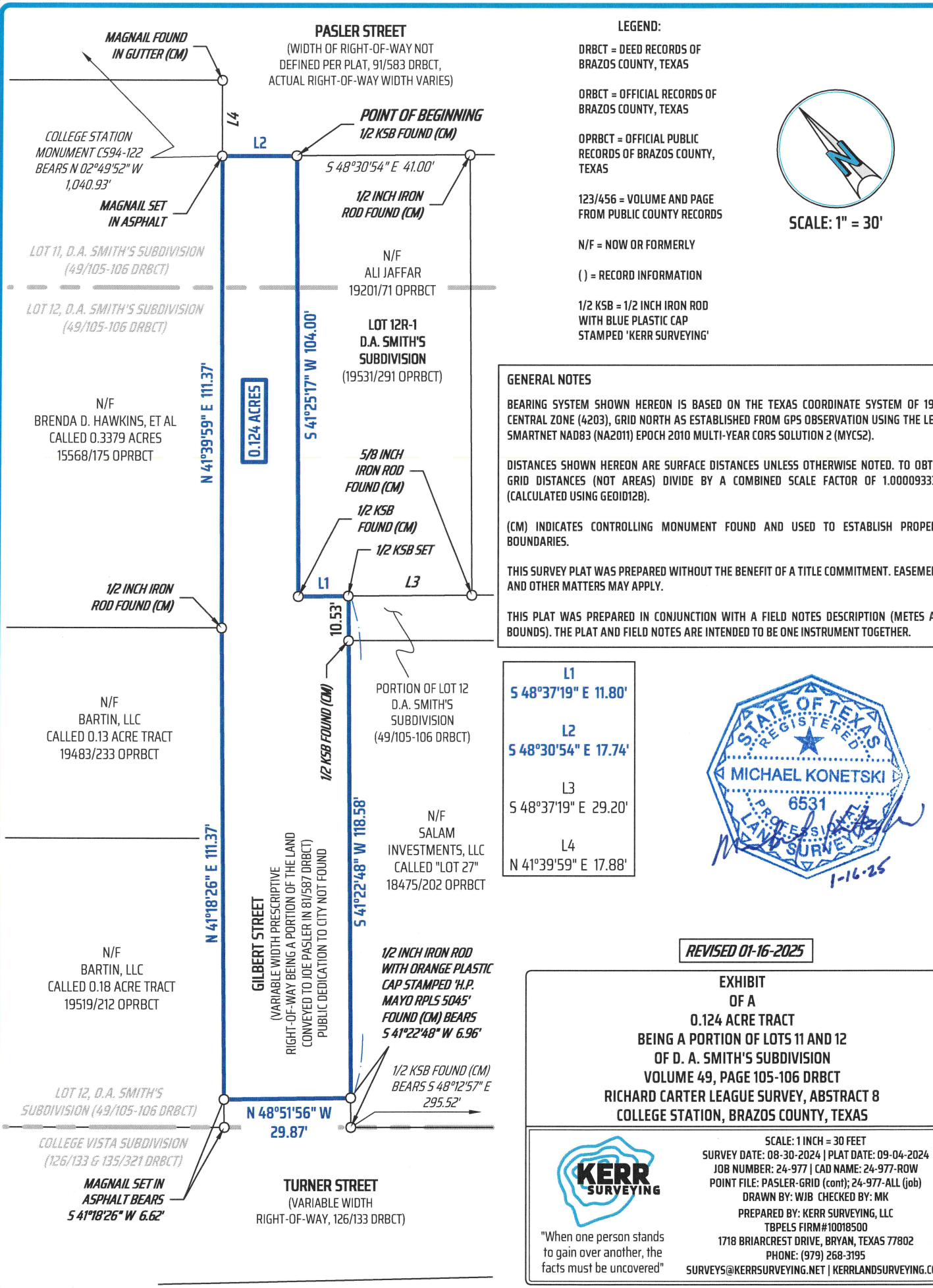
KERR SURVEYING

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

Location: *Gilbert Street*

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.



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1/2 KSB = 1/2 INCH IRON ROD WITH BLUE PLASTIC CAP STAMPED 'KERR SURVEYING'

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GENERAL NOTES

BEARING SYSTEM SHOWN HEREON IS BASED ON THE TEXAS COORDINATE SYSTEM OF 1983, CENTRAL ZONE (4203), GRID NORTH AS ESTABLISHED FROM GPS OBSERVATION USING THE LEICA SMARTNET NAD83 (NA2011) EPOCH 2010 MULTI-YEAR CORS SOLUTION 2 (MYCS2).

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STATE OF TEXAS
REGISTERED
MICHAEL KONETSKI
6531
PROFESSIONAL
LAND SURVEYOR
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EXHIBIT
OF A
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COLLEGE STATION, BRAZOS COUNTY, TEXAS

KERR SURVEYING

"When one person stands to gain over another, the facts must be uncovered"

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JOB NUMBER: 24-977 | CAD NAME: 24-977-ROW
POINT FILE: PASLER-GRID (cont); 24-977-ALL (job)
DRAWN BY: WJB CHECKED BY: MK

PREPARED BY: KERR SURVEYING, LLC
TBPELS FIRM#10018500
1718 BRIARCREST DRIVE, BRYAN, TEXAS 77802
PHONE: (979) 268-3195
SURVEYS@KERRSURVEYING.NET | KERRLANDSURVEYING.COM

Application for Abandonment of
a Public Right-of-Way/Easement

Location: *Gilbert Street*

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: _____

Location: *Gilbert Street*

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: _____

FRONTIER
~~VERIZON~~ TELEPHONE COMPANY

By: _____ Joshua Mary

Title: _____ ENGINEER III

SUDDENLINK COMMUNICATIONS

By: _____

Title: _____

BRYAN TEXAS UTILITIES

By: _____

Title: _____

Location: *Gilbert Street*

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: Dan Ausbun

Title: Supervisor-OPS-Construction

10.1.24

BRYAN TEXAS UTILITIES

By: _____

Title: _____

Location: *Gilbert Street*

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: _____

Title: Design Engineering Manager

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 from the standpoint of City of College Station ordinances and with respect to present and future needs of the City of College Station and see no objection to the requested abandonment from the City's standpoint.

Carol Cotter
City Engineer
City of College Station

Brian Binford
Building Official
City of College Station

Molly Hitchcock
Zoning Official
City of College Station

Fire Marshal
City of College Station

Timothy Ray Crabb, P.E.
Electric Department
City of College Station

Water Services Department
City of College Station

Emily Fisher
Public Works Director
City of College Station

Application for Abandonment of
a Public Right-of-Way/Easement

Location: *Gilbert Street*

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: _____

ADDRESS: Owner of 616 Pasler Street

Onie Holmes
616 Pasler Street
College Station, TX 77840

NAME: Ali Issa Jaffar

ADDRESS: 4558 Hicks Lane, College Station TX 77845

NAME: Onie Holmes

ADDRESS: 619 Pasler Street
College Station, TX 77840

X Onie Holmes

NAME: _____

ADDRESS: _____

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):

Gilbert Street right-of-way, located between Turner Street and Pasler Street.

APPLICANT/PROJECT MANAGER'S INFORMATION (Primary contact for the project):

Name *RME Consulting Engineers (c/o Rabon Metcalf)* E-mail *rabon@rmengineer.com*

Street Address *PO Box 9253*

City *College Station* State *TX* Zip Code *77845*

Phone Number *(979) 764-0704* Fax Number

PROPERTY OWNER'S INFORMATION (ALL owners must be identified. Please attach an additional sheet for multiple owners):

Name *Onie Holmes* E-mail

Street Address: *616 Pasler Street*

City *College Station* State *TX* Zip Code *77840*

Phone Number 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.

Onie M Holmes
Signature and title

10/10/24
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 *Not applicable.* E-mail _____

Street Address _____

City _____ State _____ Zip Code _____

Reason consent was not obtained: _____

If objecting, points of objection:

Name *Not applicable.* E-mail _____

Street Address _____

City _____ State _____ Zip Code _____

Reason consent was not obtained: _____

If objecting, points of objection:

Name *Not applicable.* 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:
Pasler, Block 2, Lots 23 - 26 currently take access to Gilbert Street. These lots will be replatted/redeveloped to take access to Turner Street.

8. That there is no current public need or use for the easement or right-of-way because:
Pursuant to conversation with CoCS Staff, Gilbert Street is a sub-standard street with insufficient right-of-way. With proposed redevelopment, along Turner Street, no lots will take access to the existing roadway.

9. That there is no anticipated future public need or use for the easement or right-of-way because:
Same as response as Item #8.

10. That all public utilities have access to serve current and future customers because:
All needed water/sewer utilities are located either along Turner Street or Pasler Street.

11. Such public right-of-way/easement has been and is being used as follows:
Mid-block access between Turner Street and Pasler Street along with driveway access for Pasler, Block 2, Lots 23 - 26. These lots will be replatted/redeveloped to take access to Turner Street.

I swear that all of the information contained in this application is true and correct to the best of my knowledge and belief.

Onie M Holmes
Signature and title

10/10/2024
Date

STATE OF TEXAS §
§ ACKNOWLEDGEMENT
COUTY OF BRAZOS §

Subscribed and sworn to before me, a Notary Public, this 10th day of October, 2024 ~~2009~~ by Kimberly Brewer-Harper.

KIMBERLY BREWER HARPER
My Notary ID # 130507361
Expires January 31, 2024

Notary Public in and for
the State of Texas

Application for Abandonment of
a Public Right-of-Way/Easement

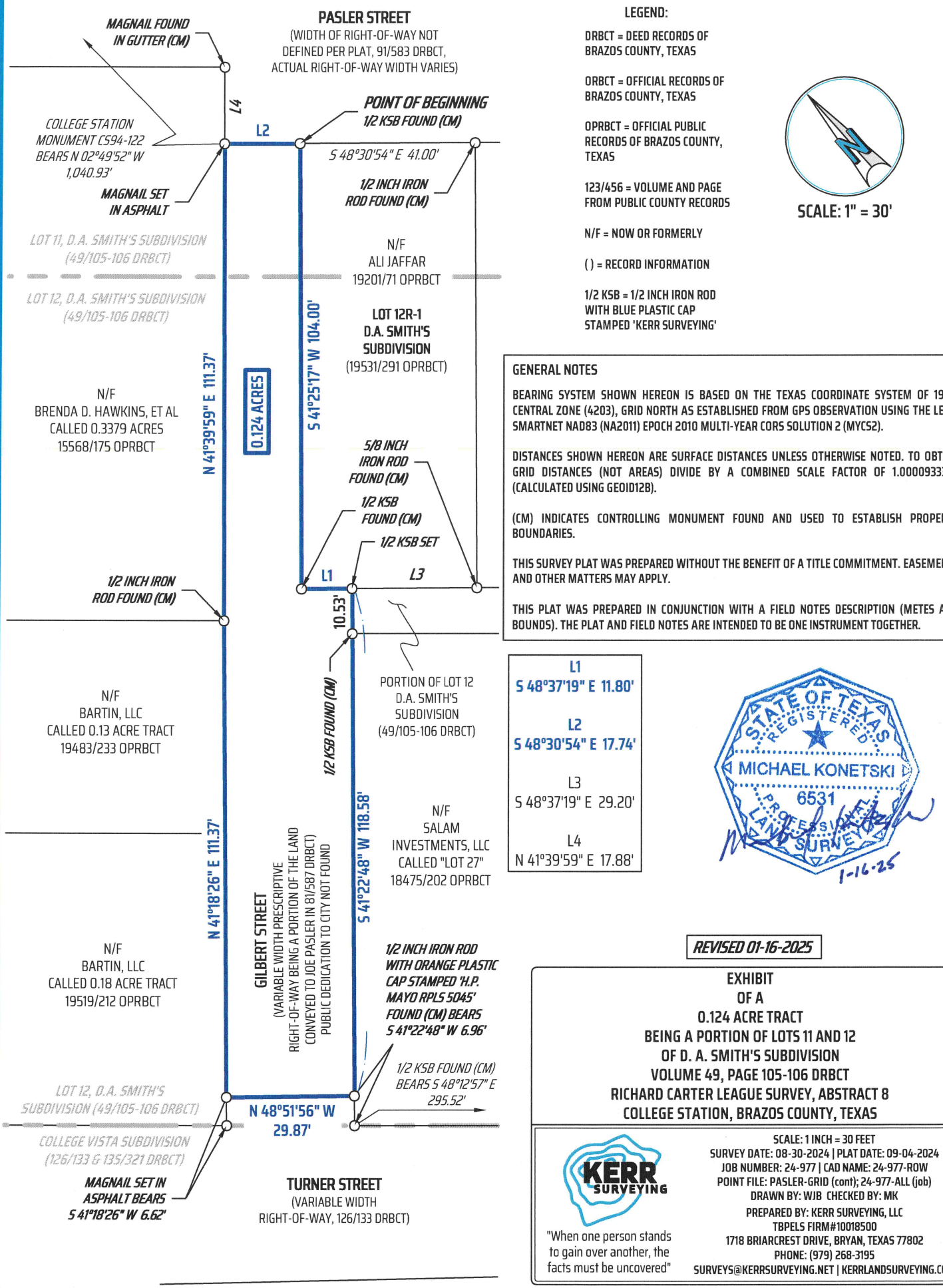
Location: *Gilbert Street*

EXHIBIT NO. 1

Attached is a sealed copy of the metes and bounds description of the public right-of-way/easement situated in

the DA Smith's Subdivision (Volume 49, Page 106), Richard Carter League Survey, A-8

Addition/Subdivision to the City of College Station, Brazos County, Texas, sought to be abandoned.



LEGEND:

DRBCT = DEED RECORDS OF BRAZOS COUNTY, TEXAS

ORBCT = OFFICIAL RECORDS OF BRAZOS COUNTY, TEXAS

OPRBCT = OFFICIAL PUBLIC RECORDS OF BRAZOS COUNTY, TEXAS

123/456 = VOLUME AND PAGE FROM PUBLIC COUNTY RECORDS

N/F = NOW OR FORMERLY

( ) = RECORD INFORMATION

1/2 KSB = 1/2 INCH IRON ROD WITH BLUE PLASTIC CAP STAMPED 'KERR SURVEYING'

SCALE: 1" = 30'

GENERAL NOTES

BEARING SYSTEM SHOWN HEREON IS BASED ON THE TEXAS COORDINATE SYSTEM OF 1983, CENTRAL ZONE (4203), GRID NORTH AS ESTABLISHED FROM GPS OBSERVATION USING THE LEICA SMARTNET NAD83 (NA2011) EPOCH 2010 MULTI-YEAR CORS SOLUTION 2 (MYCS2).

DISTANCES SHOWN HEREON ARE SURFACE DISTANCES UNLESS OTHERWISE NOTED. TO OBTAIN GRID DISTANCES (NOT AREAS) DIVIDE BY A COMBINED SCALE FACTOR OF 1.0000933393 (CALCULATED USING GEOID12B).

(CM) INDICATES CONTROLLING MONUMENT FOUND AND USED TO ESTABLISH PROPERTY BOUNDARIES.

THIS SURVEY PLAT WAS PREPARED WITHOUT THE BENEFIT OF A TITLE COMMITMENT. EASEMENTS AND OTHER MATTERS MAY APPLY.

THIS PLAT WAS PREPARED IN CONJUNCTION WITH A FIELD NOTES DESCRIPTION (METES AND BOUNDS). THE PLAT AND FIELD NOTES ARE INTENDED TO BE ONE INSTRUMENT TOGETHER.

L1	S 48°37'19" E 11.80'
L2	S 48°30'54" E 17.74'
L3	S 48°37'19" E 29.20'
L4	N 41°39'59" E 17.88'

STATE OF TEXAS
REGISTERED
MICHAEL KONETSKI
6531
PROFESSIONAL
LAND SURVEYOR
1-16-25

REVISED 01-16-2025

EXHIBIT
OF A
0.124 ACRE TRACT
BEING A PORTION OF LOTS 11 AND 12
OF D. A. SMITH'S SUBDIVISION
VOLUME 49, PAGE 105-106 DRBCT
RICHARD CARTER LEAGUE SURVEY, ABSTRACT 8
COLLEGE STATION, BRAZOS COUNTY, TEXAS

KERR SURVEYING

"When one person stands to gain over another, the facts must be uncovered"

SCALE: 1 INCH = 30 FEET
SURVEY DATE: 08-30-2024 | PLAT DATE: 09-04-2024
JOB NUMBER: 24-977 | CAD NAME: 24-977-ROW
POINT FILE: PASLER-GRID (cont); 24-977-ALL (job)
DRAWN BY: WJB CHECKED BY: MK

PREPARED BY: KERR SURVEYING, LLC
TBPELS FIRM#10018500
1718 BRIARCREST DRIVE, BRYAN, TEXAS 77802
PHONE: (979) 268-3195
SURVEYS@KERRSURVEYING.NET | KERRLANDSURVEYING.COM

KERR SURVEYING

FIELD NOTES DESCRIPTION

OF A

0.124 ACRE TRACT

RICHARD CARTER LEAGUE SURVEY, ABSTRACT NO. 8

COLLEGE STATION, BRAZOS COUNTY, TEXAS

A FIELD NOTES DESCRIPTION OF 0.124 ACRES IN THE RICHARD CARTER LEAGUE SURVEY, ABSTRACT NO. 8, IN COLLEGE STATION, BRAZOS COUNTY, TEXAS, BEING ALL OF GILBERT STREET (A VARIABLE WIDTH PRESCRIPTIVE RIGHT-OF-WAY FORMERLY KNOWN AS OTTO STREET) AND BEING FURTHER DESCRIBED AS A PORTION OF LOT 11 AND A PORTION OF LOT 12, D.A. SMITH'S SUBDIVISION SHOWN ON THE PLAT FILED IN VOLUME 49, PAGE 105-106 OF THE DEED RECORDS OF BRAZOS COUNTY, TEXAS (DRBCT) CONVEYED TO JOE PASLER IN A SHERIFF'S DEED RECORDED IN VOLUME 81, PAGE 587 (DRBCT); SAID 0.124 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a 1/2 inch iron rod with blue plastic cap stamped 'KERR SURVEYING' found in the southwest line of Pasler Street (a public road shown on the plat of Joe Pasler's partial subdivision of Lots Ten and Eleven of D. A. Smith's Subdivision of 96 Acre Tract filed in Volume 91, Page 583, DRBCT, having an undefined width [actual right-of-way width varies]), at the north corner of a tract of land described as Lot 38, Pasler Addition (unrecorded) in a deed to Ali Jaffar recorded in Volume 19201, Page 71 of the Official Public Records of Brazos County, Texas (OPRBCT) being further described as a 41' x 104' tract of land (Second Tract) in a deed to Lula Mae Thomas, et al, recorded in Volume 345, Page 27 (DRBCT), and the northeast corner hereof, from which a 1/2 inch iron rod found at the occupied and monumented east corner of said Jaffar tract bears S 48° 30' 54" E, a distance of 41.00 feet;

THENCE, with the northwest line of said Jaffar tract, through said Lot 11 and Lot 12, D.A. Smith's Subdivision, **S 41° 25' 17" W**, for a distance of **104.00 feet** to a 1/2 inch iron rod with blue plastic cap stamped 'KERR SURVEYING' found at the west corner of said Jaffar tract;

THENCE, with the southwest line of said Jaffar tract, **S 48° 37' 19" E**, for a distance of **11.80 feet** to a 1/2 inch iron rod with blue plastic cap stamped 'KERR SURVEYING' set for corner, from which a 5/8 inch iron rod found at the occupied and monumented south corner of said Jaffar tract bears S 48° 37' 19" E, a distance of 29.20 feet;

THENCE, leaving said Jaffar tract and continuing across said Lot 12 of D.A. Smith's Subdivision, **S 41° 22' 48" W**, at a distance of 10.53 feet passing a 1/2 inch iron rod with blue plastic cap stamped 'KERR SURVEYING' found at the north corner of a tract of land described as Lot 27 of said unrecorded Pasler Addition in a deed to Salam Investments, LLC recorded in Volume 18475, Page 202 (OPRBCT), the same being further described as a 37.8' x 115' tract of land (First Tract) in said deed to Lula Mae Thomas, et al (345/27, DRBCT), and continuing with the northwest line of said Lot 27 for a total distance of **118.58 feet** to a point for the south corner hereof, from which a 1/2 inch iron rod with orange plastic cap stamped 'H.P. MAYO RPLS 5045' found in the northeast line of Turner Street (a public road shown on the plat of College View [Subdivision] filed in Volume 126, Page 133, DRBCT, and renamed as College Vista [Subdivision] in Volume 135, Page 321, DRBCT, having a variable width right-of-way), same being the southwest

line of said Lot 12 of D.A. Smith's Subdivision, for the west corner of said Lot 27 bears S 41° 22' 48" W, a distance of 6.96 feet and from said iron rod found a 1/2 inch iron rod with blue plastic cap stamped 'KERR SURVEYING' found at the south corner of said Lot 12, same being the east corner of said College Vista subdivision, bears S 48° 12' 57" E, a distance of 295.52 feet;

THENCE, crossing said Gilbert Street, **N 48° 51' 56" W**, for a distance of **29.87 feet** to a point in the southeast line of a called 0.18 acre tract of land described in a deed to Bartin, LLC recorded in Volume 19519, Page 212 (OPRBCT), the same being further described in a deed from Joe Pasler to Otto Seeman recorded in Volume 102, Page 538 (DRBCT), for the west corner hereof, from which a magnail set in asphalt at the south corner of said Bartin tract bears S 41° 18' 26" W, a distance of 6.62 feet;

THENCE, through said Lot 12 of D.A. Smith's Subdivision, with the southeast line of said 0.18 acre tract, **N 41° 18' 26" E**, passing the east corner of said 0.18 acre tract and the south corner of a called 0.13 acre tract of land described in a deed to Bartin, LLC recorded in Volume 19483, Page 233 (OPRBCT), and continuing with the southeast line of said 0.13 acre tract for a total distance of **111.37 feet** to a 1/2 inch iron rod found at the east corner of said 0.13 acre tract and the south corner of a called 0.3379 acre tract of land described in a deed to Brenda D. Hawkins, et al, recorded in Volume 15568, Page 175 (OPRBCT);

THENCE, continuing through said Lot 12 and through said Lot 11 of D.A. Smith's Subdivision, with the southeast line of said Hawkins tract, **N 41° 39' 59" E**, for a distance of **111.37 feet** to a magnail set in asphalt for the north corner hereof, from which the City of College Station GPS monument CS94-122 bears N 02° 49' 52" W, a distance of 1,040.93 feet and a magnail found in gutter on the southwest side of Pasler Street, at the east corner of said Hawkins tract, bears N 41° 39' 59" E, a distance of 17.88 feet;

THENCE, leaving the southeast line of said Hawkins tract and continuing through said Lot 11, D.A. Smith's Subdivision, **S 48° 30' 54" E,** for a distance of **17.74 feet** to the **POINT OF BEGINNING** hereof and containing **0.124 acres**, more or less.

Surveyed on the ground August 2024 under my supervision. See plat prepared September 2024 for other information. The bearing basis for this survey is based on the Texas State Plane Coordinate System of 1983 (NAD83), Central Zone, Grid North as established from GPS observation using the Leica Smartnet NAD83 (NA2011) Epoch 2010 Multi-year CORS Solution 2 (MYCS2). Distances described herein are surface distances. To obtain grid distances (not grid areas) divide by a combined scale factor of 1.0000933393 (calculated using GEOID12B). Reference drawing: 24-977-ROW.dwg.

Michael Konetski 12/4/24

Michael Konetski
Registered Professional Land Surveyor No. 6531
Revised 12/4/2024

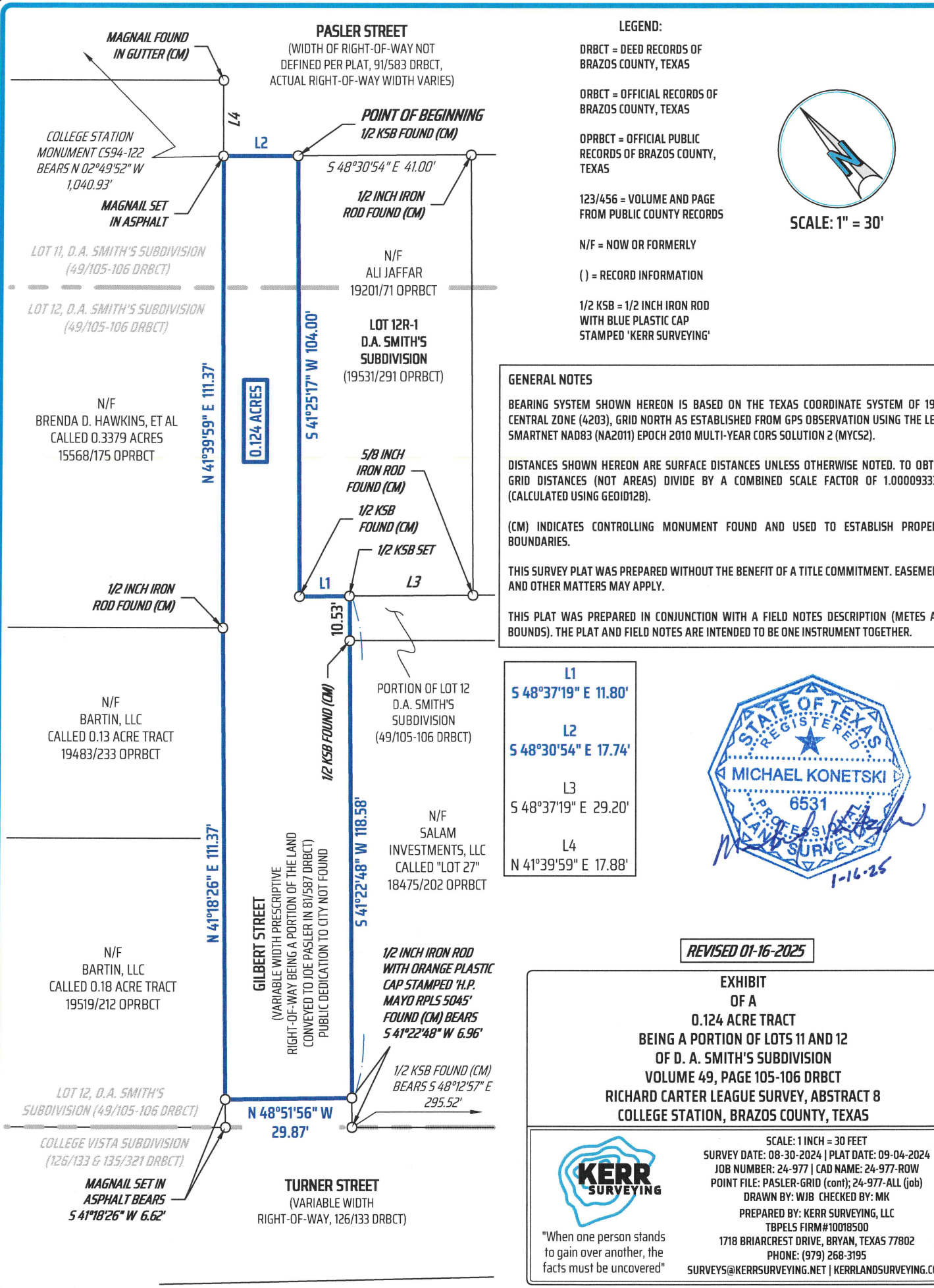
KERR SURVEYING

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

Location: *Gilbert Street*

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.



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STATE OF TEXAS
REGISTERED
MICHAEL KONETSKI
6531
PROFESSIONAL
LAND SURVEYOR
1-16-25

REVISED 01-16-2025

EXHIBIT
OF A
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KERR SURVEYING

"When one person stands to gain over another, the facts must be uncovered"

SCALE: 1 INCH = 30 FEET
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JOB NUMBER: 24-977 | CAD NAME: 24-977-ROW
POINT FILE: PASLER-GRID (cont); 24-977-ALL (job)
DRAWN BY: WJB CHECKED BY: MK
PREPARED BY: KERR SURVEYING, LLC
TBPELS FIRM#10018500
1718 BRIARCREST DRIVE, BRYAN, TEXAS 77802
PHONE: (979) 268-3195
SURVEYS@KERRSURVEYING.NET | KERRLANDSURVEYING.COM

Application for Abandonment of
a Public Right-of-Way/Easement

Location: *Gilbert Street*

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: *Gilbert Street*

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: _____

FRONTIER
~~VERIZON~~ TELEPHONE COMPANY

By: _____ Joshua May

Title: ENGINEER III

SUDDENLINK COMMUNICATIONS

By: _____

Title: _____

BRYAN TEXAS UTILITIES

By: _____

Title: _____

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: Dan Ausbun

Title: Supervisor-OPS-Construction

10.1.24

BRYAN TEXAS UTILITIES

By: _____

Title: _____

Location: *Gilbert Street*

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: _____

Title: DBSISN Engineering Manager

Location: *Gilbert Street ABAN2024-000011*

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 from the standpoint of City of College Station ordinances and with respect to present and future needs of the City of College Station and see no objection to the requested abandonment from the City's standpoint.

Carol Cotter
City Engineer
City of College Station

Brian Binford
Building Official
City of College Station

Molly Hitchcock
Zoning Official
City of College Station

Fire Marshal
City of College Station

Timothy Ray Crabb, P.E.
Electric Department
City of College Station

Water Services Department
City of College Station

Emily Fisher
Public Works Director
City of College Station

Application for Abandonment of
a Public Right-of-Way/Easement

Location: *Gilbert Street*

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:

ADDRESS: Owner of 501 & 505 Gilbert Street
Owner 700 Pasler Street
Owner 701 Turner Street

Ali Jaffer
4558 Hicks Lane
College Station, TX 77845

NAME:

ADDRESS: _____

_____

_____

NAME: _____

ADDRESS: _____

_____

_____

NAME: _____

ADDRESS: _____

_____

_____

February 27, 2025
Item No. 10.5.
BioCorridor Board Appointment Recommendations

Sponsor: Tanya Smith, City Secretary, Anthony Armstrong, Director of Planning and Development

Reviewed By CBC: N/A

Agenda Caption: Presentation, discussion, and possible action regarding a recommendation on Planning & Zoning Commission appointments to the BioCorridor Board.

Relationship to Strategic Goals:

- Good Governance
- Diverse Growing Economy

Recommendation(s): The Planning and Zoning Commission recommends Aron Collins and David Higdon as the two members of the Commission to the City Council for consideration to serve on the BioCorridor Board.

Summary: The zoning and development ordinance for the BioCorridor Planned Development District establishes a BioCorridor Board as a body of representatives from the cities and the Texas A&M University System that would be able to make subjective decisions regarding specific requests in the area (such as appeals to site plan requirements and parking waivers) and recommendations to other decision-making bodies (such as subdivision waiver requests to the Planning & Zoning Commission).

The ordinance calls for the City Council to appoint three representatives from the City of College Station to the Board. Membership requires that:

- One be a member of the City Council and
- Two be members of the Planning and Zoning Commission

The role of the Board is to provide recommendations:

- To City P&Z regarding subdivision waivers
- To City P&Z regarding amendments to the BioCorridor PDD

The Board has the power to take final action on:

- Special District Identification Signs
- Temporary signs promoting positive community communications
- Works of art on public land
- Appeals to Staff’s determination of platting requirements
- Appeals to Staff’s denial of a site plan
- Appeal of Staff’s denial of an alternative parking plan
- Waivers related to parking
- Alternatives to Highway Buffer Standards
- Appeals to Highway Buffer Standards

The Board meets on an as-needed basis, the dates and times coordinated by staff with the applicant and the Board members. The Board last met in February of 2019, when they recommended changes to the BioCorridor PDD that ultimately eliminated the need for waivers to problematic site planning

requirements. The Board has not had to meet since the College Station and Bryan city councils adopted the revised PDD in 2019.

Budget & Financial Summary: N/A

Attachments:
None

February 27, 2025
Item No. 10.6.
Housing Action Plan Committee Appointments

Sponsor: Tanya Smith, City Secretary

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action regarding the appointment of members to the Housing Action Plan Committee.

Relationship to Strategic Goals:
Core Services and Infrastructure

Recommendation(s): Staff recommends the appointment of seven applicants to the Housing Action Plan Committee

Summary: City Council adopted a resolution forming the Housing Action Plan at the January 9, 2025 meeting. The application for residents interested in serving was opened on January 10, 2025 and closed on February 17, 2025. The list of applicants is available for your consideration of appointment.

Budget & Financial Summary: N/A

Attachments:
None

February 27, 2025
Item No. 10.7.
Presentation, discussion, and possible action regarding the appointment of members to the Tourism Committee.

Sponsor: Tanya Smith, City Secretary

Reviewed By CBC: N/A

Agenda Caption: Presentation, discussion, and possible action regarding the appointment of members to the Tourism Committee.

Relationship to Strategic Goals:
Diverse and Growing Economy
Good Governance

Recommendation(s): Staff recommends the City Council appoint eleven (11) members to the Tourism Committee.

Summary: Per City Ordinance No. 2025-4569, passed on January 9th, 2025, the City Council established the tourism committee made up of up to 11 voting members, and 5 ex-officio members. The committee was established to enhance and promote the College Station tourism industry. The committee would include three (3) members from the lodging and accommodations industry, one (1) member to represent the food and beverage establishment industry, one (1) member to represent the retail industry, one (1) member to represent the attractions industry, one (1) member to represent the arts industry, one (1) member to represent the Northgate District, and three (3) members to represent tourism related areas of the Council's discretion.

Budget & Financial Summary: N/A

Attachments:
None

February 27, 2025
Item No. 11.1.
Items of Community Interest and Council Calendar

Sponsor: City Council

Reviewed By CBC: City Council

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

Relationship to Strategic Goals:

- Good Governance

Recommendation(s): None.

Summary: A current calendar of upcoming community events can be found in more detail at cstx.gov/calendar and official meetings or public notices are posted at cstx.gov/agendas.

Meetings and events from the days of March 3rd thru March 13th:
March 3 – Historic Preservation Committee Meeting
March 4 – Northgate Small Area Plan Committee Meeting
March 5 – Legislative Affairs Committee Meeting
March 6 – B/CS Habitat for Humanity Community Builders Breakfast
March 6 – Dementia Friendly BCS Corporate Community Kickoff
March 6 – TML Legislative Update 2
March 6 – Council Legislative Engagement Committee Meeting
March 6 – Audit Committee Meeting
March 6 – Planning & Zoning Commission Meeting
March 7 – Debbie Eller's Retirement Reception
March 10 – Bicycle, Pedestrian & Greenway Advisory Board Meeting
March 11 – Parks Board Meeting
March 13 – Rock Prairie Management District No. 2
March 13 – Council Meeting Day

Budget & Financial Summary: None.

Attachments:
None

February 27, 2025
Item No. 12.1.
Council Reports on Committees, Boards, and Commissions

Sponsor: City Council

Reviewed By CBC: City Council

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

Relationship to Strategic Goals:
Good Governance

Recommendation(s): Review meetings attended.

Summary: Animal Shelter Board, Arts Council of Brazos Valley, Architectural Advisory Committee, Audit Committee, Bond Citizens Advisory Committee, Bicycle, Pedestrian, and Greenways Advisory Board, Bio-Corridor Board of Adjustments, Brazos County Health Dept., Brazos Valley Council of Governments, Brazos Valley Economic Development Corporation, Bryan/College Station Chamber of Commerce, Budget and Finance Committee, BVSWMA, BVWACS, Census Committee Group, Compensation and Benefits Committee, Experience Bryan-College Station, Design Review Board, Economic Development Committee, Gulf Coast Strategic Highway Coalition, Historic Preservation Committee, Interfaith Dialogue Association, Intergovernmental Committee, Joint Relief Funding Review Committee, Landmark Commission, Library Board, Metropolitan Planning Organization, Operation Restart, Parks and Recreation Board, Planning and Zoning Commission, Research Valley Technology Council, Regional Transportation Committee for Council of Governments, Sister Cities Association, Spring Creek Local Government Corporation, Transportation and Mobility Committee, TAMU Student Senate, Texas Municipal League, Walk with the Mayor, YMCA, Zoning Board of Adjustments. (Notice of Agendas posted on City Hall bulletin board.)

Budget & Financial Summary: None.

Attachments:
None