



## College Station, TX

### Meeting Agenda City Council

1101 Texas Ave, College Station, TX 77840

Internet: [www.microsoft.com/microsoft-teams/join-a-meeting](http://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#

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February 12, 2026

4:00 PM

City Hall Council Chambers

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**Notice is hereby given that a quorum of the meeting body will be present in the physical location stated above where citizens may also attend in order to view a member(s) participating by videoconference call as allowed by 551.127, Texas Government Code. The City uses a third-party vendor to host the virtual portion of the meeting; if virtual access is unavailable, meeting access and participation will be in-person only.**

**1. Call to Order.**

**2. Executive Session Agenda.**

Executive Session is closed to the public and will be held in the 1938 Executive Conference Room. The City Council may according to the Texas Open Meetings Act adjourn the Open Meeting during the Consent, Workshop, Regular, or Special Agendas and return into Executive Session to seek legal advice from the City Attorney regarding any item on the Workshop, Consent or Regular Agendas under Chapter 551, Texas Government Code.

**2.1. Consultation with Attorney {Gov't Code Section 551.071};**

Possible action. The City Council may seek advice from its attorney regarding a pending or contemplated litigation subject or settlement offer or attorney-client privileged information. Litigation is an ongoing process and questions may arise as to a litigation tactic or settlement offer, which needs to be discussed with the City Council. Upon occasion the City Council may need information from its attorney as to the status of a pending or contemplated litigation subject or settlement offer or attorney-client privileged information. After executive session discussion, any final action or vote taken will be in public. The following subject(s) may be discussed:

- a. 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.
- b. Legal advice regarding Texas Open Meetings
- c. Legal advice regarding the professional services contract for Southeast Park.

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

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

- a. Approximately 8 acres of land located at 1508 Harvey Road.
- b. Approximately 28 acres of land generally located at Midtown Drive and Corporate Parkway in the Midtown Business Park.
- c. Property located within the Midtown Business Park.

**2.3. Personnel {Gov't Code Section 551.074};**

Possible action. The City Council may deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer. After executive session

discussion, any final action or vote taken will be in public. The following public officer(s) may be discussed:

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

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

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

- a. Economic development agreement with Corinth Group, Inc.
- b. Economic development agreement for a development within the Midtown Business Park relating to baseball fields.
- c. Economic development agreement for a development generally located at the intersection of University Drive and College Avenue.
- d. Economic development agreement for a development generally located at the intersection of Raymond Stotzer Parkway and State Highway 47.
- e. Economic development agreement with BCS Urban Living LLC for a property at the terminus of Castle Rock Parkway.

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

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

Speaker Protocol.

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

**5. Presentation - Proclamations, Awards, and Recognitions.**

5.1. Presentation of a proclamation recognizing February 2026 as Black History Month.

Sponsors: Barbara Moore

Attachments: 1. 26 Black History Month

**6. Hear Visitors.**

During Hear Visitors an individual may address the City Council on any item which does not appear on the posted agenda. The City Council will listen and receive the information presented by the speaker,

ask staff to look into the matter, or place the issue on a future agenda. Topics of operational concern shall be directed to the City Manager.

## **7. Consent Agenda.**

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

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

- January 22, 2026 Council Meeting

Sponsors: Tanya Smith

Attachments: 1. CCM012226 DRAFT Minutes

7.2. Presentation, discussion, and possible action on the award of a construction contract in the amount of \$683,000 to Brazos Valley L4, LLC for Concrete Joint Sealing and Minor Repairs.

Sponsors: Emily Fisher

Attachments: 1. 26-016 Tabulation

2. Brazos Valley L4 LLC\_Contract 26300269\_VendorSigned

7.3. Presentation, discussion, and possible action on a construction contract award to D&S Construction, Inc. in the amount of \$200,500 for Drainage Repairs on Graham Road and 600 Ivy Cove.

Sponsors: Emily Fisher

Attachments: 1. 26-028 Bid Tabulation

2. 26300292--KJ (CC 2.12.26) vendor signed

7.4. Presentation, discussion, and possible action on a contract with API National Service Group Inc, in the amount of \$175,000 for fire inspections, monitoring, and repairs.

Sponsors: Jennifer Cain

Attachments: 1. API National Services Contract\_VendorSigned

7.5. Presentation, discussion, and possible action on a deductive change order with Kieschnick General Contractors, Inc, in the amount of \$557,172 for the McCulloch Water and Wastewater Rehabilitation Project.

Sponsors: Jennifer Cain

Attachments: 1. McCulloch Rehab Project - Closeout CO\_VendorSigned

## **8. Workshop Agenda.**

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

Sponsors: Richard Mann

Attachments: None

## **9. Regular Agenda.**

9.1. Presentation, discussion, and possible action regarding a resolution of support of a proposal received in response to RFI 26-032 for the development of affordable housing in College Station through the Texas Department of Housing and Community Affairs 2026 Low Income Housing Tax Credit allocation process.

Sponsors: David Brower

Attachments: 1. Knoxwood Crossing Woda Cooper Companies College Station Affordable Housing RFI

2. Knoxwood Organizational Charts
3. Tax Credit Support Resolution Knoxwood

## **10. Items of Community Interest and Council Calendar.**

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

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

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

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

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

## **13. Adjourn.**

The City Council may adjourn into Executive Session to consider any item listed on the agenda if a matter is raised that is appropriate for Executive Session discussion. Executive Session is closed to the public. The City Council may according to the Texas Open Meetings Act adjourn the Open Meeting during the Consent, Workshop or Regular or Special Agendas and return into Executive Session to seek legal advice from the City Attorney regarding any item on the Workshop, Consent or Regular or Special Agendas under Chapter 551, Texas Government Code

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 5, 2026 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@cctx.gov](mailto:adaassistance@cctx.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 12, 2026**  
**Item No. 5.1.**  
**Black History Month Proclamation**

**Sponsor:** Barbara Moore, Assistant to the City Manager

**Reviewed By CBC:** City Council

**Agenda Caption:** Presentation of a proclamation recognizing February 2026 as Black History Month.

**Relationship to Strategic Goals:**

- Good Governance

**Recommendation(s):** None.

**Summary:** For Black History Month 2026, the theme is "A Century of Black History Commemorations," urges us to explore the transformative impact of these public observances in elevating the accomplishments of Black people in the modern world.

**Budget & Financial Summary:** None.

**Attachments:**

1. 26 Black History Month



## *Proclamation*

**WHEREAS**, for 100 years, our nation has officially recognized the achievements and contributions of Black Americans through national commemorations, a legacy started by Dr. Carter G. Woodson in 1926; and

**WHEREAS**, the 2026 theme, "A Century of Black History Commemorations," urges us to explore the transformative impact of these public observances in elevating the accomplishments of Black people in the modern world; and

**WHEREAS**, as we also commemorate the 250th anniversary of United States independence this year, we recognize that an accurate and all-encompassing history of our nation must also center the stories and struggles of Black Americans; and

**WHEREAS**, Black history is American history, and its value lies in its resonance and truth, serving as a beacon for democracy and social progress; and

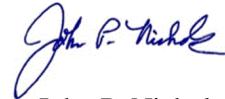
**WHEREAS**, our community remains committed to honoring the trailblazers, leaders, and everyday citizens who have shaped the cultural, economic, and political fabric of our society.

**NOW, THEREFORE, I**, John P. Nichols, Mayor of College Station proclaim and officially recognize February of 2026 as

## *Black History Month*

and urge all citizens to observe this month with appropriate programs, activities, and reflections and to continue our efforts to create a world that is more just, equitable and prosperous for all.

IN WITNESS WHEREOF, I have set my hand and caused the seal of the City of College Station to be affixed this 22nd day of February 2026.



John P. Nichols  
Mayor

Attest:



Tanya Smith  
City Secretary

**February 12, 2026**  
**Item No. 7.1.**  
**January 22nd Meeting Minutes**

**Sponsor:** Tanya Smith, City Secretary

**Reviewed By CBC:** City Council

**Agenda Caption:** Presentation, discussion, and possible action of minutes for:

- January 22, 2026 Council Meeting

**Relationship to Strategic Goals:**

- Good Governance

**Recommendation(s):** Recommends Approval.

**Summary:** N/A

**Budget & Financial Summary:** None

**Attachments:**

1. CCM012226 DRAFT Minutes

MINUTES OF THE CITY COUNCIL MEETING  
IN-PERSON WITH TELECONFERENCE PARTICIPATION  
CITY OF COLLEGE STATION  
JANUARY 22, 2026

STATE OF TEXAS §  
COUNTY OF BRAZOS §

## **Present:**

John Nichols, Mayor

### **Council:**

Mark Smith  
William Wright, Mayor ProTem  
David White  
Melissa McIlhaney  
Bob Yancy  
Scott Shafer

**City Staff:**

Bryan Woods, City Manager  
Jeff Kersten, Assistant 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 January 22, 2026, 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, §551.086-Competitive Matters, and §551.087-Economic Development, and the College Station City Council convened into Executive Session at 4:00 p.m. on January 22, 2026, to continue discussing matters pertaining to:

**2.1. Consultation with Attorney to seek advice regarding pending or contemplated litigation, to wit:**

- 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

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

- Approximately 8 acres of land located at 1508 Harvey Road.
- Approximately 28 acres of land generally located at Midtown Drive and Corporate Parkway in the Midtown Business Park.
- Property located within the Midtown Business Park.

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

- Construction Board of Adjustments
- Zoning Board of Adjustments
- City Secretary
- City Attorney
- City Manager
- Council Self-Evaluation

**2.4. Deliberation on a competitive matter as that term is defined in Gov't Code Section 552.133; to wit:**

- Power Supply

**2.5. 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 with Corinth Group, Inc.
- Economic development agreement for a development within the Midtown Business Park relating to baseball fields.
- Economic development agreement with College Station Town Center, LP.
- Economic development agreement for a development generally located at the intersection of University Drive and College Avenue.
- 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.

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

Invocation given by Rabi Peter Tarrow, College Station Police Department.

**5. PRESENTATION - PROCLAMATIONS, AWARDS, AND RECOGNITIONS.**

**5.1. Presentation recognizing the Texas A&M Women's Volleyball Team for winning the 2025 NCAA Championship.**

Mayor Nichols presented a proclamation to Coach Jamie Morrison and the Texas A&M Women's Volleyball Team for winning the 2025 NCAA Championship.

**6. Hear Visitors Comments.**

No one signed up to speak at hear visitors.

**7. CONSENT ITEMS**

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

Item (7.4) was pulled for clarification.

(7.4) Sam Rivera, IT Director, explained the replacement fund's role in planning for equipment replacement, from firewalls to laptops. Though there are capital and recurring funds, an IT replacement fund specifically covers these purchases. Projects are budgeted yearly, with this replacement entirely financed by the Replacement Fund.

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

- January 5, 2026 Special Meeting
- January 8, 2026 Council Meeting

**7.2. Presentation, discussion, and possible action regarding the award of general services contracts for Vehicle Painting and Body Repair Services to Corn's Collision Center, Inc. for an amount not to exceed \$200,000 annually, George's Paint and Body, LLC for an amount not to exceed \$150,000 annually, and to BDS Body Works for an amount not to exceed \$50,000 annually.**

**7.3. Presentation, discussion, and possible action on the award of contracts for temporary staffing services to Spherion Staffing, LLC and The Reserves Network, Inc. for a combined estimated annual expenditure not to exceed \$300,000 based on projected service needs.**

**7.4. Presentation, discussion, and possible action regarding a subscription agreement with Kudelski Security Inc. for Pal Alto Networks firewall systems, hardware and support in the amount of \$311,322.**

**7.5. Presentation, discussion, and possible action regarding the award of Bid 26-026, Electric Underground Distribution Bore Projects, to Sterling Global Industries, LLC for an amount not to exceed \$1,537,561.67.**

**7.6. Presentation, discussion, and possible action regarding the disposition of the single-family home at 2700 Wilderness Drive South to Brazos Valley Community Action Programs in order to create an affordable rental opportunity. The home was purchased and rehabilitated with Community Development Block Grant (CDBG) funds totaling \$325,000.**

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

**8. WORKSHOP ITEMS**

**8.1. Presentation, discussion, and possible action related to a Water Services Department annual update.**

Stephen Maldonado, Water Services Assistant Director, provided an annual update, providing an overview of historical and current operations, along with key priorities and planned actions. The presentation also highlighted the major initiatives in public outreach and water conservation.

**2025 Highlights**

- Maintained our Superior Water Rating while delivering over 5 billion gallons of safe, reliable drinking water (~16,000 AFY)
- Treated over 3.5 billion gallons of wastewater
- Successfully resolved a major groundwater export dispute

- Initiated design and construction of Wells 10, 11, & 12
- Reduced per-capita water use to 117 GPCD - well below the State's 140 GPCD target

### Drought Monitoring

- 2022–2023: Exceptional Drought Intensity
  - ➔ 2022 - led to a drought disaster declaration
  - ➔ 2023 - hottest year/summer on record
    - ➔ Stage 1 Restrictions: 8/22 – 9/22
- 2024 & 2025: Largely drought-free
  - ❖ Some severe intensity- late 2024 early 2025

### Key Actions

- Ongoing System Improvements
  - ✓ Expand & Sustain Water Supply
  - ✓ Replace Aging Pipelines
  - ✓ Upgrade Wastewater Treatment Plant Systems
- System Assessments
  - ✓ 2026: Regional Pumping and Regulatory Analysis
  - ✓ 2026: 5-Yr Comp Plan & W/WW Master Plan Updates
  - ✓ 2027: Strategic Water Supply Plan
- Strategies to Reduce Peak Water Demand:
  - ✓ Promote Water Conservation
  - ✓ Enhance Rebate Programs (e.g., smart/efficient irrigation)
  - ✓ Explore Technologies (e.g., AMI) to help customers detect leaks and understand high water use in real time

Jennifer Nations, Water Services Program Coordinator, outlined the tools and programs offered to help customers use water responsibly and share practical ways everyone can help. She stated that the water conservation goal is to reduce consumption and ensure a sustainable supply for future generations. Goals are focused on reducing water demand by having goals for average gallons per person per day consumption which are below the average for our type of community.

### Drought Contingency Plan

- Year-round water use management when not in drought stage
- Stage 1 – High Water Demand
- Stage 2 – Severe Water Demand
- Stage 3 – Extreme Water Demand
- Stage 4 – Water Supply Emergency (sample schedule below)
  - ✓ Triggered if water system fails or is contaminated; reached immediately



The City of College Station's Stage 1 Drought Restrictions went into effect on Tuesday, Aug. 22 and apply to all customers receiving water service from College Station Water Services.

WATER SCHEDULE	MONDAY/THURSDAY	TUESDAY/FRIDAY	WEDNESDAY/SATURDAY	SUNDAY/THURSDAY
ADDRESS ENDS IN	0, 1, OR 2	3, 4, OR 5; COMMERCIAL	6, 7, OR 8	9; MULTIFAMILY, AND HOA COMMON AREAS



## **8.2. Presentation, discussion, and possible action regarding an overview of the Traffic Congestion and Mobility Analysis Study.**

Jason Schubert, Planning and Development, stated that the City of College Station started traffic congestion and mobility analysis in 2024. An initial presentation was given at the Council Workshop on August 8, 2024. The Planning & Development Services Department and Traffic Engineering Division, along with consultant TJKM, assessed 50 city intersections based on current and projected 2035 traffic conditions. Staff will present a summary of a citizen survey, review analysis results, and get feedback from the Council. The study finds intersections with current or expected operational issues and funding is unavailable for improvements except for a few ongoing capital projects.

## **Surveys and Priority**

### 2025 Citizen Survey

**Q1a. City Services That Are Most Important to Residents**  
by percentage of respondents who selected the item as one of their top three choices

Service	Percentage
Police Department services	51%
Fire Department services	36%
Maintaining streets and roads	34%
Managing traffic congestion	33%
Attracting business and jobs	17%
Enforcing traffic laws	17%
Programs to retain & support existing businesses	15%
Managing trash and recycling collection	15%
Biking/walking facilities	14%
Library services	11%

▪ Managing traffic congestion has consistently ranked as a high service priority:

- 2<sup>nd</sup> in 2019 Citizen Survey
- 3<sup>rd</sup> in 2016 Citizen Survey

**Project Survey (926 responses)**

- 86% - responded that driving alone in a car is their primary means of transportation
- 79% - strongly agreed or somewhat agreed they drive to work or school because they felt it is their only feasible option.
- Responded they would like to see these changes to improve traffic flow and safety:

Change	Percentage
More alternate routes	57%
Greater focus on improving intersections	52%
Decrease in speed	12%
Enhancements to signage and pavement...	33%
Destinations closer to me (i.e. shopp...)	25%
Other (please specify)	39%

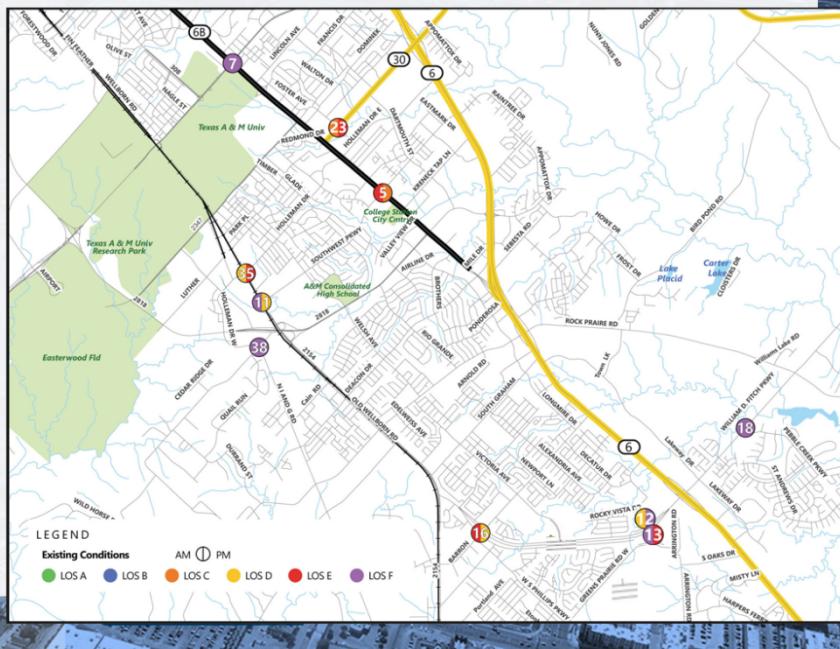
## **Study Parameters**

- 50 Intersections Included
  - 25 on TxDOT roadways
  - 25 on City streets
- Did not include those under construction or in design.
- Studied two scenarios:
  - Existing traffic conditions
  - Projected conditions in 2035
- Level of Service (LOS) D was used as acceptable standard.
- Identify potential mitigation measures to resolve congestion issues.

LEGEND  
X Study Intersection

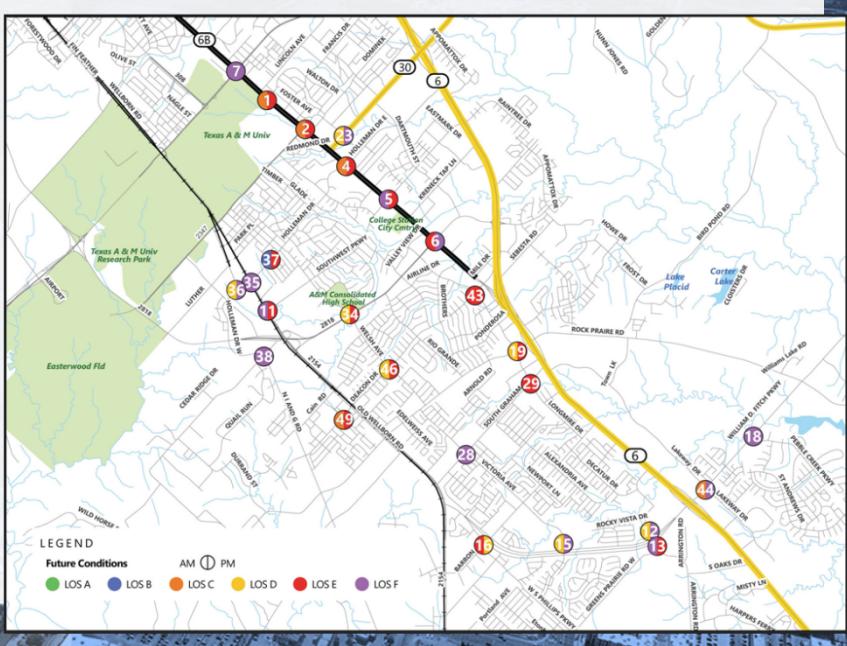
# Existing Conditions

- 10 intersection failing LOS
  - 8 on TxDOT roadways
  - 2 on City streets
- The two City intersections are in design for improvements:
  - #18: William D. Fitch Pkwy at Pebble Creek Pkwy – Signal
  - #38: Holleman Dr. South at North Dowling Rd – Roundabout
- Brazos County Transportation Bond from 2022 includes project on William D. Fitch Pkwy at Arrington Rd to SH 6.



# Projected Condition (2035)

- 24 intersection failing LOS
  - 14 on TxDOT roadways
  - 10 on City streets
- TxDOT Corridors
  - Texas Ave (Business SH 6)
  - Harvey Mitchell Pkwy (FM 2818)
  - Wellborn Rd (FM 2154)
  - William Fitch Pkwy (SH 40)
- City Streets – most are on collector corridors such as:
  - Longmire Dr
  - Holleman Dr
  - Deacon Dr
  - Victoria Ave
  - Welsh Ave



## Mitigation Strategies and Next Steps

- Minor strategies:
  - Signal optimization
  - Addition of turn lanes
  - Extend turn lanes or lane reconfiguration
- Major strategies:
  - Change in traffic control such as adding traffic signals or roundabout
  - Significant intersection redesign such as grade separations, displaced left or other innovative intersection configurations
- Next Steps:
  - On-going monitoring of performance and safety of intersections
  - Obtain funding through MPO, TxDOT safety funds, or City unfunded project or bond

## **9. REGULAR ITEMS**

### **9.1. Public Hearing, presentation, discussion, and possible action regarding Ordinance No. 2026-4656 amending Appendix "A", "Unified Development Ordinance," Article 11, "Definitions," Section 11.2 "Defined Terms" of the Code of Ordinances of the City of College Station, Texas, regarding the definition of family.**

Heather Wade, Planning and Development, stated that this item pertains to an amendment of Appendix "A," "Unified Development Ordinance," Article 11, "Definitions," Section 11.2 "Defined Terms," specifically to revise the definition of family.

#### **Proposed Amendment to the Definition of Family**

- “Family: A family is any number of persons occupying a single dwelling unit, including but not limited to those related by blood, marriage, adoption or guardianship or dependency. The term family shall not be construed to mean a club, a lodge, or a fraternity/sorority house.”

At approximately 7:47 p.m., Mayor Nichols opened the Public Hearing.

Ed Udell, College Station, mentioned he's been engaging with community to gather their opinions. They are questioning the ongoing definition of family and homeowners, concerned about potential pressures or legal implications of excluding new family types.

There being no further comments, the Public Hearing was closed at 7:49 p.m.

**MOTION:** Upon a motion made by Councilmember Yancy and a second by Councilmember McIlhaney, the City Council voted seven (7) for and none (0) opposed, to adopt Ordinance No. 2026-4656, amending Appendix "A", "Unified Development Ordinance," Article 11, "Definitions," Section 11.2 "Defined Terms" of the Code of Ordinances of the City of College Station, Texas, regarding the definition of family. The motion carried unanimously.

### **9.2. Public Hearing, presentation, discussion, and possible action regarding Ordinance No. 2026-4657 amending Chapter 107, “Impact Fees”, Article II, “System-Wide Impact Fees”, Section 107-73, “System-Wide Roadway Impact Fees”, of the Code of Ordinances of the City of College Station, Texas, to amend the roadway impact fee collection rates.**

Anthony Armstrong, Planning and Development Services Director, explained that this is a Council requested item to discuss setting roadway impact fee collection rates to zero. He stated that impact fees are allowed under Local Government Code 395 as a charge or assessment imposed by a political subdivision against a new development in order to generate revenue for funding or recouping the cost of capital improvements or facility expansions necessitated by and attributable to the new development. Mechanisms to recover infrastructure costs required to serve future development are a one-time fee only assessed to new development and calculated from a portion of the CIP providing capacity for the new growth.

The city first adopted roadway impact fees on November 10, 2016, with phased-in reduced rates. The statutory 5-year update was done on November 22, 2021, with the next one due in 2026. Amendments effective January 1, 2022, raised residential development collection rates by 10% as of March 1, 2022. In July 2023, phased increases starting January 1, 2024, were approved, raising maximum recoverable revenue from 11% to 30% by 2026 with commercial rates staying the same.

## Current Roadway Impact Fee Program

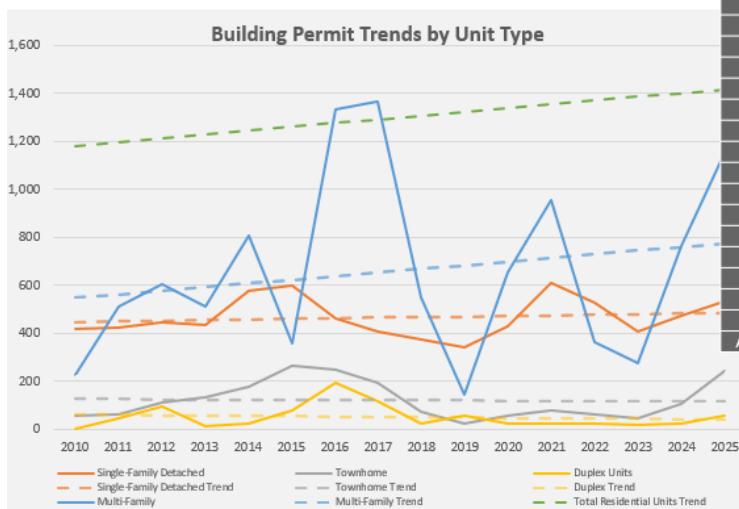
Impact Fee	Adopted Max Rate	Current Collection Rate per Service Unit		Total Estimated Capital Costs of IF Projects	Recoverable Costs at Max Rate (2021 - 2031)		Recoverable Cost at Collection Rate (2021-2031) *
		Res	Non-Res				
Roadway A	\$499	\$499	\$80	\$13.9M		\$9.0M	\$3.4M
Roadway B	\$1,261	\$1,261 <sup>†</sup>	\$80	\$48.3M		\$20.1M	\$5.9M
Roadway C	\$2,127	\$1,541	\$80	\$78.2M		\$25.6M	\$8.9M
Roadway D	\$3,452	\$1,541	\$80	\$74.4M		\$57.4M	\$5.7M
<b>Roadway Totals</b>				<b>\$215M</b>		<b>\$112.2M</b>	<b>\$23.7M</b>

\* Recoverable costs include programmed collection rate adjustments.

<sup>†</sup> For properties platted prior to January 1, 2022, the collection rate is limited to the 2016 maximum assessable rate of \$1,072.

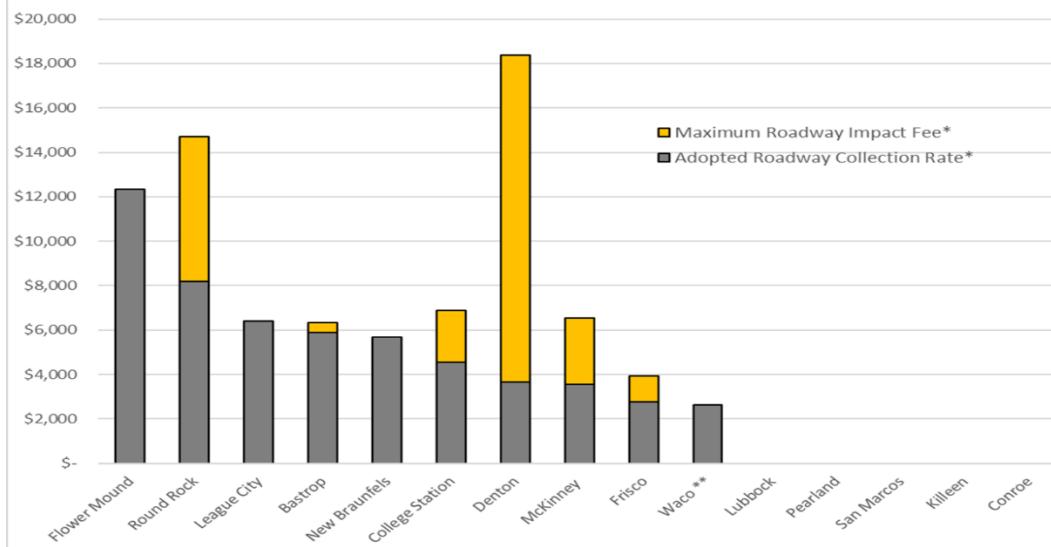
Mr. Armstrong explained that the Roadway Impact Fee Service Area is within city limits and divided into four zones, following a 4-mile boundary. Fees collected must be spent within the collection zone on qualifying Capital Improvement Projects. Rates vary based on vehicle miles for different land uses. Initially a flat rate, the 2023 increase allowed rate variation across zones. Impact fees cover infrastructure costs needed for new developments, specifically additional capacity. Statistical data on benchmark cities' impact fees and building permit data from 2010-2025 were presented to council.

### Residential Permit Numbers 2010 - 2025



Year	Single-Family Detached	Townhome	Duplex Units	Multi-Family	Total Units
2010	419	54	2	228	703
2011	423	61	4	510	998
2012	443	112	10	606	1,171
2013	435	136	12	513	1,096
2014	578	179	22	806	1,585
2015	600	265	38	357	1,260
2016	430	246	40	1,335	2,051
2017	325	191	46	1,364	1,926
2018	375	75	22	551	1,023
2019	339	23	56	144	562
2020	428	55	26	655	1,164
2021	612	76	26	955	1,669
2022	527	64	24	363	978
2023	410	47	20	277	754
2024	472	107	22	764	1,365
2025	531	245	56	1,150	1,982
Average	466	121	51	629	1,300

### Roadway Impact Fees per Single Family Home



The council appointed members to an Impact Fee Advisory Committee which discussed impact fees at meetings in 2025, with a final meeting on January 7, 2026. Written comments have been provided as per state law.

At approximately 8:51 p.m., Mayor Nichols opened the Public Hearing.

Veronica Morgan, College Station, highlighted previous discussions on impact fees and their effects on affordable housing. She believes that reducing roadway impact fees would lower housing costs and supports setting impact fees to zero, believing it would benefit the community.

Chandler Arden, College Station, urged the Council to eliminate impact fees, arguing they make housing less affordable. He noted that every \$1000 increase in home price can disqualify 100-150 buyers, impacting everyone from affordable to high-end markets. Mr. Arden believes that these fees also raise student rents, burdening families further.

Dennis Maloney, College Station, urged the Council to keep impact fees in place. He stated that a decline in home permits can be attributed to the 2008 mortgage market crash, and current affordability is impacted more by loans hovering at 6%. He noted that from 1999 to 2024 single-family home prices rose by 40%, driven by inflation, labor, and material costs—not impact fees. He argued that homes sell at a price in any particular area driven by market forces, not impact fees. Mr. Maloney concluded if the council eliminates impact fees, then property taxes will need to increase to fund infrastructure.

There being no further comments, the Public Hearing was closed at 9:01 p.m.

**MOTION:** Upon a motion made by Mayor Nichols and a second by Councilmember Shafer, the City Council voted five (5) for and two (2) opposed, with Councilmembers White and Yancy voting against, to approve the roadway fees as they are for residential and commercial. The motion carried unanimously.

### 9.3 Presentation, discussion, and possible action regarding a resolution of support of a proposal received in response to RFI 26-032 for the development of affordable housing in College Station through the Texas Department of Housing and Community Affairs 2026 Low Income Housing Tax Credit allocation process.

*Item was pulled at the request of the applicant.*

### 9.4. Presentation, discussion, and possible action regarding appointments to the following boards, committees and commissions.

- Construction Board of Adjustments
- Zoning Board of Adjustments
- Aggieland Humane Society
- Architectural Advisory Committee
- Audit Committee
- BCS Library Board
- Design Review Board

**MOTION:** Upon a motion made by Councilmember McIlhaney and a second by Councilmember Yancy, the City Council voted seven (7) for and none (0) opposed, to approve the appointments of the Construction Board of Adjustments (CBA) as stated below. The motion carried unanimously.

#### Construction Board of Adjustments (CBA)

- Mark A. Hill (3-year term for Position 5)

- Due to lack of applicants, CBA will remain open to receive applications.

**MOTION:** Upon a motion made by Councilmember McIlhaney and a second by Councilmember Yancy, the City Council voted seven (7) for and none (0) opposed, to approve the appointments of the Zoning Board of Adjustments (ZBA) as stated below. The motion carried unanimously.

#### Zoning Board of Adjustments (ZBA)

- Position 1 - Justin Collins (2-yr term)
- Position 2 - Brittany Medizabal (2-yr term)
- Position 4 - Alison Drouilhet (2-yr term)
- Position 5 - Brian Young (2-yr term)
- Alternate 2 - Andrew Arizpe (1-yr unexpired term)
- Chair - James Hutchins

**MOTION:** Upon a motion made by Councilmember McIlhaney and a second by Councilmember White, the City Council voted seven (7) for and none (0) opposed, to approve the appointments of the Aggieland Humane Society as stated below. The motion carried unanimously.

#### Aggieland Humane Society

- Sean Dwyer, PD Manager (PD Member)
- Dianne Marlow (3-yr term)

**MOTION:** Upon a motion made by Councilmember McIlhaney and a second by Councilmember Wright, the City Council voted seven (7) for and none (0) opposed, to approve the appointments of the Design Review Board (DRB) as stated below. The motion carried unanimously.

#### Design Review Board (DRB)

- Susanne M. Krueger (3-yr terms for Position 3)
- Cameron Nicole Gallucci (3-yr terms for Position 4)
- P&Z Chair, Jason Cornelius (DRB Chair)

**MOTION:** Upon a motion made by Councilmember McIlhaney and a second by Councilmember Shafer, the City Council voted seven (7) for and none (0) opposed, to approve the appointments as stated below. The motion carried unanimously.

#### Architectural Advisory Committee (AAC)

- Jeff Lednicky (2-yr term)

#### Audit Committee

- Danielle Carlson (2-yr terms)

#### B/CS Library Board

- Janice Epstein (2-yr terms)
- Sharron Rosedahl (2-yr terms)

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

**to be attended by a Council Member, another city official or staff of the City of College Station; and announcements involving an imminent threat to the public health and safety of people in the City of College Station that has arisen after the posting of the agenda.**

Councilmember Yancy made a note of extreme weather event expected to start tomorrow and urged citizens to utilize community resources if needed.

Councilmember Wright urged the community to exercise patience while the “Big 6” TxDOT project is underway.

Mayor Nichols made a note of recent sports related highlights in community.

**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 Smith reported on BVSWMA.

Councilmember Yancy reported on the BVCOG.

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

Councilmember McIlhaney requested an item on potential affordable housing opportunities.

**13. Adjournment.**

There being no further business, Mayor Nichols adjourned the meeting of the City Council at 10:15 p.m. on Thursday, January 22, 2026.

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John P. Nichols, Mayor

ATTEST:

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Tanya Smith, City Secretary

**February 12, 2026**

**Item No. 7.2.**

**Concrete Joint Sealing and Minor Repairs**

**Sponsor:** Emily Fisher, Director of Public Works

**Reviewed By CBC:** City Council

**Agenda Caption:** Presentation, discussion, and possible action on the award of a construction contract in the amount of \$683,000 to Brazos Valley L4, LLC for Concrete Joint Sealing and Minor Repairs.

**Relationship to Strategic Goals:**

1. Core Services and Infrastructure

**Recommendation(s):** Staff recommends awarding the contract to Brazos Valley L4, LLC.

**Summary:** This contract is for joint sealing and minor repairs of concrete streets. Resealing joints of concrete streets will prolong the life of the concrete streets. Furthermore, small failures and distresses in concrete roads will be repaired, also prolonging the life of the street.

ITB 26-016 Concrete Resealing and Minor Repairs was opened on November 11th, 2025, with three (3) sealed competitive bids received. The bid scope consisted of approximately 57,000 linear feet of concrete street resealing and 25,000 square feet of minor concrete street repairs. The lowest responsible bidder was Brazos Valley L4, LLC at \$683,000.

**Budget & Financial Summary:** Funds are budgeted and available in the Roadway Maintenance Fund.

**Attachments:**

1. 26-016 Tabulation
2. Brazos Valley L4 LLC\_Contract 26300269\_VendorSigned

City of College Station  
 ITB 26-016 Concrete Resealing and Minor Repairs  
 Bid Opening Tuesday, November 11, 2025 at 2:00p.m. CT

			Brazos Paving, Inc.		Brazos Valley L4, LLC		Garret Shields Infrastructure, LLC.		
<b>GENERAL COSTRUCTION ITEMS</b>									
<u>Item No.</u>	<u>Description</u>	<u>Unit of Measure</u>	<u>Estimated Quantity</u>	<u>Unit Price</u>	<u>Total Price</u>	<u>Unit Price</u>	<u>Total Price</u>	<u>Unit Price</u>	<u>Total Price</u>
1	Reseal concrete expansion and sawcut joints, including cleaning existing joint, reshaping reservoir, installing backer rod, and applying sealant. Traffic Control included.	LF	57,000	\$ 5.00	\$ 285,000.00	\$ 3.53	\$ 201,210.00	\$ 5.00	\$ 285,000.00
2	Minor concrete road repairs, full panel replacement. Traffic Control included.	SQFT	25,000	\$ 20.00	\$ 500,000.00	\$ 19.29	\$ 482,250.00	\$ 20.00	\$ 500,000.00
<b>Grant Total</b>				<b>\$ 785,000.00</b>			<b>\$ 683,460.00</b>		<b>\$ 785,000.00</b>
2 responses were deemed nonresponsive									



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

# CONTRACT & AGREEMENT ROUTING FORM

CONTRACT#: 26300269 PROJECT#: \_\_\_\_\_ BID#: 26-016 RFP#: \_\_\_\_\_

Project Name / Contract Description: Concrete Resealing and Minor Repairs

Name of Contractor: Brazos Valley L4, LLC

CONTRACT TOTAL VALUE: \$ 683,460.00 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 # \_\_\_\_\_  CHANGE ORDER # \_\_\_\_\_  OTHER \_\_\_\_\_

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

ITB 26-016 opened on November 11th, 2025 with three bids received. Funding is available in the Street Maintenance budget.

CRC Approval Date\*: N/A *(If required)\** Council Approval Date\*: 2/12/26 Agenda Item No\*: \_\_\_\_\_

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

Insurance Certificates: DDV Performance Bond: BW Payment Bond: BW Form 1295: BW

## SIGNATURES RECOMMENDING APPROVAL

Emily Fisher \_\_\_\_\_ 1/20/2026 \_\_\_\_\_  
DEPARTMENT DIRECTOR/ADMINISTERING CONTRACT DATE

LEGAL DEPARTMENT \_\_\_\_\_ DATE

ASST CITY MGR – CFO \_\_\_\_\_ DATE

## APPROVED & EXECUTED

CITY MANAGER \_\_\_\_\_ DATE

N/A \_\_\_\_\_ DATE

MAYOR (if applicable) \_\_\_\_\_ DATE

N/A \_\_\_\_\_ DATE

CITY SECRETARY (if applicable) \_\_\_\_\_ DATE

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

This Agreement is entered into by and between the City of College Station, a Texas home-rule municipal corporation (the "City") and Brazos Valley L4, LLC, (the "Contractor") for the construction and/or installation of the following:  
As described in 26-016 ITB Concrete Resealing and Minor Repairs.

**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: Sixty- Eight Thousand Three Hundred Forty-Six and NO  $\frac{1}{100}$  Dollars (\$68,346.00).

**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: Six Hundred Eighty-Three Thousand Four Hundred Sixty and NO  $\frac{1}{100}$  Dollars (\$683,460.00).

**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 (\$0.00 ) for each and every calendar day that the Contractor shall be in default after the time stipulated for Substantial Completion and/or Final Completion, not as a penalty, but as liquidated damages for the breach of this Agreement. It being specifically understood that the assessment of liquidated damages may be made for any failure to meet either or both of the deadlines specified for Substantial Completion and/or Final Completion.

## **24. CHARGES FOR INJURY OR REPAIR**

**24.01** The Contractor shall be liable for any damages incurred or repairs made necessary by reason of its work and/or caused by it. Repairs of any kind required by the City will be made and charged to the Contractor by the City.

**24.02** The Contractor shall take the necessary precautions to protect any areas adjacent to its Work.

**24.03** The Work specified consists of all work, materials, and labor required by the City to repair any damage to the property of the City, including but not limited to structures, roadways, curbs, parking areas, and sidewalks.

## **25. WARRANTY**

**25.01** Upon issuance of a certificate of Final Completion, the Contractor warrants for a period of one (1) year as follows:

**The Contractor warrants that all materials provided to the City under this Agreement shall be new unless otherwise approved in advance by City's Representative, and all work will be of good quality, free from faults and defects (other than defects from third parties as set out in Chapter 59 Texas Business and Commerce Code relating to non-critical infrastructure), and in conformance with this Agreement, the other Contract Documents, and recognized industry standards .**

**25.02** All work not conforming to these requirements, including but not limited to unapproved substitutions, may be considered defective.

**25.03** This warranty is in addition to any rights or warranties expressed or implied by law and in addition to any consumer protection claims arising from misrepresentations by the Contractor.

**25.04** Where more than a one (1) year warranty is specified for individual products, work, or materials, the longer warranty shall govern.

**25.05** This warranty obligation shall be covered by any performance or payment bonds tendered in compliance with this Agreement.

**25.06 Defective Work Discovered During Warranty Period.** If any of the Work is found or determined to be either defective, including obvious defects under warranty as set forth in this Section 25, or otherwise not in accordance with this Agreement within one (1) year after the date of the issuance of a certificate of Final Completion of the Work or a designated portion thereof, whichever is longer, or within one (1) year after acceptance by the City of designated equipment, or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required by this Agreement, the Contractor shall promptly, upon receipt of written notice by the City, correct the defective work at no cost to the City.

**25.07** The obligation to correct any defective work shall survive the termination of this Agreement. The guarantee to correct the defective work shall not constitute the exclusive remedy of City, nor shall other remedies be limited to the terms of either the warranty or the guarantee.

**25.08** If within ten (10) calendar days after the City has notified the Contractor of a defect, failure, or abnormality in the Work, the Contractor has not started to make the necessary corrections or adjustments, the City is hereby authorized to make the corrections or adjustments, or to order the Work to be done by a third party. The cost of the work shall be paid by the Contractor or its surety.

**25.09** The cost of all materials, parts, labor, transportation, supervision, special instruments, and supplies required for the replacement or repair of parts and for correction of defects shall be paid by the Contractor or by the surety.

**25.10** The guarantee shall be extended to cover all repairs and replacements furnished, and the term of the guarantee for each repair or replacement shall be one (1) year after the installation or completion. The one (1) year warranty shall cover all Work, equipment, and materials that are part of this Project, whether or not a warranty is specified in the individual section of the Contract Documents that prescribe that particular aspect of the Work.

## **26. PAYMENT OF EMPLOYEES, SUBCONTRACTORS & SUPPLIERS**

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

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

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

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

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

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

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

## 27. INSURANCE

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

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

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

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

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

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

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

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

- (a) General Liability insurance shall be written by a carrier rated "A:VIII" or better in accordance with the current A.M. Best Key Rating Guide.
- (b) Limit of \$1,000,000.00 per occurrence for bodily injury and property damage with an annual aggregate limit of \$2,000,000.00 which limits shall be endorsed to be per Project.
- (c) Coverage shall be at least as broad as ISO form GC 00 01.
- (d) No coverage shall be excluded from the standard policy without notification of individual exclusions being attached for the City's review and acceptance.
- (e) The coverage shall not exclude the following: premises/operations with separate aggregate; independent contracts; products/completed operations; contractual liability (insuring the indemnity provided herein) Host Liquor Liability, Personal & Advertising Liability; and Explosion, Collapse, and Underground coverage.

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

- (a) Business Automobile Liability insurance shall be written by a carrier rated "A:VIII" or better in accordance with the current A.M. Best Key Rating Guide.
- (b) Minimum Combined Single Limit of \$1,000,000.00 per occurrence for bodily injury and property damage.
- (c) The Business Auto Policy must show Symbol 1 in the Covered Autos Portion of the liability section in Item 2 of the declarations page.
- (d) The coverage shall include owned autos, leased or rented autos, non-owned autos, any autos and hired autos.
- (e) Pollution Liability coverage shall be provided by endorsement MCS-90, with a limit of \$1,000,000.00, where such exposures exist.

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

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

**27.07 Additional Insured.**

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

## **27.08 Builder's Risk**

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

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

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

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

- (a)** Pursuant to the requirements set forth in Title 28, Section 110.110 of the Texas Administrative Code, all employees of the Contractor, all employees of any and all subcontractors, and all other persons providing services on the Project must be covered by a workers' compensation insurance policy: either directly through their employer's policy (the Contractor's or subcontractor's policy) or through an executed coverage agreement on an approved Texas Department of Insurance Division of Workers' Compensation (DWC) form. Accordingly, if a subcontractor does not have his or her own policy and a coverage agreement is used, contractors and subcontractors must use that portion of the form whereby the hiring contractor agrees to provide coverage to the employees of the subcontractor. The portion of the form that would otherwise allow them not to provide coverage for the employees of an independent contractor may not be used.
- (b)** Workers' Compensation/ Employer's Liability insurance shall include the following terms:
  1. Employer's Liability minimum limits of \$1,000,000.00 for each accident/each disease/each

employee are required.

2. "Texas Waiver of Our Right to Recover From Others Endorsement, WC 42 03 04" shall be included in this policy.
3. Texas must appear in Item 3A of the Workers' Compensation coverage or Item 3C must contain the following: All States except those listed in Item 3A and the States of NV, ND, OH, WA, WV, and WY.

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

*"A. Definitions:*

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

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

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

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

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

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

extended.

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

- (1) *a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and*
- (2) *no later than seven calendar days after receipt by the Contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.*

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

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

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

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

- (1) *provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, that meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;*
- (2) *provide to the Contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;*
- (3) *provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;*
- (4) *obtain from each other person with whom it contracts, and provide to the Contractor:*
  - (a) *A certificate of coverage, prior to the other person beginning work on the project; and*
  - (b) *A new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate*

*of coverage ends during the duration of the project;*

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

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

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

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

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

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

- (a)** The company is authorized to do business in the State of Texas.
- (b)** The insurance policies provided by the insurance company are underwritten on forms that have been provided by the Department of Insurance or ISO.
- (c)** Original endorsements affecting coverage required by this section shall be furnished with the certificates of insurance.

## **28. BOND PROVISIONS**

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

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

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

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

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

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

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

## **29. SURETY**

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

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

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

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

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

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

## **30. COMPLIANCE WITH LAW**

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

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

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

## **31. SAFETY PRECAUTIONS**

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

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

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

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

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

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

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

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

## **32. TRENCH SAFETY**

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

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

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

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

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

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

### **33. INDEMNITY**

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

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

- (a) The City is damaged due to the act, omission, mistake, fault or default of the Contractor.**
- (b) In the event of any claims for payment for goods or services brought by any material suppliers, mechanics, laborers, or other subcontractors.**
- (c) In the event of any and all injuries to or claims of adjacent property owners caused by the Contractor, its agents, employees, and representatives.**
- (d) In the event of any damage to the floor, walls, etc., caused by the Contractor's personnel or equipment during installation.**
- (e) The removal of all debris related to the Work.**
- (f) The acts and omissions of the subcontractors it hired.**
- (g) The Contractor's failure to comply with applicable federal, state, or local regulations, that touch upon or concern the maintenance of a safe and protected working environment and the safe use and operation of machinery and equipment in that working environment, no matter where fault or responsibility lies.**

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

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

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

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

#### **34. RELEASE**

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

#### **35. PERMITS AND LICENSES**

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

#### **36. ROYALTIES AND LICENSING FEES**

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

## **37. BREACH OF CONTRACT & DAMAGES**

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

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

- (a)** If the Contractor shall fail to remedy any default after written notice thereof from City's Representative, as City's Representative shall direct; or
- (b)** If the Contractor shall fail for any reason other than the failure by City's Representative to make payments called upon when due; or
- (c)** If the Contractor commits a substantial default under any of the terms, provisions, conditions, or covenants contained in this Agreement.

## **38. TERMINATION FOR CAUSE**

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

- (a)** If the Contractor becomes insolvent, commits any act of bankruptcy, makes a general assignment for the benefit of creditors, or becomes the subject of any proceeding commenced under any statute or law for the relief of debtors and, after notice, fails to provide adequate assurance that it can remedy all of its defaults; or
- (b)** If a receiver, trustee, or liquidator of any of the property or income of the Contractor is appointed; or
- (c)** If the Contractor fails to prosecute the Work or any part thereof with diligence necessary to insure its progress and completion as prescribed by the time schedules; or
- (d)** If the Contractor fails to remedy any default within ten (10) calendar days after written notice thereof from City's Representative, as City's Representative shall direct; or

- (e) If the Contractor fails for any reason other than the failure by City's Representative to make payments called upon when due; or
- (f) If the Contractor abandons the Work.
- (g) If the Contractor commits a material default under any of the terms, provisions, conditions, or covenants contained in this Agreement.

## **39. TERMINATION FOR CONVENIENCE**

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

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

## **40. RIGHT TO COMPLETE**

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

## **41. CLOSE OUT**

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

- (a) Stop the work on the date and to the extent specified in the notice of termination;
- (b) Place no further orders or subcontracts for services, equipment, or materials, except as may be necessary for completion of such portion of the Work as is not terminated;

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

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

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

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

## **42. TERMINATION CONVERSION**

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

## **43. HIRING**

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

## **44. ASSIGNMENT**

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

## **45. EFFECTIVE DATE**

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

## **46. OTHER TERMS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**46.17 Fraud Reporting.** To reduce the risk of fraud and to protect the Contractor's financial information from fraud, the Contractor must report to the City in writing at [VendorInvoiceEntry@cctx.gov](mailto:VendorInvoiceEntry@cctx.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**

**BRAZOS VALLEY L4, LLC**

By: Michael Long

Printed Name: Michael Long

Title: Owner

Date: 1/18/2026

**CITY OF COLLEGE STATION**

By: \_\_\_\_\_

City Manager

Date: \_\_\_\_\_

APPROVED:

\_\_\_\_\_  
City Attorney

Date: \_\_\_\_\_

\_\_\_\_\_  
Assistant City Manager/CFO

Date: \_\_\_\_\_

**EXHIBIT A**  
**DAVIS BACON WAGE RATES**

Contract No. 26300269  
Construction Agreement Over \$50,000  
Form 04-20-2023

State: Texas

Construction Type: 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.

#### HIGHWAY CONSTRUCTION PROJECTS

Modification Number	Publication Date
0	09/19/2025
1	12/12/2025

SATX2025-004 11/15/2023

	Rates	Fringes
Agricultural Tractor Operator....	\$ 19.14	0.00
Asphalt Distributor Operator....	\$ 24.07	0.00
Asphalt Paving Machine Operator.....	\$ 22.12	0.00
Asphalt Raker.....	\$ 19.40	0.00
Boom Truck Operator.....	\$ 27.82	0.00
Broom or Sweeper Operator.....	\$ 18.09	0.00
Concrete Finisher, Paving and Structures.....	\$ 20.61	0.00
Concrete Pavement Finishing Machine Operator.....	\$ 22.81	0.00
Concrete Saw Operator.....	\$ 25.97	0.00
Crane Operator, Hydraulic 80 tons or less.....	\$ 29.24	0.00
Crane Operator, Lattice Boom 80 Tons or Less.....	\$ 26.47	0.00
Crane Operator, Lattice Boom Over 80 Tons.....	\$ 28.87	0.00
Crawler Tractor Operator.....	\$ 20.92	0.00
Directional Drilling Locator....	\$ 21.39	0.00
Directional Drilling Operator....	\$ 25.19	0.00
Electrician.....	\$ 30.54	0.00
Excavator Operator, 50,000 pounds or less.....	\$ 22.93	0.00
Excavator Operator, Over 50,000 pounds.....	\$ 22.90	0.00
Flagger.....	\$ 15.52	0.00
Form Builder/Setter, Structures.....	\$ 20.63	0.00
Form Setter, Paving & Curb.....	\$ 19.18	0.00

Foundation Drill Operator, Truck Mounted.....\$ 24.28	0.00
Front End Loader Operator, 3 CY or Less.....\$ 20.33	0.00
Front End Loader Operator, Over 3 CY.....\$ 20.20	0.00
Laborer, Common.....\$ 17.52	0.00
Laborer, Utility.....\$ 19.05	0.00
Loader/Backhoe Operator.....\$ 20.32	0.00
Mechanic.....\$ 26.15	0.00
Milling Machine Operator.....\$ 21.73	0.00
Motor Grader Operator, Fine Grade.....\$ 26.56	0.00
Motor Grader Operator, Rough.....\$ 22.95	0.00
Off Road Hauler.....\$ 17.52	0.00
Painter, Structures.....\$ 23.76	0.00
Pavement Marking Machine Operator.....\$ 22.00	0.00
Pipelayer.....\$ 19.23	0.00
Reclaimer/Pulverizer Operator....\$ 19.05	0.00
Reinforcing Steel Worker.....\$ 22.46	0.00
Roller Operator, Asphalt.....\$ 20.24	0.00
Roller Operator, Other.....\$ 17.52	0.00
Scraper Operator.....\$ 17.52	0.00
Servicer.....\$ 23.75	0.00
Sign Erector.....\$ 17.52	0.00
Spreader Box Operator.....\$ 19.31	0.00
Traffic Signal/Light Pole Worker.....\$ 21.99	0.00
Truck Driver Lowboy Float.....\$ 25.96	0.00
Truck Driver, Single Axle.....\$ 19.70	0.00
Truck Driver, Single or Tandem Axle Dump Truck.....\$ 20.91	0.00
Truck Driver, Tandem Axle Tractor with Semi Trailer.....\$ 21.71	0.00
Welder.....\$ 23.38	0.00
Work Zone Barricade Servicer.....\$ 17.75	0.00

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

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>.

Note: Executive Order 13658 generally applies to contracts subject to the Davis-Bacon Act that were awarded on or between January 1, 2015 and January 29, 2022, and that have not been renewed or extended on or after January 30, 2022. Executive Order 13658 does not apply to contracts subject only to the Davis-Bacon Related Acts regardless of when they were awarded. If a contract is subject to Executive Order 13658, 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 the contract in 2025. The applicable Executive Order minimum wage rate will be adjusted annually. Additional information on contractor requirements and worker protections under Executive Order 13658 is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).

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)).

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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.

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## 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.

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END OF GENERAL DECISION"

1. Payment greater than prevailing wage rate as listed within this document not prohibited per Texas Government Code, Chapter 2258, Prevailing Wage Rates, Subchapter A. General Provisions.
2. Not less than the following hourly rates shall be paid for the various classifications of work required by this project. Workers in classifications where rates are not identified shall be paid not less than the general prevailing rate of "laborer" for the various classifications of work therein listed.
3. The hourly rate for legal holiday and overtime work shall not be less than one and one-half (1 & 1/2) times the base hourly rate.
4. The rates listed are journeyman rates. Helpers may be used on the project and may be compensated at a rate determined mutually by the worker and employer, commensurate with the experience and skill of the worker but not at a rate less than 60% of the journeyman's wage as shown. Apprentices (enrolled in a federally certified apprentice program) may be used at the percentage rates of the journeyman scale stipulated in their apprenticeship agreement. At no time shall a journeyman supervise more than two (2) apprentices or helpers. All apprentices or helpers shall be under the direct supervision of a journeyman working as a crew.
5. Except for Heavy/Highway Construction, building construction wage rates shall be paid to all workers except those workers engaged in site work and construction beyond five feet of buildings.

**EXHIBIT B**  
**PERFORMANCE AND PAYMENT BONDS**

Contract No. 26300269  
Construction Agreement Over \$50,000  
Form 04-20-2023

**PERFORMANCE BOND**

Bond No. CNB-26-0006038-00

**THE STATE OF TEXAS**

**THE COUNTY OF BRAZOS**

§  
§  
§

**KNOW ALL MEN BY THESE PRESENTS:**

THAT WE, Brazos Valley L4 LLC, as Principal, hereinafter called "Contractor" and the other subscriber hereto Insurors Indemnity 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 Six Hundred Eighty-Three Thousand Four Hundred Sixty and NO /100 Dollars (\$ 683,460.00) 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 As described in 26-016 ITB Concrete Resealing and Minor Repairs,

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.

**FOR THE CONTRACTOR:**

ATTEST & SEAL: (if a corporation)

WITNESS: (if not a corporation)

By: Brandy Palomino  
Name: Brandy Palomino  
Title: Corporate Secretary  
Date: January 22, 2026

(SEAL)

Brazos Valley L4, LLC.

(Name of Contractor)

By: Michael Long  
Name: Michael Long  
Title: Owner  
Date: January 22, 2026

(SEAL)

**FOR THE SURETY:**

ATTEST/WITNESS (SEAL)

By: Geri Lynn Mirabal  
Name: Geri Lynn Mirabal  
Title: CSR  
Date: January 22, 2026

Insurors Indemnity Company

(Full Name of Surety)

P.O. Box 32577, Waco, Texas 76703

(Address of Surety for Notice)

By: David Satine  
Name: David Satine  
Title: Attorney-in-Fact  
Date: January 22, 2026

(SEAL)

**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.** CNB-26-0006038-00

THE STATE OF TEXAS  
THE COUNTY OF BRAZOS

**KNOW ALL MEN BY THESE PRESENTS:**

THAT WE, Brazos Valley L4 LLC, as Principal, hereinafter called "Principal" and the other subscriber hereto Insurors Indemnity 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 Six Hundred Eighty-Three Thousand Four Hundred Sixty and NO /100 Dollars (\$ 683,460.00) 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 22 day of January, 2026, for As described in 26-016 ITB  
Concrete Resealing and Minor Repairs, referred to and made a part hereof as fully and to the same extent as if copied at length herein.

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

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

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

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

Contract No. 26300269  
Construction Agreement Over \$50,000  
Form 04-20-2023

**FOR THE CONTRACTOR:**

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

**WITNESS:** (if not a corporation)

(SEAL)

Brazos Valley L4, LLC.

(Name of Contractor)

By: Brandy Palant  
Name: Brandy Palant  
Title: Corporate Secretary  
Date: January 22, 2026

By: Michael Long  
Name: Michael Long  
Title: Owner  
Date: January 22, 2026

**FOR THE SURETY:**

**ATTEST/WITNESS** (SEAL)

By: Geri Lynn Mirabal  
Name: Geri Lynn Mirabal  
Title: CSR  
Date: January 22, 2026

Insurors Indemnity Company  
(Full Name of Surety)

P.O. Box 32577, Waco, Texas 76703

(Address of Surety for Notice)

By: fs  
Name: David Satine  
Title: Attorney-in-Fact  
Date: January 22, 2026

**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.**

POWER OF ATTORNEY of INSURORS INDEMNITY COMPANY  
Waco, Texas

KNOW ALL PERSONS BY THESE PRESENTS:

Number: CNB-26-0006038-00

That INSURORS INDEMNITY COMPANY, Waco, Texas, organized and existing under the laws of the State of TEXAS, and authorized and licensed to do business in the State of TEXAS and the United States of America, does hereby make, constitute and appoint

David Satine of the City of Dripping Springs, State of TEXAS

as Attorney in Fact, with full power and authority hereby conferred upon him to sign, execute, acknowledge, and deliver for and on its behalf as Surety and as its act and deed, all of the following classes of document, to -wit:

Indemnity, Surety and Undertakings that may be desired by contract, or may be given in any action or proceeding in any court of law or equity; Indemnity in all cases where indemnity may be lawfully given and with full power and authority to execute consents and waivers to modify or change or extend any bond or document executed for this Company.

INSURORS INDEMNITY COMPANY

Attest: Tammy Tieperman  
Tammy Tieperman, Secretary

By: Dave E. Talbert  
Dave E. Talbert, President

State of Texas  
County of McLennan

On the 1st day of January, 2025, before me a Notary Public in the State of Texas, personally appeared Dave E. Talbert and Tammy Tieperman, who being by me duly sworn, acknowledged that they executed the above Power of Attorney in their capacities as President, and Corporate Secretary, respectively, of Insurors Indemnity Company, and acknowledged said Power of Attorney to be the voluntary act and deed of the Company.

Cheyenne Wasden  
Notary Public, State of Texas



Insurors Indemnity Company certifies that this Power of Attorney is granted under and by authority of the following resolutions of the Company adopted by the Board of Directors on November 11, 2014:

RESOLVED, that all bonds, undertakings, contracts or other obligations may be executed in the name of the Company by persons appointed as Attorney in Fact pursuant to a Power of Attorney issued in accordance with these Resolutions. Said Power of Attorney shall be executed in the name and on behalf of the Company either by the Chairman and CEO or the President, under their respective designation. The signature of such officer and the seal of the Company may be affixed by facsimile to any Power of Attorney, and, unless subsequently revoked and subject to any limitation set forth therein, any such Power of Attorney or certificate bearing such facsimile signature and seal shall be valid and binding upon the Company and any such power so executed and certified by facsimile signature and seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is validly attached.

RESOLVED, that Attorneys in Fact shall have the power and authority, subject to the terms and limitations of the Power of Attorney issued to them, to execute and deliver on behalf of the Company and to attach the seal of the Company to any and all bonds and undertakings, and any such instrument executed by such Attorneys in Fact shall be binding upon the Company as if signed by an Executive Officer and sealed and attested to by the Secretary or Assistant Secretary of the Company.

I, Tammy Tieperman, Secretary of Insurors Indemnity Company, do hereby certify that the foregoing is a true excerpt from the Resolutions of the said Company as adopted by its Board of Directors on November 11, 2014, and that this Resolution is in full force and effect. I certify that the foregoing Power of Attorney is in full force and effect and has not been revoked.

In Witness Whereof, I have set my hand and the seal of INSURORS INDEMNITY COMPANY on this 22nd, January 2026

Tammy Tieperman  
Tammy Tieperman, Secretary

NOTE: IF YOU HAVE ANY QUESTION REGARDING THE VALIDITY OR WORDING OF THIS POWER OF ATTORNEY,  
PLEASE CALL 800 933 7444 OR WRITE TO US AT P. O. BOX 32577, WACO, TEXAS 76703 OR EMAIL US AT  
[BONDDEPT@INSURORSINDEMNITY.COM](mailto:BONDDEPT@INSURORSINDEMNITY.COM).



Phone: 877 816 2800 | PO Box 32577  
Waco, Texas 76703-4200

## IMPORTANT NOTICE - AVISO IMPORTANTE

To obtain information or make a complaint:

You may call Insurors Indemnity Company's toll-free telephone number for information or to make a complaint at:

1-877-816-2800

You may also write to Insurors Indemnity Company at:

P.O. Box 32577  
Waco, TX 76703-4200  
Or  
225 South Fifth Street  
Waco, TX 76701

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

1-800-252-3439

You may write the Texas Department of Insurance at:

Consumer Protection (111-1A)  
P.O. Box 149091  
Austin, TX 78714-9091  
Fax: 512-490-1007

Web: <http://www.tdi.texas.gov>

E-mail: [ConsumerProtection@tdi.texas.gov](mailto:ConsumerProtection@tdi.texas.gov)

### PREMIUM OR CLAIM DISPUTES:

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

### ATTACH THIS NOTICE TO YOUR POLICY:

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

Para obtener informacion o para someter una queja:

Usted puede llamar al numero de telefono gratis de Insurors Indemnity Company's para informacion o para someter una queja al

1-877-816-2800

Usted tambien puede escribir a Insurors Indemnity Company:

P.O. Box 32577  
Waco, TX 76703-4200  
Or  
225 South Fifth Street  
Waco, TX 76701

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

1-800-252-3439

Puede escribir al Departamento de Seguros de Texas:

Consumer Protection (111-1A)  
P.O. Box 149091  
Austin, TX 78714-9091  
Fax: 512-490-1007

Web: <http://www.tdi.texas.gov>

E-mail: [ConsumerProtection@tdi.texas.gov](mailto:ConsumerProtection@tdi.texas.gov)

### DISPUTAS SOBRE PRIMAS O RECLAMOS:

Si tiene una disputa concerniente a su prima o a un reclamo, debe comunicarse con el agente o la compania primero. Si no se resuelve la disputa, puede entonces comunicarse con el departamento (TDI).

### UNA ESTE AVISO A SU POLIZA:

Este aviso es solo para proposito de informacion y no se convierte en parte o condicion del documento adjunto.

**EXHIBIT C**  
**CERTIFICATES OF INSURANCE AND ENDORSEMENTS**

Contract No. 26300269  
Construction Agreement Over \$50,000  
Form 04-20-2023



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
1/9/2026

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).

<b>PRODUCER</b> Hub International Insurance Services 13100 Wortham Center Dr Ste 100 Houston TX 77065-5629	<b>CONTACT</b> NAME: Alicia Edwards PHONE (A/C, No, Ext): 979-774-6522 FAX (A/C, No): 979-774-5372 E-MAIL ADDRESS: alicia.edwards@hubinternational.com	
	INSURER(S) AFFORDING COVERAGE	
	INSURER A : Kinsale Insurance Company 38920	
	INSURER B : Progressive County Mutual 29203	
	INSURER C : Texas Mutual Insurance Company 22945	
	INSURER D :	
	INSURER E :	
	INSURER F :	
	License#: BR-767175 BRAZVAL-62	
	INSURED Brazos Valley L4 LLC 2991 Clark Rd North Zulch TX 77872	

**COVERAGES** **CERTIFICATE NUMBER:** 1057373574 **REVISION NUMBER:**

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS		
A	COMMERCIAL GENERAL LIABILITY  CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR			0100344866	1/14/2026	1/14/2027	EACH OCCURRENCE	\$ 1,000,000	
							DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 100,000	
							MED EXP (Any one person)	\$ 5,000	
							PERSONAL & ADV INJURY	\$ 1,000,000	
	GEN'L AGGREGATE LIMIT APPLIES PER:  POLICY <input checked="" type="checkbox"/> PRO- JECT <input type="checkbox"/> LOC						GENERAL AGGREGATE	\$ 2,000,000	
	OTHER:						PRODUCTS - COMP/OP AGG	\$ 2,000,000	
								\$	
B	AUTOMOBILE LIABILITY  ANY AUTO OWNED AUTOS ONLY <input checked="" type="checkbox"/> SCHEDULED AUTOS HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY			976341556	1/10/2026	1/10/2027	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000	
							BODILY INJURY (Per person)	\$	
							BODILY INJURY (Per accident)	\$	
							PROPERTY DAMAGE (Per accident)	\$	
								\$	
A	UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE			0100344869	1/14/2026	1/14/2027	EACH OCCURRENCE	\$ 5,000,000	
							AGGREGATE	\$ 5,000,000	
								\$	
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY  ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	<input checked="" type="checkbox"/> Y / N	N / A	0002104625	1/10/2026	1/10/2027	X PER STATUTE	OTHE-	
							E.L. EACH ACCIDENT	\$ 1,000,000	
							E.L. DISEASE - EA EMPLOYEE	\$ 1,000,000	
							E.L. DISEASE - POLICY LIMIT	\$ 1,000,000	

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

The General Liability policy provides Blanket Additional Insured, Primary & Non-Contributory, and Blanket Waiver of Subrogation when required by written contract. Auto Liability provides Waiver of subrogation when required by contract.

Workers Compensation policies (Texas and All Other States) include Waiver of Subrogation when required by written contract.

Excess Liability policy provides Additional Insured And Waiver of Subrogation that follows form on the above policies.

The above policies provide for 30-day Advance Notice of Cancellation to Certificate Holder for reasons other than non-payment of premium.

**CERTIFICATE HOLDER**

**CANCELLATION**

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

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS - SCHEDULED PERSON OR ORGANIZATION

Attached To and Forming Part of Policy 0100344866-0	Effective Date of Endorsement 01/14/2025 12:01AM at the Named Insured address shown on the Declarations	Named Insured Brazos Valley L4 LLC
Additional Premium: \$0	Return Premium: \$0	

This endorsement modifies insurance provided under the following:

### COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE	
Name of Additional Insured Person(s) or Organization(s)	Location(s) of Covered Operations
Blanket, as required by written contract, executed prior to the start of work on the project.	Locations as required and specified by written contract, executed prior to the start of work on the project.
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

**A. Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

**B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:**

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

**C. With respect to the insurance afforded to these additional insureds, the following is added to Section III – Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or

2. Available under the applicable limits of insurance; whichever is less.

This endorsement shall not increase the applicable limits of insurance.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS - COMPLETED OPERATIONS

Attached To and Forming Part of Policy 0100344866-0	Effective Date of Endorsement 01/14/2025 12:01AM at the Named Insured address shown on the Declarations	Named Insured Brazos Valley L4 LLC
Additional Premium: \$0	Return Premium: \$0	

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

### SCHEDULE

Name of Additional Insured Person(s) or Organization(s)	Location and Description of Completed Operations
Blanket, as required by written contract, executed prior to the start of work on the project.	Locations as required and specified by written contract, executed prior to the start of work on the project.
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

**A. Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the Schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

**B. With respect to the insurance afforded to these additional insureds, the following is added to Section III – Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable limits of insurance;

whichever is less.

This endorsement shall not increase the applicable limits of insurance.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

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**ADDITIONAL INSURED - PRIMARY AND NON-CONTRIBUTORY ENDORSEMENT**

<i>Attached To and Forming Part of Policy</i> 0100344866-0	<i>Effective Date of Endorsement</i> 01/14/2025 12:01AM at the Named Insured address shown on the Declarations	<i>Named Insured</i> Brazos Valley L4 LLC
<i>Additional Premium:</i> \$0		<i>Return Premium:</i> \$0

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE**

**PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE**

**ENVIRONMENTAL CONTRACTING AND PROFESSIONAL SERVICES LIABILITY COVERAGE**

**PRODUCTS POLLUTION LIABILITY COVERAGE**

**PREMISES ENVIRONMENTAL LIABILITY INSURANCE COVERAGE**

**ENVIRONMENTAL COMBINED LIABILITY POLICY - ALL COVERAGE PARTS**

The insurance provided to Additional Insureds shall be excess with respect to any other valid and collectible insurance available to the Additional Insured unless the written contract specifically requires that this insurance apply on a primary and non-contributory basis, in which case this insurance shall be primary and non-contributory.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
01/08/2026

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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	Service Insurance Group, Inc. PO Box 5753 3840 Corporate Center Dr Bryan	TX 77805-5753	CONTACT NAME:	Nick Lutz		
			PHONE (A/C No. Ext.):	(979)774-3900	FAX (A/C No.):	(979)774-3955
INSURED	Brazos Valley L4, LLC 2991 Clark Road North Zulch	TX 77872-	E-MAIL ADDRESS:	Nick.Lutz@sigbcs.com		
			INSURER(S) AFFORDING COVERAGE			NAIC #
			INSURER A: Evanston Insurance Company			35378
			INSURER B:			
			INSURER C:			
			INSURER D:			
			INSURER E:			
INSURER F:						

## COVERAGEs

CERTIFICATE NUMBER: Master

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.								
INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
	COMMERCIAL GENERAL LIABILITY  CLAIMS-MADE <input type="checkbox"/> OCCUR <input type="checkbox"/>						EACH OCCURRENCE	\$
							DAMAGE TO RENTED PREMISES (Ea occurrence)	\$
							MED EXP (Any one person)	\$
							PERSONAL & ADV INJURY	\$
							GENERAL AGGREGATE	\$
							PRODUCTS - COMP/OP AGG	\$
							OTHER:	\$
	AUTOMOBILE LIABILITY  ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident)	\$
							BODILY INJURY (Per person)	\$
							BODILY INJURY (Per accident)	\$
							PROPERTY DAMAGE (Per accident)	\$
	UMBRELLA LIAB	<input type="checkbox"/> OCCUR					EACH OCCURRENCE	\$
	EXCESS LIAB	<input type="checkbox"/> CLAIMS-MADE					AGGREGATE	\$
	DED <input type="checkbox"/> RETENTION \$							\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY  ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A				PER STATUTE	OTH-ER
							E.L. EACH ACCIDENT	\$
							E.L. DISEASE - EA EMPLOYEE	\$
							E.L. DISEASE - POLICY LIMIT	\$
A	Pollution Liability			CPLMOL133429	08/04/2025	08/04/2026	Limit Aggregate Deductible	\$1,000,000 \$1,000,000 \$10,000

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

Additional insured status applies to Certificate Holder with regards to pollution liability policy, when such status is required by a written contract.

CERTIFICATE HOLDER		CANCELLATION	
City of College Station Attn: Risk Management PO Box 9960 College Station		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 	
TX 77842-9960			

**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.

Specification load as a separate document on to Brazosbid.ionwave.net

**EXHIBIT E**  
**CONSTRUCTION SCHEDULE**

Sustantial Completion is 90 days from notice to proceed.

**EXHIBIT F**  
**SCHEDULE OF VALUES**

See attached

Contract No. 26300269  
Construction Agreement Over \$50,000  
Form 04-20-2023

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

**BID SUMMARY  
BID NO. 26-010**

The Undersigned proposes to furnish all labor, services, materials, tools and necessary equipment for the construction of the Concrete Resealing and Minor Repairs and to perform the work required for the construction of said Concrete Resealing and Minor Repairs at the location set out by the Plans and Specifications, in strict accordance with the Contract Documents.

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

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

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

**BASE PROPOSAL:** Stipulated Total Bid of: (\$ 683,400.00)

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

**RECEIPT OF ADDENDA**

I hereby acknowledge receipt of the following Addenda: Addenda 1

**CONTRACTOR NAME:** Brazos Valley LLC

**CONTRACTOR SIGNATURE:** Mary Yang

**City of College Station  
ITB 26-016 Concrete Resealing and Minor Repairs  
Bid Opening Tuesday, November 11, 2025 at 2:00p.m. CT**

**GENERAL CONSTRUCTION ITEMS (ESTIMATES)**

<u>Item No.</u>	<u>Description</u>	<u>Unit of Measure</u>	<u>Estimated Quantity</u>	<u>Unit Price</u>	<u>Total Price</u>
1	Reseal concrete expansion and sawcut joints, Including cleaning existing joint, reshaping reservoir, installing backer rod, and applying sealant. Traffic Control included.	LF	57,000	x 3.53	\$201,210.00
2	Minor concrete road repairs, full panel replacement. Traffic Control Included.	SQFT	25,000	x 19.29	\$482,250.00
<b>Grant Total</b>					<b>\$683,460.00</b>

**February 12, 2026**  
**Item No. 7.3.**  
**Minor Drainage Repairs at Graham Road and 600 Ivy Cove.**

**Sponsor:** Emily Fisher, Director of Public Works

**Reviewed By CBC:** City Council

**Agenda Caption:** Presentation, discussion, and possible action on a construction contract award to D&S Construction, Inc. in the amount of \$200,500 for Drainage Repairs on Graham Road and 600 Ivy Cove.

**Relationship to Strategic Goals:**

1. Core Services and Infrastructure

**Recommendation(s):** Staff recommends awarding the contract to D&S Contracting Inc.

**Summary:** During routine and post-storm drainage inspections, infrastructure has been identified as deficient and in need of replacement. This contract is for the replacement of drainage infrastructure under Graham Road and at 600 Ivy Cove. Invitation to Bid 26-028 was opened on December 17, 2025, with one bid received. D&S Construction Inc. was the only responsible responder with a bid of \$200,500.00.

**Budget & Financial Summary:** Funds are budgeted and available for small drainage projects in the Drainage Utility Fund.

**Attachments:**

1. 26-028 Bid Tabulation
2. 26300292--KJ (CC 2.12.26) vendor signed



**City of College Station - Purchasing Division**  
**Bid Tabulation for #26-028**  
**"Drainage Repairs"**  
**Open Date: Wednesday, December 17, 2025 @ 2:00 p.m.**

D&S Contracting Inc.					
ITEM	QTY	UNIT	DESCRIPTION	UNIT PRICE	TOTAL PRICE
<b>CATEGORY</b>					
1	1	LS	Remove and replace 18" RCP ( Graham Rd)	\$125,000.00	\$125,000.00
2	1	LS	Remove 18" RCP and Replace with 18" HDPE ( 600 Ivy Cove	\$47,000.00	\$47,000.00
3	1	LS	Detailed TCP for Graham Rd. Pipe Repair	\$8,500.00	\$8,500.00
4	1	LS	Mobilization, traffic control, permits, environmental compliance and final engineering inspection with hydraulic testing	\$20,000.00	\$20,000.00
CATEGORY - TOTAL				\$200,500.00	

NOTES:



**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 D&S Contracting, Inc. (the "Contractor") for the construction and/or installation of the following: as described in ITB 26-028 Drainage Repairs.

**1. DEFINITIONS**

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

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

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

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

**1.05 Contingency Amount.** The term "Contingency Amount" shall mean and be understood as referring to the amount established and appropriated by the City, to be used exclusively by the City and in the City's sole discretion, to pay City-authorized costs associated with Change Orders and other related expenses for this Project. The Contractor agrees that the Contingency Amount, if any, is established by and is for the sole use of the City, that the Contingency Amount is not included in the Contract Amount, and that the Contractor has no right to use or receive any Contingency Amount unless authorized by the City in a written and duly authorized change order. The City's Contingency Amount is: Twenty Thousand Fifty and NO  $\frac{1}{100}$  Dollars (\$20,050.00).

**1.06 Contract Amount.** The term "Contract Amount" shall mean the amount of Contractor's lump sum base bid proposal, together with all alternates, as accepted by the City in accordance with the Contractor's Proposal. In the case of a unit price contract, Contract Amount shall mean the sum of the product of all unit prices multiplied by the respective estimated final quantities of work, for all base bid and alternates, as accepted by the City. Except in the event of a duly authorized change order approved by the City as provided in this Agreement, and in consideration of the Contractor's final completion of all Work in conformity with this Agreement, the City shall pay the Contractor an amount not to exceed: Two Hundred Thousand Five Hundred and NO  $\frac{1}{100}$  Dollars (\$200,500.00).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **2. CONTRACT DOCUMENTS**

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

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

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

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

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

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

### **3. AWARD OF CONTRACT**

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

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

### **4. CITY'S REPRESENTATIVE**

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

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

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

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

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

### **5. INDEPENDENT CONTRACTOR**

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

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

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

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

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

## **6. DISORDERLY EMPLOYEES**

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

## **7. HOURS OF WORK**

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

## **8. NATURE OF THE WORK**

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

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

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

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

## **9. POST-AGREEMENT AWARD MEETINGS**

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

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

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

**(c)** Schedules of the starting and ending dates of subcontractors and the scope of Work contemplated for subcontractors.

**(d)** Name, local office, phone number and addresses and, home phone numbers for the Contractor and its Project Superintendent/Manager.

**(e)** For construction projects, four (4) copies of all shop and/or setting drawings or schedules for the submission thereof, including PDF/electronic versions and CAD files.

**(f)** Where applicable, materials procurement schedules and material supplier names, addresses and phone numbers.

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

## **10. PROGRESS OF WORK**

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

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

**(a)** The Contractor shall submit a Construction Schedule and schedule of values at the initial post-agreement award meeting and subsequent meetings.

**(b)** City's Representative shall be entitled to make objections to the Contractor's Construction Schedule submitted herein. The Contractor shall promptly resubmit a revised Construction Schedule to City's Representative.

**(c)** The Project Superintendent/Manager shall coordinate its activities with City's Representative. If required by the City, the Contractor shall provide a weekly schedule of planned activities, which may be reviewed on a daily basis.

**(d)** The Contractor shall submit, at such time as may reasonably be requested by City's Representative, additional schedules that shall list the order in which the Contractor proposes to carry on the Work with dates at which the Contractor will start the several parts of the Work and the estimated dates of completion of the several parts.

**(e)** The Contractor shall attend additional meetings called by City's Representative upon twenty-four (24) hours written notice unless otherwise agreed in writing by the parties.

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

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

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

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

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

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

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

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

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

## **11. SITE CONDITIONS AND MANAGEMENT**

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

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

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

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

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

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

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

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

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

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

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

## **12. MATERIALS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **13. ENTRY, OBSERVATION, TESTING & POSSESSION**

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

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

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

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

## **14. REJECTED WORK**

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

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

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

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

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

## **15. SUBCONTRACTING & SUBCONTRACTORS**

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

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

## **16. PAYMENT**

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

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

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

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

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

OR:

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

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

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

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

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

**16.09** Unless otherwise provided in the Contract Documents:

**(a)** Allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;

**(b)** Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Amount but not in the allowances; and

**(c)** Whenever costs are more than or less than allowances, the Contract Amount shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 16.9(a) and (2) changes in the Contractor's costs under Section 16.9(b).

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

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

**(a)** Defective work other than defects in design provided to Contractor by a person other than Contractor's agents, contractors, fabricators, or suppliers, or its consultants, of any tier for non-critical infrastructure.

**(b)** Failure to timely disclose in writing to the City of a known defect, inaccuracy, inadequacy, or insufficiency in the plans, specifications or other design documents.

**(c)** Claims made or reasonable evidence indicating probable filing of claims by unpaid vendors or other third parties.

**(d)** Failure of the Contractor to make prompt payments to subcontractors for labor or material or materialmen.

**(e)** Claims made or reasonable evidence indicating claims will be made for damage to another by the Contractor.

**(f)** Claims made or reasonable evidence indicating claims will be made for damage to third parties, including adjacent property owners.

**(g)** Claims made or reasonable evidence indicating claims will be made for unremedied damage to property owned by the City.

**(h)** City's determination of an amount of liquidated damages.

**(i)** Charges made for repairs to the Contractor's defective work or repairs made by the City to correct damage to other property.

**(j)** Other amounts authorized under this Agreement or under any other agreement made between City and Contractor.

**(k)** Corrections of mistakes, errors and overpayments in relation to prior pay applications and payments.

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

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

## 17. EXTRA WORK CHARGES

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

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

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

OR:

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

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

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

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

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

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

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

**Method A** - By agreed unit prices, or

**Method B** - By agreed lump sum, or

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

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

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

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

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

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

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

## **18. TIME OF COMPLETION**

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

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

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

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

## **19. SUBSTANTIAL COMPLETION**

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

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

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

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

## **20. FINAL COMPLETION**

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

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

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

## **21. DELAYS**

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

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

**21.03** No payment or compensation of any kind shall be made to the Contractor for damages because of hindrance or delay in the progress of the Work, unless such delays (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  $\frac{1}{100}$  DOLLARS (\$0.00) for each and every calendar day that the Contractor shall be in default after the time stipulated for Substantial Completion and/or Final Completion, not as a penalty, but as liquidated damages for the breach of this Agreement. It being specifically understood that the assessment of liquidated damages may be made for any failure to meet either or both of the deadlines specified for Substantial Completion and/or Final Completion.

## **24. CHARGES FOR INJURY OR REPAIR**

**24.01** The Contractor shall be liable for any damages incurred or repairs made necessary by reason of its work and/or caused by it. Repairs of any kind required by the City will be made and charged to the Contractor by the City.

**24.02** The Contractor shall take the necessary precautions to protect any areas adjacent to its Work.

**24.03** The Work specified consists of all work, materials, and labor required by the City to repair any damage to the property of the City, including but not limited to structures, roadways, curbs, parking areas, and sidewalks.

## **25. WARRANTY**

**25.01** Upon issuance of a certificate of Final Completion, the Contractor warrants for a period of one (1) year as follows:

**The Contractor warrants that all materials provided to the City under this Agreement shall be new unless otherwise approved in advance by City's Representative, and all work will be of good quality, free from faults and defects (other than defects from third parties as set out in Chapter 59 Texas Business and Commerce Code relating to non-critical infrastructure), and in conformance with this Agreement, the other Contract Documents, and recognized industry standards .**

**25.02** All work not conforming to these requirements, including but not limited to unapproved substitutions, may be considered defective.

**25.03** This warranty is in addition to any rights or warranties expressed or implied by law and in addition to any consumer protection claims arising from misrepresentations by the Contractor.

**25.04** Where more than a one (1) year warranty is specified for individual products, work, or materials, the longer warranty shall govern.

**25.05** This warranty obligation shall be covered by any performance or payment bonds tendered in compliance with this Agreement.

**25.06 Defective Work Discovered During Warranty Period.** If any of the Work is found or determined to be either defective, including obvious defects under warranty as set forth in this Section 25, or otherwise not in accordance with this Agreement within one (1) year after the date of the issuance of a certificate of Final Completion of the Work or a designated portion thereof, whichever is longer, or within one (1) year after acceptance by the City of designated equipment, or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required by this Agreement, the Contractor shall promptly, upon receipt of written notice by the City, correct the defective work at no cost to the City.

**25.07** The obligation to correct any defective work shall survive the termination of this Agreement. The guarantee to correct the defective work shall not constitute the exclusive remedy of City, nor shall other remedies be limited to the terms of either the warranty or the guarantee.

**25.08** If within ten (10) calendar days after the City has notified the Contractor of a defect, failure, or abnormality in the Work, the Contractor has not started to make the necessary corrections or adjustments, the City is hereby authorized to make the corrections or adjustments, or to order the Work to be done by a third party. The cost of the work shall be paid by the Contractor or its surety.

**25.09** The cost of all materials, parts, labor, transportation, supervision, special instruments, and supplies required for the replacement or repair of parts and for correction of defects shall be paid by the Contractor or by the surety.

**25.10** The guarantee shall be extended to cover all repairs and replacements furnished, and the term of the guarantee for each repair or replacement shall be one (1) year after the installation or completion. The one (1) year warranty shall cover all Work, equipment, and materials that are part of this Project, whether or not a warranty is specified in the individual section of the Contract Documents that prescribe that particular aspect of the Work.

## **26. PAYMENT OF EMPLOYEES, SUBCONTRACTORS & SUPPLIERS**

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

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

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

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

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

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

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

## 27. INSURANCE

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

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

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

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

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

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

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

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

- (a) General Liability insurance shall be written by a carrier rated "A:VIII" or better in accordance with the current A.M. Best Key Rating Guide.
- (b) Limit of \$1,000,000.00 per occurrence for bodily injury and property damage with an annual aggregate limit of \$2,000,000.00 which limits shall be endorsed to be per Project.
- (c) Coverage shall be at least as broad as ISO form GC 00 01.
- (d) No coverage shall be excluded from the standard policy without notification of individual exclusions being attached for the City's review and acceptance.
- (e) The coverage shall not exclude the following: premises/operations with separate aggregate; independent contracts; products/completed operations; contractual liability (insuring the indemnity provided herein) Host Liquor Liability, Personal & Advertising Liability; and Explosion, Collapse, and Underground coverage.

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

- (a) Business Automobile Liability insurance shall be written by a carrier rated "A:VIII" or better in accordance with the current A.M. Best Key Rating Guide.
- (b) Minimum Combined Single Limit of \$1,000,000.00 per occurrence for bodily injury and property damage.
- (c) The Business Auto Policy must show Symbol 1 in the Covered Autos Portion of the liability section in Item 2 of the declarations page.
- (d) The coverage shall include owned autos, leased or rented autos, non-owned autos, any autos and hired autos.
- (e) Pollution Liability coverage shall be provided by endorsement MCS-90, with a limit of \$1,000,000.00, where such exposures exist.

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

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

**27.07 Additional Insured.**

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

## **27.08 Builder's Risk**

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

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

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

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

- (a)** Pursuant to the requirements set forth in Title 28, Section 110.110 of the Texas Administrative Code, all employees of the Contractor, all employees of any and all subcontractors, and all other persons providing services on the Project must be covered by a workers' compensation insurance policy: either directly through their employer's policy (the Contractor's or subcontractor's policy) or through an executed coverage agreement on an approved Texas Department of Insurance Division of Workers' Compensation (DWC) form. Accordingly, if a subcontractor does not have his or her own policy and a coverage agreement is used, contractors and subcontractors must use that portion of the form whereby the hiring contractor agrees to provide coverage to the employees of the subcontractor. The portion of the form that would otherwise allow them not to provide coverage for the employees of an independent contractor may not be used.
- (b)** Workers' Compensation/ Employer's Liability insurance shall include the following terms:
  1. Employer's Liability minimum limits of \$1,000,000.00 for each accident/each disease/each

employee are required.

2. "Texas Waiver of Our Right to Recover From Others Endorsement, WC 42 03 04" shall be included in this policy.
3. Texas must appear in Item 3A of the Workers' Compensation coverage or Item 3C must contain the following: All States except those listed in Item 3A and the States of NV, ND, OH, WA, WV, and WY.

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

*"A. Definitions:*

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

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

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

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

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

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

extended.

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

- (1) *a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and*
- (2) *no later than seven calendar days after receipt by the Contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.*

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

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

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

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

- (1) *provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, that meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;*
- (2) *provide to the Contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;*
- (3) *provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;*
- (4) *obtain from each other person with whom it contracts, and provide to the Contractor:*
  - (a) *A certificate of coverage, prior to the other person beginning work on the project; and*
  - (b) *A new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate*

*of coverage ends during the duration of the project;*

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

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

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

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

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

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

- (a)** The company is authorized to do business in the State of Texas.
- (b)** The insurance policies provided by the insurance company are underwritten on forms that have been provided by the Department of Insurance or ISO.
- (c)** Original endorsements affecting coverage required by this section shall be furnished with the certificates of insurance.

## **28. BOND PROVISIONS**

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

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

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

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

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

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

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

## **29. SURETY**

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

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

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

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

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

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

## **30. COMPLIANCE WITH LAW**

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

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

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

## **31. SAFETY PRECAUTIONS**

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

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

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

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

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

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

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

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

## **32. TRENCH SAFETY**

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

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

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

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

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

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

### **33. INDEMNITY**

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

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

- (a) The City is damaged due to the act, omission, mistake, fault or default of the Contractor.**
- (b) In the event of any claims for payment for goods or services brought by any material suppliers, mechanics, laborers, or other subcontractors.**
- (c) In the event of any and all injuries to or claims of adjacent property owners caused by the Contractor, its agents, employees, and representatives.**
- (d) In the event of any damage to the floor, walls, etc., caused by the Contractor's personnel or equipment during installation.**
- (e) The removal of all debris related to the Work.**
- (f) The acts and omissions of the subcontractors it hired.**
- (g) The Contractor's failure to comply with applicable federal, state, or local regulations, that touch upon or concern the maintenance of a safe and protected working environment and the safe use and operation of machinery and equipment in that working environment, no matter where fault or responsibility lies.**

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

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

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

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

#### **34. RELEASE**

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

#### **35. PERMITS AND LICENSES**

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

#### **36. ROYALTIES AND LICENSING FEES**

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

## **37. BREACH OF CONTRACT & DAMAGES**

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

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

- (a)** If the Contractor shall fail to remedy any default after written notice thereof from City's Representative, as City's Representative shall direct; or
- (b)** If the Contractor shall fail for any reason other than the failure by City's Representative to make payments called upon when due; or
- (c)** If the Contractor commits a substantial default under any of the terms, provisions, conditions, or covenants contained in this Agreement.

## **38. TERMINATION FOR CAUSE**

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

- (a)** If the Contractor becomes insolvent, commits any act of bankruptcy, makes a general assignment for the benefit of creditors, or becomes the subject of any proceeding commenced under any statute or law for the relief of debtors and, after notice, fails to provide adequate assurance that it can remedy all of its defaults; or
- (b)** If a receiver, trustee, or liquidator of any of the property or income of the Contractor is appointed; or
- (c)** If the Contractor fails to prosecute the Work or any part thereof with diligence necessary to insure its progress and completion as prescribed by the time schedules; or
- (d)** If the Contractor fails to remedy any default within ten (10) calendar days after written notice thereof from City's Representative, as City's Representative shall direct; or

- (e) If the Contractor fails for any reason other than the failure by City's Representative to make payments called upon when due; or
- (f) If the Contractor abandons the Work.
- (g) If the Contractor commits a material default under any of the terms, provisions, conditions, or covenants contained in this Agreement.

## **39. TERMINATION FOR CONVENIENCE**

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

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

## **40. RIGHT TO COMPLETE**

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

## **41. CLOSE OUT**

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

- (a) Stop the work on the date and to the extent specified in the notice of termination;
- (b) Place no further orders or subcontracts for services, equipment, or materials, except as may be necessary for completion of such portion of the Work as is not terminated;

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

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

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

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

## **42. TERMINATION CONVERSION**

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

## **43. HIRING**

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

## **44. ASSIGNMENT**

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

## **45. EFFECTIVE DATE**

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

## **46. OTHER TERMS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**46.17 Fraud Reporting.** To reduce the risk of fraud and to protect the Contractor's financial information from fraud, the Contractor must report to the City in writing at [VendorInvoiceEntry@cctx.gov](mailto:VendorInvoiceEntry@cctx.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

**D&S CONTRACTING, INC.**

By: DeAnne Moore Smith  
Printed Name: DeAnne Moore Smith  
Title: President  
Date: 1/14/2026

**CITY OF COLLEGE STATION**

By: \_\_\_\_\_  
City Manager  
Date: \_\_\_\_\_

APPROVED:

\_\_\_\_\_  
City Attorney  
Date: \_\_\_\_\_

\_\_\_\_\_  
Assistant City Manager/CFO  
Date: \_\_\_\_\_

**EXHIBIT A**  
**DAVIS BACON WAGE RATES**

Contract No. 26300292  
Construction Agreement Over \$50,000  
Form 04-20-2023

"General Decision Number: TX20250234 11/21/2025

Superseded General Decision Number: TX20240234

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:	<ul style="list-style-type: none"><li>Executive Order 14026 generally applies to the contract.</li><li>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.</li></ul>
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:	<ul style="list-style-type: none"><li>Executive Order 13658 generally applies to the contract.</li><li>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.</li></ul>

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
1	03/07/2025

2	03/14/2025
3	05/16/2025
4	09/19/2025
5	11/21/2025

BOIL0074-003 01/01/2025

Rates	Fringes
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BOILERMAKER.....	\$ 33.17	24.92
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ELEV0031-003 01/01/2025

Rates	Fringes
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ELEVATOR MECHANIC.....	\$ 53.59	38.435+a+b
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## 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
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## POWER EQUIPMENT OPERATOR

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

IRON0084-011 06/01/2024

Rates	Fringes
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IRONWORKER, ORNAMENTAL.....	\$ 28.26	8.13
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PLUM0068-002 10/01/2024

Rates	Fringes
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PLUMBER.....	\$ 39.98	11.61
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\* PLUM0211-002 10/01/2025

Rates	Fringes
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PIPEFITTER (HVAC Pipe Installation Only).....	\$ 42.09	12.96
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PLUM0286-011 09/01/2025

Rates	Fringes
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PIPEFITTER (Excludes HVAC Pipe Installation).....	\$ 37.15	16.92
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SHEE0054-002 04/01/2020

Rates	Fringes
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SHEET METAL WORKER (HVAC Duct Installation Only).....	\$ 29.70	13.85
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\* SUTX2014-009 07/21/2014

Rates	Fringes
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BRICKLAYER.....	\$ 20.00	0.00
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CARPENTER, Excludes Form Work....	\$ 14.56 **	0.00
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CEMENT MASON/CONCRETE FINISHER...\$	14.68 **	0.00
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ELECTRICIAN.....	\$ 22.96	4.83
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FORM WORKER.....	\$ 11.83 **	0.00
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INSULATOR - MECHANICAL (Duct, Pipe & Mechanical System Insulation).....	\$ 19.77	7.13
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IRONWORKER, REINFORCING.....	\$ 13.35 **	0.00
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IRONWORKER, STRUCTURAL.....	\$ 20.74	5.25
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LABORER: Common or General.....\$	11.57 **	0.00
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LABORER: Mason Tender - Brick...\$	10.96 **	0.00
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LABORER: Mason Tender - Cement/Concrete.....\$	9.93 **	0.00
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LABORER: Pipelayer.....\$	12.49 **	2.13
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LABORER: Roof Tearoff.....\$	11.28 **	0.00
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OPERATOR: Backhoe/Excavator/Trackhoe.....\$	14.33 **	0.00
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OPERATOR: Bobcat/Skid Steer/Skid Loader.....\$	13.93 **	0.00
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OPERATOR: Bulldozer.....\$	18.29	1.31
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OPERATOR: Drill.....\$	16.22 **	0.34
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OPERATOR: Forklift.....\$	15.00 **	0.00
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OPERATOR: Grader/Blade.....\$	14.34 **	1.68
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OPERATOR: Loader.....\$	14.01 **	0.44
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OPERATOR: Mechanic.....\$	17.52 **	3.33
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OPERATOR: Paver (Asphalt, Aggregate, and Concrete).....\$	16.03 **	0.00
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OPERATOR: Roller.....\$	13.11 **	0.00
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PAINTER (Brush, Roller, and		
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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

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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 (29CFR 5.5 (a) (1) (iii)).

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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.

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#### 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.

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END OF GENERAL DECISION"

1. Payment greater than prevailing wage rate as listed within this document not prohibited per Texas Government Code, Chapter 2258, Prevailing Wage Rates, Subchapter A. General Provisions.
2. Not less than the following hourly rates shall be paid for the various classifications of work required by this project. Workers in classifications where rates are not identified shall be paid not less than the general prevailing rate of "laborer" for the various classifications of work therein listed.
3. The hourly rate for legal holiday and overtime work shall not be less than one and one-half (1 & 1/2) times the base hourly rate.
4. The rates listed are journeyman rates. Helpers may be used on the project and may be compensated at a rate determined mutually by the worker and employer, commensurate with the experience and skill of the worker but not at a rate less than 60% of the journeyman's wage as shown. Apprentices (enrolled in a federally certified apprentice program) may be used at the percentage rates of the journeyman scale stipulated in their apprenticeship agreement. At no time shall a journeyman supervise more than two (2) apprentices or helpers. All apprentices or helpers shall be under the direct supervision of a journeyman working as a crew.
5. Except for Heavy/Highway Construction, building construction wage rates shall be paid to all workers except those workers engaged in site work and construction beyond five feet of buildings.

**EXHIBIT B**  
**PERFORMANCE AND PAYMENT BONDS**

Contract No. 26300292  
Construction Agreement Over \$50,000  
Form 04-20-2023

PERFORMANCE BOND

Bond No. 54268469

THE STATE OF TEXAS

§

KNOW ALL MEN BY THESE PRESENTS:

THE COUNTY OF BRAZOS

§

THAT WE, D&S Contracting Inc, as Principal, hereinafter called "Contractor" and the other subscriber hereto United Fire & Casualty Company, as Surety, do hereby acknowledge ourselves to be held and firmly bound to the City of College Station, a municipal corporation, in the sum of two hundred thousand five hundred dollars ..... and 00..... /100 Dollars (\$ 200,500.00.....) for the payment of which sum, well and truly to be made to the City of College Station and its successors, the said Contractor and Surety do bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally.

**THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:**

WHEREAS, the Contractor has on or about this day executed a Contract in writing with the City of College Station for ITB 26-028 Drainage Repairs,

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

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

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

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

Contract No. 26300292  
Construction Agreement Over \$50,000  
Form 04-20-2023

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

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

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

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

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

**FOR THE CONTRACTOR:**

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

By: Samuel B. Smith

Name: Samuel B. Smith

Title: Secretary

Date: February 12, 2026

(Name of Contractor)

By: D&S Contracting Inc

Name: DeAnne Moore Smith

Title: President

Date: February 12, 2026

**FOR THE SURETY:**

**ATTEST/WITNESS** **(SEAL)**

By: Angie Dean

Name: Angie Dean

Title: Senior Account Executive

Date: February 12, 2026

United Fire & Casualty Company

(Full Name of Surety)

118 Second Ave SE

Cedar Rapids, IA 52401

(Address of Surety for Notice)

By: Nickolas Robert Lutz, III

Name: Nickolas Robert Lutz, III

Title: Attorney in Fact

Date: February 12, 2026

**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.**



UNITED FIRE & CASUALTY COMPANY, CEDAR RAPIDS, IA  
UNITED FIRE & INDEMNITY COMPANY, WEBSTER, TX  
FINANCIAL PACIFIC INSURANCE COMPANY, LOS ANGELES, CA  
CERTIFIED COPY OF POWER OF ATTORNEY

(original on file at Home Office of Company – See Certification)

Inquiries: Surety Department  
118 Second Ave SE  
Cedar Rapids, IA 52401

KNOW ALL PERSONS BY THESE PRESENTS, That United Fire & Casualty Company, a corporation duly organized and existing under the laws of the State of Iowa; United Fire & Indemnity Company, a corporation duly organized and existing under the laws of the State of Texas; and Financial Pacific Insurance Company, a corporation duly organized and existing under the laws of the State of California (herein collectively called the Companies), and having their corporate headquarters in Cedar Rapids, State of Iowa, does make, constitute and appoint

BRADLEY HURT, RODNEY HURT, NICKOLAS ROBERT LUTZ III, ANGELA YVONNE DEAN, EACH INDIVIDUALLY

their true and lawful Attorney(s)-in-Fact with power and authority hereby conferred to sign, seal and execute in its behalf all lawful bonds, undertakings and other obligatory instruments of similar nature provided that no single obligation shall exceed \$10,000,000.00 and to bind the Companies thereby as fully and to the same extent as if such instruments were signed by the duly authorized officers of the Companies and all of the acts of said Attorney, pursuant to the authority hereby given and hereby ratified and confirmed.

The Authority hereby granted shall expire the 3rd day of November, 2025 unless sooner revoked by United Fire & Casualty Company, United Fire & Indemnity Company, and Financial Pacific Insurance Company.

This Power of Attorney is made and executed pursuant to and by authority of the following bylaw duly adopted by the Boards of Directors of United Fire & Casualty Company, United Fire & Indemnity Company, and Financial Pacific Insurance Company.

**"Article VI – Surety Bonds and Undertakings"**

Section 2, Appointment of Attorney-in-Fact. "The President or any Vice President, or any other officer of the Companies may, from time to time, appoint by written certificates attorneys-in-fact to act in behalf of the Companies in the execution of policies of insurance, bonds, undertakings and other obligatory instruments of like nature. The signature of any officer authorized hereby, and the Corporate seal, may be affixed by facsimile to any power of attorney or special power of attorney or certification of either authorized hereby; such signature and seal, when so used, being adopted by the Companies as the original signature of such officer and the original seal of the Companies, to be valid and binding upon the Companies with the same force and effect as though manually affixed. Such attorneys-in-fact, subject to the limitations set of forth in their respective certificates of authority shall have full power to bind the Companies by their signature and execution of any such instruments and to attach the seal of the Companies thereto. The President or any Vice President, the Board of Directors or any other officer of the Companies may at any time revoke all power and authority previously given to any attorney-in-fact.

IN WITNESS WHEREOF, the COMPANIES have each caused these presents to be signed by its vice president and its corporate seal to be hereto affixed this 3rd day of November, 2023

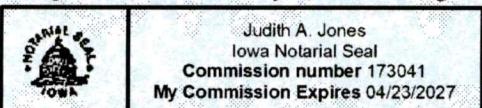


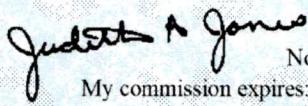
UNITED FIRE & CASUALTY COMPANY  
UNITED FIRE & INDEMNITY COMPANY  
FINANCIAL PACIFIC INSURANCE COMPANY

By:   
Vice President

State of Iowa, County of Linn, ss:

On 3rd day of November, 2023, before me personally came Kyanna M. Saylor to me known, who being by me duly sworn, did depose and say; that she resides in Cedar Rapids, State of Iowa; that she is a Vice President of United Fire & Casualty Company, a Vice President of United Fire & Indemnity Company, and a Vice President of Financial Pacific Insurance Company the corporations described in and which executed the above instrument; that she knows the seal of said corporations; that the seal affixed to the said instrument is such corporate seal; that it was so affixed pursuant to authority given by the Board of Directors of said corporations and that she signed her name thereto pursuant to like authority, and acknowledges same to be the act and deed of said corporations.

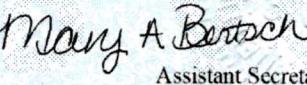


  
Notary Public  
My commission expires: 04/23/2027

I, Mary A. Bertsch, Assistant Secretary of United Fire & Casualty Company and Assistant Secretary of United Fire & Indemnity Company, and Assistant Secretary of Financial Pacific Insurance Company, do hereby certify that I have compared the foregoing copy of the Power of Attorney and affidavit, and the copy of the Section of the bylaws and resolutions of said Corporations as set forth in said Power of Attorney, with the ORIGINALS ON FILE IN THE HOME OFFICE OF SAID CORPORATIONS, and that the same are correct transcripts thereof, and of the whole of the said originals, and that the said Power of Attorney has not been revoked and is now in full force and effect.

In testimony whereof I have hereunto subscribed my name and affixed the corporate seal of the said Corporations  
this 12<sup>th</sup> day of February, 2024.



By:   
Assistant Secretary,  
UF&C & UF&I & FPIC

BPOA0045 122017

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TEXAS STATUTORY PAYMENT BOND

Bond No. 54268469

THE STATE OF TEXAS

§

KNOW ALL MEN BY THESE PRESENTS:

THE COUNTY OF BRAZOS

§

THAT WE, D&S Contracting Inc, as Principal, hereinafter called "Principal" and the other subscriber hereto United Fire & Casualty 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 two hundred thousand five hundred dollars..... and 00..... /100 Dollars (\$ 200,500.00.....) for payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns jointly and severally.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:

WHEREAS, Principal has entered into a certain contract with the City of College Station, dated the 12 day of February, 20 26, for ITB 26-028 Drainage Repairs, 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.

**FOR THE CONTRACTOR:**

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

By:   
Name: Samuel B. Smith  
Title: Secretary  
Date: February 12, 2026

(Name of Contractor)

By: D&S Contracting Inc  
Name: DeAnne Moore Smith  
Title: President  
Date: February 12, 2026



**FOR THE SURETY:**

ATTEST/WITNESS (SEAL)

By: Angie Dean  
Name: Angie Dean  
Title: Senior Account Executive  
Date: February 12, 2026

United Fire & Casualty Company  
(Full Name of Surety)

118 Second Ave SE  
Cedar Rapids, IA 52401  
(Address of Surety for Notice)

By: Nickolas Robert Lutz  
Name: Nickolas Robert Lutz, III  
Title: Attorney in Fact  
Date: February 12, 2026

**FOR THE CITY:**

REVIEWED:

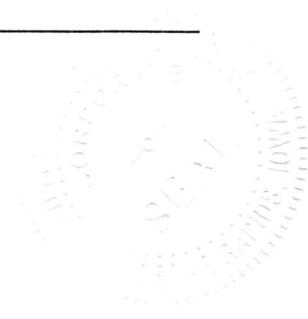
**THE FOREGOING BOND IS ACCEPTED ON  
BEHALF OF THE CITY OF COLLEGE  
STATION, TEXAS:**

City Attorney

City Manager

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

Contract No. 26300292  
Construction Agreement Over \$50,000  
Form 04-20-2023





UNITED FIRE & CASUALTY COMPANY, CEDAR RAPIDS, IA  
UNITED FIRE & INDEMNITY COMPANY, WEBSTER, TX  
FINANCIAL PACIFIC INSURANCE COMPANY, LOS ANGELES, CA  
CERTIFIED COPY OF POWER OF ATTORNEY  
(original on file at Home Office of Company - See Certification)

Inquiries: Surety Department  
118 Second Ave SE  
Cedar Rapids, IA 52401

KNOW ALL PERSONS BY THESE PRESENTS, That United Fire & Casualty Company, a corporation duly organized and existing under the laws of the State of Iowa; United Fire & Indemnity Company, a corporation duly organized and existing under the laws of the State of Texas; and Financial Pacific Insurance Company, a corporation duly organized and existing under the laws of the State of California (herein collectively called the Companies), and having their corporate headquarters in Cedar Rapids, State of Iowa, does make, constitute and appoint

BRADLEY HURT, RODNEY HURT, NICKOLAS ROBERT LUTZ III, ANGELA YVONNE DEAN, EACH INDIVIDUALLY

their true and lawful Attorney(s)-in-Fact with power and authority hereby conferred to sign, seal and execute in its behalf all lawful bonds, undertakings and other obligatory instruments of similar nature provided that no single obligation shall exceed \$10,000,000.00 and to bind the Companies thereby as fully and to the same extent as if such instruments were signed by the duly authorized officers of the Companies and all of the acts of said Attorney, pursuant to the authority hereby given and hereby ratified and confirmed.

The Authority hereby granted shall expire the 8th day of October, 2027 unless sooner revoked

by United Fire & Casualty

Company, United Fire & Indemnity Company, and Financial Pacific Insurance Company.

This Power of Attorney is made and executed pursuant to and by authority of the following bylaw duly adopted by the Boards of Directors of United Fire & Casualty Company, United Fire & Indemnity Company, and Financial Pacific Insurance Company.

**"Article VI - Surety Bonds and Undertakings"**

Section 2, Appointment of Attorney-in-Fact. "The President or any Vice President, or any other officer of the Companies may, from time to time, appoint by written certificates attorneys-in-fact to act in behalf of the Companies in the execution of policies of insurance, bonds, undertakings and other obligatory instruments of like nature. The signature of any officer authorized hereby, and the Corporate seal, may be affixed by facsimile to any power of attorney or special power of attorney or certification of either authorized hereby; such signature and seal, when so used, being adopted by the Companies as the original signature of such officer and the original seal of the Companies, to be valid and binding upon the Companies with the same force and effect as though manually affixed. Such attorneys-in-fact, subject to the limitations set forth in their respective certificates of authority shall have full power to bind the Companies by their signature and execution of any such instruments and to attach the seal of the Companies thereto. The President or any Vice President, the Board of Directors or any other officer of the Companies may at any time revoke all power and authority previously given to any attorney-in-fact.

IN WITNESS WHEREOF, the COMPANIES have each caused these presents to be signed by its vice president and its corporate seal to be hereto affixed this 8th day of October, 2025

UNITED FIRE & CASUALTY COMPANY  
UNITED FIRE & INDEMNITY COMPANY  
FINANCIAL PACIFIC INSURANCE COMPANY

By:   
Vice President

State of Iowa, County of Linn, ss:

On 8th day of October, 2025, before me personally came Kyanna M. Saylor to me known, who being by me duly sworn, did depose and say; that she resides in Cedar Rapids, State of Iowa; that she is a Vice President of United Fire & Casualty Company, a Vice President of United Fire & Indemnity Company, and a Vice President of Financial Pacific Insurance Company the corporations described in and which executed the above instrument; that she knows the seal of said corporations; that the seal affixed to the said instrument is such corporate seal; that it was so affixed pursuant to authority given by the Board of Directors of said corporations and that she signed her name thereto pursuant to like authority, and acknowledges same to be the act and deed of said corporations.



Notary Public  
My commission expires: 04/23/2027

I, Mary A. Bertsch, Assistant Secretary of United Fire & Casualty Company and Assistant Secretary of United Fire & Indemnity Company, and Assistant Secretary of Financial Pacific Insurance Company, do hereby certify that I have compared the foregoing copy of the Power of Attorney and affidavit, and the copy of the Section of the bylaws and resolutions of said Corporations as set forth in said Power of Attorney, with the ORIGINALS ON FILE IN THE HOME OFFICE OF SAID CORPORATIONS, and that the same are correct transcripts thereof, and of the whole of the said originals, and that the said Power of Attorney has not been revoked and is now in full force and effect.

In testimony whereof I have hereunto subscribed my name and affixed the corporate seal of the said Corporations  
this 12th day of February, 2026.



By:   
Assistant Secretary,  
UF&C & UF&I & FPI

BPOA0045 122017

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**EXHIBIT C**  
**CERTIFICATES OF INSURANCE AND ENDORSEMENTS**

Contract No. 26300292  
Construction Agreement Over \$50,000  
Form 04-20-2023



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
01/13/2026

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	Service Insurance Group, Inc. PO Box 5753 3840 Corporate Center Dr Bryan	TX 77805-5753	CONTACT NAME:	Angie Dean	FAX (A/C, No.): (979)774-3955	
			PHONE (A/C, No. Ext.):	(979)774-3900		
INSURED	D&S Contracting, Inc. P.O. Box 9100 College Station	TX 77842-	E-MAIL ADDRESS:	angie.dean@sigbcs.com		
			INSURER(S) AFFORDING COVERAGE			NAIC #
			INSURER A: Texas Mutual Ins Co			22945
			INSURER B: Bitco National Insurance Company			20095
			INSURER C:			
			INSURER D:			
INSURER E:						
INSURER F:						

## COVERAGEs

## CERTIFICATE NUMBER:

## REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.							
INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
B	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Blanket Addl Insured <input checked="" type="checkbox"/> Blanket Waiver Sub  GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC  OTHER:		X	CLP3758103	05/16/2025	05/16/2026	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000  \$
B	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY		X	CAP3758102	05/16/2025	05/16/2026	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$  \$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB CLAIMS-MADE  DED <input checked="" type="checkbox"/> RETENTION \$ 10,000			CUP3758104	05/16/2025	05/16/2026	EACH OCCURRENCE \$ 5,000,000  AGGREGATE \$ 5,000,000  \$
A	<input checked="" type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> Y/N <input checked="" type="checkbox"/> N/A (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below			0001179916-3	05/16/2025	05/16/2026	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
B	Contractors Equipment			CLP3758103	05/16/2025	05/16/2026	Owned
B	Leased/Rented			CLP3758103	05/16/2025	05/16/2026	Any One Piece \$500,000

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

Blanket Additional Insured and Blanket Waiver of Subrogation on all policies in favor of the certificate holder and any others as required by written contract. General Liability is Primary and Non-contributory.

CERTIFICATE HOLDER		CANCELLATION		AI 024891
City of College Station Risk Management PO Box 9960 College Station		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 		



WORKERS' COMPENSATION AND  
EMPLOYERS LIABILITY POLICY

WC 42 03 04 B  
Insured copy

## TEXAS WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

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

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

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

The premium for this endorsement is shown in the Schedule.

### Schedule

#### 1. ( ) Specific Waiver

Name of person or organization

#### (X) Blanket Waiver

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

#### 2. Operations: All Texas operations

#### 3. Premium:

The premium charge for this endorsement shall be **2.00** percent of the premium developed on payroll in connection with work performed for the above person(s) or organization(s) arising out of the operations described.

#### 4. Advance Premium: Included, see Information Page

This endorsement changes the policy to which it is attached effective on the inception date of the policy unless a different date is indicated below.  
(The following "attaching clause" need be completed only when this endorsement is issued subsequent to preparation of the policy.)

This endorsement, effective on 5/16/25 at 12:01 a.m. standard time, forms a part of:

Policy no. 0001179916 of Texas Mutual Insurance Company effective on 5/16/25

Issued to: D & S CONTRACTING INC

This is not a bill

NCCI Carrier Code: 29939

Authorized representative

5/12/25

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**EXTENDED LIABILITY COVERAGE**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE FORM**

It is agreed that the provisions listed below apply only upon the entry of an  in the box next to the caption of such provision.

A. <input checked="" type="checkbox"/> Broad Form Named Insured	F. <input checked="" type="checkbox"/> Coverage Territory Broadened
B. <input checked="" type="checkbox"/> Bodily Injury Extension	G. <input checked="" type="checkbox"/> Medical Payments - Increased Limits
C. <input checked="" type="checkbox"/> Employee As Insureds - Health Care Services	H. <input checked="" type="checkbox"/> Expanded Expected or Intended Exception
D. <input checked="" type="checkbox"/> Non-Owned Watercraft Liability	I. <input checked="" type="checkbox"/> Property Perils Legal Liability
E. <input checked="" type="checkbox"/> Liberalization	J. <input checked="" type="checkbox"/> Broadened Supplementary Payments

**A. BROAD FORM NAMED INSURED**

**SECTION II - WHO IS AN INSURED** , Paragraph 3 is deleted and replaced by the following:

3. Any organization you newly acquire or form, except for a partnership, joint venture or limited liability company, and over which you maintain majority ownership or interest (51% or more) or for which you have assumed the active management, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:
  - a. Coverage under this provision is afforded only until the end of the policy period or the 12-month anniversary of the policy inception date, whichever is earlier;
  - b. Coverage A does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization;
  - c. Coverage B does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

**B. BODILY INJURY EXTENSION**

**SECTION V - DEFINITIONS** , Paragraph 3, is deleted and replaced by the following:

3. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including mental anguish or death resulting from any of these, at any time. Mental anguish means any type of mental or emotional illness or disease.

**C. EMPLOYEES AS INSUREDs - HEALTH CARE SERVICES**

**SECTION II - WHO IS AN INSURED** , Item 2.a.(1)(d) is deleted.

## **D. NON-OWNED WATERCRAFT LIABILITY**

**SECTION I - COVERAGES, COVERAGE A, 2. EXCLUSIONS** , Item g.(2) is replaced with:

- (2) A watercraft you do not own that is:
  - (a) Less than 51 feet long; and
  - (b) Not being used to carry persons or property for a charge.

## **E. LIBERALIZATION**

**SECTION IV - CONDITIONS** , Is amended to include:

### **10. Liberalization**

If we adopt a change in our forms or rules which would broaden the coverage of this policy without an additional premium charge, the broader coverage will apply. This extension is effective upon the approval of such broader coverage in your state of domicile.

## **F. COVERAGE TERRITORY BROADENED**

**SECTION V - DEFINITIONS** , Item 4.a. Is replaced with:

- a. The United States of America (including its territories and possessions), Canada, Bermuda, the Bahamas, the Cayman Islands, British Virgin Islands and Puerto Rico.

## **G. MEDICAL PAYMENTS - INCREASED LIMITS**

Unless **COVERAGE C. - MEDICAL PAYMENTS** Is excluded from this policy:

**SECTION I - COVERAGES** , Coverage C, Insuring Agreement , Item c. Is added:

- c. The medical expense limit provided by this policy shall be the greater of:
  - (1) \$10,000; or
  - (2) The amount shown in the declarations.

## **H. EXPANDED EXPECTED or INTENDED EXCEPTION**

**SECTION I - COVERAGES** , 2. Exclusions Item a. Is amended as follows:

- a. Expected or Intended Injury - "bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect persons or property.

## **I. PROPERTY PERILS LEGAL LIABILITY**

- A. **SECTION I - COVERAGES, COVERAGE A, 2. Exclusions**, the last paragraph following exclusion q. Is replaced with:

Exclusion c. through n., do not apply to damage by fire, explosion, smoke, water damage, sprinkler leakage, or lightning to premises while rented to you or temporarily occupied by you

with the permission of the owner. A separate limit of insurance applies to this coverage as described in **SECTION III - LIMITS OF INSURANCE** .

**B. SECTION III - LIMITS OF INSURANCE** , Item 6, is replaced with:

6. Subject to 5. above, the Damage to Premises Rented to You Limit is the most we will pay under Coverage A for damages because of "property damage" to any one premises while rented to you, or in the case of damages by fire, explosion, smoke, water damage, sprinkler leakage or lightning, while rented to you or temporarily occupied by you with the permission of the owner, arising out of any one fire, explosion, smoke, water damage, sprinkler leakage or lightning incident.

The Damage to Premises Rented to You Limit provided by this policy shall be the greater of:

1. \$300,000 or
2. The amount shown in the declarations.

**C. SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS** , Item 4.b.(1)(a)(ii) is replaced with:

(ii) That is fire, explosion, smoke, water damage, sprinkler leakage or lightning insurance for premises while rented to you or temporarily occupied by you with the permission of the owner.

**D. SECTION V - DEFINITIONS** , Item 9.a. is replaced with:

a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire, explosion, smoke, water damage, sprinkler leakage or lightning to premises while rented to you or temporarily occupied by you with the permission of the owner is not an "insured contract."

**J. BROADENED SUPPLEMENTARY PAYMENTS**

**SECTION I - COVERAGES, SUPPLEMENTARY PAYMENTS - Coverages A and B**, Item 1.b. and 1.d. are replaced with:

1.b. The cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.

1.d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit," including actual loss of earnings up to \$500 a day because of time off from work.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## LAND IMPROVEMENT CONTRACTORS EXTENDED LIABILITY COVERAGE

This endorsement modifies insurance provided under the following:

### COMMERCIAL GENERAL LIABILITY COVERAGE FORM

It is agreed that the provisions listed below apply only upon the entry of an  in the box next to the caption of such provision.

- A.  Partnership and Joint Venture Extension
- B.  Contractors Automatic Additional Insured Coverage – Ongoing Operations
- C.  Automatic Waiver of Subrogation
- D.  Extended Notice of Cancellation, Nonrenewal
- E.  Unintentional Failure to Disclose Hazards
- F.  Broadened Mobile Equipment
- G.  Personal and Advertising Injury - Contractual Coverage
- H.  Nonemployment Discrimination
- I.  Liquor Liability
- J.  Broadened Conditions
- K.  Automatic Additional Insureds – Equipment Leases
- L.  Insured Contract Extension - Railroad Property and Construction Contracts
- M.  Construction Project General Aggregate Limits
- N.  Fellow Employee Coverage
- O.  Care, Custody or Control
- P.  Electronic Data Liability Coverage
- Q.  Consolidated Insurance Program Residual Liability Coverage
- R.  Automatic Additional Insureds – Managers or Lessors of Premises
- S.  Automatic Additional Insureds – State or Governmental Agency or Political Subdivisions – Permits or Authorizations
- T.  Contractors Automatic Additional Insured Coverage – Completed Operations
- U.  Additional Insured – Engineers, Architects or Surveyors

#### A. PARTNERSHIP AND JOINT VENTURE EXTENSION

The following provision is added to SECTION II - WHO IS AN INSURED :

The last full paragraph which reads as follows:

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations is deleted and replaced with the following:

With respect to the conduct of any past or present joint venture or partnership not shown as a Named Insured in the Declarations and of which you are or were a partner or member, you are an insured, but only with respect to liability arising out of "your work" on behalf of any partnership or joint venture not shown as a Named Insured in the Declarations, provided no other similar liability insurance is available to you for "your work" in connection with your interest in such partnership or joint venture.

**B. CONTRACTORS AUTOMATIC ADDITIONAL INSURED COVERAGE – ONGOING OPERATIONS**

**SECTION II – WHO IS AN INSURED** is amended to include as an additional insured any person or organization who is required by written contract to be an additional insured on your policy, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf; in the performance of your ongoing operations for the additional insured(s) at the project(s) designated in the written contract.

With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

This insurance is excess of all other insurance available to the additional insured, whether primary, excess, contingent or on any other basis, unless the written contract requires this insurance to be primary. In that event, this insurance will be primary relative to insurance policy(s) which designate the additional insured as a named insured in the declarations and we will not require contribution from such insurance if the written contract also requires that this insurance be non-contributory. But with respect to all other insurance under which the additional insured qualifies as an insured or additional insured, this insurance will be excess.

**C. AUTOMATIC WAIVER OF SUBROGATION**

Item 8. of **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS**, is deleted and replaced with the following:

8. Transfer of Rights of Recovery Against Others to Us and Automatic Waiver of Subrogation.

- a. If the insured has rights to recover all or part of any payment we have made under this coverage form, those rights are transferred to us. The insured must do nothing after loss to impair those rights. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.
- b. If required by a written contract executed prior to loss, we waive any right of recovery we may have against any person or organization because of payments we make for injury or damage arising out of "your work" for that person or organization.

**D. EXTENDED NOTICE OF CANCELLATION, NONRENEWAL**

Item A.2.b. of the **COMMON POLICY CONDITIONS**, is deleted and replaced with the following:

A.2.b. 60 days before the effective date of the cancellation if we cancel for any other reason.

Item 9. of **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS**, is deleted and replaced with the following:

**9. WHEN WE DO NOT RENEW**

- a. If we choose to nonrenew this policy, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 60 days before the expiration date.
- b. If we do not give notice of our intent to nonrenew as prescribed in a. above, it is agreed that you may extend the period of this policy for a maximum additional sixty (60) days from its scheduled expiration date. Where not otherwise prohibited by law, the existing terms, conditions and rates will remain in effect during that extension period. It is further agreed that so long as it is not otherwise prohibited by law, this one time sixty day extension is the sole remedy and liquidated damages available to the Insured as a result of our failure to give the notice as prescribed in 9. a. above.

**E. UNINTENTIONAL FAILURE TO DISCLOSE HAZARDS**

Although we relied on your representations as to existing and past hazards, if unintentionally you should fail to disclose all such hazards at the inception date of your policy, we will not deny coverage under this Coverage Form because of such failure.

**F. BROADENED MOBILE EQUIPMENT**

Item 12.b. of **SECTION V - DEFINITIONS**, is deleted and replaced with the following:

12.b. Vehicles maintained for use solely on or next to premises, sites or locations you own, rent or occupy.

**G. PERSONAL AND ADVERTISING INJURY - CONTRACTUAL COVERAGE**

Exclusion 2.e. of **SECTION I, COVERAGE B** is deleted.

**H. NONEMPLOYMENT DISCRIMINATION**

Unless "personal and advertising injury" is excluded from this policy:

Item 14. of **SECTION V - DEFINITIONS**, is amended to include:

"Personal and advertising Injury" also means embarrassment or humiliation, mental or emotional distress, physical illness, physical impairment, loss of earning capacity or monetary loss, which is caused by "discrimination."

**SECTION V - DEFINITIONS**, is amended to include:

"Discrimination" means the unlawful treatment of individuals based on race, color, ethnic origin, age, gender or religion.

Item 2. Exclusions of **SECTION I, COVERAGE B**, is amended to include:

"Personal and advertising Injury" arising out of "discrimination" directly or indirectly related to the past employment, employment or prospective employment of any person or class of persons by any Insured;

"Personal and advertising injury" arising out of "discrimination" by or at your, your agents or your "employees" direction or with your, your agents or your "employees" knowledge or consent;

"Personal and advertising injury" arising out of "discrimination" directly or indirectly related to the sale, rental, lease or sub-lease or prospective sale, rental, lease or sub-lease of any dwelling, permanent lodging or premises by or at the direction of any insured; or

Fines, penalties, specific performance or injunctions levied or imposed by a governmental entity, or governmental code, law, or statute because of "discrimination."

## I. LIQUOR LIABILITY

Exclusion 2.c. of SECTION I, COVERAGE A, is deleted.

## J. BROADENED CONDITIONS

Items 2.a. and 2.b. of SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS, are deleted and replaced with the following:

### 2. Duties In The Event Of Occurrence, Offense, Claim Or Suit:

- a. You must see to it that we are notified of an "occurrence" or an offense which may result in a claim as soon as practicable after the "occurrence" has been reported to you, one of your officers or an "employee" designated to give notice to us. Notice should include:
  - (1) How, when and where the "occurrence" or offense took place;
  - (2) The names and addresses of any injured persons and witnesses; and
  - (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.
- b. If a claim is made or "suit" is brought against any insured, you must:
  - (1) Record the specifics of the claim or "suit" and the date received as soon as you, one of your officers, or an "employee" designated to record such information is notified of it; and
  - (2) Notify us in writing as soon as practicable after you, one of your officers, your legal department or an "employee" you designate to give us such notice learns of the claims or "suit."

Item 2.e. is added to SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS :

- 2.e. If you report an "occurrence" to your workers compensation insurer which develops into a liability claim for which coverage is provided by the Coverage Form, failure to report such "occurrence" to us at the time of "occurrence" shall not be deemed in violation of paragraphs 2.a., 2.b., and 2.c. However, you shall give written notice of this "occurrence" to us as soon as you are made aware of the fact that this "occurrence" may be a liability claim rather than a workers compensation claim.

## K. AUTOMATIC ADDITIONAL INSURED - EQUIPMENT LEASES

SECTION II - WHO IS AN INSURED is amended to include any person or organization with whom you agree in a written equipment lease or rental agreement to name as an additional insured with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, at least in part, by your maintenance, operation, or use by you of the equipment leased to you by such person or organization, subject to the following additional exclusions.

The insurance provided to the additional insured does not apply to:

1. "Bodily injury" or "property damage" occurring after you cease leasing the equipment.
2. "Bodily injury" or "property damage" arising out of the sole negligence of the additional insured.

3. "Property damage" to:
  - a. Property owned, used or occupied by or rented to the additional insured; or
  - b. Property in the care, custody or control of the additional insured or over which the additional insured is for any purpose exercising physical control.

This insurance is excess of all other insurance available to the additional insured, whether primary, excess, contingent or on any other basis, unless the written contract requires this insurance to be primary. In that event, this insurance will be primary relative to insurance policy(s) which designate the additional insured as a Named Insured in the Declarations and we will not require contribution from such insurance if the written contract also requires that this insurance be non-contributory. But with respect to all other insurance under which the additional insured qualifies as an insured or additional insured, this insurance will be excess.

## **L INSURED CONTRACT EXTENSION- RAILROAD PROPERTY AND CONSTRUCTION CONTRACTS**

Item 9. of **SECTION V- DEFINITIONS** , is deleted and replaced with the following.

9. "Insured Contract" means:
  - a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
  - b. A sidetrack agreement;
  - c. Any easement or license agreement;
  - d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
  - e. An elevator maintenance agreement;
  - f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph f. does not include that part of any contract or agreement:

- (1) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
  - (a) Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
  - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
- (2) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (1) above and supervisory, inspection, architectural or engineering activities.

## M. CONSTRUCTION PROJECT GENERAL AGGREGATE LIMITS

This modifies SECTION III - LIMITS OF INSURANCE.

A. For all sums which can be attributed only to ongoing operations at a single construction project for which the insured becomes legally obligated to pay as damages caused by an "occurrence" under SECTION I - COVERAGE A, and for all medical expenses caused by accidents under SECTION I - COVERAGE C :

1. A separate Construction Project General Aggregate Limit applies to each construction project, and that limit is equal to the amount of the General Aggregate Limit shown in the Declarations.
2. The Construction Project General Aggregate Limit is the most we will pay for the sum of all damages under COVERAGE A, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard," and for medical expenses under COVERAGE C regardless of the number of:
  - a. Insureds;
  - b. Claims made or "suits" brought; or
  - c. Persons or organizations making claims or bringing "suits."
3. Any payments made under COVERAGE A for damages or under COVERAGE C for medical expenses shall reduce the Construction Project General Aggregate Limit for that construction project. Such payments shall not reduce the General Aggregate Limit shown in the Declarations nor shall they reduce any other Construction Project General Aggregate Limit for any other construction project.
4. The limits shown in the Declarations for Each Occurrence, Fire Damage and Medical Expense continue to apply. However, instead of being subject to the General Aggregate Limit shown in the Declarations, such limits will be subject to the applicable Construction Project General Aggregate Limit.

B. For all sums which cannot be attributed only to ongoing operations at a single construction project for which the insured becomes legally obligated to pay as damages caused by an "occurrence" under SECTION I - COVERAGE A, and for all medical expenses caused by accidents under SECTION I - COVERAGE C :

1. Any payments made under COVERAGE A for damages or under COVERAGE C for medical expenses shall reduce the amount available under the General Aggregate Limit or the Products-Completed Operations Aggregate Limit, whichever is applicable; and
2. Such payments shall not reduce any Construction Project General Aggregate Limit.

C. Payments for damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard" will reduce the Products-Completed Operations Aggregate Limit, and not reduce the General Aggregate Limit nor the Construction Project General Aggregate Limit.

D. If a construction project has been abandoned, delayed, or abandoned and then restarted, or if the authorized contracting parties deviate from plans, blueprints, designs, specifications or timetables, the project will still be deemed to be the same construction project.

E. The provisions of SECTION III - LIMITS OF INSURANCE not otherwise modified by this endorsement shall continue to be applicable.

## N. FELLOW EMPLOYEE COVERAGE

Exclusion 2.e. Employers Liability of SECTION I, COVERAGE A, is deleted and replaced with the following:

2.e. "Bodily Injury" to

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

This exclusion applies:

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

This exclusion does not apply to:

- (1) Liability assumed by the insured under an "insured contract"; or
- (2) Liability arising from any action or omission of a co-"employee" while that co-"employee" is either in the course of his or her employment or performing duties related to the conduct of your business.

Item 2.a. (1)(a) of SECTION II - WHO IS AN INSURED, is deleted and replaced with the following:

2.a. (1)(a) To you, to your partners or members (if you are a partnership or joint venture) or to your members (if you are a limited liability company), or to your "volunteer workers" while performing duties related to the conduct of your business.

## O. CARE, CUSTODY OR CONTROL

Exclusion 2.j.4 of SECTION I, COVERAGE A, is deleted and replaced with the following:

2.j.4 Personal property in the care, custody or control of the Insured. However, for personal property in the care, custody or control of you or your "employees," this exclusion applies only to that portion of any loss in excess of \$25,000 per occurrence, subject to the following terms and conditions:

- (a) The most that we will pay under this provision as an annual aggregate is \$100,000, regardless of the number of occurrences.
- (b) This provision does not apply to "employee" owned property or any property that is missing where there is not physical evidence to show what happened to the property.
- (c) The aggregate limit for this coverage provision is part of the General Aggregate Limit and SECTION III - LIMITS OF INSURANCE is changed accordingly.
- (d) In the event of damage to or destruction of property covered by this exception, you shall, if requested by us, replace the property or furnish the labor and materials necessary for repairs thereto, at actual cost to you, exclusive of prospective profit or overhead charges of any nature.

(e) \$2,500 shall be deducted from the total amount of all sums you became obligated to pay as damages on account of damage to or destruction of all property of each person or organization, including the loss of use of that property, as a result of each "occurrence." Our limit of liability under the endorsement as being applicable to each "occurrence" shall be reduced by the amount of the deductible indicated above; however, our aggregate limit of liability under this provision shall not be reduced by the amount of such deductible. The conditions of the policy, including those with respect to duties in the event of "occurrence," claims or "suit" apply irrespective of the application of the deductible amount. We may pay any part or all of the deductible amount to effect settlement of any claim or "suit" and, upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as has been paid by us.

## P. ELECTRONIC DATA LIABILITY COVERAGE

A. Exclusion 2.p. of COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY in SECTION I – COVERAGES is replaced by the following:

### 2. Exclusions

This insurance does not apply to:

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

Damages arising out of:

- (1) Any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information; or
- (2) The loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate "electronic data" that does not result from physical injury to tangible property

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

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

B. The following is added to Paragraph 2. EXCLUSIONS of SECTION I – COVERAGE B – PERSONAL AND ADVERTISING INJURY LIABILITY:

### 2. Exclusions

This insurance does not apply to:

Access Or Disclosure Of Confidential Or Personal Information

"Personal and advertising injury" arising out of any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information.

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

**C. The following definition is added to Section V – DEFINITIONS :**

"Electronic data" means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software (including systems and applications software), hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

**D. For the purposes of this coverage, the definition of "property damage" in SECTION V – DEFINITIONS is replaced by the following:**

"Property damage" means:

- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it;
- b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it; or
- c. Loss of, loss of use of, damage to, corruption of, inability to access, or inability to properly manipulate "electronic data", resulting from physical injury to tangible property. All such loss of "electronic data" shall be deemed to occur at the time of the "occurrence" that caused it.

For the purposes of this insurance, "electronic data" is not tangible property.

**Q. CONSOLIDATED INSURANCE PROGRAM RESIDUAL LIABILITY COVERAGE**

With respect to "bodily injury", "property damage", or "personal and advertising injury" arising out of your ongoing operations; or operations included within the "products-completed operations hazard", the policy to which this coverage is attached shall apply as excess insurance over coverage available to "you" under a Consolidated Insurance Program (such as an Owner Controlled Insurance Program or Contractors Controlled Insurance Program).

Coverage afforded by this endorsement does not apply to any Consolidated Insurance Program involving a "residential project" or any deductible or insured retention, specified in the Consolidated Insurance Program.

The following is added to Section V – Definitions

"Residential project" means any project where 30% or more of the total square foot area of the structures on the project is used or is intended to be used for human residency. This includes but is not limited to single or multifamily housing, apartments, condominiums, townhouses, co-operatives or planned unit developments and appurtenant structures (including pools, hot tubs, detached garages, guest houses or any similar structures). A "residential project" does not include military owned housing, college/university owned housing or dormitories, long term care facilities, hotels, motels, hospitals or prisons.

All other terms, provisions, exclusions and limitations of this policy apply.

**R. AUTOMATIC ADDITIONAL INSUREDs - MANAGERS OR LESSORS OR PREMISES**

**SECTION II – WHO IS AN INSURED** is amended to include:

Any person or organization with whom you agree in a written contract or written agreement to name as an additional insured but only with respect to liability arising out of the ownership, maintenance or use of that part of the premises, designated in the written contract or written agreement, that is leased to you and subject to the following additional exclusions:

This Insurance does not apply to:

1. Any "occurrence" which takes place after you cease to be a tenant in that premises.
2. Structural alterations, new construction or demolition operations performed by or on behalf of the additional insured listed in the written contract or written agreement.

This Insurance is excess of all other insurance available to the additional insured, whether primary, excess, contingent or on any other basis, unless the written contract requires this Insurance to be primary. In that event, this Insurance will be primary relative to insurance policy(s) which designate the additional insured as a Named Insured in the Declarations and we will not require contribution from such insurance if the written contract also requires that this insurance be non-contributory. But with respect to all other insurance under which the additional insured qualifies as an insured or additional insured, this insurance will be excess.

#### **S. AUTOMATIC ADDITIONAL INSURED – STATE OR GOVERNMENTAL AGENCY OR POLITICAL SUBDIVISIONS – PERMITS OR AUTHORIZATIONS**

**SECTION II – WHO IS AN INSURED** is amended to include any state or governmental agency or subdivision or political subdivision with whom you are required by written contract, ordinance, law or building code to name as an additional insured subject to the following provisions:

This Insurance applies only with respect to operations performed by you or on your behalf for which the state or governmental agency or subdivision or political subdivision has issued a permit or authorization.

This Insurance does not apply to:

1. "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the federal government, state or municipality; or
2. "Bodily injury" or "property damage" included within the "products-completed operations hazard".

This Insurance is excess of all other insurance available to the additional insured, whether primary, excess, contingent or on any other basis, unless the written contract requires this Insurance to be primary. In that event, this Insurance will be primary relative to insurance policy(s) which designate the additional insured as a Named Insured in the Declarations and we will not require contribution from such insurance if the written contract also requires that this insurance be non-contributory. But with respect to all other insurance under which the additional insured qualifies as an insured or additional insured, this insurance will be excess.

#### **T. CONTRACTORS AUTOMATIC ADDITIONAL INSURED COVERAGE – COMPLETED OPERATIONS**

**SECTION II – WHO IS AN INSURED** is amended to include as an additional insured any person or organization who is required by written contract to be an additional insured on your policy for completed operations, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the project designated in the contract, performed for that additional insured and included in the "products-completed operations hazard".

This Insurance is excess of all other insurance available to the additional insured, whether primary, excess, contingent or on any other basis, unless the written contract requires this Insurance to be primary. In that event, this Insurance will be primary relative to insurance policy(s) which designate the additional insured as a Named Insured in the Declarations and we will not require contribution from such insurance if the written contract also requires that this insurance be non-contributory. But with respect to all other insurance under which the additional insured qualifies as an insured or additional insured, this insurance will be excess.

#### **U. ADDITIONAL INSURED - ENGINEERS, ARCHITECTS OR SURVEYORS**

**SECTION II - WHO IS AN INSURED** is amended to include as an additional insured any architect, engineer or surveyor who is required by written contract to be an additional insured on your policy, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf; in the performance of your ongoing operations performed by you or on your behalf.

This includes such architect, engineer or surveyor, who may not be engaged by you, but is contractually required to be added as an additional insured to your policy.

With respect to the insurance afforded to these additional insureds, the following additional exclusion applies:

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

1. The preparing, approving, or failing to prepare or approve maps, drawings, opinions, reports, surveys, change orders, designs or specifications; or
2. Supervisory, inspection or engineering services.

This insurance is excess of all other insurance available to the additional insured, whether primary, excess, contingent or on any other basis, unless the written contract requires this insurance to be primary. In that event, this insurance will be primary relative to insurance policy(s) which designate the additional insured as a Named Insured in the Declarations and we will not require contribution from such insurance if the written contract also requires that this insurance be non-contributory. But with respect to all other insurance under which the additional insured qualifies as an insured or additional insured, this insurance will be excess.

BITCO GENERAL INSURANCE CORPORATION  
BITCO NATIONAL INSURANCE COMPANY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BROADENED COVERAGE - AUTOMOBILES

The following modifies insurance provided under:

**BUSINESS AUTO COVERAGE FORM**

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by this endorsement.

1 - Broad Form Named Insured	10 - Employee Hired Autos
2 - Automatic Waiver of Subrogation	11 - Bodily Injury Extension
3 - Automatic Additional Insured	12 - Hired Auto Physical Damage
4 - Primary and Noncontributory - Other Insurance Condition	13 - Enhanced Supplementary Payments
5 - Unintentional Failure to Disclose Hazards	14 - Fellow Employee Coverage for Designated Positions
6 - Extended Notice of Cancellation, Non-Renewal	15 - Physical Damage - Transportation Expenses
7 - When We Do Not Renew	16 - Rental Reimbursement Coverage
8 - Notice of Knowledge of Accident or Loss	17 - Loan/Lease Gap Coverage
9 - Employees as Insured	18 - Accidental Air Bag Discharge Coverage

**1. BROAD FORM NAMED INSURED**

**SECTION II. A. 1. - WHO IS AN INSURED** - Paragraph d. is added:

d. Any organization you newly acquire or form, except for a partnership, joint venture or limited liability company, and over which you maintain majority ownership or interest (51% or more) or for which you have assumed the active management, will qualify as a Named Insured if there is no other similar insurance available to that organization. However, coverage under this provision is only afforded until the end of the policy period or the 12-month anniversary of the policy inception date, whichever is earlier.

**2. AUTOMATIC WAIVER OF SUBROGATION**

**Section IV - Business Auto Conditions, Paragraph A.5, Transfer of Rights of Recovery Against Others to Us**, is deleted and replaced with the following:

- a. If the Insured has rights to recover all or part of any payment we have made under this Coverage Form, those rights are transferred to us. The Insured must do nothing after loss to impair those rights. At our request, the Insured will bring "suit" or transfer those rights to us and help us enforce them.
- b. If required by a written contract executed prior to loss, we waive any right of recovery we may have against any person or organization because of payments we make for damages under this coverage form.

**3. AUTOMATIC ADDITIONAL INSURED**

**SECTION II – WHO IS AN INSURED**, Paragraph A.1, Is amended to include as an "insured" any person or organization who is required by written contract or agreement to be an additional insured on your policy, but only with respect to liability arising out of operations performed by you or on your behalf for the additional insured.

**4. PRIMARY AND NONCONTRIBUTORY - OTHER INSURANCE CONDITION**

The following is added to the Other Insurance Condition in the Business Auto Coverage Form and the Other Insurance - Primary And Excess Insurance Provisions in the Motor Carrier Coverage Form and supersedes any provision to the contrary:

This Coverage Form's Covered Autos Liability Coverage is primary to and will not seek contribution from any other insurance available to an "insured" under your policy provided that:

1. Such "insured" is a Named Insured under such other insurance; and
2. You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to such "insured".

**5. UNINTENTIONAL FAILURE TO DISCLOSE HAZARDS**

Although we relied on your representations as to existing and past hazards, If unintentionally you should fail to disclose all such hazards at the inception date of your policy, we will not deny coverage under this Coverage Form because of such failure.

**6. EXTENDED NOTICE OF CANCELLATION, NON-RENEWAL**

The **COMMON POLICY CONDITIONS**, Item A.2.b. Is deleted and replaced with the following:

A.2.b. 60 days before the effective date of the cancellation if we cancel for any other reason.

**7. WHEN WE DO NOT RENEW**

**SECTION IV – BUSINESS AUTO CONDITIONS**, Is amended to add Item B.9.:

- a. If we choose to nonrenew this policy, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 60 days before the expiration date.
- b. If we do not give notice of our intent to nonrenew as prescribed in a. above, it is agreed that you may extend the period of this policy for a maximum additional sixty (60) days from its scheduled expiration date. Where not otherwise prohibited by law, the existing terms, conditions and rates will remain in effect during that extension period. It is further agreed that so long as it is not otherwise prohibited by law, this one-time sixty-day extension is the sole remedy and liquidated damages available to the insured as a result of our failure to give the notice as prescribed in 9. a. above.

**8. NOTICE OF KNOWLEDGE OF ACCIDENT OR LOSS**

**SECTION IV - BUSINESS AUTO CONDITIONS**, Item A.2.a. Is deleted and replaced with the following:

**2. Duties in the Event of Accident, Claim Suit or Loss:**

- a. You must see to it that we are notified of an "accident", "claim", "suit" or "loss" which may result in a claim as soon as practicable after the "occurrence" has been reported to you, a partner, a member, an officer, or an employee designated to give notice to us. Notice should include:
  - (1) How, when and where the "accident" or "loss" occurred;

- (2) The "insured's" name and address; and
- (3) To the extent possible, the names and addresses of any injured persons and witnesses.

## 9. EMPLOYEES AS INSURED

The following is added to the Section II - Covered Autos Liability Coverage, Paragraph A.1. Who Is An Insured provision:

Any "employee" of yours is an "insured" while using a covered "auto" you don't own, hire or borrow in your business or your personal affairs.

## 10. EMPLOYEE HIRED AUTOS

### A. Changes In Covered Autos Liability Coverage

The following is added to the Who Is An Insured Provision:

An "employee" of yours is an "insured" while operating an "auto" hired or rented under a contract or agreement in an "employee's" name, with your permission, while performing duties related to the conduct of your business.

### B. Changes In General Conditions

Paragraph 5.b. of the Other Insurance Condition in the Business Auto Coverage Form and Paragraph 5.f. of the Other Insurance - Primary And Excess Insurance Provisions Condition in the Motor Carrier Coverage Form are replaced by the following:

For Hired Auto Physical Damage Coverage, the following are deemed to be covered "autos" you own:

1. Any covered "auto" you lease, hire, rent or borrow; and
2. Any covered "auto" hired or rented by your "employee" under a contract in an "employee's" name, with your permission, while performing duties related to the conduct of your business.

However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".

## 11. BODILY INJURY EXTENSION

SECTION V - DEFINITIONS , Paragraph C. is deleted and replaced by the following:

C. "Bodily Injury" means bodily injury, sickness or disease sustained by a person, including mental anguish or death resulting from any of these, at any time. Mental anguish means any type of mental or emotional illness or disease.

## 12. HIRED AUTO PHYSICAL DAMAGE

SECTION III.A.4. - Coverage Extensions - Paragraph c. is added:

### c. Hired Auto Physical Damage

If Comprehensive, Specified Causes of Loss or Collision coverage is provided under this policy, then Hired Auto Physical Damage is provided for that coverage part subject to the following:

- (1) The most we will pay for any one "accident" or "loss" under this Hired Auto Physical Damage Coverage is the lesser of:
  - (a) The any one "Accident" or "Loss" amount of \$100,000;

- (b) The actual cash value; or
- (c) Cost of repair.

Our obligation to pay for a loss in c.(1) above will be reduced by a deductible. The deductible will be equal to the largest deductible applicable to any owned "auto" for that coverage. The deductible will be waived for "loss" caused by fire or lightning.

- (2) Subject to paragraph c.(1), above, we will provide coverage equal to the broadest physical damage coverage applicable to any covered "auto" shown in the declarations.
- (3) When you are required by written contract to indemnify a lessor for actual financial loss because of loss of use of a hired "auto" resulting from a covered "accident" or "loss", we will cover that financial loss subject to the limit specified in paragraph c.(1).

#### 13. ENHANCED SUPPLEMENTARY PAYMENTS

**SECTION II.A.2.a. COVERAGE EXTENSIONS**, Supplementary Payments (2) and (4) are replaced by the following:

- (2) Up to \$2,500 for the cost of bail bonds (including bonds for related traffic laws violations) required because of an "accident" we cover. We do not have to furnish these bonds.
- (4) All reasonable expenses incurred by the "Insured" at our request, including actual loss of earnings up to \$350 a day because of time off from work.

#### 14. FELLOW EMPLOYEE COVERAGE FOR DESIGNATED POSITIONS

The Fellow Employee Exclusion contained in Section II.B.5, does not apply to the following positions or job titles: foreman, supervisor, manager, officer, partner or other senior level "employee". Coverage is excess over all other collectible insurance.

#### 15. PHYSICAL DAMAGE - TRANSPORTATION EXPENSES

**SECTION III.A.4.a. Transportation Expenses**, is replaced by the following:

##### a. Transportation Expenses

We will pay up to \$50 per day to a maximum of \$1,500 for temporary transportation expense incurred by you because of the total theft of a covered "auto". We will pay only for those covered "autos" for which you carry either Comprehensive or Specified Cause of Loss Coverage. We will pay for temporary transportation expenses incurred during the period beginning 48 hours after the theft and ending, regardless of the policy's expiration, when the covered "auto" is returned to use or we pay for its "loss".

For autos provided with temporary transportation expense, the following physical damage coverage will apply:

- (1) The most we will pay for any one "accident" or "loss" under the temporary transportation expense physical damage coverage is the lesser of:
  - (a) The any one "Accident" or "Loss" amount of \$100,000;
  - (b) The actual cash value; or
  - (c) Cost of repair.

Our obligation to pay for a loss in a.(1) above will be reduced by a deductible. The deductible will be equal to the largest deductible applicable to any owned "auto" for that coverage. The deductible will be waived for "loss" caused by fire or lightning.

- (2) Subject to paragraph a.(1), above, we will provide coverage equal to the broadest physical damage coverage applicable to any covered "auto" shown in the declarations.
- (3) When you are required by written contract to indemnify a lessor for actual financial loss because of loss of use of a hired "auto" resulting from a covered "accident" or "loss", we will cover that financial loss subject to the limit specified in paragraph a.(1).

## 16. RENTAL REIMBURSEMENT COVERAGE

### SECTION III.A.4. - Coverage Extensions - Paragraph d. is added.

- d. If you carry Comprehensive, Specified Causes of Loss or Collision coverage for the damaged covered "auto" as provided under this policy, then Rental Reimbursement Coverage is provided for that coverage part subject to the following:
  - 1. We will pay for rental reimbursement expenses incurred by you for the rental of an "auto" because of "loss" other than theft, to a covered "auto". Payment applies in addition to the otherwise applicable amount of each coverage you have on a covered "auto". No deductibles apply to this coverage.
  - 2. We will only pay for those expenses incurred during the policy period beginning 24 hours after the "loss" and ending, regardless of the policy's expiration, with the lesser of the following number of days:
    - (a) The number of days reasonably required to repair or replace the covered "auto"; or,
    - (b) 30 days.
    - (c) Our payment is limited to the lesser of the following amounts:
      - (1) Necessary and actual expenses incurred; or
      - (2) \$50 per day.

## 17. LOAN/LEASE GAP COVERAGE

### Physical Damage Coverage: Is amended by the addition of the following:

In the event of a total "loss" to a covered "auto", we will pay your additional legal obligation for any difference between the actual cash value of the "auto" at the time of the loss and the "outstanding balance" of the loan/lease, not to exceed \$2,500 for any one vehicle or \$25,000 annually in aggregate.

For the purposes of this endorsement, "outstanding balance" means the amount you owe on the loan/lease at the time of loss less any amounts representing taxes, overdue payments, penalties, interest or charges resulting from overdue payments, additional mileage charges, excess wear and tear charges or lease termination fees, costs for extended warranties, credit Life Insurance, Health, Accident or Disability Insurance purchased with the loan or lease; and carry-over balances from previous loans or leases.

## 18. ACCIDENTAL AIR BAG DISCHARGE COVERAGE

### SECTION III.B.3.a - Exclusions . This exclusion does not apply to the accidental discharge of an air bag.



WORKERS' COMPENSATION AND  
EMPLOYERS LIABILITY POLICY

WC 42 06 01  
Insured copy

### TEXAS NOTICE OF MATERIAL CHANGE ENDORSEMENT

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

In the event of cancellation or other material change of the policy, we will mail advance notice to the person or organization named in the Schedule. The number of days advance notice is shown in the Schedule.

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

#### Schedule

1. Number of days advance notice: 30
2. Notice will be mailed to: PER LIST ON FILE

This endorsement changes the policy to which it is attached effective on the inception date of the policy unless a different date is indicated below.  
(The following "attaching clause" need be completed only when this endorsement is issued subsequent to preparation of the policy.)

This endorsement, effective on 5/16/25 at 12:01 a.m. standard time, forms a part of:

Policy no. 0001179916 of Texas Mutual Insurance Company effective on 5/16/25

Issued to: D & S CONTRACTING INC

This is not a bill

Authorized representative

NCCI Carrier Code: 29939

5/12/25

PO Box 12058, Austin, TX 78711-2058

texasmutual.com | (800) 859-5995 | Fax (800) 359-0650

WC 42 06 01

**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 26-028 INCORPORATED BY REFERENCE INTO THIS CONTRACT

**EXHIBIT E**  
**CONSTRUCTION SCHEDULE**

SUBSTANTIAL COMPLETION TIME 90 DAYS AFTER NOTICE TO PROCEED

Contract No. 26300292  
Construction Agreement Over \$50,000  
Form 04-20-2023

**EXHIBIT F**  
**SCHEDULE OF VALUES**

Contract No. 26300292  
Construction Agreement Over \$50,000  
Form 04-20-2023

**February 12, 2026**  
**Item No. 7.4.**  
**Fire Inspections, Monitoring and Repair Contract**

**Sponsor:** Jennifer Cain, Director Capital Projects

**Reviewed By CBC:** City Council

**Agenda Caption:** Presentation, discussion, and possible action on a contract with API National Service Group Inc, in the amount of \$175,000 for fire inspections, monitoring, and repairs.

**Relationship to Strategic Goals:**

Core Services and Infrastructure

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

**Summary:** The contract consists of services associated with the repair and regular replacement of fire extinguishers, maintenance of backflow devices, kitchen hood inspections, sprinkler inspections, server room suppression system inspections, and Call-Out repair services. American Fire Protection Group Incorporated has a branch in College Station and the services that they offer amount to a one-stop shop for the city's critical fire protection needs. The amount of this contract is set up to cover any critical fire suppression repairs that may arise over the course of this fiscal year.

Contingent upon City Council approval, Monitoring, Inspection, Re-Charges of City Fire Extinguishers and Alarm Systems, and Service Call-Outs will be procured through BuyBoard Contract #751-24. BuyBoard is a cooperative purchasing program that provides competitively solicited contracts for use by governmental agencies. Each BuyBoard contract is awarded following a formal solicitation process that fully complies with state and local competitive procurement statutes. By utilizing an existing BuyBoard contract, the City leverages volume-based pricing and discounts, reduced administrative costs, and increased procurement efficiency.

**Budget & Financial Summary:** Fire inspections, monitoring, and repair funds are included in the department's O&M budget.

**Attachments:**

1. API National Services Contract\_VendorSigned



## **CITY OF COLLEGE STATION GENERAL SERVICES CONTRACT**

This **General Services Contract** (“Contract”) is executed by and between the **City of College Station, Texas**, a Texas-Home-Rule Municipal Corporation (“City”) and API National Service Group, Inc. (“Contractor”), collectively referred as the Parties, for the following project, monitoring, inspection, re-charges of City fire extinguishers and alarm systems, and service call-outs, and pursuant to the promises, representations, warranties, obligations, and consideration herein described, including monetary and non-monetary consideration, the sufficiency of which is hereby acknowledged, the Parties do hereby agree as follows:

### **ARTICLE I PAYMENT, TERM, SPECIAL DEFINITIONS, AND INTERPRETATION**

**1.1 Consideration.** In consideration for the services and work performed in the Scope of Services/Work see **Exhibit A** (Scope of Services or Work) and Contractor’s Completion of work in conformity with this Contract, as well as the non-monetary consideration in the form of the Contractor’s representations, warranties, promises, and obligations contained in this Contract, the City shall pay the Contractor an amount not to exceed One Hundred Seventy-Five Thousand **and NO/100 Dollars** (\$175,000.00).

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

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

**1.4 Term.** The initial term of the Contract is for one (1) year with the potential option to renew for two (2) additional one (1) year terms for a total of three (3) years; however, it is expressly required that the Parties must mutually agree in writing (through the execution of a subsequent amendment or other revision of this Contract) to approve any renewal of this Contract.

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

**1.6 Special Definitions.** Unless specially defined in this Contract, words used in this Contract shall be interpreted according to their common usage or meaning to result in the most reasonable application. Unless otherwise designated, the following special definitions shall apply whether a term or phrase appears in capital letters or in bolded, italicized, or underlined print:

- (a)**     **“Business Day”** means a day other than a Saturday, Sunday, or holiday recognized by the City, and unless described by this Contract as a “Business Day,” a “day” herein described shall mean a calendar day.

- (b) **“City”** means the City of College Station, Texas, a signing Party to this Contract, including its elected officials, appointed officials, officers, employees, representatives, agents, successors and permitted assigns.
- (c) **“City Council” or “Council”** means the City Council of the City of College Station, Texas, the governing body of the City.
- (d) **“City Manager”** means the City Manager of the City of College Station, Texas.
- (e) **“Contract” or “Agreement”** means this General Services Contract including all attached exhibits approved and executed by the signing Parties.
- (f) **“Contractor”** means the Contractor as described above, a signing Party to this Contract, including its directors, officers, members, managers, partners, employees, representatives, agents, subcontractors, successors, and permitted assigns.
- (g) **“Contractor Business Records”** means the business records created or maintained by the Contractor (or on its behalf) regarding the performance of this Contract that the City reasonably needs to inspect, copy, and review to determine Contractor compliance with this Contract.
- (h) **“Default”** means the conduct, act, or omission by a Party which constitutes a breach or violation of a duty, obligation, representation, or responsibility imposed on that Party by this Contract. Default is synonymous with material default as used in this Contract.
- (i) **“Insurance Coverage”** includes not only commercial insurance coverage but also risk pool coverage as allowed by law.
- (j) **“Party”** means a signing Party to this Agreement. The signing Parties to this Contract collectively are the City and the Contractor.
- (k) **“Project”** means the City’s project made the subject of this Contract, as defined by the Scope of Work or Services described in this Contract in **Exhibit A**.
- (l) **“Scope of Services or Work”** means the services, goods, and work described in this Contract for the City’s Project, as described in **Exhibit A**.

## 1.7 **Interpretation.**

- (a) Unless otherwise designated in this Contract, the past, present, or future tense shall each include the other, the masculine or feminine gender shall each include the other, and the singular and plural number shall each include the other where necessary for a correct meaning.
- (b) All statements made in the preamble and preliminary recitals of this Contract and all attached documents are incorporated by reference. The following documents

are attached to this Contract as exhibits: **Exhibit A** – Scope of Services/Work; **Exhibit B** – Payment Schedule; and **Exhibit C** – Certificates of Insurance.

## **ARTICLE II** **CHANGE ORDER**

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

**(a) City Manager Approval.** When the original Contract amount plus all change orders is \$50,000 or less, the City Manager or his designee may approve the written change order provided the change order does not increase the total amount set forth in the Contract to more than \$50,000. A change order resulting in a revised Contract amount exceeding \$50,000 may be subject to additional statutory requirements as applicable; and

When the original Contract plus all change orders is greater than \$50,000 but less than \$100,000, the City Manager or his designee may approve the written change order provided the change order does not increase the total amount set forth in the Contract to more than \$100,000. For such contracts, when a change order results in a total Contract amount that exceeds \$100,000, the City Council of the City must approve such change order prior to commencement of the services or work. The sum of all change orders may not exceed 25% of the original contract amount; and

**(b) City Council Approval.** When the original contract amount plus all change orders is greater than \$100,000, the City Manager or his designee may approve the written change order provided the change order does not exceed \$50,000. For such contracts, when a change order exceeds \$50,000, the City Council of the City must approve such change order prior to commencement of the services or work. The sum of all change orders may not exceed 25% of the original contract amount.

**(c) Increase in Scope.** Any request by the Contractor for an increase in the Scope of Services/Work and an increase in the amount listed in Article I of this Contract shall be made and approved by the City prior to the Contractor providing such services or work or the right to payment for such additional services or work shall be waived.

**(d) Dispute.** If there is a dispute between the Contractor and the City respecting any service or work provided or to be provided hereunder by the Contractor, including a dispute as to whether such service or work is additional to the Scope of Services or Work included in this Contract, the Contractor agrees to continue providing on

a timely basis all services or work to be provided by the Contractor hereunder, including any service as to which there is a dispute.

## **ARTICLE III INDEPENDENT CONTRACTOR AND SUBCONTRACTORS**

**3.1 Independent Contractor.** It is understood and agreed by the parties that the Contractor is an independent contractor retained for the services described in the Scope of Services or Work. The Contractor shall be solely responsible for and have control over the means, methods, techniques and procedures, and for coordination of all portions of the work or services. Unless otherwise provided in the Contract, the Contractor shall provide and pay for labor, materials, equipment, tools, utilities, transportation, and other facilities and services necessary for proper execution and completion of the work or services. In addition, at the appropriate times, the Contractor shall arrange and bear cost of tests, inspections, and approvals of portions of the work or services required by the Contract or by laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. The City will not control the manner or the means of the Contractor's performance but shall be entitled to a work product as in the Scope of Services or Work. The City will not be responsible for reporting or paying employment taxes or other similar levies that may be required by the United States Internal Revenue Service or other State or Federal agencies. This Contract does not create a joint venture.

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

## **ARTICLE IV INSURANCE**

**4.1** The Contractor shall procure and maintain, at its sole cost and expense for the duration of this Contract, sufficient insurance coverage, as herein described, against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the services performed by the Contractor, its officers, agents, volunteers, and employees.

**4.2** The Contractor's insurance shall list the City of College Station, its officers, agents, volunteers, and employees as additional insureds. More specifically, the following shall be required. Certificates of insurance evidencing the required insurance coverage policies are attached in **Exhibit C**. During the term of this Contract, Contractor's insurance policies shall meet the minimum requirements of this section.

**4.3 Types.** Contractor shall acquire and maintain for Contract duration the following types of insurance:

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

**4.4 General Requirements Applicable to All Policies.** The following General requirements applicable to all insurance coverage policies shall apply:

- (a) Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent and delivered to the City in a timely manner according to this instrument.
- (b) Certificates of Insurance and endorsements shall be furnished and delivered to the City on the most current State of Texas Department of Insurance-approved forms to the City's Representative no later than 3 days before this instrument is submitted for final approval and execution by the City; shall be attached to this Contract as **Exhibit C**; and shall be approved by the City before work begins.
- (c) Contractor shall be responsible for all deductibles on any policies obtained in compliance with this Agreement. Deductibles shall be listed on the Certificate of Insurance and are acceptable on a per-occurrence basis only.
- (d) The City will accept only licensed Insurance Carriers authorized to do business in the State of Texas.
- (e) The City will not accept "claims made" policies.
- (f) Coverage shall not be suspended, canceled, non-renewed or reduced in limits of liability before thirty (30) days written notice has been given to the City.

**4.5 Commercial General Liability.** The following Commercial General Liability requirements shall apply:

- (a) General Liability insurance shall be written by a carrier rated "A:VIII" or better under the current A. M. Best Key Rating Guide.
- (b) Policies shall contain an endorsement listing the City as Additional Insured and further providing "primary and non-contributory" language with regard to self-insurance or any insurance the City may have or obtain.
- (c) Limits of liability must be equal to or greater than \$1,000,000 per occurrence for death, bodily injury, and property damage, with an annual aggregate limit of \$2,000,000.00. Limits shall be endorsed to be per project.
- (d) No coverage shall be excluded from the standard policy without notification of individual exclusions being submitted for the City's review and acceptance before the execution of this contract by the City.
- (e)
- (f) The coverage shall not exclude the following: premises/operations with separate aggregate; independent contracts; products/completed operations; contractual liability (insuring the indemnity provided herein) Host Liquor Liability, and Personal & Advertising Liability. **Limitation of Liability. Notwithstanding anything to the contrary in this Agreement, the total aggregate liability of**

**the Contractor to the City, and to any third party, arising out of or related to this Agreement (including any indemnity obligations), whether in contract, tort, strict liability, or otherwise, shall not exceed the limits of liability required under subsection (c) above (\$1,000,000 per occurrence and \$2,000,000 annual aggregate), except to the extent such limitation is prohibited by applicable law.**

**4.6 Business Automobile Liability.** The following Business Automobile Liability requirements shall apply:

- (a) Business Automobile Liability insurance shall be written by a carrier rated "A:VIII" or better under the current A. M. Best Key Rating Guide.
- (b) Policies shall contain an endorsement listing the City as Additional Insured and further providing "primary and non-contributory" language with regard to self-insurance or any insurance the City may have or obtain.
- (c) Combined Single Limit of Liability of \$1,000,000 per occurrence for death, bodily injury, and property damage.
- (d) The Business Auto Policy must show Symbol 1 in the Covered Autos Portion of the liability section in Item 2 of the declarations page.
- (e) The coverage shall include any autos, owned autos, leased or rented autos, non-owned autos, and hired autos operated by the Contractor on (i) City property, (ii) the job or work site associated with or related to the business purpose or Scope of Services/Work described by this Contract, (iii) any other property or road in performance of this contract.

**4.7 Workers' Compensation/Employer's Liability Insurance.** The following Workers' Compensation Insurance shall include the following terms:

- (a) Employer's Liability limits of liability of \$1,000,000 for each accident/each disease/each employee are required;
- (b) "Texas Waiver of Our Right to Recover From Others Endorsement, WC 42 03 04" shall be included in this policy; and
- (c) TEXAS must appear in Item 3A of the Workers' Compensation coverage or Item 3C must contain the following: "All States except those named in Item 3A and the States of NV, ND, OH, WA, WV, and WY".

## **ARTICLE V** **INDEMNIFICATION AND RELEASE**

**5.1 Indemnification.** To the fullest extent permitted by law, Contractor shall indemnify and hold harmless the City and its Council members, officials, officers, agents, volunteers, and employees (the "Indemnified Parties") from and against third-party claims for bodily injury, death, or damage to tangible property, but only to the extent caused by the negligent acts or omissions of Contractor or those for whom Contractor is legally responsible in the performance of the work or services under this Contract. Contractor shall have no obligation to indemnify, hold harmless, or defend any Indemnified Party from or against any claims to the extent caused by the negligence or willful misconduct of that Indemnified Party or any other third party. The parties intend this section to be interpreted and enforced in accordance with, and not to require any indemnity or defense prohibited by, Chapter 151 of the Texas Insurance Code or other applicable Texas law.

## ARTICLE VI GENERAL TERMS

**6.1 Performance.** Contractor, its officers, employees, associates, representatives, agents, subcontractors, successors, permitted assigns and other representatives expressly warrant and represent that they shall perform all the work and services described in the Scope of Services or Work in a good, workmanlike, and professional manner and in accordance with this Contract, and all applicable laws, codes, and regulations. Contractor and its aforesaid representatives shall be fully qualified and competent to perform the work or services. Contractor shall undertake and complete the work or services in a timely manner.

**6.2 Termination.**

- (a) Termination for Convenience.** The City may terminate the Project and this Contract, at any time, for convenience. In the event of such termination the City will notify the Contractor in writing and the Contractor shall cease work immediately. Contractor shall be compensated for the work and services performed provided Contractor is not in default of this Contract. Should the City terminate this Contract for convenience, the City shall pay Contractor for the work and services performed and expenses incurred before the date of termination, provided the Contractor is not in default of this contract.
- (b)** This **Contract** also may be terminated: **(a)** by the City upon a default committed by the Contractor; **(b)** by a subsequent written termination Contract executed with the mutual consent of the contracting Parties; and **(c)** at the conclusion of the Contract term, unless the Contract term is extended by a written amended Contract executed with the mutual consent of the contracting Parties as herein required.

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

**6.4 Amendment.** This Contract may only be amended by written instrument approved and executed by the Parties.

**6.5 Taxes.** The City is exempt from payment of state and local sales and use taxes on labor and materials incorporated into the project made the basis of this Contract. If necessary, it is the Contractor's responsibility to obtain a sales tax permit, resale certificate, and exemption certificate that shall enable the Contractor to buy any materials to be incorporated into the project and then resell the aforementioned materials to the City without paying the tax on the materials at the time of purchase.

**6.6 Compliance with Laws.** The Contractor will comply with all applicable federal, state, and local statutes, regulations, ordinances, and other laws, including but not limited to the Immigration Reform and Control Act (IRCA) regarding the Contractor's performance, operations and activities pursuant to this Contract. The Contractor may not knowingly obtain the labor or services of an undocumented worker. The Contractor, not the City, must verify eligibility for employment as required by IRCA. Nothing in this Contract shall be construed to alter or affect the obligation of the Contractor to comply with any applicable federal or Texas statute, rule, or regulation, and any applicable local ordinance, rule, or regulation regarding the performance of this Contract or the Contractor's operations and activities regarding the project made the subject of this Contract, and further, the parties would show that prior to the approval of this Contract by the City, the Contractor has submitted to the City: (a) a properly executed Form CIQ/Conflicts of Interest Questionnaire pursuant to Chapter 176 of the Texas Local Government Code; and (b) a properly executed Form 1295/Texas Ethics Commission Certificate of Interested Parties pursuant to Section 2252.908 of the Texas Government Code.

**6.7 Waiver of Terms.** No waiver or deferral by either Party of any term or condition of this Contract shall be deemed or construed to be a waiver or deferral of any other term or condition or subsequent waiver or deferral of the same term or condition. Also, no waiver of a default occurs if a non-defaulting Party fails to immediately declare a default or delays in taking any action regarding a default committed by a defaulting Party.

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

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

**6.10 Prioritization.** Contractor and City agree that City is a political subdivision of the State of Texas and is thus subject to certain laws. Because of this there may be documents or portions thereof added by Contractor to this Contract as exhibits that conflict with such laws, or that conflict with the terms and conditions herein excluding the additions by Contractor. In either case, *to the extent required by non-waivable applicable law, such law shall prevail, and to the extent necessary to comply with such law, the applicable provision of this Contract shall control over any directly conflicting term in Contractor's exhibits.*

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

**6.12 Agree to Terms.** The parties state that they have read the terms and conditions of this Contract and agree to the terms and conditions contained in this Contract.

**6.13 Effective Date.** This Contract goes into effect when duly approved by all the parties hereto. The Effective Date is the date the last signing Party executes this Contract.

**6.14 Notice.** Any official notice under this Contract will be sent to the following addresses:

**CITY OF COLLEGE STATION**

Attn: Craig Dohnalik  
PO BOX 9960  
1101 Texas Ave  
College Station, TX 77842  
cdohnalik@cstx.gov

**API NATIONAL SERVICE GROUP, INC**

Attn: Shawn Sanders  
5931 Rice Creek Parkway  
Shoreview MN 55126  
shawn.sanders@afpgusa.us

**6.15 Governmental Immunity.** This Contract is subject to the proper application of the doctrine of governmental immunity.

**6.16 Duplicate Originals.** The parties may execute this Contract in duplicate originals, each of equal dignity, and further, copies of this complete and fully executed Contract (including copies of signatures) shall have the same force and effect as an original.

**6.17 Exhibits.** All exhibits to this Contract are incorporated and made part of this Contract for all purposes.

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

- (a) **Boycott Israel.** If this Contract is for goods and services subject to § 2271.002 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 § 2276.002 Texas Government Code Contractor herein verifies that it (i) does not boycott energy companies; and (ii) will not boycott energy companies during the term of this Contract.

**6.19 Fraud Reporting.** To reduce the risk of fraud and to protect the Contractor's financial information from fraud, the Contractor must report to the City in writing at

[VendorInvoiceEntry@cstx.gov](mailto:VendorInvoiceEntry@cstx.gov) if the Contractor reasonably suspects or knows if any of their financial information has been subject to fraudulent activity or suspected fraudulent activity.

## 6.20 Default.

- (a) The City may declare a Default of this Contract if the Contractor commits a Default of this Contract and fails to cure the default during an authorized cure period as herein described.
- (b) If the City declares a Default of this Contract, it is agreed that the City may modify or terminate this Contract, and the City, in such event, shall be entitled to pursue all remedies allowed or authorized by law, equity, or this Contract.
- (c) The City shall notify the Contractor of a Default in writing, and the Parties agree as follows: (i) the default notice shall specify and reasonably explain the basis for the declaration of default; (ii) regarding an authorized opportunity to cure, the Contractor shall have 10 days from the receipt of the default notice to cure the default; (iii) where fulfillment of any obligation requires more than 10 days, the Contractor's performance shall be commenced within 10 days after the default notice receipt and such performance shall be diligently continued until the default is cured; and (iv) however, if such default cannot be cured, or cannot be cured within 45 days from the date of the default notice receipt, the Contractor shall be liable for and will promptly perform under this Contract and pay to the City within 60 days from receipt of the default notice all amounts due the City for the default as described in this Contract.
- (d) Should a Default be committed by the Contractor, the City may pursue and recover all remedies authorized by law, equity or this Contract, including: (i) termination of this Contract; (ii) litigation (with or without a trial by jury) including all authorized causes of action, claims, and damages; (iii) equitable relief or extraordinary relief, including all authorized injunction, specific performance, and mandamus relief; and (iv) all authorized remedies for the (a) recovery of all accrued monetary amounts due the City but not paid by the Contractor to the City under this Contract, and (b) recovery of the City's reasonably incurred attorney's fees, reimbursement amounts, and other expenses, costs, interest, offsets, and credits due the City as allowed by law.
- (e) Should a Default be committed by the City, the Contractor may pursue and recover all remedies authorized by law, equity, or this Contract, including: (i) termination of this Contract; (ii) litigation (with or without a trial by jury) including all authorized causes of action, claims, and damages; (iii) equitable relief, specific performance, or extraordinary relief, including all authorized injunction and mandamus relief; and (iv) recovery of the reasonably incurred attorney's fees, reimbursement amounts, and other expenses, costs, interest, offsets, and credits due the Contractor as allowed by law.

## 6.21 Alternative Dispute Resolution.

No suit shall be filed by a Party regarding a dispute arising under or related to this Contract unless the Parties first attempt to submit the dispute to

mediation pursuant to Chapter 2009 of the Texas Government Code and Chapter 154 of the Texas Civil Practice and Remedies Code. Notwithstanding anything to the contrary stated in this Contract, however, a Party may file suit solely for injunction or mandamus relief regarding an aforesaid dispute without first submitting that dispute to mediation. The mediation shall be held in Brazos County, Texas, within 30 days of a Party sending notice to the other Party requesting mediation, unless otherwise agreed in writing by the Parties. Each Party shall pay its own expenses incurred for the mediation, including attorney fees, mediator fees, and travel expenses. The mediator shall be selected by the Parties' agreement; however, should they fail to agree on a mediator, the dispute shall be submitted to the following public institution for assignment of a mediator and the holding of the mediation at that institution: Aggie Dispute Resolution Program, Texas A&M University School of Law, 1515 Commerce Street, Fort Worth, Texas 76102-6509, (800) 733-9529.

### **List of Exhibits**

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

**API NATIONAL SERVICE GROUP**

By:   
Title: President  
  
Printed Name: Lauren Thompson  
Date: 1/18/2026

**CITY OF COLLEGE STATION**

By: \_\_\_\_\_  
City Manager  
Date: \_\_\_\_\_

**APPROVED:**

John A. Haislet  
City Attorney  
Date: 1/20/2026

John A. Haislet  
Assistant City Manager/CFO  
Date: 1/20/2026

**EXHIBIT A**  
**SCOPE OF SERVICES/WORK**

The terms and conditions of this Contract shall take precedence and control over any term or provision of the Scope of Services/Work that in any way conflicts with, differs from, or attempts to alter the terms of this Contract.

**SEE ATTACHED PROPOSAL BELOW...**

**SERVICE CALL-OUTS**

- **STANDARD LABOR RATE: \$112.00 PER HOUR, PER TECHNICIAN**
- **OVERTIME: 1.5× THE STANDARD RATE**
- **DOUBLE TIME: 2× THE STANDARD RATE**

**REFERENCE BUYBOARD CONTRACT #751-24**

November 12, 2025

Quote #: G-5595

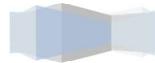
**Attention:** City of College Station  
304 Holleman Rd. E  
College Station, TX 77840

**Regarding:** 2026 Fiscal Year Contract Proposal

API National Service Group and American Fire Protection Group are pleased to present the following scope of work and proposal for the referenced property.

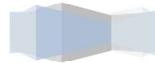
**Scope of Work:**

I. ANNUAL INSPECTIONS					
ITEM	QTY	DESCRIPTION	UNIT PRICE	TOTAL	
1A	23	Annual standard inspections of Sprinklers	\$132.98	\$3,058.54	
1B	13	Annual standard inspections of Back Flow <b>Building</b> Devices	\$106.38	\$1,382.94	
1C	7	Annual standard inspections of <b>Vaulted</b> Back Flow Devices	\$212.77	\$1,489.39	
1D	3	Annual standard inspections of Domestic Water Devices	\$106.38	\$319.14	
2	21	Annual standard inspections of Fire Alarm Systems	\$425.53	\$8,936.13	
3	704	Includes all annual standard inspections of Extinguishers (ABC, BC, etc.)	\$7.45	\$5,244.80	
5	1	Extinguishing Systems City Hall (Computer Server Room)	\$265.96	\$265.96	
6	1	Utility Customer Service (Computer server room)	\$265.96	\$265.96	
7	1	Carter Creek Wastewater (Computer server room)	\$265.96	\$265.96	
7A	1	New Police Station (Computer server room)	\$265.96	\$265.96	
8	9	Annual Inspection Kitchen Hood Fire	\$132.98	\$1,196.82	
9	15	Kitchen Hood Links (Replace at Kitchen Hood Inspection)	\$24.46	\$366.90	
10	1	Fire Pump Inspection and Test (City Hall)	\$282.07	\$282.07	
<b>Subtotal: Annual Inspections</b>				<b>\$23,340.57</b>	



II. SEMI-ANNUAL INSPECTIONS					
ITEM	QTY	DESCRIPTION		UNIT PRICE	TOTAL
11	9	Includes all semi-annual standard inspections of Commercial Kitchen hood systems		\$132.98	\$1,196.82
12	15	Kitchen Hood Links (Replace at Kitchen Hood Inspection)		\$24.46	\$366.90
13	4	Semi-Annual Clean Agent Inspection (Computer Server Rms) Utility, Carter Creek Waste, City Hall, New Police Station		\$425.53	\$1,702.12
<b>Subtotal: Semi- Annual Inspections</b>				<b>\$3,265.84</b>	

III. EXTINGUISHER PURCHASES					
ITEM	QTY	TYPE	SIZE	UNIT PRICE	TOTAL
11	10	ABC	2 ½ lb	\$90.43	\$904.30
12	35	ABC	5 lb	\$111.70	\$3,909.50
13	10	ABC	10 lb	\$159.57	\$1,595.70
14	6	ABC	20 lb	\$292.55	\$1,755.30
15	6	BC	2 ½ lb.	N/A	
16	1	BC	10 lb.	N/A	
17	1	CO2	5 lb.	\$404.26	\$425.53
18	1	CO2	10 lb.	\$510.64	\$505.32
19	1	CO2	15 lb.	\$595.74	\$558.51
20	1	P-W	2 ½ gal.	\$382.98	\$382.98
21	7	CLN Agent FK-5-1-12 (Halotron)	5 lb.	\$1,336.17	\$9,353.19
<b>Subtotal: Extinguisher Purchases</b>				<b>\$19,390.33</b>	



#### IV. EXTINGUISHER RE-CHARGES/SERVICING

The quantities below are the City's estimated extinguisher inventory and thus the potential re-charges. They are for bid purposes only and are not guaranteed re-charges (incl. parts if any). **All pricing should include all normal parts and materials necessary to inspect, test, service, tag, clean, refill and certify as agreed upon.**

**Firm Fixed Prices** are to be offered for the items listed below for the initial contract period

ITEM	QTY	TYPE	SIZE	RECHARGE PRICE	TOTAL
22	80	ABC	2 ½ lb	\$42.55	\$3,404.00
23	300	ABC	5 lb.	\$47.87	\$14,361.00
24	125	ABC	10 lb	\$53.19	\$6,648.75
25	40	ABC	20 lb	\$69.15	\$2,766.00
26	10	BC	2 ½ lb	N/A	
27	10	BC	10 lb	N/A	
28	10	CO2	5 lb.	\$53.19	\$531.90
29	10	CO2	10 lb	\$79.79	\$797.90
30	10	CO2	15 lb.	\$106.38	\$1,063.80
31	10	P-W	2 ½ gal.	\$31.91	\$319.10
32	5	Halotron	5 lb.	N/A	
<b>Subtotal: Extinguisher Re-Charges/ Services</b>				<b>\$29,892.45</b>	

**V. FIRE ALARM MONITORING**

QTY	BUILDING	ADDRESS	PANEL	DIALER	UNIT PRICE	TOTAL
12	Central Park Admin	1000 Krenek Tap	Silent Knight 5207	Evac 2101-RMT	\$60.00	\$720.00
12	New City Hall	1101 Texas Ave.	Simplex 4100 ES	Starlink	\$60.00	\$720.00
12	CS Utility Admin	1601 Graham Rd	Silent Knight 5208	Silent Knight	\$60.00	\$720.00
12	CS Utility Training Bldg.	1603 Graham Rd	Silent Knight 5208	Silent Knight 5205	\$60.00	\$720.00
12	CS Utility Dispatch	1601 Graham Rd	Silent Knight 5700		\$60.00	\$720.00
12	Fire #2	2100 Rio Grande	Silent Knight SK-5208	Silent Knight 5129	\$60.00	\$720.00
12	Fire #3	1900 Barron Rd	Silent Knight SK-5208	Silent Knight 5205	\$60.00	\$720.00
12	Fire #5	1601 William D. Fitch	Silent Knight SK 5208	Silent Knight 5205	\$60.00	\$720.00
12	Fire #6	610 University Dr.	Siemens FS-250		\$60.00	\$720.00
12	Library	1818 Harvey Mitchell	Simplex 4005	Silent Knight 5104B	\$60.00	\$720.00
12	Lincoln Center Bldg. A	1000 Eleanor	Silent Knight 5104	Silent Knight 5205	\$60.00	\$720.00
12	Lincoln Center Bldg.	1000 Eleanor	Silent Knight 5805	Cell Dialer Verizon	\$60.00	\$720.00
12	Municipal Court	300 Krenek Tap	Silent Knight IPF-100	Silent Knight IPF 100/7860	\$60.00	\$720.00
12	Police Dept.	2611 TX Ave	Firequest 200	Silent Knight 5104B	\$60.00	\$720.00
12	Public Works	310 William King Cole	Fire Lite Mini Scan 424A	Silent Knight 5104B	\$60.00	\$720.00
12	Utility Customer Service	310 Krenek Tap	Notifier AFP200	Notifier 911-A	\$60.00	\$720.00
12	CCWWTP Lab	2200 North Forest Pkwy	Silent Knight 6700	Cell Dialer AT&T	\$60.00	\$720.00
12	Central Park Concession	1000 Krenek Tap	DMP XR500		\$60.00	\$720.00
12	Lick Creek Park Nature Center	13600 Rock Prairie Rd	Fire Lite MS-5UD		\$60.00	\$720.00
12	Visit BCS Building	1207 Texas Ave S	Silent Knight		\$60.00	\$720.00
12	Post Oak Mall	1508 Harvey Road	Fire Lite		\$60.00	\$720.00
12	Community Center	2277 Dartmouth Drive	Silent Knight		\$60.00	\$720.00
12	Field of Honor Cemetery	3800 Raymond Stozer Pkwy	Silent Knight		\$60.00	\$720.00
<b>Subtotal: Fire Alarm Monitoring</b>						<b>\$16,560.00</b>



**Exclusions:**

- Any additional fees for further requirements not outlined within the given scope of work and/or contract.
- Any credentials required to access facilities at the local level.
- Additional costs incurred by third-party reporting required by AHJ's at the local level.
- The testing of systems tied into fire systems that are outside defined scope(s) such as inspections requiring coordination with an electrician, elevator technician, mechanic, plumber, etc.
- Painting of pipe, piping, valves.
- Patching or cutting of any kind.
- Fees for labor outside of defined scopes as required by jurisdictional requirements.
- Permits and submittals unless specified above.
- Damage incurred from lack of integrity of existing system components.
- Fire watch and / or temporary fire protection is specifically excluded.
- X-raying, cutting, patching, and painting of any walls, floors, or ceilings.
- Warranty of existing systems and owner provided equipment.
- Protection of the existing building, furniture, or equipment while performing our work.

**Clarifications:**

- Free and clear access is given to all equipment.
- Labor is to be performed during normal business hours unless specified above.
- Additional charges may apply for work that is canceled by customer after technician arrives on-site.

Technician Inspection Labor: \$25,935.00

Technician Recharge Labor: \$29,820.00

Fire Alarm Cellular Monitoring: \$16,560.00

**OTHER DIRECT COSTS/ MATERIALS WITHOUT PRICING CATALOG ON CONTRACT:**

- Other Materials: \$20,345.50

**Project Total: \$92,660.50**

\*This is a Firm Fixed Price Quote

Due to the volatility of products and material costs, we reserve the right to adjust all prices based on the cost of materials at the time of contract. The customer may be required to pay for materials at the time of contract to guarantee price and/or an equitable adjustment will be added to our contract amount by means of a change order equal to the amount of the "material" increase. Any contractual agreement related to this quoted work must include language that relieves API from any costs or liquidated damages that may result from unavailability of products. This includes inflated material costs due to material shortages and tariffs.

API National Service Group (NSG) assumes that no federal funds are being appropriated to fund this project. NSG understands EDGAR requirements are applicable when federal funds are appropriated for this project.

Furthermore, no DBE/HUB participation goals or EDGAR requirements are included or inferred. Should this project involve DBE/HUB goals, prevailing wage, and/or federal funding, please advise in writing regarding the specific nature of those goals or requirements and specifically how they impact API National Service Group.

This proposal may not be combined with any other proposals or contracts unless written approval from NSG.

5

The pricing in this proposal is valid for 30 days unless otherwise approved by API NSG

Unless otherwise stated above, this quote excludes the cost of any state, federal or local taxes.

**EXHIBIT B**  
**PAYMENT SCHEDULE**

Payment is a fixed fee in the amount listed in Article I of this Contract. This amount shall be payable by the City pursuant to the schedule listed below and upon completion of the services and written acceptance by the City. The City will pay such invoices in compliance with the Texas Prompt Payment Act.

Schedule of Payment for each phase:

**Total NTE: \$175,000**

**EXHIBIT C**  
**CERTIFICATES OF INSURANCE**



# CERTIFICATE OF LIABILITY INSURANCE

Page 1 of 2

DATE (MM/DD/YYYY)  
01/09/2026

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 Willis Towers Watson Midwest, Inc. c/o 26 Century Blvd P.O. Box 305191 Nashville, TN 372305191 USA	CONTACT NAME: WTW Certificate Center	
	PHONE (A/C, No, Ext): 1-877-945-7378	FAX (A/C, No): 1-888-467-2378
INSURED APi National Service Group, Inc. 5931 Rice Creek Parkway Shoreview, MN 55126	E-MAIL ADDRESS: certificates@wtwco.com	
	INSURER(S) AFFORDING COVERAGE	NAIC #
	INSURER A: Zurich American Insurance Company	16535
	INSURER B:	
	INSURER C:	
	INSURER D:	
	INSURER E:	
INSURER F:		

## COVERAGES

CERTIFICATE NUMBER: W43635050

## 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	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR	Y	Y	GLO 8902940 06	12/31/2025	12/31/2026	EACH OCCURRENCE	\$ 4,000,000
	<input checked="" type="checkbox"/> Contractual Liability						DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 4,000,000
							MED EXP (Any one person)	\$ 10,000
	GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO- JECT <input type="checkbox"/> LOC						PERSONAL & ADV INJURY	\$ 4,000,000
	OTHER:						GENERAL AGGREGATE	\$ 8,000,000
							PRODUCTS - COMP/OP AGG	\$ 8,000,000
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY	Y	Y	BAP 8488453 06	12/31/2025	12/31/2026	COMBINED SINGLE LIMIT (Ea accident)	\$ 5,000,000
							BODILY INJURY (Per person)	\$
							BODILY INJURY (Per accident)	\$
							PROPERTY DAMAGE (Per accident)	\$
								\$
	<input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE						EACH OCCURRENCE	\$
							AGGREGATE	\$
								\$
	<input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$							
A	<input checked="" type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY <input type="checkbox"/> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N No	N/A	WC 8902941 06	12/31/2025	12/31/2026	<input checked="" type="checkbox"/> PER STATUTE	OTH-ER
							E.L. EACH ACCIDENT	\$ 5,000,000
							E.L. DISEASE - EA EMPLOYEE	\$ 5,000,000
							E.L. DISEASE - POLICY LIMIT	\$ 5,000,000

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

This Voids and Replaces Previously Issued Certificate Dated 12/18/2025 WITH ID: W42983915.

Contract # 26300276

City of College Station, its officers, agents, volunteers, and employees are included as Additional Insureds as respects to General Liability and Auto Liability when required by written contract.

## CERTIFICATE HOLDER

## CANCELLATION

City of College Station PO Box 9960 1101 Texas Avenue College Station, TX 77842	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE 

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## ADDITIONAL REMARKS SCHEDULE

AGENCY Willis Towers Watson Midwest, Inc.	NAMED INSURED APi National Service Group, Inc. 5931 Rice Creek Parkway Shoreview, MN 55126	
POLICY NUMBER See Page 1		
CARRIER See Page 1	NAIC CODE See Page 1	EFFECTIVE DATE: See Page 1

### ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,

FORM NUMBER: 25 FORM TITLE: Certificate of Liability Insurance

General Liability and Auto Liability policies shall be Primary and Non-contributory with any other insurance in force for or which may be purchased by Additional Insureds when required by written contract.

Waiver of Subrogation applies in favor of Additional Insureds with respects to General Liability, Auto Liability and Workers Compensation when required by written contract and as permitted by law.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **DESIGNATED INSURED FOR COVERED AUTOS LIABILITY COVERAGE**

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM  
BUSINESS AUTO COVERAGE FORM  
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by this endorsement.

This endorsement identifies person(s) or organization(s) who are "insureds" for Covered Autos Liability Coverage under the Who Is An Insured provision of the Coverage Form. This endorsement does not alter coverage provided in the Coverage Form.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

**Named Insured: API Group, Inc.**

**Endorsement Effective Date: 12/31/2025**

### **SCHEDULE**

**Name Of Person(s) Or Organization(s):**

Any person or organization when required by written contract, agreement or permit and is executed prior to the loss.

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

Each person or organization shown in the Schedule is an "insured" for Covered Autos Liability Coverage, but only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured provision contained in Paragraph **A.1.** of Section **II** – Covered Autos Liability Coverage in the Business Auto and Motor Carrier Coverage Forms and Paragraph **D.2.** of Section **I** – Covered Autos Coverages of the Auto Dealers Coverage Form.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US (WAIVER OF SUBROGATION)**

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM  
BUSINESS AUTO COVERAGE FORM  
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

**Named Insured: API Group, Inc.**

**Endorsement Effective Date: 12/31/2025**

### **SCHEDULE**

**Name(s) Of Person(s) Or Organization(s):**

Any person or organization when required by written contract, agreement or permit and is executed prior to the loss.

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

**The Transfer Of Rights Of Recovery Against  
Others To Us** condition does not apply to the person(s) or organization(s) shown in the Schedule, but only to the extent that subrogation is waived prior to the "accident" or the "loss" under a contract with that person or organization.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **PRIMARY AND NONCONTRIBUTORY – OTHER INSURANCE CONDITION**

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM  
BUSINESS AUTO COVERAGE FORM  
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

**A.** The following is added to the **Other Insurance Condition** in the Business Auto Coverage Form and the **Other Insurance – Primary And Excess Insurance Provisions** in the Motor Carrier Coverage Form and supersedes any provision to the contrary:

This Coverage Form's Covered Autos Liability Coverage is primary to and will not seek contribution from any other insurance available to an "insured" under your policy provided that:

1. Such "insured" is a Named Insured under such other insurance; and
2. You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to such "insured".

**B.** The following is added to the **Other Insurance Condition** in the Auto Dealers Coverage Form and supersedes any provision to the contrary:

This Coverage Form's Covered Autos Liability Coverage and General Liability Coverages are primary to and will not seek contribution from any other insurance available to an "insured" under your policy provided that:

1. Such "insured" is a Named Insured under such other insurance; and
2. You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to such "insured".

# Additional Insured – Owners, Lessees Or Contractors – Scheduled Person Or Organization



**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

Policy No. **GLO 8902940 06**

Effective Date: **12/31/2025**

This endorsement modifies insurance provided under the:

## **Commercial General Liability Coverage Part**

### **SCHEDULE MAN001**

<b>Name Of Additional Insured Person(s) Or Organization(s):</b>	<b>Location(s) Of Covered Operations</b>
Blanket when required by written contract, agreement, or permit and is executed prior to loss.	All projects or locations where required by written contract.

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 to the extent of liability for "bodily injury", "property damage" or "personal and advertising injury" caused, by:

1. Your negligent acts or omissions; or
2. The negligent acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

**B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:**

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance, or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

All other terms, conditions, provisions and exclusions of this policy remain the same.

# Additional Insured – Owners, Lessees Or Contractors – Completed Operations



**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

Policy No. **GLO 8902940 06**

Effective Date: **12/31/2025**

This endorsement modifies insurance provided under the:

## Commercial General Liability Coverage Part

### SCHEDULE MAN 002

Name Of Additional Insured Person(s) Or Organization(s):	Location And Description Of Completed Operations
Blanket when required by written contract, agreement or permit and is executed prior to loss.	All projects or locations where required by written contract.

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

**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 to the extent of liability for "bodily injury" or "property damage" caused by your negligent acts or omissions in the completion of "your work" at the location designated and described in the schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

All other terms, conditions, provisions and exclusions of this policy remain the same.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **PRIMARY AND NONCONTRIBUTORY – OTHER INSURANCE CONDITION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
LIQUOR LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

The following is added to the **Other Insurance** Condition and supersedes any provision to the contrary:

### **Primary And Noncontributory Insurance**

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured under your policy provided that:

- (1)** The additional insured is a Named Insured under such other insurance; and

- (2)** You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US (WAIVER OF SUBROGATION)**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
ELECTRONIC DATA LIABILITY COVERAGE PART  
LIQUOR LIABILITY COVERAGE PART  
POLLUTION LIABILITY COVERAGE PART DESIGNATED SITES  
POLLUTION LIABILITY LIMITED COVERAGE PART DESIGNATED SITES  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART  
RAILROAD PROTECTIVE LIABILITY COVERAGE PART  
UNDERGROUND STORAGE TANK POLICY DESIGNATED TANKS

### **SCHEDULE**

**Name Of Person(s) Or Organization(s):** Any person or organization when required by written contract, agreement or permit executed prior to the loss.

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

The following is added to Paragraph **8. Transfer Of Rights Of Recovery Against Others To Us** of **Section IV – Conditions:**

We waive any right of recovery against the person(s) or organization(s) shown in the Schedule above because of payments we make under this Coverage Part. Such waiver by us applies only to the extent that the insured has waived its right of recovery against such person(s) or organization(s) prior to loss. This endorsement applies only to the person(s) or organization(s) shown in the Schedule above.

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

This endorsement changes the policy to which it is attached effective on inception date of the policy unless a different date is indicated below.

(The following "attaching clause" need be completed only when this endorsement is issued subsequent to preparation of the policy).

This endorsement, effective 12:01 AM 12/31/2025 forms a part of Policy No. WC 8902941 06

Issued to API GROUP, INC.

By Zurich American Insurance Company

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.

This agreement shall not operate directly or indirectly to benefit any one not named in the Schedule.

Schedule

Any person or organization required by written contract, agreement or permit executed prior to the loss.

This form is not applicable in California, Kentucky, New Hampshire, New Jersey, North Dakota, Ohio, Texas, Utah, or Washington. This form is not applicable in Missouri when there is a construction code on the policy and there is Missouri premium or exposure.

WC 00 03 13  
(Ed. 04/84)

Countersigned by



Authorized Representative

**February 12, 2026**  
**Item No. 7.5.**  
**McCulloch Water/Wastewater Rehab Deductive Change Order**

**Sponsor:** Jennifer Cain, Director Capital Projects

**Reviewed By CBC:** City Council

**Agenda Caption:** Presentation, discussion, and possible action on a deductive change order with Kieschnick General Contractors, Inc, in the amount of \$557,172 for the McCulloch Water and Wastewater Rehabilitation Project.

**Relationship to Strategic Goals:**

Core Services and Infrastructure

**Recommendation(s):** Staff recommends approval.

**Summary:** The City recently completed work in the McCulloch Neighborhood to rehabilitate the water and wastewater lines. The contractor identified opportunities to save costs and still produce quality work. The project was bid to include temporary water for residences in case any of the waterline work required an extended outage for residences. The contractor was able to keep everyone in service while building the new line and switched all residences to the new line without extended outages, thus resulting in the most significant savings on the project.

**Budget & Financial Summary:** A combined budget of \$9,527,000 is included in the Water and Wastewater Capital Improvement Projects Funds. A combined total of \$8,420,933 has been spent to date. The proposed deductive change order will reduce the encumbered amount by a combined total of \$577,172.

**Attachments:**

1. McCulloch Rehab Project - Closeout CO\_VendorSigned



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

# CONTRACT & AGREEMENT ROUTING FORM

CONTRACT#: 24300504CO5 PROJECT#: WA/WW190001 BID#: \_\_\_\_\_ RFP#: \_\_\_\_\_

**Project Name / Contract Description:** McCulloch Utility Rehab

Rehabilitation of water and wastewater utilities in the McCulloch neighborhood

**Name of Contractor:** Kieschnick GC, Inc

**CONTRACT TOTAL VALUE:** \$ 7,561,467.00 **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 # \_\_\_\_\_  CHANGE ORDER # 5  OTHER \_\_\_\_\_

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

A combined budget of \$9,527,000 is included in the Water and Wastewater Capital Improvement Projects Funds. A combined total of \$8,420,933 has been spent or committed to date. The proposed deductive change order will reduce the encumbered amount by a combined total of \$577,172.

**CRC Approval Date\***: N/A *(If required)\** **Council Approval Date\***: 2/12/26 **Agenda Item No\***: \_\_\_\_\_

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

**Insurance Certificates:** N/A **Performance Bond:** N/A **Payment Bond:** N/A **Form 1295:** BW

## 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



# Memo

**Date:** January 5, 2026

**To:** Jennifer Cain, CCM. Capital Projects and Facility Manager Director

**From:** Casey Rhodes, Project Manager II, Capital Projects

**RE:** McCulloch Rehab Change Order #5

---

This change order adds work to repair conduit damaged in Wayne Smith Park, finalizes quantities, and closes out the project.

If there is any additional information I can provide, please feel free to contact me at x6248, or [crhodes@cstx.gov](mailto:crhodes@cstx.gov).

<b>CHANGE ORDER NO. 5</b> P.O. #. 22403716		DATE: 1/9/2026 PROJECT: McCulloch Rehab	Contract No. 24300504 ITB NO. 24-048																																																																							
<b>OWNER:</b> City of College Station P.O. Box 9960 College Station, Texas 77842		<b>CONTRACTOR:</b> Contractor Name Kieschnick General Contractors Contractor Address PO Box 200 Contractor Address Welborn, Tx 77881																																																																								
<b>PURPOSE OF THIS CHANGE ORDER:</b> This change order adds work to repair to damaged electrical conduits for lights in Wayne Smith Park near the Lincoln Center. This change order also finalize all quantities and closes out the project.																																																																										
ITEM NO	UNIT	DESCRIPTION	UNIT PRICE	ORIGINAL QUANTITY	REVISED QUANTITY	ADDED COST																																																																				
6	SY	Block Sodding	\$9.00	3874	0	\$ (34,866.00)																																																																				
22	LF	R&R existing trench drain	\$300.00	8	0	\$ (2,400.00)																																																																				
24	LS	R&R existing 36" RCP storm line & con HW	\$10,000.00	1	0	\$ (10,000.00)																																																																				
25	LF	R&R 6" curb and gutter	\$50.00	6800	5801	\$ (49,950.00)																																																																				
27	SY	Remove & Replace Ex. Concrete Driveway	\$132.00	780	800	\$ 2,640.00																																																																				
28	SY	Remove & Replace Ex. Concrete Driveway (Sewer Lines G & H)	\$132.00	883	0	\$ (116,556.00)																																																																				
29	SY	Remove & Replace Ex. Asphalt Driveway	\$90.00	40	22	\$ (1,620.00)																																																																				
30	SY	Remove & Replace Ex. Asphalt Pavement	\$90.00	4600	4678	\$ 7,020.00																																																																				
34	SF	Remove & Replace Ex. Concrete Sidewalk	\$12.00	4750	4122	\$ (7,536.00)																																																																				
36	EA	Accessibility Curb Ramp	\$2,000.00	10	9	\$ (2,000.00)																																																																				
37	LS	Thermoplastic striping	\$5,000.00	1	0	\$ (5,000.00)																																																																				
38	LF	18" stl cas pipe w/10" HDPE ssl & case spacer	\$225.00	10	0	\$ (2,250.00)																																																																				
39	LF	12" HDPE (DR-17) Sanitary Sewer Line by Pipe Bursting	\$138.00	1530	1522	\$ (1,104.00)																																																																				
59	EA	Standard 5' Dia. Storm Sewer Conflict Manhole	\$6,000.00	1	0.15	\$ (5,100.00)																																																																				
69	LF	14" Steel Casing Pipe by Dry Mechanical Bore w/ 6" AWWA C-900 DR14 PVC Water Line and Casing Spacers	\$400.00	120	65	\$ (22,000.00)																																																																				
85	EA	4" Gate Valve	\$1,500.00	1	0	\$ (1,500.00)																																																																				
91	EA	8"x4" Tee	\$1,000.00	1	0	\$ (1,000.00)																																																																				
111	LS	Temporary Water	\$55.00	5650	0	\$ (310,750.00)																																																																				
RCO1.9	EA	8"x45 Bend	\$700.00	0	4	\$ 2,800.00																																																																				
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THE NET AFFECT OF THIS CHANGE ORDER IS 2.78% DECREASE.																																																																										
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A/E CONTRACTOR	Date	CITY ATTORNEY																																																																								
<u>Dana Kieschnick</u>	1/23/2026	Date																																																																								
CONSTRUCTION CONTRACTOR	Date	ASST CITY MGR - CFO																																																																								
PROJECT MANAGER	Date	CITY MANAGER																																																																								
DEPARTMENT DIRECTOR	Date																																																																									

**CHANGE ORDER REQUEST NO. 6 - Reconciliation**

DATE: 11/20/2025

**PROJECT: McCulloch Utility Rehab****GENERAL CONTRACTOR:**

Kieschnick General Contractors  
P.O. Box 200  
Wellborn, TX 77881

**OWNER:**

City of College Station

**PURPOSE OF THIS CHANGE ORDER:**

Contract Reconciliation

ITEM NO	UNIT	DESCRIPTION	UNIT PRICE	ORIGINAL QUANTITY	Quantity to Add/Deduct	COST CHANGE
<b>RECONCILIATION</b>						
R-6	SY	Block Sodding	\$9.00		-3874	(\$34,866.00)
R-22	LF	R&R existing trench drain	\$300.00		-8	(\$2,400.00)
R-24	LS	R&R existing 36" RCP storm line & con hw	\$10,000.00		-1	(\$10,000.00)
R-25	LF	R&R 6" curb & gutter	\$50.00		-999	(\$49,950.00)
R-27	SY	R&R existing concrete driveway	\$132.00		20	\$2,640.00
R-28	SY	R&R existing concrete dw (swr line G&H)	\$132.00		-883	(\$116,556.00)
R-29	SY	R&R existing asphalt driveway	\$90.00		-18	(\$1,620.00)
R-30	SY	R&R existing asphalt pavement	\$90.00		78	\$7,020.00
R-34	SF	R&R exisitng concrete sidewalk	\$12.00		-628	(\$7,536.00)
R-36	EA	Access curb ramp	\$2,000.00		-1	(\$2,000.00)
R-37	LS	Thermoplastic striping	\$5,000.00		-1	(\$5,000.00)
R-38	LF	18" stl cas pipe w/10" HDPE ssl & cas space	\$225.00		-10	(\$2,250.00)
R-39	LF	12" HDPE ssl by pipe burst	\$138.00		-8	(\$1,104.00)
R-59	EA	stand 5' dia storm conflict manhole	\$6,000.00		-0.85	(\$5,100.00)
R-69	LF	14" stl cas pipeby dry mech bore	\$400.00		-55	(\$22,000.00)
R-85	EA	4" Gate valve	\$1,500.00		-1	(\$1,500.00)
R-91	EA	8x4 Tee	\$1,000.00		-1	(\$1,000.00)
111	LF	Temporary Water	\$55.00		-5650	(\$310,750.00)
RCO1.9	EA	I.94-8x45 Bend	\$700.00		4	\$2,800.00
RCO1.10	EA	Park Light Circuit repair	\$4,000.00		1	\$4,000.00
						<b>(\$557,172.00)</b>

**ADD TO CONTRACT****ORIGINAL CONTRACT AMOUNT**\$7,777,493.00 **GC REQUEST**

Change Orders To Date

5

\$341,146.00

This Proposal

6-Rec

**(\$557,172.00)****Change****REVISED CONTRACT AMOUNT****\$7,561,467.00****ORIGINAL CONTRACT TIME**

365

Time Ext 1	21
Time Ext 2	25
	0
<b>ADDITIONAL DAYS ON THIS CHANGE PROPOSAL</b>	<hr/> <b>411</b>

**NEW TOTAL**

**APPROVED:**

N/A		N/A	
A/E CONTRACTOR	Date	PROJECT MANAGER	Date

N/A		N/A	
GENERAL CONTRACTOR	Date	SUBCONTRACTOR	Date

**COMMENTS:**

**February 12, 2026**  
**Item No. 8.1.**  
**Update from the College Station Fire Department**

**Sponsor:** Richard Mann, Chief of Fire and Emergency Services

**Reviewed By CBC:** N/A

**Agenda Caption:** Presentation, discussion, and possible action on an update from the College Station Fire Department.

**Relationship to Strategic Goals:**

1. Core Services

**Recommendation(s):** Staff welcomes feedback from the Council and community.

**Summary:** The presentation will include an update on 2025 operations and activities for the College Station Fire Department.

**Budget & Financial Summary:** None

**Attachments:**

None

**February 12, 2026**

**Item No. 9.1.**

**Resolution of Support for affordable Low Income Housing Tax Credit Development Knoxwood Crossing**

**Sponsor:** David Brower

**Reviewed By CBC:** City Council

**Agenda Caption:** Presentation, discussion, and possible action regarding a resolution of support of a proposal received in response to RFI 26-032 for the development of affordable housing in College Station through the Texas Department of Housing and Community Affairs 2026 Low Income Housing Tax Credit allocation process.

**Relationship to Strategic Goals:**

- Financially Sustainable City
- Core Services and Infrastructure
- Neighborhood Integrity
- Diverse Growing Economy

**Recommendation(s):** Staff Recommends Support

**Summary:** Staff will provide a presentation regarding the demonstrated need for more affordable rental units in College Station, a summary of the 9% Low Income Housing Tax Credit program and scoring criteria, and details regarding the proposal received in response to RFI 26-032 - Affordable Housing Development.

One proposal was received in response to the RFI from Woda Cooper Companies, Inc. to develop affordable rental housing for a 60 unit family/workforce development called Knoxwood Crossing at 2735 South Harvey Mitchel Parkway. The development would feature one, two, and three bedroom units, serving families earning between 30% to 60% of Area Median Income.

Not taking action to support the development could jeopardize its' ability to secure a tax credit allocation.

**Budget & Financial Summary:**

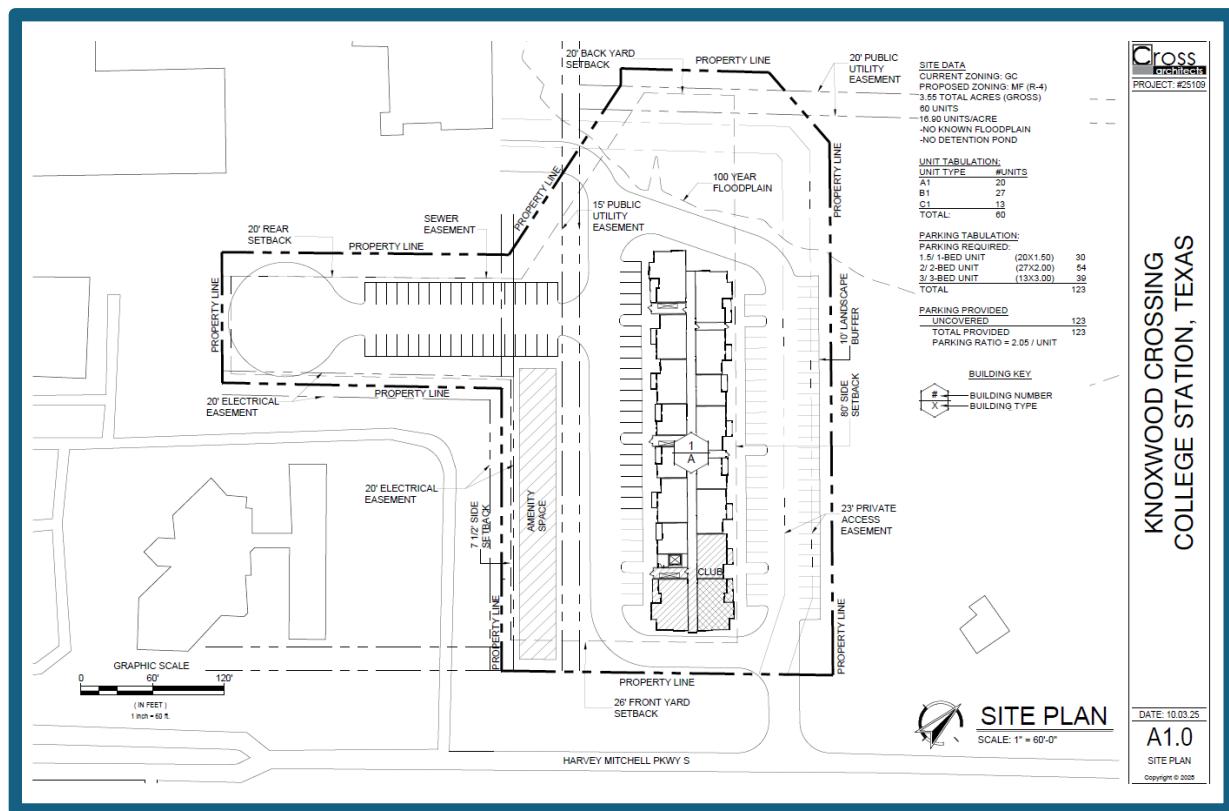
**Attachments:**

1. Knoxwood Crossing Woda Cooper Companies College Station Affordable Housing RFI
2. Knoxwood Organizational Charts
3. Tax Credit Support Resolution Knoxwood



*City of College Station, Texas*  
**RFI No. 26-032**  
***Request for Interest***  
***Affordable Housing Development***

Applicant: Woda Cooper Companies, Inc.



*Knoxwood Crossing*  
2735 South Harvey Mitchell Parkway  
College Station, Texas 77840



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

## *Letter of Interest*



# WODA COOPER COMPANIES

500 South Front St  
10th Floor  
Columbus, Ohio 43215  
Office: 614.396.3200  
[www.wodagroup.com](http://www.wodagroup.com)

David Brower  
City of College Station  
Planning & Development Services Department  
P.O BOX 9960  
College Station, Texas 77842  
[dbrower@cctx.gov](mailto:dbrower@cctx.gov)

## **RE: RFI NO. 26-032 Request For Interest Affordable Housing Development**

To Whom it May Concern,

Please accept the following submission as Woda Cooper Companies Inc.'s (WCCI) formal response to RFI NO. 26-032, gauging the interest for affordable housing development in College Station, Texas. WCCI is pleased to present the proposed development of **Knoxwood Crossing**, a 60-unit, 4-story elevator community to be located at 2735 South Harvey Mitchell Parkway, College Station, Texas 77840 (Brazos County Central Appraisal District Property ID 31044).

WCCI brings more than thirty-five (35) years of experience in the development, construction, and management of workforce and senior multifamily housing. Our portfolio spans 18 states and includes more than 350 communities and 17,000 units under management. WCCI consistently ranks among the nation's top ten affordable housing developers by *Affordable Housing Finance*. Since our inception in 1990, Woda Cooper has completed only one disposition—a small portfolio of rural communities in the Midwest—reflecting our long-term commitment to owning and managing our communities in perpetuity.

Our development philosophy prioritizes community engagement, thoughtful planning, and innovative design. We value long-term partnerships with municipalities and strive to ensure that our communities serve as lasting sources of pride for all stakeholders upon completion.

If there are any comments, questions, or concerns, please feel free to reach out via email at [osarig@wodagroup.com](mailto:osarig@wodagroup.com). We look forward to working with the City of College Station.

Sincerely,

*Omer Sarig*

---

**Omer Sarig**  
**Development Specialist**  
**Woda Cooper Companies, Inc**

OFFICES LOCATED IN GEORGIA, INDIANA, KENTUCKY, MARYLAND, MICHIGAN, NORTH CAROLINA, OHIO, AND VIRGINIA.  
WODA COOPER COMPANIES, INC. IS AN ESOP OWNED COMPANY AND PARENT COMPANY OF WODA CONSTRUCTION, INC., WODA MANAGEMENT & REAL ESTATE, LLC, AND WODA COOPER DEVELOPMENT, INC.



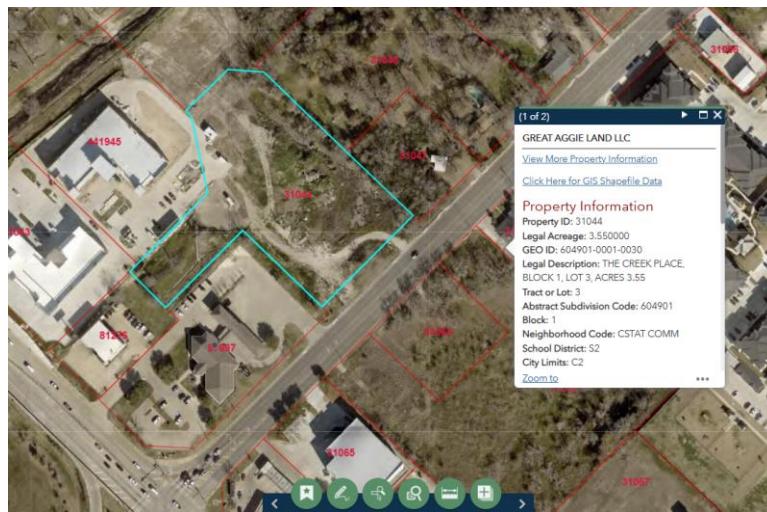
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## *Site Location*



## Site Location

The subject site for the proposed 60-unit development of Knoxwood Crossing is at 2735 South Harvey Mitchell Parkway, College Station, Texas 77840. This 3.55-acre parcel is at Brazos County Parcel ID 31044:



**Exhibit A:** Knoxwood Crossing Parcel Map



**Exhibit B:** Knoxwood Crossing Parcel within City Limits



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## *Development Narrative*



## Development Narrative

The proposed development of Knoxwood Crossing is to be located at 2735 South Harvey Mitchell Parkway, College Station, Texas 77840 (Brazos County Central Appraisal District Property ID 31044). The 3.55-acre community will feature amenity green space for resident leisure, incorporating aesthetically pleasing landscaping with Texas native canopy trees, non-canopy trees, and shrubs. Sidewalks along Harvey Mitchell Parkway will enhance pedestrian walkability and provide convenient access to nearby amenities. Thoughtful site design and planning will also allow for drive aisle connection to the adjacent Creek Place Retail, ensuring efficient traffic flow and multiple points of ingress and egress. A vehicle parking ratio greater than two spaces per unit, in addition to bicycle parking on-site, would effectively address the parking demands associated with College Station's large growing population. The community exterior would incorporate a combination of masonry, Hardie fiber cement, and vertical/horizontal siding.

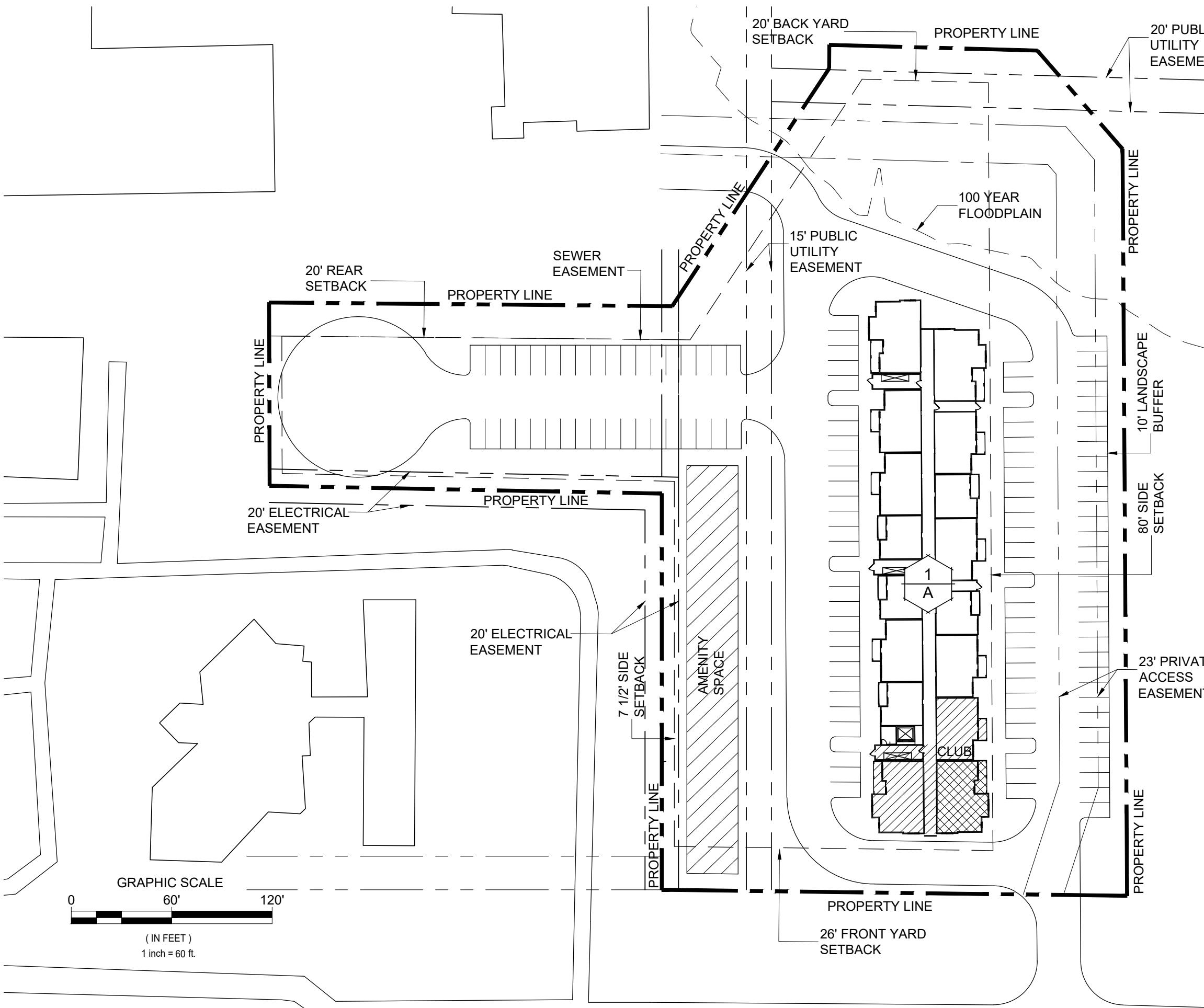
The four (4) story elevator building will feature an integrated designer clubhouse with a community room, fitness center, warming kitchen, and on-site laundry facilities. The community would feature one (1), two (2), and three (3) bedroom units, serving individuals and families earning between 30% to 60% of Area Median Income. Each unit would be equipped with energy-efficient appliances, spacious kitchen islands, luxury vinyl tile flooring, and washer & dryer hook-ups. Residents would benefit from professional on-site management and maintenance staff that would address resident concerns and maintain general upkeep of the community. Security camera systems will be installed throughout the building hallways, stairwells, and common spaces. Thoughtful landscaping, lighting, and exterior cameras will ensure enhanced resident security throughout Knoxwood Crossing.



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## *Site Plan*

# KNOXWOOD CROSSING COLLEGE STATION, TEXAS



**SITE PLAN**  
A1.0

DATE: 10.03.25

SCALE: 1" = 60'-0"

SITE PLAN

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## *Preliminary Cost Estimates*



## Preliminary Cost Estimates

The development of Knoxwood Crossing, a 60-unit, 100% affordable community would be an approximately 21-million-dollar investment in the city of College Station. Not only would the development help the city achieve its goals related to affordable housing, but it would also serve as a source of tax revenue for the city, county, and school district. Please see Table 1 below for a preliminary breakdown of the sources and uses of funds for the development of Knoxwood Crossing.

Sources		Uses	
Federal Investor Equity	\$16,998,300	Land Acquisition, Total Hard & Soft Costs	\$17,825,623
Permanent First Mortgage	\$2,480,000	Reserves	\$495,656
Deferred Developer Fee	\$1,077,734	Developer Fee	\$2,234,755
<b>Total Sources</b>	<b>\$20,556,034</b>	<b>Total Uses</b>	<b>\$20,556,034</b>

**Table 1:** Preliminary Cost Estimates



CITY OF COLLEGE STATION

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## *Capability to Finance Proposed Development & Funding Request*



## **Firm's Capability to Finance Proposed Development & Funding Request**

In Woda Cooper Companies, Inc.'s (WCCI) 35-year history of operation, our organization has successfully financed and developed more than 350 affordable housing communities across 17 states. We maintain long-standing relationships with numerous banks, financial institutions, and syndicators who are highly experienced in Low-Income Housing Tax Credit (LIHTC) financing. WCCI prides itself on conducting thorough analyses of each state's Qualified Allocation Plan (QAP) and effectively translating those requirements into competitive applications. As a result, more than 50 percent of the LIHTC applications we submit in the states in which we operate receive an allocation of credits each year.

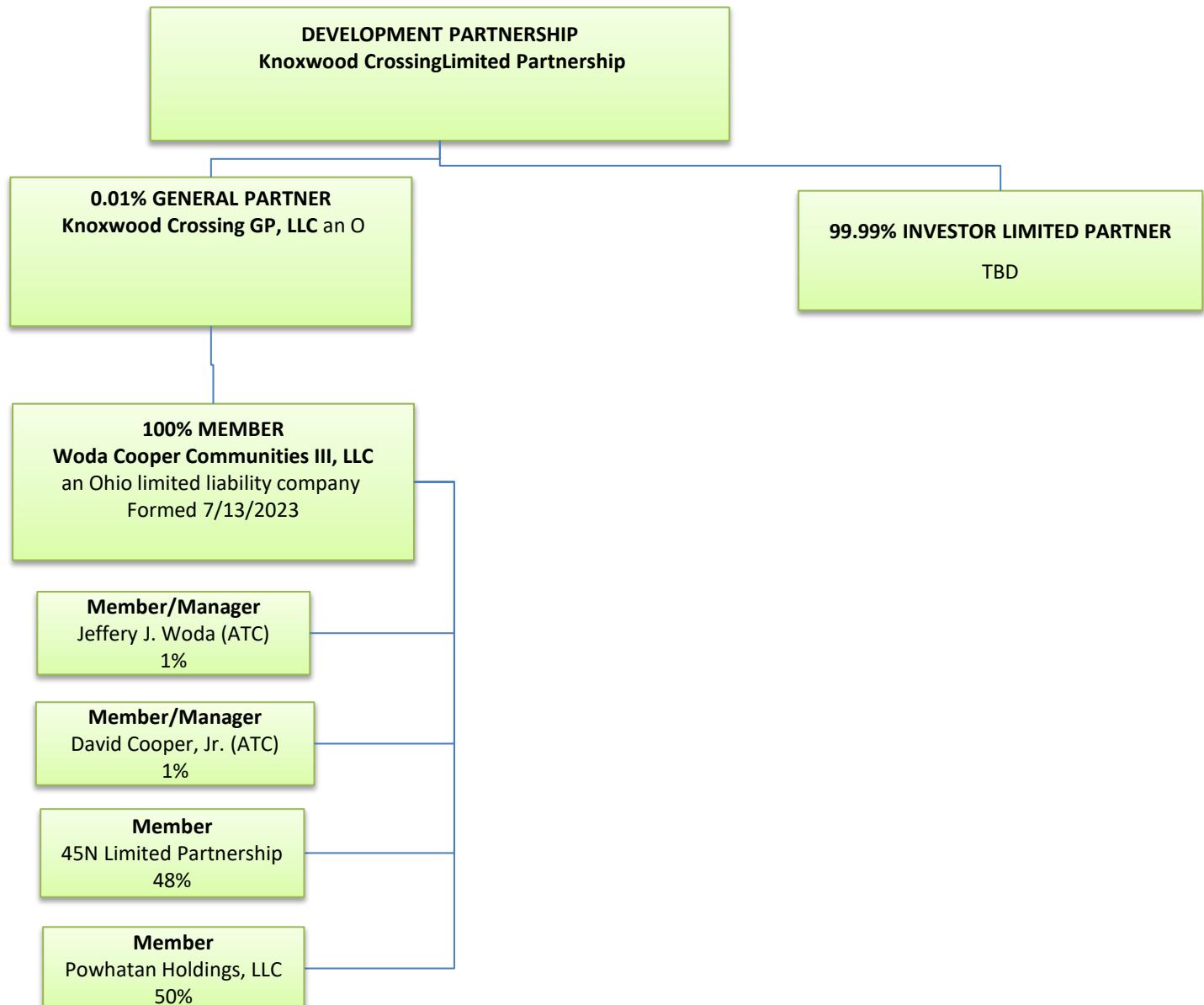
Construction is scheduled to commence in the first quarter of 2026 on our first development in Texas, Tecovas Terrace, located at 1601 Southeast 28th Avenue in Amarillo, Texas. Through this endeavor, WCCI has demonstrated its ability to successfully navigate the Texas Department of Housing and Community Affairs (TDHCA) process and collaborate with lenders and investors to fully finance an affordable housing development in Texas.

WCCI respectfully requests a contribution of \$500,000 from the City of College Station's Community Development Block Grant (CDBG) and HOME Investment Partnerships Program (HOME) funding pool to support the development of Knoxwood Crossing. Knoxwood Crossing is proposed as a 60-unit, 100 percent affordable housing community, closely aligning with the City's housing goals and strategic initiatives.

The City's 2024 Housing Action Plan indicates that more than 58 percent of renters in College Station are currently cost-burdened, and that the community is projected to face a housing shortage exceeding 4,000 units by 2030. These figures underscore the significant and growing need for high-quality, attainable housing options within the city. WCCI is eager to partner with the City of College Station to help address this need and contribute meaningfully to the expansion of affordable housing opportunities for its residents.

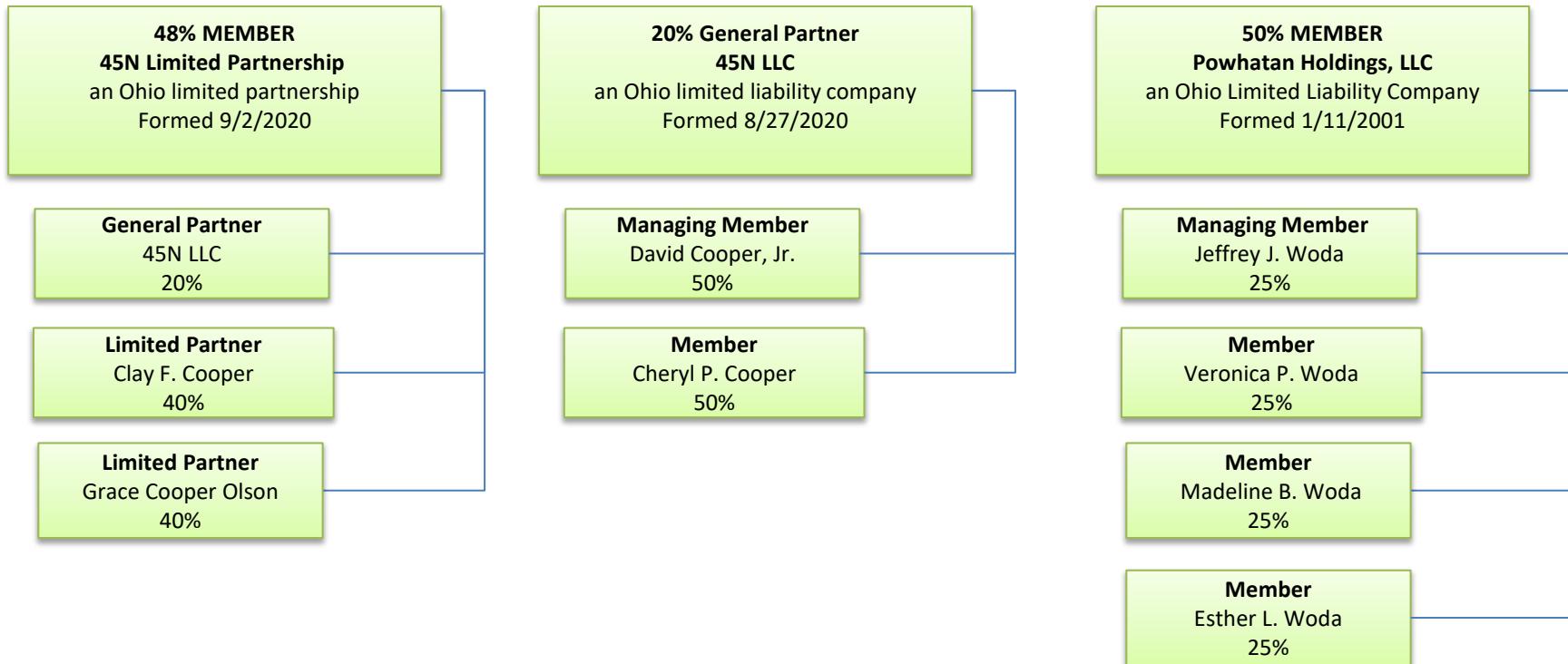
# Knoxwood Crossing

## Owner Structure



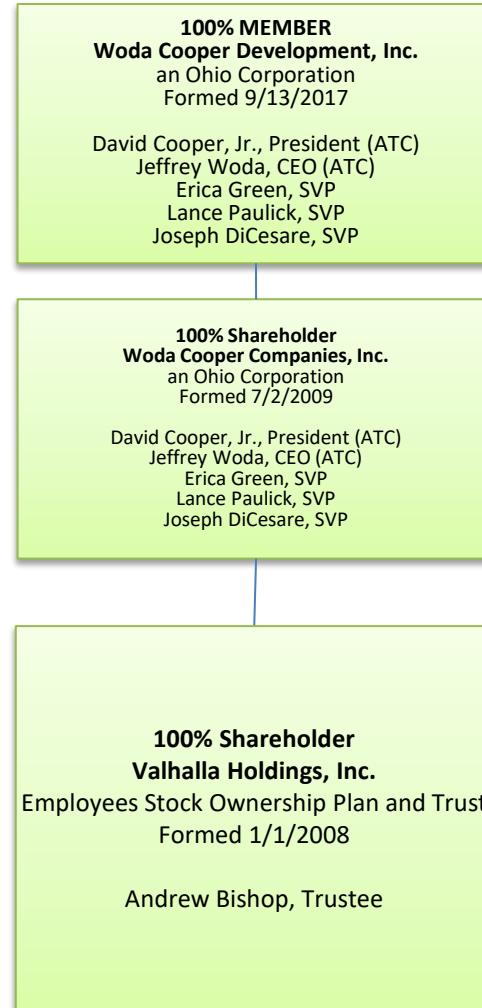
# Knoxwood Crossing

## Organizational Structure—Ownership



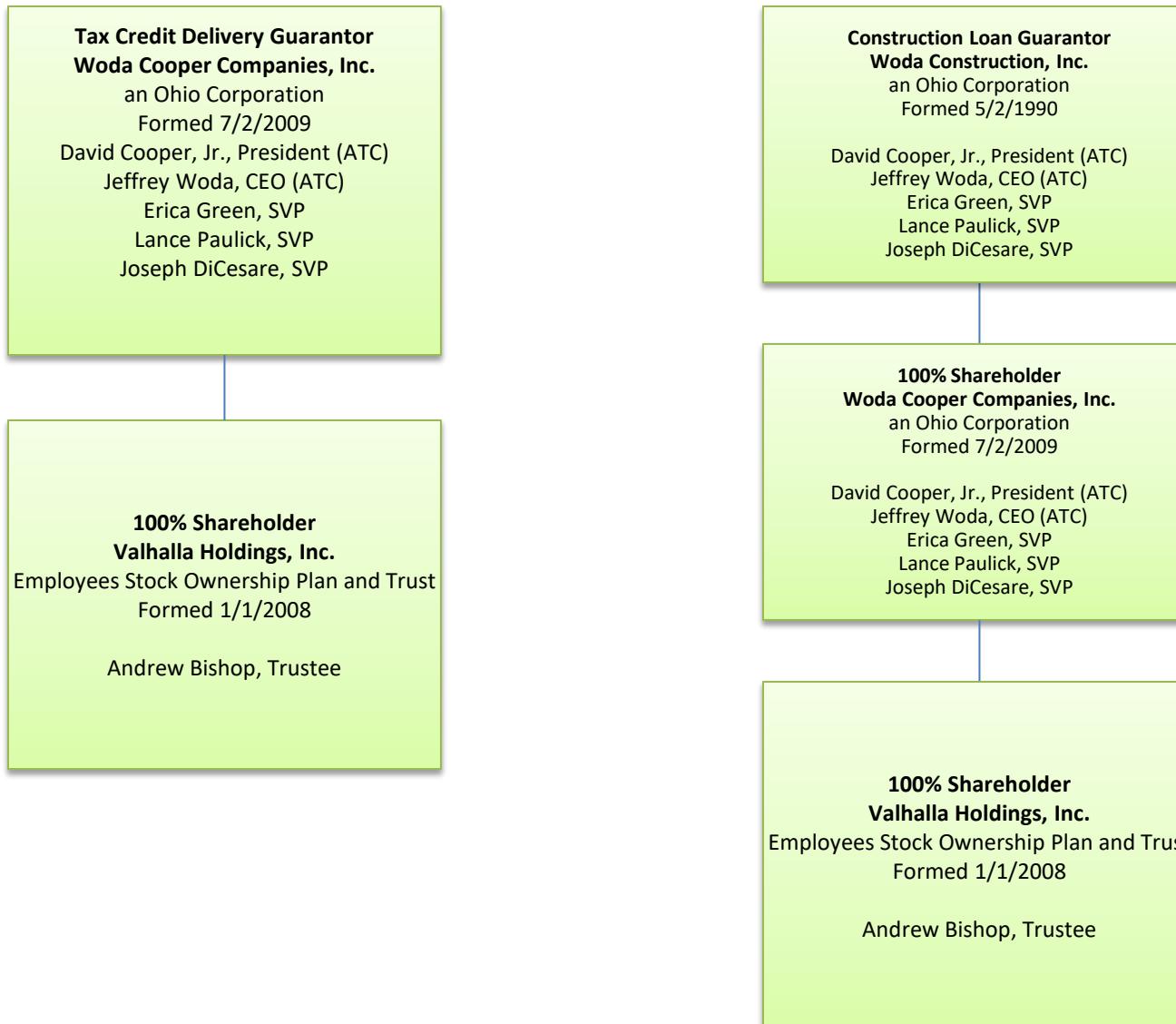
# Knoxwood Crossing

## Organizational Structure—Developers



# Knoxwood Crossing

## Organizational Structure—Guarantors



**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY OF COLLEGE STATION, TEXAS, DECLARING SUPPORT FOR KNOXWOOD CROSSING LIMITED PARTNERSHIP TAX CREDIT APPLICATION TO THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS FOR THE YEAR 2026.**

**WHEREAS**, Knoxwood Crossing Limited Partnership (“Knoxwood”), affiliated with Woda Cooper Companies Inc. the respondent to RFI 26-032, has proposed the new construction of affordable rental housing at 2735 South Harvey Mitchell Parkway, named the Knoxwood Crossing (“Development”) in the City of College Station, Brazos County, Texas; and

**WHEREAS**, Knoxwood has advised that it intends to submit an application to the Texas Department of Housing and Community Affairs for 2026 Competitive 9% Housing Tax Credits for the Development; and

**WHEREAS**, Knoxwood has requested a waiver of development/permit fees in the amount of \$500.00 for the Development as a commitment of development funding from the City of College Station, Texas; and

**WHEREAS**, the construction of affordable rental housing in accordance with the City of College Station Consolidated Plan which demonstrates a need for this type of development; now, therefore,

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

**PART 1:** That the City Council hereby declares support of the application for tax credits for the development of affordable rental housing at 2735 South Harvey Mitchell Parkway.

**PART 2:** That the development of Knoxwood Crossing fulfills a need for additional affordable rental housing in accordance with the City of College Station Consolidated Plan.

**PART 3:** That the City Manager and their designee(s) are authorized to waive development and permit fees for the development of rental housing at 2735 South Harvey Mitchell Pkwy in the amount of \$500.00.

**PART 4:** That as provided for in 10 Texas Administrative Code (“TAC”) §11.3(e) and §11.4(c)(1), it is hereby acknowledged that the proposed new construction development is located in a census tract that has more than 20% Housing Tax Credit Units per total households.

**PART 5:** That the City of College Station hereby confirms that its Governing Body has no objection to the application, pursuant to 10 TAC §11.3(e) and §11.4(c)(1) of the Qualified Allocation Plan.

**PART 6:** That as provided for in 10 TAC §11.101(a)(3) of the Qualified Allocation Plan, it is hereby acknowledged that the proposed development is located in a census tract that has a poverty rate above 40% for individuals.

**PART 7:** It is found and determined that the meeting at which this Resolution was passed was open to the public as required, and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act; and

**PART 8:** That this resolution shall take effect immediately from and after its passage.

ADOPTED this 12<sup>th</sup> day of February, AD 2026

**ATTEST:**

**APPROVED:**

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**City Secretary**

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**Mayor**

APPROVED:

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**City Attorney**

**February 12, 2026**  
**Item No. 11.1.**  
**Council Reports on Committees, Boards, and Commissions**

**Sponsor:** City Council

**Reviewed By CBC:** City Council

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

**Relationship to Strategic Goals:**

Good Governance

**Recommendation(s):** Review meetings attended.

**Summary:** Aggieland Humane Society, The Art Center of Brazos Valley, Architectural Advisory Committee, Audit Committee, Bicycle, Pedestrian, and Greenways Advisory Board, Bio-Corridor Board of Adjustments, Brazos County Health Dept., Brazos Valley Council of Governments, Brazos Transit District, Brazos Valley Economic Development Corporation, Brazos Valley Council of Gov't Board of Directors, Bryan/College Station Chamber of Commerce, Budget and Finance Committee, BVSWMA, BVWACS, CDBG Public Service Agency Funding Review Committee, Census Committee Group, Compensation and Benefits Committee, Comprehensive Plan Evaluation Committee, Construction Board of Adjustments & Building and Construction Standards Commission, Design Review Board, Economic Development Committee, Gulf Coast Strategic Highway Coalition, Historic Preservation Committee, Housing Plan Advisory Committee, Intergovernmental Local Committee, Keep Brazos Beautiful, Legislative Engagement Committee, 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, Tourism Committee, YMCA, Zoning Board of Adjustments. (Notice of Agendas posted on City Hall bulletin board.)

**Budget & Financial Summary:** None.

**Attachments:**

None