



# The Texas A&M University System

*System Real Estate Office*

A&M System Building • Suite 1151 • 200 Technology Way • College Station, Texas 77845-3424  
Phone (979) 458-6350 • Fax (979) 458-6359 • Campus Mailstop 1120

December 9, 2005

## HAND DELIVERED

Mr. David J. Massey, P.E.  
College Station Utilities  
P.O. Box 9960  
College Station, Texas 77842

THROUGH: Mr. Dan K. Buchly  
Associate Vice Chancellor  
for Real Estate

RE: Northgate Substation; Our File No. 05020071

Dear Mr. Massey:

As per our telephone conversation on Monday, December 5, 2005, enclosed for further handling are duplicate originals of the Ground Lease Agreement by and between the City of College Station and the Board of Regents of The Texas A&M University System for the lease of 1.40 acres for the Northgate Substation. Please have both originals signed and notarized. After the documents have been signed by Mr. Silvia, please return both originals to me so that I may have them executed on behalf of The Texas A&M University System. I will then return one original to you for your records and retain the second original in our files.

If you have any questions regarding this matter, please do not hesitate to contact me at (979) 458-6350.

Very truly yours,

Kenneth Wakefield  
Real Estate Management  
Specialist

KW:ksw

CF# 021-006-101

Enclosures

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#### Universities

Prairie View A&M University • Tarleton State University • Texas A&M International University • Texas A&M University • Texas A&M University-Commerce • Texas A&M University-Corpus Christi  
Texas A&M University-Kingsville • Texas A&M University-Texarkana • West Texas A&M University

#### Agencies

Texas Agricultural Experiment Station • Texas Cooperative Extension • Texas Engineering Experiment Station • Texas Engineering Extension Service  
Texas Forest Service • Texas Transportation Institute • Texas Veterinary Medical Diagnostic Laboratory

The Texas A&M University System Health Science Center

## GROUND LEASE AGREEMENT

This Ground Lease Agreement (this "Lease") is effective as of the 1<sup>st</sup> day of January, 2006, by and between **THE BOARD OF REGENTS OF THE TEXAS A&M UNIVERSITY SYSTEM ("TAMUS")**, for the benefit of Texas A&M University ("University"), and the **CITY OF COLLEGE STATION, TEXAS ("COLLEGE STATION")**.

Section 85.25 of the Texas Education Code establishes that the Board of Regents of The Texas A&M University System has exclusive management and control of the lands under its jurisdiction or acquired by it.

**COLLEGE STATION** desires to construct an electric power utility substation (the "Substation") on property owned by **TAMUS**, to be operated jointly under a separate agreement between **COLLEGE STATION** and Bryan Texas Utilities.

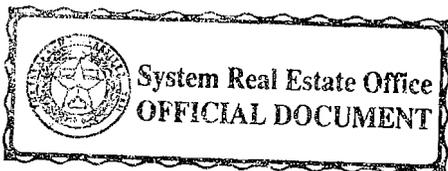
**TAMUS** and **COLLEGE STATION** have agreed to enter into this Lease whereby **TAMUS** will lease a tract of approximately 1.40 acres of land to **COLLEGE STATION**, and **COLLEGE STATION** will construct the Substation for use as an electric power utility substation for the benefit of the public, including **TAMUS** and the University.

**NOW THEREFORE**, in consideration of the mutual covenants, conditions and agreements in this Lease, the parties agree, as follows:

### ARTICLE ONE LEASE OF LEASED PREMISES - TERMS OF LEASE

Section 1.01. Lease of Leased Premises. **TAMUS** lets, demises, and rents exclusively unto **COLLEGE STATION**, and **COLLEGE STATION** rents and leases from **TAMUS**, the real property in College Station, Texas, more particularly described in Exhibit "A" attached hereto and made a part hereof (the "Leased Premises"). **COLLEGE STATION**, by execution of this Lease, accepts the leasehold estate in the Leased Premises subject to the matters filed of record in the Real Property Records of Brazos County, Texas, or apparent on the ground.

Section 1.02. Term. This Lease is in full force and effect for a term ("Term") of fifty (50) years commencing on January 1, 2006 (the "Commencement Date"), and ending at midnight on December 31, 2056. If **COLLEGE STATION** desires to renew the term of this Lease, it must give written notice of its desire to **TAMUS** not less than three (3) nor more than five (5) years prior to the expiration of the Term. If the parties are unable to negotiate the terms of the renewal within six (6) months following the date of **COLLEGE STATION**'s written notice, then this Lease shall expire at the end of the Term. **COLLEGE STATION** shall, at its expense, remove the Substation and all other improvements on the Leased Premises upon the termination of this Lease by the expiration of its Term or for any other reason.



Section 1.03. Peaceful Possession. TAMUS covenants that COLLEGE STATION, upon paying the Rent (as hereafter defined) and performing all of the covenants and agreements of this Lease to be performed by COLLEGE STATION, may peaceably have, hold, occupy, use, and enjoy the Leased Premises during the Term.

## ARTICLE TWO DEFINITIONS

As may be set forth in this Lease, the listed terms have the following meanings:

“Applicable Laws” - all present and future statutes, regulations, ordinances, resolutions and orders of any Governmental Authority.

“Award” - any payment or other compensation received or receivable as a consequence of a taking from or on behalf of any Governmental Authority or any other Person vested with the power of eminent domain.

“COLLEGE STATION” – the City of College Station, Texas, a home-rule municipality, and its permitted successors and assigns.

“Commencement Date” – the date described in Section 1.02 for the commencement of this Lease.

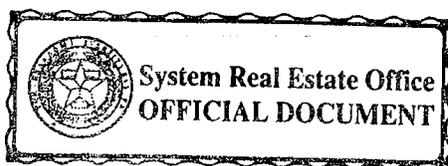
“Event of Default” - any matter identified as an event of default under Section 9.01.

“Governmental Authority” - any and all entities, courts, boards, agencies, commissions, offices, divisions, subdivisions, departments, bodies or authorities of any nature whatsoever of any governmental unit (federal, state, county, district, municipality, city or otherwise) whether now or hereafter in existence.

“Hazardous Material” - (a) any "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6091 *et seq.*), as amended from time to time, and regulations promulgated thereunder; (b) any "hazardous substance" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 6091 *et seq.*), as amended from time to time, and regulations promulgated thereunder; (c) polychlorinated biphenyl; (d) underground storage tanks, whether empty, filled or partially filled with any substance, (e) any substance the presence of which on the Leased Premises is prohibited by any Governmental Authority; and (f) any other substance which requires special handling or notification of any federal, state or local governmental entity in its collection, storage, treatment, or disposal in accordance with Applicable Laws.

“Leased Premises” - the real property described on Exhibit “A” attached hereto.

“Person” - an individual, trust, estate, Governmental Authority, partnership, joint venture, corporation, company, firm or any other entity whatsoever.



“Rent” – the ground lease payment described in Article Three.

“Substation” - all improvements on the Leased Premises constructed by **COLLEGE STATION**, including an electric utility substation and related facilities.

“Taking” - the actual or constructive condemnation, or the actual or constructive acquisition by condemnation, eminent domain or similar proceeding by or at the direction of any Governmental Authority or other Person with the power of eminent domain.

“University” - Texas A&M University, a component of the Texas A&M University System, located in College Station, Texas.

### **ARTICLE THREE RENT**

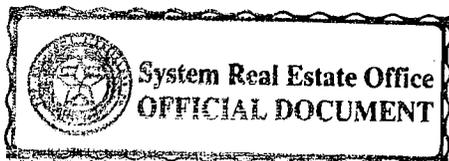
Beginning on the Commencement Date, and continuing on or before each anniversary of the Commencement Date during the Term of this Lease, **COLLEGE STATION** will pay **TAMUS** rent in the amount of \$1.00 per year (“Rent”).

### **ARTICLE FOUR USE AND OPERATION OF PROPERTY**

Section 4.01. Purpose of Lease. **COLLEGE STATION** enters into this Lease for the sole purpose of developing, constructing, maintaining, operating and managing the Substation, along with associated amenities and site improvements. Any change in the use of the Leased Premises as a Substation is subject to the prior written approval of **TAMUS**, which approval may be withheld by **TAMUS** in its sole discretion.

Section 4.02. Required Operation. During the term of this Lease, the Leased Premises shall be used and operated as a Substation providing electric utility services to the University and/or the city of College Station, Texas. If at any time during the term of this Lease, the City abandons the Substation or ceases using the Leased Premises as a Substation, and such abandonment or cessation continues for a period of ninety (90) days following written notice from **TAMUS**, then this Lease shall automatically terminate. In the event of termination under this Section, title to the Substation shall vest in **TAMUS**; provided that, at **TAMUS**' election, **COLLEGE STATION** shall remove the Substation and all related improvements and return the Leased Premises to the condition they were in at the inception of this Lease within six (6) months following written notice from **TAMUS** of its election delivered to **COLLEGE STATION** prior to the termination.

Section 4.03. Utilities. **COLLEGE STATION** expressly acknowledges that neither **TAMUS** nor the University is under any obligation to provide any utility or other services whatsoever to the Leased Premises.



Section 4.04. Security. COLLEGE STATION is solely responsible for providing security for the Substation. Neither TAMUS nor University will provide or have any duty to provide security services.

Section 4.05. Access. COLLEGE STATION must permit TAMUS' agents, representatives, and employees to enter the Leased Premises at reasonable times for the purpose of inspection to determine whether COLLEGE STATION is in compliance with the terms of this Lease, or for other reasonable purposes.

Section 4.06. Property Condition. COLLEGE STATION acknowledges that it has had the opportunity to inspect the Leased Premises prior to executing this Lease. COLLEGE STATION's execution of this Lease is conclusive evidence of COLLEGE STATION's acceptance of the Leased Premises in an "as is" condition.

## ARTICLE FIVE ASSIGNMENT AND SUBLETTING

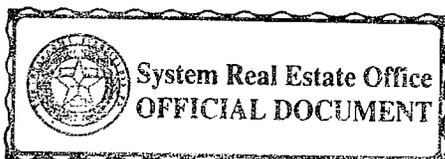
Section 5.01. Assignment. COLLEGE STATION is not authorized to sell or assign COLLEGE STATION's leasehold estate, or any interest in it, without the prior written consent of TAMUS, which consent may be withheld by TAMUS in its sole discretion. Any assignment made or given without first obtaining TAMUS' consent will be null and void.

Section 5.02. Subletting. COLLEGE STATION shall not sublet the leasehold estate, or any interest in it, without TAMUS' prior written consent, which consent may be withheld by TAMUS in its sole discretion; provided, that COLLEGE STATION may enter into a joint operating agreement with Bryan Texas Utilities for the operation of the Substation.

Section 5.03. Release of TAMUS. If TAMUS sells or transfers all or part of the Leased Premises and as a part of the transaction assigns its interest in this Lease, then as of the effective date of the sale, assignment, or transfer, TAMUS will have no further liability under this Lease to COLLEGE STATION, except with respect to liability matters that have accrued and are unsatisfied as of that date.

## ARTICLE SIX DAMAGES

In the event any portion of the Substation is damaged by fire or other casualty, COLLEGE STATION shall (i) commence repair, renovation or replacement of the damaged or destroyed property within sixty (60) calendar days following the date of such damage or destruction, and proceed with reasonable diligence to completion, so that the Substation will, at no expense to TAMUS, be restored to substantially the same size, function, value and appearance it had prior to the damage, or (ii) demolish and remove the Substation and all other improvements within six (6) months following the date of the damage, in which event, this Lease shall be terminated as of the date the improvements are removed and the Leased Premises are returned to their condition immediately prior to construction of the Substation.



**ARTICLE SEVEN  
CERTAIN LIENS PROHIBITED**

**COLLEGE STATION** will not permit any mechanic's liens or other liens to be enforced against **COLLEGE STATION'S** leasehold interest in the Leased Premises by reason of a failure to pay for any work, labor, services, or materials supplied or claimed to have been supplied to **COLLEGE STATION** or to anyone holding the Leased Premises or any part of it through or under **COLLEGE STATION**.

**ARTICLE EIGHT  
INSURANCE AND INDEMNIFICATION**

Section 8.01. Indemnification by COLLEGE STATION. To the fullest extent permitted by Texas law, **COLLEGE STATION** shall indemnify and save harmless **TAMUS**, its agents, officers, and employees, from and against any and all liability, claims, demands, damages, expenses, fees, fines, penalties, suits, proceedings, actions, and causes of action of any and every kind and nature arising or growing out of or in any way connected with **COLLEGE STATION'S** use, occupancy, management, operation or control of the Leased Premises and the Substation. This obligation to indemnify includes legal counsel, third-party investigation costs and all other costs, expenses, and liabilities arising from any claim or demand; however, **COLLEGE STATION** and **TAMUS** will use the same counsel, if such counsel is approved by **TAMUS** and the Attorney General of Texas. If **TAMUS** or the Attorney General does not approve counsel, **TAMUS** may retain independent counsel at **TAMUS'** sole cost and expense. It is expressly understood and agreed that **COLLEGE STATION** is an independent contractor responsible to all parties with respect to its acts or omissions and **TAMUS** is in no way responsible for such acts or omissions.

Section 8.02. TAMUS not Liable. **TAMUS** will not be liable for any personal injury, death or damage to property unless such personal injury, death or damage is caused by the negligence or willful misconduct of an employee, agent or representative of **TAMUS**, and then only to the extent provided by law. Nothing in this Lease shall be construed as a waiver of any of the rights, privileges and immunities of **TAMUS** under the constitution and laws of the State of Texas.

Section 8.03. Insurance. **COLLEGE STATION** shall at all times maintain, with respect to the Substation, for the duration of this Lease and any extensions, the following insurance issued by a company or companies authorized to do business in Texas and approved in writing by **TAMUS**, such approval not to be unreasonably withheld:

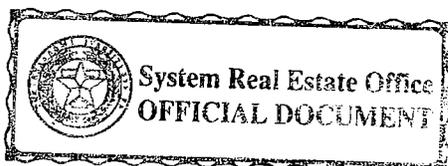
TYPE

Comprehensive General (Public) Liability to include coverage for the following:

(a) Premises/Operations

AMOUNT

Combined Single Limit for bodily injury and property damage in an amount acceptable to the **TAMUS** Representative, but not less than \$2,000,000.



- (b) Independent Contractors
- (c) Products/Completed Operations
- (d) Personal Injury
- (e) Contractual Liability
- (f) Explosion, collapse and underground premises damage

Section 8.04. TAMUS as Additional Insured. COLLEGE STATION agrees with respect to the above required insurance, that TAMUS will:

- A. be named an additional insured;
- B. be provided with thirty (30) calendar days advance notice, in writing, of cancellation or material change in coverage. If any insurance policy provides the insurer will give such notice, then COLLEGE STATION will not be obligated to do so with respect to such policy; and
- C. be provided a certificate evidencing the required insurance prior to the Commencement Date of this Lease and thereafter certificates evidencing renewals or replacements of the policy of insurance at least thirty (30) calendar days prior to its expiration or cancellation.

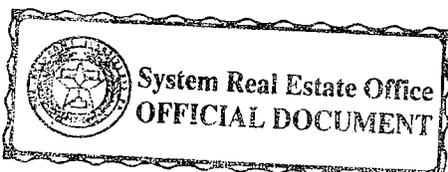
Section 8.05. Additional Insurance. TAMUS will review COLLEGE STATION's required insurance at the time of renewal of the policy or at the time of any material change, and TAMUS reserves the right to require reasonable additional limits or coverage. COLLEGE STATION agrees to comply with any request by TAMUS.

## ARTICLE NINE DEFAULT AND REMEDIES

Section 9.01. Default by COLLEGE STATION. Any one of the following events is deemed to be an "Event of Default" by COLLEGE STATION under this Lease:

A. COLLEGE STATION's failure to pay any sum required to be paid to TAMUS under this Lease and such failure is not cured within twenty (20) calendar days after receipt of written notice from TAMUS of such failure.

B. COLLEGE STATION's failure to perform any other covenant or agreement, other than the payment of money or as otherwise stated in this Section, to be performed by COLLEGE STATION under this Lease and such failure is not cured within thirty (30) calendar days after receipt of written notice from TAMUS of such failure; provided if, during such thirty (30) calendar day period, COLLEGE STATION takes action to cure such failure but is unable, by reason of the nature of the work involved, to cure such failure and work to cure the default continues diligently and without unnecessary delays, the failure will not constitute an Event of Default, unless in TAMUS' sole judgment, the failure causes or threatens to cause damage to persons or property.



C. Abandonment of the Leased Premises for a period of sixty (60) or more days.

D. Failure to maintain the exterior and grounds of the Substation. TAMUS expressly agrees COLLEGE STATION has thirty (30) calendar days after receipt of written notice from TAMUS to cure such failure and if cured within the thirty (30) days such failure will not be considered an Event of Default.

Section 9.02. TAMUS' Rights upon Default. Upon the occurrence of an Event of Default, TAMUS may, at its option, declare this Lease and all rights and interests created by it to be terminated, may seek any and all damages occasioned by the Event of Default, or may seek any other remedies available at law or in equity.

Section 9.03. Default by TAMUS. If TAMUS or the University fails to perform any of their respective obligations or covenants under this Lease, then COLLEGE STATION will be entitled to pursue any remedies available to it under the law.

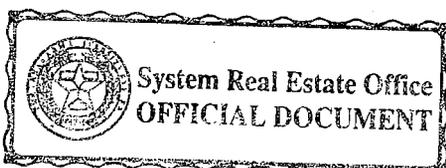
## ARTICLE TEN CONDEMNATION

Section 10.01. Condemnation of Entire Premises. Upon the permanent Taking of the entire Leased Premises, this Lease will terminate as of the date of such Taking and COLLEGE STATION and TAMUS will be released from any liability after such Taking. COLLEGE STATION will receive notice of any proceedings relating to a Taking and will have the right to participate to the extent of its leasehold interest.

Section 10.02. Partial Condemnation. Upon a temporary Taking or a Taking of less than all of the Leased Premises, COLLEGE STATION, at its written election, may terminate this Lease by giving TAMUS notice of its election to terminate at least sixty (60) calendar days prior to the date of such termination if COLLEGE STATION reasonably determines the Substation cannot be economically and feasibly used by COLLEGE STATION for its intended purposes. Upon termination, the Rent accrued and unpaid will be apportioned to the date of termination. If COLLEGE STATION does not elect to terminate this Lease, then the Lease shall continue in full force and effect, without any change in terms or conditions.

Section 10.03. Payment of Awards. Upon the Taking of all or any portion of the Leased Premises (a) COLLEGE STATION will be entitled, free of any claim by TAMUS, to the Award for the value of its interest in the Leased Premises and its rights under this Lease together with any other compensation or benefits paid as a consequence of the interruption of business; and (b) TAMUS will be entitled, free of any claim by COLLEGE STATION, to the Award for the value of TAMUS' fee title interest.

Section 10.04. Repair after Condemnation. Should a Taking occur not resulting in termination as provided by Sections 10.01 or 10.02, COLLEGE STATION, at its sole expense, must commence and proceed with reasonable diligence to repair or reconstruct the Substation. If the Award payable as a consequence of a Taking is insufficient, in the reasonable judgment of



**COLLEGE STATION**, to permit such restoration, then **COLLEGE STATION** shall have the right to terminate this Lease, in which case **COLLEGE STATION** shall demolish the Substation, remove all debris, and restore the property to its condition prior to this Lease, at **COLLEGE STATION's** sole cost and expense, if requested by **TAMUS**. In the event of termination under this Section, this Lease will terminate on the date the Leased Premises are restored to its condition prior to the date of this Lease, and the Rent will be apportioned and paid as of the date of termination.

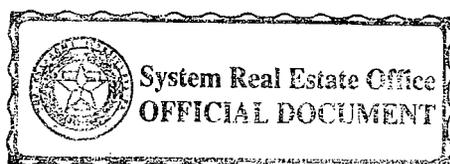
## **ARTICLE ELEVEN COMPLIANCE CERTIFICATES**

Section 11.01. TAMUS Compliance. **COLLEGE STATION** agrees, at any time and from time to time upon not less than thirty (30) calendar days prior written notice from **TAMUS**, to execute, acknowledge and deliver to **TAMUS**, or to such other party as **TAMUS** may request, a statement in writing certifying (a) that this Lease is unmodified and in full force and effect (or if there have been modifications, the Lease is in full force and effect as modified and stating the modifications); (b) if (to the best of its knowledge), there are any existing offsets or defenses against the enforcement of any of the terms, covenants or conditions to be performed by **COLLEGE STATION** (and if so specifying them); (c) the dates to which the Rent and other charges have been paid; and (d) the dates of commencement and expiration of the Term, it being intended any such statement delivered pursuant to this Section may be relied upon by any prospective purchaser of **TAMUS'** interest.

Section 11.02. COLLEGE STATION Compliance. **TAMUS** agrees, at any time and from time to time, upon not less than thirty (30) calendar days prior written notice from **COLLEGE STATION**, to execute, acknowledge and deliver to **COLLEGE STATION** a statement in writing, addressed to **COLLEGE STATION** or to such other party as **COLLEGE STATION** may request, certifying (a) this Lease is unmodified and in full force and effect (or if there have been modifications the Lease is in full force and effect as modified and stating the modifications); (b) the dates to which the Rent and other charges have been paid; (c) whether, to the best of its knowledge, an Event of Default has occurred and is continuing (and stating the nature of any known Event of Default); (d) whether, to the best of its knowledge, an event has occurred which, after giving of notice or the passage of time (or both) would result in an Event of Default (and stating the nature of the known event(s)); and (e) the dates of commencement and expiration of the Term.

## **ARTICLE TWELVE TAXES AND LICENSES**

Section 12.01. Payment of Taxes/Maintenance of Permits. **COLLEGE STATION** shall pay the appropriate collecting authorities, all federal, state and local taxes and fees, if any, which are now or may hereafter be levied upon the Leased Premises or that arise from the operation of the Substation and, upon request by **TAMUS**, will provide evidence of payment to **TAMUS**. **COLLEGE STATION** must maintain in current status all federal, state and local licenses and permits required for the operation of the Substation.



Section 12.02. Contested Tax Payments. COLLEGE STATION will not be required to pay, discharge or remove any such taxes or assessments so long as COLLEGE STATION is contesting the amount or validity thereof by an appropriate proceeding that operates to prevent or stay the collection of the amount contested. COLLEGE STATION agrees to indemnify and save TAMUS harmless from all liability for damages occasioned thereby and shall, in the event of a judgment of foreclosure on any lien arising in respect to such contested amounts, cause the lien to be discharged and removed prior to the execution of such judgment. Upon the termination of such proceeding, COLLEGE STATION will deliver to TAMUS proof of the amount due as finally determined and proof of payment. TAMUS, at COLLEGE STATION'S expense, will join in any such proceeding if required by law.

**ARTICLE THIRTEEN  
MISCELLANEOUS**

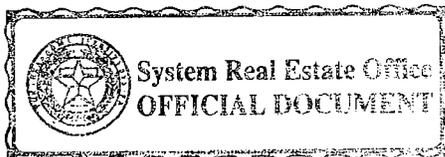
Section 13.01. Nondiscrimination, Employment and Wages. Neither COLLEGE STATION nor its agents or employees shall discriminate on account of race, color, sex, age, religion, national origin or handicap, in employment practices or in the performance of the terms, conditions, covenants and obligations of this Lease.

Section 13.02. Notices. Notices or communications to TAMUS or COLLEGE STATION required or appropriate under this Lease must be in writing, sent by (a) personal delivery, or (b) expedited delivery service with proof of delivery, or (c) registered or certified United States mail, return receipt requested, postage prepaid, or (d) facsimile if confirmed by expedited delivery service or by mail in the manner previously described, addressed as follows:

if to TAMUS: Senior Vice President for Finance  
Texas A&M University  
Coke Bldg., Suite 302  
College Station, Texas 77843-1181  
Fax No.: (979) 862-7778

with a copy to: Associate Vice Chancellor for Real Estate  
System Real Estate Office  
The Texas A&M University System  
200 Technology Way, Suite 1151  
College Station, Texas 77845  
Fax No.: (979) 458-6359

if to COLLEGE STATION: City of College Station  
College Station Utilities  
P.O. Box 9960  
College Station, Texas 77842  
Fax No.: (979) 764-3452



or to such other address or to the attention of such other person as may be designated in writing by such party. Any notice or communication will be deemed given either at the time of personal delivery or, in the case of delivery service, facsimile or mail, upon receipt.

Section 13.03. Relationships of Parties. Nothing in this Lease will be deemed or construed by the parties, or by any third party, as creating the relationship of principal and agent, partners, joint venturers, or any other relationship other than lessor and lessee.

Section 13.04. Texas Law to Apply. This Lease shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties are performable in Brazos County, Texas. By statute, venue for any suit against TAMUS shall be in Brazos County, Texas.

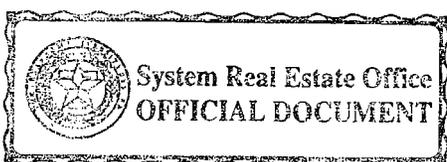
Section 13.05. Rights Cumulative. All rights, options, and remedies of TAMUS and COLLEGE STATION contained in this Lease are cumulative and one will not be exclusive of any other. TAMUS and COLLEGE STATION each have the right to pursue any one or all of such remedies or any other remedy or relief which may be provided by law or in equity.

Section 13.06. Nonwaiver. No waiver by TAMUS or COLLEGE STATION of a breach of any of the covenants or conditions of this Lease will constitute a waiver of any subsequent breach of any of the covenants or conditions. The failure of TAMUS or COLLEGE STATION to insist in any one or more cases upon the strict performance of any of the covenants of this Lease, or to exercise any option contained in this Lease, will not be construed as a waiver or relinquishment for the future of such covenant or option. A receipt by TAMUS or acceptance of payment by TAMUS of Rent with knowledge of the breach of any covenant will not be deemed a waiver of such breach.

Section 13.07. Terminology. Unless the context of this Lease clearly requires otherwise, (a) pronouns include natural persons, corporations and associations of every kind and character; (b) the singular includes the plural wherever and as often as may be appropriate; (c) the word "includes" or "including" means "including without limitation"; (d) the word "or" has the inclusive meaning represented by the phrase "and/or"; and (e) the words "hereof," "herein," "hereunder," and similar terms in this Lease refer to this Lease as a whole and not to any particular section or article in which such words appear. The section, article and other headings in this Lease are for reference purposes and do not control or affect the construction of this Lease or its interpretation. Article, section, subsection and exhibit references are to this Lease unless otherwise specified. All exhibits attached to this Lease constitute a part of this Lease. All references to a specific time of day in this Lease are based upon the Central Time zone.

Section 13.08. Counterparts. This Lease may be executed in multiple counterparts, each of which is declared an original.

Section 13.09. Severability. If any clause or provision of this Lease is illegal, invalid or unenforceable under present or future laws effective during the Term of this Lease, it is the intention of the parties that the remainder of this Lease will not be affected.



Section 13.10. Entire Agreement. This Lease, together with the exhibits attached, contains the final and entire agreement between the parties and contains all of the terms and conditions agreed upon, and no other agreements, oral or otherwise, regarding the subject matter of this Lease will be deemed to exist or to bind the parties; it is the intent of the parties that neither is bound by any term, condition, or representation not contained in this Lease.

Section 13.11. Amendment. No amendment, modification, or alteration of this Lease will be binding unless in writing, dated on or subsequent to the date of this Lease and duly executed by the parties.

Section 13.12. Successors and Assigns. All of the covenants, agreements, terms and conditions to be observed and performed by the parties will be applicable to and binding upon their respective permitted successors and assigns.

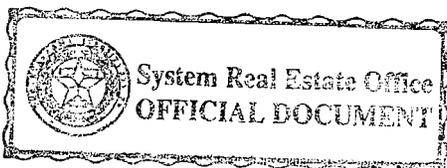
Section 13.13. Hazardous Materials. COLLEGE STATION shall, at COLLEGE STATION's expense, comply with all present and hereinafter enacted Environmental Laws, and any amendments thereto, affecting COLLEGE STATION's use, operation, occupation or alteration of the Leased Premises, the Substation and all other improvements.

A. Definitions. "**Environmental Laws**" means any one or all of the following as the same are amended from time to time: the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6941 *et seq.*; the Toxic Substances Control Act, 15 U.S.C. Section 2601 *et seq.*; the Safe Drinking Water Act, 42 U.S.C. Section 300h *et seq.*; the Clean Water Act, 33 U.S.C. Section 1251 *et seq.*; the Clean Air Act, 42 U.S.C. Section 7401 *et seq.*; and the regulations promulgated thereunder and any other laws, regulations and ordinances (whether enacted by the local, state or federal government) now in effect or hereinafter enacted that deal with the regulation or protection of the environment, including the ambient air, ground water, surface water, and land use, including sub-strata land.

"**Hazardous Material**" shall mean all substances, materials and wastes that are, or that become, regulated under or classified as hazardous or toxic under any Environmental Law.

"**Release**" shall mean any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing, or dumping into the environment.

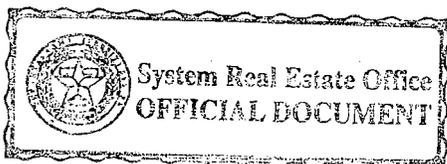
B. Compliance. COLLEGE STATION shall not cause or permit any hazardous material to be used, generated, manufactured, produced, stored, brought upon, or released, on, under or about the Leased Premises, or transported to and from the Leased Premises, by COLLEGE STATION, its agents, employees, contractors, invitees, or a third party in violation of any Environmental Law. TO THE FULLEST EXTENT PERMITTED BY LAW, COLLEGE STATION SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS TAMUS, ITS SUCCESSORS AND ASSIGNS, EMPLOYEES, AGENTS AND ATTORNEYS FROM AND AGAINST ANY AND ALL LIABILITY, LOSS, DAMAGE, EXPENSE, PENALTIES AND LEGAL AND INVESTIGATION FEES OR COSTS, ARISING FROM OR RELATED TO



ANY CLAIM OR ACTION FOR INJURY, LIABILITY, BREACH OF WARRANTY OR REPRESENTATION, OR DAMAGE TO PERSONS OR PROPERTY AND ANY AND ALL CLAIMS OR ACTIONS BROUGHT BY ANY PERSON, ENTITY OR GOVERNMENTAL BODY, ALLEGING OR ARISING IN CONNECTION WITH CONTAMINATION OF, OR ADVERSE EFFECTS ON, THE ENVIRONMENT OR VIOLATION OF ANY ENVIRONMENTAL LAW OR OTHER STATUTE, ORDINANCE, RULE, REGULATION, JUDGMENT OR ORDER OF ANY GOVERNMENT OR JUDICIAL ENTITY WHICH ARE INCURRED OR ASSESSED AS A RESULT (WHETHER IN PART OR IN WHOLE) OF ANY ACTIVITY OR OPERATION ON OR DISCHARGE FROM THE LEASED PREMISES OR ANY IMPROVEMENTS THEREON. THIS OBLIGATION INCLUDES, BUT IS NOT LIMITED TO, ALL COSTS AND EXPENSES RELATED TO CLEANING UP THE LEASED PREMISES, IMPROVEMENTS, LAND, SOIL, AND UNDERGROUND OR SURFACE WATER AS REQUIRED UNDER THE LAW. COLLEGE STATION'S OBLIGATIONS AND LIABILITIES UNDER THIS SECTION SHALL CONTINUE SO LONG AS TAMUS BEARS ANY LIABILITY OR RESPONSIBILITY UNDER THE ENVIRONMENTAL LAWS FOR ANY ACTION THAT OCCURRED ON THE LEASED PREMISES OR ANY IMPROVEMENTS THEREON. THIS INDEMNIFICATION OF TAMUS BY COLLEGE STATION INCLUDES, WITHOUT LIMITATION, COSTS INCURRED IN CONNECTION WITH ANY INVESTIGATION OF SITE CONDITIONS OR ANY CLEANUP, REMEDIAL, REMOVAL OR RESTORATION WORK REQUIRED BY ANY FEDERAL, STATE OR LOCAL GOVERNMENTAL AGENCY OR POLITICAL SUBDIVISION BECAUSE OF HAZARDOUS MATERIAL LOCATED ON THE LEASED PREMISES, OR PRESENT IN THE SOIL OR GROUND WATER ON, UNDER OR ABOUT THE LEASED PREMISES. THE PARTIES AGREE THAT TAMUS' RIGHT TO ENFORCE COLLEGE STATION'S PROMISE TO INDEMNIFY IS NOT AN ADEQUATE REMEDY AT LAW FOR COLLEGE STATION'S VIOLATION OF ANY PROVISION OF THIS SECTION. TAMUS SHALL ALSO HAVE ALL OTHER RIGHTS AND REMEDIES PROVIDED BY LAW OR OTHERWISE PROVIDED IN THIS LEASE.

Section 13.14. Recordation of Lease. This Lease will be filed in the Real Property Records of Brazos County, Texas, at the sole cost of **COLLEGE STATION** in order for constructive notice to be given to any third party entering into a contract with **COLLEGE STATION** for improvements to be located in or on the Leased Premises, and to any other party claiming under a third party, that **TAMUS** has no liability for the satisfaction of any claims of any nature in any way arising out of a contract with **COLLEGE STATION**.

Section 13.15. Time of the Essence. Time is of the essence of this Lease.



EXECUTED as of the \_\_\_\_\_ day of \_\_\_\_\_, 2006, by TAMUS.

**THE BOARD OF REGENTS OF  
THE TEXAS A&M UNIVERSITY SYSTEM**

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

**JAMES G. HOOTON**

Executive Vice Chancellor for Finance  
The Texas A&M University System

**RECOMMEND APPROVAL:**

\_\_\_\_\_  
**ROBERT T. BISOR, III**

Associate Vice President and Chief of Staff  
Texas A&M University

\_\_\_\_\_  
**CHARLES A. SIPPAL, SR.**

Assistant Vice President for Administration  
Texas A&M University

**SPRM 41.05.03 REVIEW:**

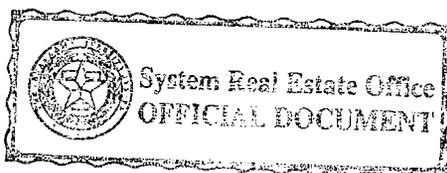
\_\_\_\_\_  
**DAN K. BUCHLY**

Associate Vice Chancellor for Real Estate  
System Real Estate Office

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
**TIMOTHY V. COFFEY**

Assistant General Counsel  
Office of General Counsel



**EXECUTED** as of the \_\_\_\_\_ day of \_\_\_\_\_, 2006, by **COLLEGE STATION.**

**COLLEGE STATION, TEXAS**

By: \_\_\_\_\_  
**RON SILVIA, Mayor**

**ATTEST:**

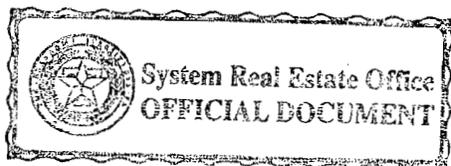
By: \_\_\_\_\_  
**CONNIE HOOKS, City Secretary**

**APPROVED:**

By: \_\_\_\_\_  
\_\_\_\_\_, City Manager

By: \_\_\_\_\_  
\_\_\_\_\_, City Attorney

By: \_\_\_\_\_  
**JEFF KERSTEN, Finance & Strategic  
Planning Director**



**ACKNOWLEDGEMENTS**

**STATE OF TEXAS           §**  
  **§**  
**COUNTY OF BRAZOS       §**

BEFORE ME, the undersigned authority, a Notary Public, for the State of Texas, on this day personally appeared **JAMES G. HOOTON**, Executive Vice Chancellor for Finance of The Texas A&M University System, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same as the act and deed of the Board of Regents of The Texas A&M University System for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this \_\_\_\_\_ day of \_\_\_\_\_, A.D. 2006.

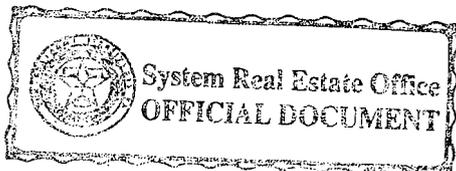
\_\_\_\_\_  
Notary Public, State of Texas  
My Commission Expires: \_\_\_\_\_

**THE STATE OF TEXAS   §**  
  **§**  
**COUNTY OF BRAZOS     §**

BEFORE ME, the undersigned authority, a Notary Public, for the State of Texas, on this day personally appeared **RON SILVIA**, Mayor of College Station, Texas, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed it for the purposes and consideration therein expressed, and in the capacity stated, in such instrument.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_  
Notary Public, State of Texas  
My Commission Expires: \_\_\_\_\_



**Joe Orr, Inc.**  
*Surveyors & Engineers*  
2167 Post Oak Circle  
College Station, TX 77845  
(979) 690-3378

Proposed Substation Tract  
Texas A&M University  
J.E. Scott League A-50  
College Station, Texas  
June 21, 2005

All that certain tract or parcel of land lying and being situated in the J.E. Scott League, Abstract No. 50, in College Station, Brazos County, Texas, being a part of that 74 acre tract conveyed to the State of Texas (Texas A&M University) by deed recorded in Volume 42, Page 684 of the Deed Records of Brazos County, Texas, being a tract fronting 259.5 feet along Finfeather Road and running back perpendicular 235.00 feet and being more particularly described as follows:

Commencing at an 8" fence post in the northwest line of the J.E. Scott League which is also the northwest line of the said 74 acre tract, from which the U.S.C. & G.S. monument "Texas A and M 1935" bears S 40° 13' 11" E - 8892.8 feet.

Thence S 40° 10' 15" E - 215.0 feet along the southwest right-of-way line of Finfeather Road as described in Volume 257, Page 311 of the Deed Records of Brazos County, Texas to a ½" iron rod with an orange plastic cap stamped "H.P. Mayo RPLS 5045" set at the Point of Beginning of this tract;

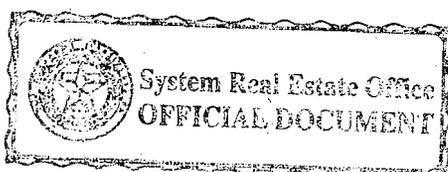
Thence S 40° 10' 15" E - 259.50 feet continuing along the southwest right-of-way line of Finfeather Road to a ½" iron rod with an orange plastic cap stamped "H.P. Mayo RPLS 5045" set for the most easterly corner of this tract at a point located 35 feet from the pavement centerline of said road;

Thence S 49° 49' 45" W - 235.00 feet through the said 74 acre tract to a ½" iron rod with an orange plastic cap stamped "H.P. Mayo RPLS 5045" set for the most southerly corner of this tract;

Thence N 40° 10' 15" W - 259.50 feet continuing through the said 74 acre tract to a ½" iron rod with an orange plastic cap stamped "H.P. Mayo RPLS 5045" set for the most westerly corner of this tract;

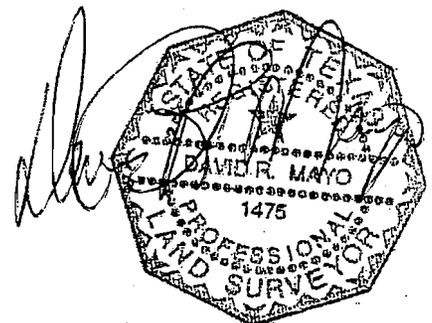
Thence N 49° 49' 45" E - 235.00 feet continuing through the said 74 acre tract to the Point of Beginning and containing 1.40 acres of land more or less.

Bearings are Texas State Plane, central zone, NAD-83 datum, based on GPS observations from monument "Texas A and M" (1935).



**Exhibit A**

Page 1 of 2

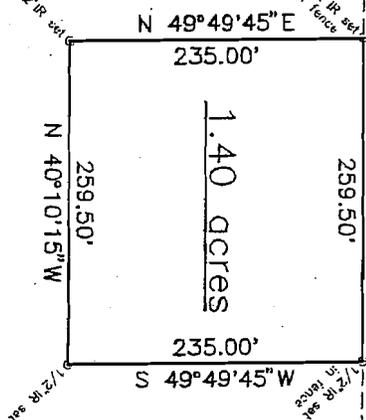


Proposed Substation Tract  
 Texas A&M University  
 J.E. Scott League A-50  
 College Station, Texas

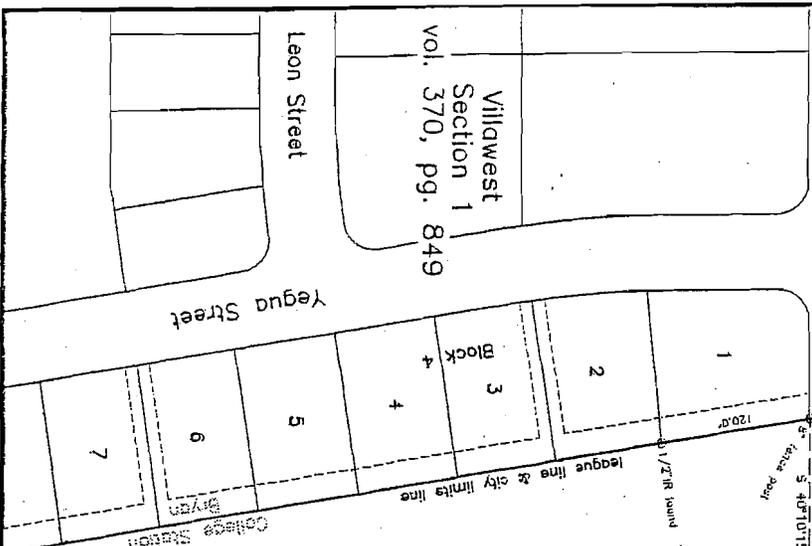
Union Pacific Railroad

formerly known as 1 & ON and Missouri Pacific railroad  
 § of rods = S 40°19'45" E  
 § of rods = S 40°20'37" E  
 formerly known as Houston & Texas Central and Southern Pacific railroad

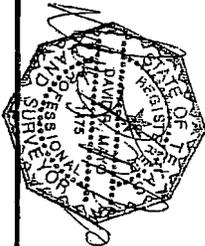
Finfeather Road  
 75' R.O.W. Easement - vol. 257, pg. 311



State of Texas  
 (Texas A&M University)  
 74 acres (includes Finfeather Rd.)  
 Vol. 42, Pg. 684



1" = 100'  
 June 2006  
 Bearings are Texas State Plane,  
 central zone, NAD-83 datum,  
 based on GPS observations from  
 monument "Texas A and M 1935".



Joe Orr, Inc.  
 Surveyors & Engineers  
 2167 Post Oak Circle  
 College Station, TX 77845  
 (979) 690-3378

Exhibit A

Page 2 of 2

Survey Notes:  
 All existing easements and  
 utilities are not be shown on  
 this plot.  
 No part of this property lies  
 within the 100 year flood plain  
 according to FIRMA panel no.  
 48041C0141 C, dated 7/2/92.  
 Iron rods set are 1/2" rebar  
 with orange plastic caps  
 stamped H.P.MAYO RPLS 5045.

