



Mayor
Ben White
Mayor Pro Tem
Lynn McIlhaney
City Manager
Glenn Brown

Councilmembers
John Crompton
James Massey
Dennis Maloney
Lawrence Stewart
David Ruesink

Agenda
College Station City Council
Regular Meeting
Thursday, January 22, 2009 at 7:00 PM
City Hall Council Chamber, 1101 Texas Avenue
College Station, Texas

1. Pledge of Allegiance, Invocation, Consider absence request.

Hear Visitors: A citizen may address the City Council on any item which does not appear on the posted Agenda. Registration forms are available in the lobby and at the desk of the City Secretary. This form should be completed and delivered to the City Secretary by 6:30 pm. Please limit remarks to three minutes. A timer alarm will sound after 2 1/2 minutes to signal thirty seconds remaining to conclude your remarks. The City Council will receive the information, ask staff to look into the matter, or place the issue on a future agenda. Topics of operational concerns shall be directed to the City Manager.

Consent Agenda

Individuals who wish to address the City Council on a consent or regular agenda item not posted as a public hearing shall register with the City Secretary prior to the Mayor's reading of the agenda item. Registration forms are available in the lobby and at the desk of the City Secretary. The Mayor will recognize individuals who wish to come forward to speak for or against the item. The speaker will state their name and address for the record and allowed three minutes. A timer will sound at 2 1/2 minutes to signal thirty seconds remaining for remarks.

2. Presentation, possible action and discussion of consent agenda items which consists of ministerial or "housekeeping" items required by law. Items may be removed from the consent agenda by majority vote of the Council.

a. Presentation, possible action, and discussion on minutes for November 20, 2008, December 4, 2008, and January 8, 2009 meeting.

b. Presentation, possible action, and discussion regarding approval of a contract with MicroAge of College Station for equipment, materials, supplies and services to upgrade the City's existing ATM Network in an amount not to exceed \$468,822.97.

c. Presentation, possible action, and discussion on the consideration of an ordinance amending Chapter 10, "Traffic Code," Section 2.C of the Code of Ordinances of the City of College Station changing the traffic control at the intersection of Eagle Avenue at Brandenburg Lane from one-way stop controlled operation to three-way stop controlled operation.

- d. Presentation, possible action and discussion on consideration of an resolution temporarily amending Chapter 10, Section 3E (2)(c), of the College Station Code of Ordinances by changing the posted speed limit on the section of Wellborn Road (FM 2154) between FM 2818 and Barron Road to 45 mph for the duration of TxDOT's Wellborn Road widening project.
- e. Presentation, possible action, and discussion on consideration of an ordinance modifying Chapter 10, "Traffic Code," Section 2.D of the Code of Ordinances of the City of College Station by updating the Traffic Control Device Inventory – Schedule III to add STOP signs at various intersections.
- f. Presentation, possible action and discussion on the City's authorized Brokers/Dealers for investments.
- g. Presentation, possible action and discussion on a resolution to open a second Investment Pool account with Texas Short Term Asset Reserve Program ("TexSTAR").
- h. Presentation, possible action, and discussion on a resolution approving a new Certificate of Authorized Persons to replace the existing certificate on the Third Party Custodian Agreement between the City of College Station, Citibank Texas, N.A., and Bank of New York, and authorizing the Mayor to execute the new certificate of authorized persons.
- i. Presentation, possible action, and discussion on obtaining approval for Stop Loss Coverage Policy Renewal with Blue Cross and Blue Shield for our self-funded employee medical insurance plan for the calendar year 2009, in the amount of \$308,766.
- j. Presentation, possible action, and discussion on the Second Amendment and Modification to the Annual Fuel Contract for City of Bryan, Texas and Second Amendment and Modification to the Annual Fuel Contract for City of College Station, Texas in order that all fuel deliveries for BVSWMA shall be separately invoiced; both the City of Bryan and City of College Station shall be jointly responsible for payment of BVSWMA invoices with BVSWMA funds and payment is so authorized in an amount not to exceed \$387,000 for BVSWMA deliveries for the fourth renewal period term.
- k. Presentation, possible action and discussion on the annual renewal agreement for concrete meter boxes with Sims Plastics of Waco for an annual expenditure of \$88,191.75. This is the first of two renewal options that is to begin on February 11, 2009 and expire on February 10, 2010. Bid #08-20.
- l. Presentation, possible action and discussion regarding action approving a real estate contract with Mervin Peters to purchase conservation property and access easements on approximately 59.7 acres of land, at a cost of \$313,425.00.
- m. Presentation, possible action and discussion to authorize additional funds for professional services from Bickerstaff, Heath, Delgado & Acosta, LLP. for litigation concerning the Brazos Valley Solid Waste Management Agency (BVSWMA) in the amount of \$202,000.00 for total funds of \$252,000.00. Approval by the Council of this request will ratify an additional \$40,040.19 expended and provide funds for additional legal costs associated with this project.

n. Presentation, possible action and discussion to authorize additional funds for professional services from Bickerstaff, Heath, Delgado & Acosta, LLP. for the Brazos Valley Solid Waste Management Agency (BVSWMA) condemnations for the Twin Oaks Landfill Facility property in the amount of \$27,737.90 for total funds of \$177,737.90. Approval by the Council of this request will ratify an additional \$27,737.90 expended.

o. Presentation, possible action, and discussion regarding a resolution awarding the bid and approval of (Contract Number #09-75) with Progressive Commercial Aquatics, Inc. in the amount of \$102,314 and ten (10) construction days for the purchase and installation of a UV Water Treatment System at four (4) swimming pools.

p. Presentation, possible action, and discussion regarding an Advanced Funding Agreement No. 3 with the Texas Department of Transportation to finalize the reimbursement on this project. Upon execution of Amendment No. 3, the Texas Department of Transportation will reimburse the City of College Station \$682,826.86.

q. Presentation, possible action and discussion regarding the approval of a resolution accepting the terms and conditions in the Letter of Acknowledgement from the Heart of Texas Regional Advisory Council and accept the Office of Assistant Secretary of Preparedness and Response (OASPR) Grant in the amount of \$7,000.00.

Regular Agenda

Individuals who wish to address the City Council **on a regular agenda item not posted as a public hearing** shall register with the City Secretary prior to the Mayor's reading of the agenda item. The Mayor will recognize you to come forward to speak for or against the item. The speaker will state their name and address for the record and allowed three minutes. A timer will sound at 2 1/2 minutes to signal thirty seconds remaining for remarks.

Individuals who wish to address the City Council on an item **posted as a public hearing** shall register with the City Secretary prior to the Mayor's announcement to open the public hearing. The Mayor will recognize individuals who wish to come forward to speak for or against the item. The speaker will state their name and address for the record and allowed three minutes. A timer alarm will sound at 2 1/2 minutes to signal thirty seconds remaining to conclude remarks. After a public hearing is closed, there shall be no additional public comments. If Council needs additional information from the general public, some limited comments may be allowed at the discretion of the Mayor.

If an individual does not wish to address the City Council, but still wishes to be recorded in the official minutes as being in support or opposition to an agenda item, the individual may complete the registration form provided in the lobby by providing the name, address, and comments about a city related subject. These comments will be referred to the City Council and City Manager.

1. Public hearing, presentation, possible action, and discussion regarding proposed changes to the City's smoking ordinance.
2. Public hearing, presentation, possible action, and discussion on an amendment to the Unified Development Ordinance, Article 7, General Development Standards as it relates to detention ponds and storm water management design.

On Behalf of the Citizens of College Station, Home of Texas A&M University, We will continue to Promote and Advance the Community's Quality of Life

- 3. Presentation, possible action, and discussion regarding the City's appointment to the Joint Relief Funding Review Committee.
- 4. Adjourn.

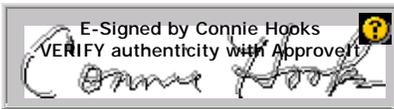
If litigation issues arise to the posted subject matter of this Council Meeting an executive session will be held.

APPROVED:

City Manager

Notice is hereby given that a Regular Meeting of the City Council of the City of College Station, Texas will be held on the Thursday, January 22, 2009 at 7:00 PM at the City Hall Council Chambers, 1101 Texas Avenue, College Station, Texas. The following subjects will be discussed, to wit: See Agenda.

Posted this 16th day of January, 2009 at 5:00 pm



City Secretary

I, the undersigned, do hereby certify that the above Notice of Meeting of the Governing Body of the City of College Station, Texas, is a true and correct copy of said Notice and that I posted a true and correct copy of said notice on the bulletin board at City Hall, 1101 Texas Avenue, in College Station, Texas, and the City's website, www.cstx.gov . The Agenda and Notice are readily accessible to the general public at all times. Said Notice and Agenda were posted on January 16, 2009 at 5:00 pm and remained so posted continuously for at least 72 hours preceeding the scheduled time of said meeting.

This public notice was removed from the official posting board at the College Station City Hall on the following date and time: _____ by _____.

Dated this ____ day of _____, 2009 By _____

Subscribed and sworn to before me on this the ____ day of _____, 2009.

Notary Public – Brazos County, Texas My commission expires: _____

The building is wheelchair accessible. Handicap parking spaces are available. Any request for sign interpretive service must be made 48 hours before the meeting. To make arrangements call (979) 764-3517 or (TDD) 1-800-735-2989. Agendas may be viewed on www.cstx.gov . Council meetings are broadcast live on Cable Access Channel 19.

On Behalf of the Citizens of College Station, Home of Texas A&M University, We will continue to Promote and Advance the Community's Quality of Life

MINUTES
PLANNING AND ZONING COMMISSION
AND CITY COUNCIL
Joint Workshop Meeting
Thursday, November 20, 2008
at 5:00 p.m.
City Hall Council Chambers
1101 Texas Avenue
College Station, Texas

COMMISSIONERS PRESENT: Chairman John Nichols, Noel Bauman, Paul Greer, Doug Slack, Thomas Woodfin and Hugh Stearns

COMMISSIONERS ABSENT: Bill Davis

CITY COUNCIL MEMBERS PRESENT: Mayor Ben White, Lynn McIlhaney, John Crompton, James Massey, Dave Ruesink, Dennis Maloney, Larry Stewart

CITY STAFF PRESENT: Senior Planner Jennifer Prochazka, Staff Planners Jason Schubert, Lauren Hovde and Matt Robinson, Graduate Civil Engineer Erika Bridges, Assistant City Engineer Josh Norton, Senior Assistant City Engineer Carol Cotter, Planning Administrator Molly Hitchcock, Director Bob Cowell, Assistant Directors Lance Simms and Gabriel Elliott, First Assistant City Attorney Carla Robinson, Assistant City Managers Kathy Merrill and David Neeley, Assistant to the City Manager Hayden Migl, Action Center Representative Carrie McHugh, Staff Assistant Brittany Caldwell, City Secretary Connie Hooks

1. Call the meeting to order.
Mayor Ben White called the City Council meeting to order at 5:00 p.m.
Chairman Nichols called the Planning & Zoning Commission meeting to order at 5:00 p.m.
2. Presentation, possible action, and discussion regarding the Comprehensive Plan, including the following draft chapters: Introduction, Community Character, Neighborhood Integrity, Transportation, and Growth Management and Capacity.

Senior Planner Jennifer Prochazka began the discussion. She spoke of the community vision and the eight vision statements identified by City Council as part of the overall city strategic plan. She emphasized that the Comprehensive Plan document serves as a guide and lays the foundation for land use decisions, Capital Improvement decisions, and budget processes.

Members held discussion on several elements within the Chapter on Community Character.

No official action was taken. Council meeting adjourned at 6:05 pm

PASSED AND APPROVED this 22nd day of January, 2009.

APPROVED:

Mayor Ben White

ATTEST:

City Secretary Connie Hooks



Mayor
Ben White
Mayor ProTem
Lynn McIlhane
City Manager
Glenn Brown

Councilmembers
John Crompton
James Massey
Dennis Maloney
Lawrence Stewart
David Ruesink

Draft Minutes
City Council Workshop & Regular Meeting
Thursday, January 8, 2009 3:00 & 7:00 p.m.
City Hall Council Chambers, 1101 Texas Avenue
College Station, Texas

COUNCIL PRESENT: Mayor White, Mayor Pro Tem McIlhane, Council members Maloney, Crompton, Massey, Ruesink, Stewart

STAFF PRESENT: City Manager Brown, Assistant City Manager Merrill, Assistant City Manager David Neeley, City Attorney Cargill Jr., City Secretary Hooks, Deputy City Secretary McNutt, Management Team

Mayor White called meeting to order at 3:00 p.m.

Workshop Agenda Item No. 1 -- Presentation, possible action, and discussion on items listed on the consent agenda.

Council member Maloney inquired about Consent Agenda Item 2f. He suggested a centralized facility for recycling drop off utilizing monies proposed for a study rather than conducting a study for city wide recycling. Council member Ruesink concurred. Staff explained the purpose of the study. Council recommended this item be returned back to staff for further review.

Council member Ruesink inquired about Consent Agenda Item 2k, the change order for police dept. renovations.

Workshop Agenda Item No. 2 -- Presentation, possible action, and discussion regarding College Station 2009 State Legislative Program.

Mayor White welcomed Dan Shelley and Jennifer Shelley Rodriguez, our legislative liaisons' from Austin.

Assistant City Manager David Neeley provided an overview of the city's legislative priorities for the upcoming 2009 State Legislative Program. These priorities included: Transportation, Municipal Revenue, Erosion of Municipal Powers, Collective Bargaining, Annexation – Land Use Authority, and Un-funded Mandates.

Dan Shelley, the city's Legislative Liaison from Austin elaborated on David Neeley's presentation. He provided the timeline for the legislative session.

2009 legislative session dates of interest
November 10, 2008 – Bill Pre-filing Begins
January 13, 2009 – Session Begins

June 1, 2009 – Session Ends

June 21, 2009 – Last Day Governor can sign or veto bills passed during regular session

Council directed staff to include input from the School District and TAMU on legislative bills affecting the community.

Workshop Agenda Item No. 3 -- Presentation, possible action, and discussion on the performance, progress and future plans of the Bryan/College Station Convention and Visitors Bureau (B/CSCVB).

Economic and Community Development Director David Gwin introduced Shannon Overby, Executive Director of Convention and Visitors Bureau.

Ms. Overby presented an overview of the performance, progress and future plans of the Bryan/College Station Convention and Visitors Bureau.

Strategic Priorities:

Research:

- Destination image
- Product needs and development
- Economic impacts

Resources:

- Partners & Cooperative marketing and efforts
- In-kind / Donated

Destination Management:

- Industry Education & Service and Training
- Product development

Advocacy/Communication:

- Facilitation
- Benefits and Contributions of Tourism

No formal action was taken.

Workshop Agenda Item No. 4 -- Presentation, possible action, and discussion regarding proposed changes to the City's smoking ordinance.

Hayden Migl, Assistant to City Manager presented the proposed amendments to the current smoking ordinance. He noted that a public meeting was held on December 15 to gather citizen input about this issue. Due to some of the comments made by business owners at the meeting, staff proposed a slight modification to the regulations around entryways for bars and bar areas be reducing the distance smoking is prohibited to ten feet. This should allow a greater portion of the patios and porches to be used as well as allowing smoking on College Main when that road is blocked off to vehicular traffic.

Mr. Migl mentioned that a public hearing will be held at the January 22 City Council Meeting.

Council members agreed to the proposed change with the exception of Council member Maloney.

Workshop Agenda Item No. 5 -- Presentation, possible action, and discussion regarding a proposed Tree Beautification Program, as requested by Council at the August 18, 2008 meeting.

Parks and Recreation Director Tony Cisneros presented an overview of the proposed Tree Beautification Program. He explained the level of tree beautification efforts that will be provided for in the future, the focus and the funding. Staff requested direction from Council on the input and policy implementation of a proposed Tree Beautification Program for the State Highway 6 Corridor.

Council directed staff to implement the policy as well as Phase I of the proposed Tree Beautification Program.

Workshop Agenda Item No. 6 -- Presentation, possible action, and discussion regarding on-going efforts to realize a signature event for the City.

Director of Economic and Community Development David Gwin presented an update on the efforts toward a signature event within the City. He asked Council to consider the appointment of a Task Force Committee.

Council concurred with the appointment of four members of community to work with members of the Arts Council and the Convention and Visitors Bureau. These appointees were: Jim Petric, Steve Beachy, Paul Surf, and Andrew Pitts.

Workshop Agenda Item No. 7 -- Council Calendar.

Council reviewed their activity calendar.

Workshop Agenda Item No. 8 -- Presentation, possible action, and discussion on future agenda items: A Council Member may inquire about a subject for which notice has not been given. A statement of specific factual information or the recitation of existing policy may be given. Any deliberation shall be limited to a proposal to place the subject on an agenda for a subsequent meeting

No discussion held.

Workshop Agenda Item No. 9 -- Discussion, review and possible action regarding the following meetings: Arts Council of the Brazos Valley, Audit Committee, Brazos County Health Dept., Brazos Valley Council of Governments, Brazos Valley Wide Area Communications Task Force, Cemetery Committee, Design Review Board, Historic Preservation Committee, Interfaith Dialogue Association, Intergovernmental Committee, Joint Relief Funding Review Committee, Library Committee, Metropolitan Planning Organization, National League of Cities, Outside Agency Funding Review, Parks and Recreation Board, Planning and Zoning Commission, Sister City Association, TAMU Student Senate, Research Valley Partnership, Regional Transportation Committee for Council of Governments, Texas Municipal League, Transportation Committee, Wolf Pen Creek Oversight Committee, Wolf Pen Creek TIF Board, Zoning Board of Adjustments, BVSWMA, (Notice of Agendas posted on City Hall bulletin board).

No discussion held.

At 5:29 pm Mayor White announced that the City Council would convene into executive session pursuant to Section 551.071 and 551.087 of the Open Meetings Act to seek the advice of our city attorney and consider economic development incentives.

Workshop Agenda Item No. 10 -- Executive Session will immediately follow the workshop meeting in the Administrative Conference Room.

Thursday, January 8, 2009

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. Application with TCEQ for permits in Westside/Highway 60 area, near Brushy Water Supply Corporation
- b. Sewer CCN permit requests
- c. Water CCN permit requests
- d. Water service application with regard to Wellborn Special Utility District.
- e. Bed & Banks Water Rights Discharge Permits for College Station and Bryan
- f. Attorney-client privileged information and possible contemplated litigation of prior expenditures of College Station funds made by Paul Urso to Texcon
- g. Legal aspects of Water Well, permits and possible purchase of or lease of water well sites
- h. Cliff A. Skiles, DVM & C.A. Skiles Family Partnership, Ltd. Water permit applications with the Brazos Valley Groundwater Conservation District
- i. JK Development v. College Station
- j. Taylor Kingsley v. College Station
- k. State Farm Lloyds as Subrogee of Mikal Klumpp v. College Station
- l. TMPA v. PUC (College Station filed Intervention)
- m. City of Bryan suit filed against College Station, Legal issues and advise on Brazos Valley Solid Waste Management Agency contract, on proposed methane gas contract
- n. Update on legal proceedings for Grimes County Landfill site and contracts for development of Grimes County site
- o. Weingarten Realty Investors v. College Station, Ron Silvia, David Ruesink, Lynn McIlhaney, and Ben White

Economic Development 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 with 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 open session. The following subject(s) may be discussed:

- a. Next Generation Industrial Park

Workshop Agenda Item No. 11 -- Action on executive session, or any workshop agenda item not completed or discussed in today's workshop meeting will be discussed in tonight's Regular Meeting if necessary.

At 6:50 pm, Council adjourned from the executive session and returned to Council Chambers. No formal action was taken.

Workshop Agenda Item No. 12 -- Adjourn.

The workshop meeting adjourned following the regular meeting.

Minutes of Regular Meeting

Regular Agenda Item No. 1 -- Pledge of Allegiance, Invocation, Consider absence request.

Mayor White called the meeting to order at 7:00 pm with all Council members present. College Station Fire Department Honor Guard led the audience in the Pledge of Allegiance. Fire Chief R.B. Alley provided the invocation.

Mayor White presented the Historic Home Marker #85 1203 Walton Drive to Tracy and Frank Chaska.

Hear Visitors:

No one spoke.

Regular Agenda Item No. 2 -- Presentation, possible action and discussion of consent agenda items which consists of ministerial or "housekeeping" items required by law. Items may be removed from the consent agenda by majority vote of the Council.

- a. Approved minutes for City Council workshop and regular meetings, December 16, 2008.
- b. Approved contract with Sungard Public Sector (SPS), formerly Sungard HTE, for the purchase of the imaging interface for the Utilities applications in use by the Fiscal Services Department in an amount not to exceed \$14,790.00.
- c. Approved Change Order to an existing Landscape Maintenance Service Contract with Green Teams, Inc. (d.b.a: The Greenery), in the amount of \$42,324.00 to add the annual landscape maintenance functions for: Dartmouth Street Extension, University Park, Edelweiss Gartens Park, Crescent Pointe Park, and Woodland Hills Park.
- d. Approved ratification of a contract to provide non-alcoholic beverages for resale at City operated concession stands for a period of six years beginning in January 2007.
- e. Approved **Resolution No. 01-08-09-2e** awarding the bid and approval of a construction contract (Contract Number #09-059) with South Construction, Inc. in the amount of \$96,832, for construction improvements in Oaks Park and Lions Park, PK0705 / PK0704.
- f. Presentation, possible action, and discussion to approve contract #09-039 in an amount not to exceed \$63,500.00 with R.W. Beck Incorporated to provide a recycling feasibility study. The study includes an analysis of drop-off and on-site recycling programs for the multifamily and commercial sectors. **(ITEM REMOVED)**
- g. Approved annual price agreement renewals for the purchase of various automotive and truck parts. The annual estimated expenditure for NAPA Auto Parts is \$113,500.00 and the annual estimated expenditure for Truckmotive, Inc. is \$48,500.00.
- h. Approved the City's proposed Housing Reconstruction Loan Program Guidelines.

Thursday, January 8, 2009

- i. Approved HOME Investment Partnership Program Tenant Based Rental Assistance (TBRA) Agreement between the City of College Station and Twin City Mission.

- j. Approved **Resolution No. 01-08-09-2j** awarding an engineering contract for the design of the Koppe Bridge Lift Station Project to Mitchell & Morgan, L.L.P., in an amount not to exceed \$60,700.00.

- k. Approved change order to Contract #07-273 in the amount of \$31,538.05 to JaCody, Inc. for construction work associated with Police Department Renovations Project.

- l. Approved **Resolution No. 01-08-09-2L** on Construction Contract with D&S Contracting, Inc., in the amount of \$136,050.20, for the construction of the Southwest Parkway Sanitary Sewer Line Replacement Project.

- m. Approved authorizing additional expenditures of \$25,000.00 for the purchase of replacement parts and/or components for existing sanitation trucks from Heil of Texas, making the annual estimated expenditure for Heil of Texas \$74,950.00.

- n. Approved **Resolution No. 01-08-09-2n** supporting legislative action to create programs and provide funding for the enhancement of public transportation including relocation of freight rail lines.

Council member Maloney made a motion to approve consent agenda items 2a thru 2e and 2g thru 2n. Council member Massey seconded the motion, which carried 7-0.

FOR: Mayor White, Mayor Pro Tem McIlhaney, Crompton, Massey, Maloney, Stewart and Ruesink
AGAINST: None

Regular Agenda Item No. 1 -- Presentation, possible action, and discussion on an amendment to the contract with the Texas Department of State Health Services for the Mayor's Council on Physical Fitness Grant Contract.

Director of Parks and Recreation Tony Cisneros presented a proposed contract amendment for the Phase II work plan that increases the contract amount by \$50, 000 for a total contract of \$73, 280 with the Texas Department of State Health Services for the Mayor's Council on Physical Fitness Grant Contract.

Council member Massey moved to approve the amended contract with the Texas Department of State Health Services. Mayor Pro Tem McIlhaney seconded the motion, which carried 7-0.

FOR: Mayor White, Mayor Pro Tem McIlhaney, Crompton, Massey, Maloney, Stewart and Ruesink
AGAINST: None

Regular Agenda Item No. 2 -- Public hearing, presentation, possible action, and discussion regarding current UDO requirements and code enforcement practices in the Northgate area.

Director of Planning and Development Services Bob Cowell presented an overview of the current UDO requirements and code enforcement practices in the Northgate area. Council provided staff with concerns of inefficiencies in code enforcement action of trash, public restrooms, and aesthetics.

Mayor White opened the public hearing. No one spoke. Mayor White closed the public hearing.

Assistant Director of Public Works Pete Caler explained the section regarding sanitation violations and the Northgate refuse containers.

Council supported Option No. 1 proposed by staff.

Regular Agenda Item No. 3 -- Presentation, possible action, and discussion regarding a proposed maintenance plan for the Northgate Commercial District.

David Gwin, Director of Economic and Community Development presented an overview of developing a long-term plan to better address the overall appearance of the public areas and assets in Northgate. The overall intent of this plan is to be more strategic and seek to maximize the very limited pool of available

resources. The plan addresses the maintenance needs of Northgate and four components believed to be critical for the long-term success of this endeavor as follows:

- 1.) General Solid Waste Management
- 2.) Bird Management and Associated Maintenance
- 3.) Maintenance of Property Assets; including:
 - a. the Surface Parking Lot
 - b. Patricia Street Promenade
 - c. Second Street Promenade
 - d. First Street/Old City Hall
 - e. Spruce Street Park
- 4.) Private Sector Engagement & Potential Partnership

Council member Maloney moved to approve the proposed maintenance plan for the Northgate Commercial District. Council member Stewart seconded the motion, which carried 7-0.

FOR: Mayor White, Mayor Pro Tem McIlhaney, Crompton, Massey, Maloney, Stewart and Ruesink
AGAINST: None

Regular Agenda Item No. 4 -- Presentation, possible action and discussion regarding an overview of a planned new website for the City.

Director of Public Communications Wayne Larson presented an overview of launching a new website for the City of College Station. The website aligns with these City Council Strategic Issues: Effective Communications, Destination Place to Live and Work, Exceptional Infrastructure and Core Services, Diverse Growing Economy, Neighborhood Integrity, and Green College Station. Also, the features of the new website will include: Enhanced homepage, new navigational dropdowns, rotating photographs, more-efficient links for top destinations of website users, and efficient ways to communicate.

No formal action was taken.

Regular Agenda Item No. 5 -- Presentation, possible action, and discussion regarding the City's appointment of a chair to the Landmark Commission.

City Secretary Connie Hooks requested Council appoint a Committee Chair from the existing membership.

Council member Crompton moved to appoint Scott Shafer Chairman on the Landmark Commission. Council member Maloney seconded the motion, which carried 6-0.

FOR: Mayor White, Crompton, Massey, Maloney, Stewart and Ruesink
AGAINST: Mayor Pro Tem McIlhaney

Regular Agenda Item No. 6 -- Adjourn.

Hearing no objections, Mayor White adjourned the meetings at 8:45 pm on Thursday, January 8, 2009.

PASSED AND APPROVED this 22nd day of January, 2009.

APPROVED

Mayor Ben White

ATTEST:

City Secretary Connie Hooks

**January 22, 2009
Consent Agenda Item No. 2b
Network Upgrade**

To: Glenn Brown, City Manager

From: Ben Roper, IT Director

Agenda Caption: Presentation, possible action, and discussion regarding approval of a contract with MicroAge of College Station for equipment, materials, supplies and services to upgrade the City's existing network switches in an amount not to exceed \$468,822.97.

Recommendation(s): Staff recommends approval.

Summary: The Asynchronous Transfer Mode (ATM) Network Upgrade project (Project CO 0522) replaces the city's obsolete network switches with a fault tolerant, singlemode fiber based, 10 Gigabit Ethernet backbone. This part of the project includes provision of equipment, materials, supplies, and services.

The existing network switch equipment is obsolete, difficult to repair, and does not provide the speed or capacity needed to effectively use current software applications. This results in frustration for users, and the inability to use some applications or conduct business in a timely manner.

This project will support the recently approved wireless plan by providing the capability to transport video from surveillance cameras over the city's network.

Budget & Financial Summary: Funding for this contract is included in the CIP budget for project CO 0522. The total project budget is \$537,359.

Attachments:

Contract is on file in the City Secretary's Office

January 22, 2009
Consent Agenda Item No. 2c
Three-way Stop Control for the intersection of
Eagle Avenue at Brandenburg Lane

To: Glenn Brown, City Manager

From: Mark Smith, Director of Public Works

Agenda Caption: Presentation, possible action, and discussion on the consideration of an ordinance amending Chapter 10, "Traffic Code," Section 2.C of the Code of Ordinances of the City of College Station changing the traffic control at the intersection of Eagle Avenue at Brandenburg Lane from one-way stop controlled operation to three-way stop controlled operation.

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

Summary: The existing intersection of Eagle Avenue and Brandenburg Lane is a T-intersection created by the termination of Brandenburg at Eagle, which is a minor collector in the Edelweiss Gartens subdivision that extends between Graham on the north and Eagle on the south. Eagle is also a minor collector and will eventually extend from the SH 6 West Frontage Road on its east end to SH 40/William D. Fitch Parkway. Currently, Brandenburg is the only street required to stop at the intersection since Eagle connects to the major area roadways.

Due to the curvature of the roadway in combination with the privacy fence along the north side of Eagle, the motorists on Brandenburg are unable to see the traffic approaching from the west a sufficient distance away to enter the intersection safely. The Bryan-College Station Unified Design Guideline Manual references the American Association of State Highways and Transportation Officials (AASHTO) design guidelines for intersection sight distance. This manual identifies sight triangles at intersections that need to remain clear of obstruction for a driver to safely enter an intersection without causing a crash. These triangles are based on the speed limit of the major roadway, so higher speed roads have larger sight triangle requirements.

The city's Traffic Management Team has evaluated the intersection and recommends that the intersection be converted to a three-way stop intersection, so all intersection approaches stop at the intersection.

Budget & Financial Summary: The "Stop" signs are planned operation and maintenance expenses accounted for in the Public Works Traffic Operation budget.

Attachments:

1. Ordinance
2. Location Map

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 10, "TRAFFIC CODE", OF THE CODE OF ORDINANCES OF THE CITY OF COLLEGE STATION, TEXAS, BY AMENDING CERTAIN SECTIONS AS SET OUT BELOW; PROVIDING A SEVERABILITY CLAUSE; DECLARING A PENALTY; AND PROVIDING AN EFFECTIVE DATE.

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

PART 1: That Chapter 10, "Traffic Code", of the Code of Ordinances of the City of College Station, Texas, be amended as set out in Exhibit "A", attached hereto and made a part of this ordinance for all purposes.

PART 2: That if any provisions of any section of this ordinance shall be held to be void or unconstitutional, such holding shall in no way effect the validity of the remaining provisions or sections of this ordinance, which shall remain in full force and effect.

PART 3: That any person, firm, or corporation violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not less than Twenty-five Dollars (\$25.00) nor more than Two Hundred Dollars (\$200.00). Each day such violation shall continue or be permitted to continue, shall be deemed a separate offense. Said Ordinance, being a penal ordinance, becomes effective ten (10) days after its date of passage by the City Council, as provided by Section 35 of the Charter of the City of College Station.

PASSED, ADOPTED and APPROVED this _____ day of _____, 2009.

APPROVED:

MAYOR

ATTEST:

City Secretary

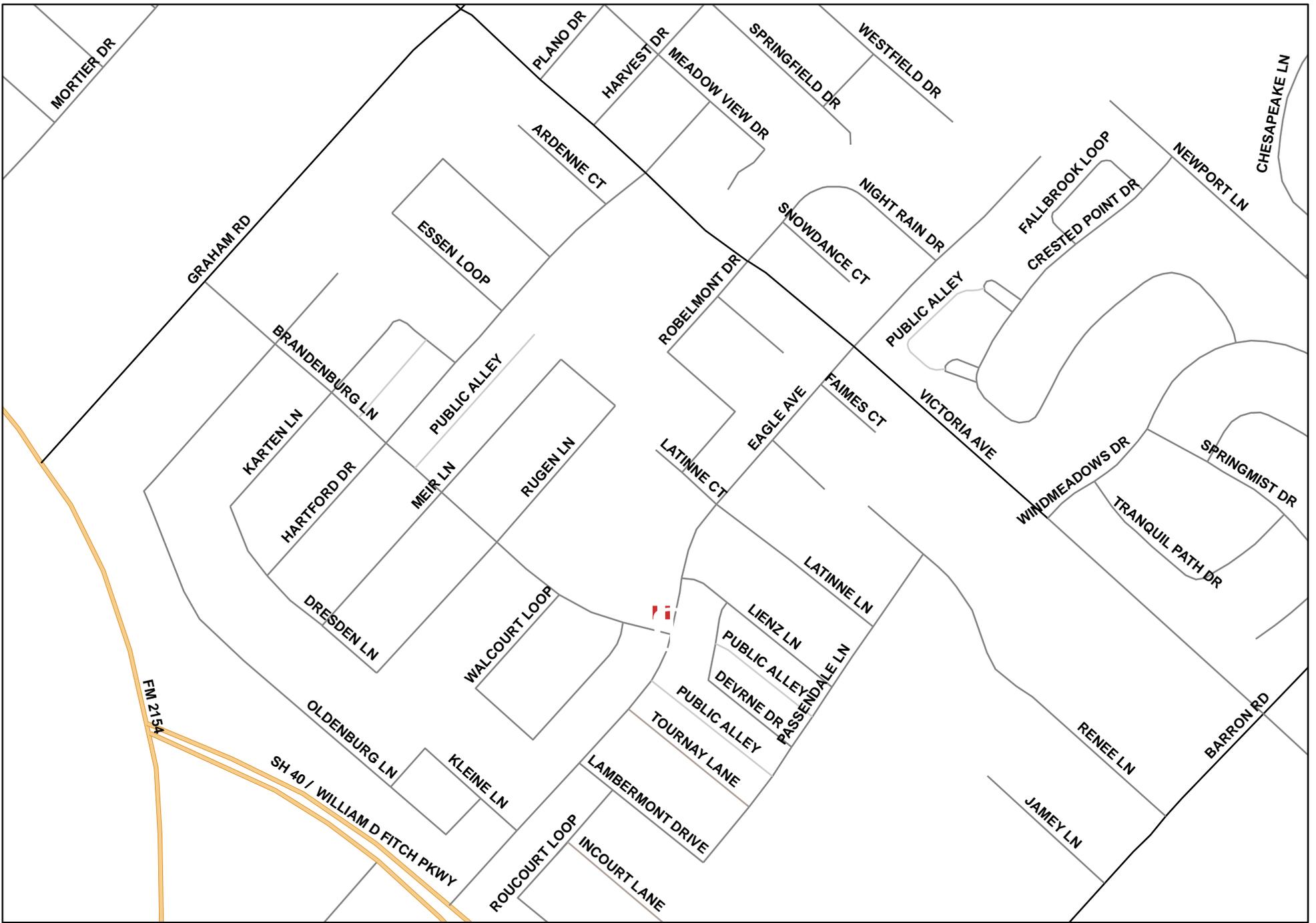
APPROVED:

City Attorney

EXHIBIT "A"

That Traffic Control Device Inventory - Schedule II as referenced in Chapter 10, "Traffic Code", Section 2 "Traffic Control Devices", sub-section C "Four Way Stop Intersections" is hereby amended to include the following:

Eagle Avenue at Brandenburg Lane



Eagle Avenue at Brandenburg Lane

Proposed Multi-way Stop Controlled Intersection



January 22, 2009
Consent Agenda Item No. 2d
Wellborn Road (FM 2154) Temporary Speed Limit

To: Glenn Brown, City Manager

From: Mark Smith, Director of Public Works

Agenda Caption: Presentation, possible action and discussion on consideration of an resolution temporarily amending Chapter 10, Section 3E (2)(c), of the College Station Code of Ordinances by changing the posted speed limit on the section of Wellborn Road (FM 2154) between FM 2818 and Barron Road to 45 mph for the duration of TxDOT's Wellborn Road widening project.

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

Summary: TxDOT is widening Wellborn Road (FM 2154) between FM 2818 and Capstone Drive. Due to the close proximity of the motorists to the construction zone and workers, TxDOT is requesting that the city pass an ordinance establishing a 45 mph construction speed zone for the roadway section between FM 2818 and Barron Road, which will lower the speed limit from the posted speed limit of 55 mph. This speed reduction will allow TxDOT to use low profile barriers along the edge of the work zone and improve the safety of motorist and construction crews. This speed zone will expire later this summer with the completion of the existing construction phase.

The TxDOT manual, *Procedures for Establishing Speed Zones*, describes the process for establishing a construction speed zone within an incorporated city, which includes two options. A city may establish a construction speed zone by adopting an ordinance or by making a request to TxDOT. The accompanying ordinance establishes a temporary 45 mph construction speed zone along a section of Wellborn Road, beginning at FM 2818 and extending south to Barron Road. The construction speed zone is temporary, becoming effective from the date of passage of the ordinance and expiring after the completion of the TxDOT construction project.

Budget & Financial Summary: No expenditure of City funds is necessary or associated with this item.

Attachments:

1. Ordinance
2. Location Map

ORDINANCE NO. _____

AN ORDINANCE TEMPORARILY AMENDING CHAPTER 10, "TRAFFIC CODE", OF THE CODE OF ORDINANCES OF THE CITY OF COLLEGE STATION, TEXAS, BY AMENDING CERTAIN SECTIONS AS SET OUT BELOW; PROVIDING A SEVERABILITY CLAUSE; DECLARING A PENALTY; AND PROVIDING AN EFFECTIVE DATE.

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

PART 1: That Chapter 10, "Traffic Code", of the Code of Ordinances of the City of College Station, Texas, be temporarily amended as set out in Exhibit "A", attached hereto and made a part of this ordinance for all purposes.

PART 2: That if any provisions of any section of this ordinance shall be held to be void or unconstitutional, such holding shall in no way effect the validity of the remaining provisions or sections of this ordinance, which shall remain in full force and effect.

PART 3: That any person, firm, or corporation violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not less than Twenty-five Dollars (\$25.00) nor more than Two Hundred Dollars (\$200.00). Each day such violation shall continue or be permitted to continue, shall be deemed a separate offense. Said Ordinance, being a penal ordinance, becomes effective ten (10) days after its date of passage by the City Council, as provided by Section 35 of the Charter of the City of College Station and expires at the completion of the Texas Department of Transportation's project to widen FM 2154 between FM 2818 and Capstone Drive.

PASSED, ADOPTED and APPROVED this _____ day of _____, 2009.

ATTEST:

APPROVED:

City Secretary

MAYOR

APPROVED:

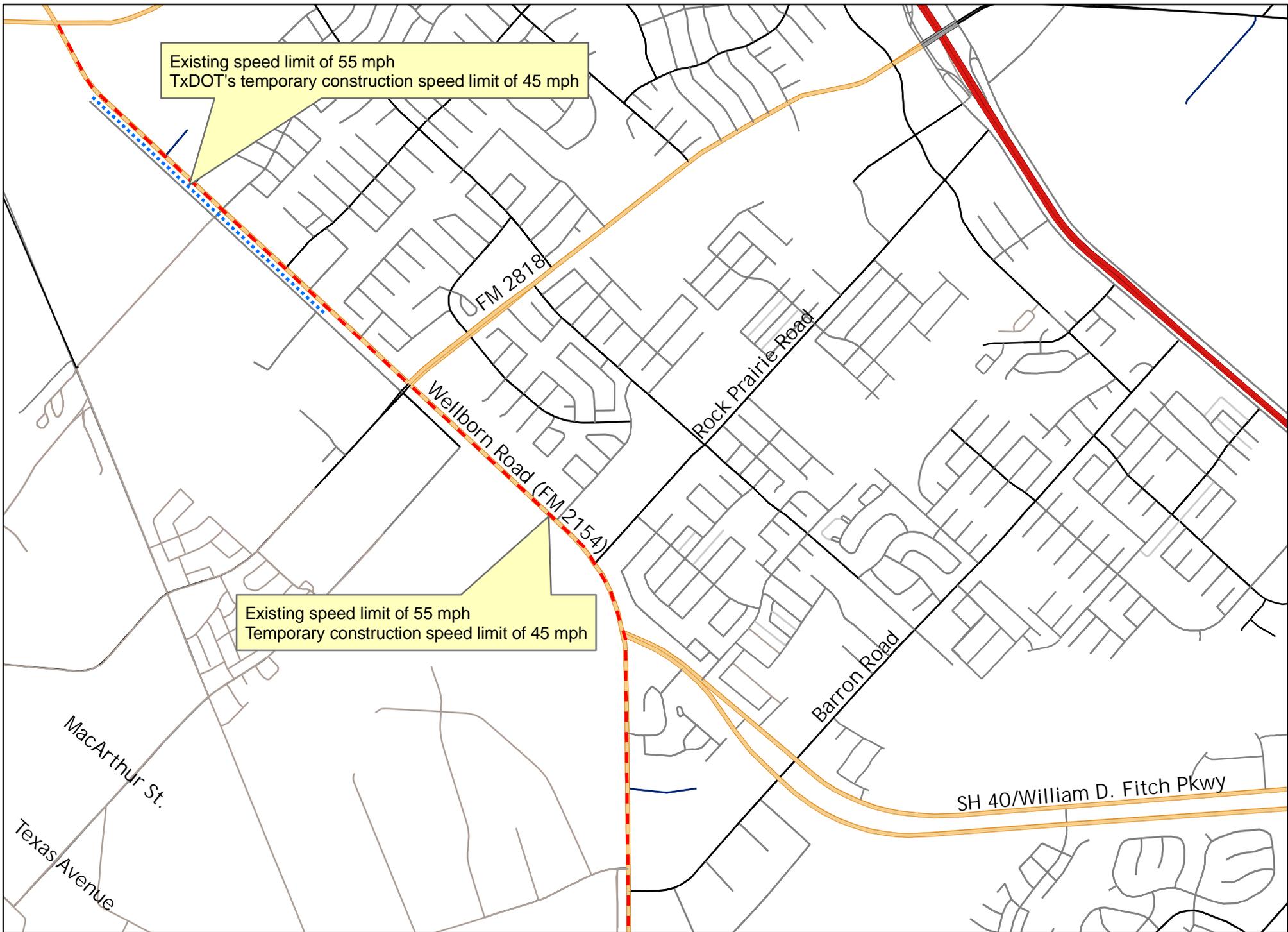
City Attorney

EXHIBIT "A"

That Chapter 10, "Traffic Code", Section 3, "Speed Limits", of the Code of Ordinances of the City of College Station, Texas, is hereby temporarily amended, by amending paragraph 2(c), as set out hereafter to read as follows:

- (c) FM 2154 (Wellborn Road), for traffic moving in a southerly direction for the first 0.600 mile from the North City Limit, the speed limit shall be forty (40) miles per hour. For the next 0.570 mile, the speed limit shall be thirty-five (35) miles per hour. For the next 0.331 mile, the speed limit shall be forty (40) miles per hour. For the next 1.523 miles, the speed limit shall be forty-five (45) miles per hour. For the next 2.427 miles, the speed limit shall be forty-five (45) miles per hour to the South City Limits.

For traffic moving in a northerly direction, for the first 2.427 miles, the speed limit shall be forty-five (45) miles per hour. For the next 1.523 miles, the speed limit shall be forty-five (45) miles per hour. For the next 0.331 mile, the speed limit shall be forty (40) miles per hour. For the next 0.570 mile, the speed limit shall be thirty-five (35) miles per hour. For the next 0.600 mile, the speed limit shall be forty (40) miles per hour to the North City Limits.



Proposed Construction Speed Limit on Wellborn Road

January 22, 2009
Consent Agenda Item No. 2e
Intersections Controlled with Stop Signs

To: Glenn Brown, City Manager

From: Mark Smith, Director of Public Works

Agenda Caption: Presentation, possible action, and discussion on consideration of an ordinance modifying Chapter 10, "Traffic Code," Section 2.D of the Code of Ordinances of the City of College Station by updating the Traffic Control Device Inventory – Schedule III to add STOP signs at various intersections.

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

Summary: This item will modify Chapter 10, "Traffic Code," by updating schedule III of the Traffic Control Device Inventory to add STOP signs at various intersections. These stop signs have either been installed as new development has occurred or are intersections that have been recently annexed.

Budget & Financial Summary: The "Stop" signs are planned operation and maintenance expenses accounted for in the Public Works Traffic Operation budget.

Attachments:

1. Ordinance

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 10, "TRAFFIC CODE", OF THE CODE OF ORDINANCES OF THE CITY OF COLLEGE STATION, TEXAS, BY AMENDING CERTAIN SECTIONS AS SET OUT BELOW; PROVIDING A SEVERABILITY CLAUSE; DECLARING A PENALTY; AND PROVIDING AN EFFECTIVE DATE.

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

PART 1: That Chapter 10, "Traffic Code", of the Code of Ordinances of the City of College Station, Texas, be amended as set out in Exhibit "A", attached hereto and made a part of this ordinance for all purposes.

PART 2: That if any provisions of any section of this ordinance shall be held to be void or unconstitutional, such holding shall in no way effect the validity of the remaining provisions or sections of this ordinance, which shall remain in full force and effect.

PART 3: That any person, firm, or corporation violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not less than Twenty-five Dollars (\$25.00) nor more than Two Hundred Dollars (\$200.00). Each day such violation shall continue or be permitted to continue, shall be deemed a separate offense. Said Ordinance, being a penal ordinance, becomes effective ten (10) days after its date of passage by the City Council, as provided by Section 35 of the Charter of the City of College Station.

PASSED, ADOPTED and APPROVED this _____ day of _____, 2009.

APPROVED:

MAYOR

ATTEST:

City Secretary

APPROVED:

City Attorney

EXHIBIT “A”

That Traffic Control Device Inventory - Schedule III as referenced in Chapter 10, “Traffic Code”, Section 2 “Traffic Control Devices”, sub-section D “Special Hazard Intersections Controlled by Stop Signs” is hereby amended to include the following:

“Jeanne Drive at SH 40/ William D. Fitch Parkway;
Jones Butler Road at Holleman Drive;
Gridiron Drive at Jones Butler Road;
Castle Rock Parkway at SH 40/ William D. Fitch Parkway;
Rock Prairie Road at Jones Butler Road;
Rock Prairie Road at Jones Butler Road;
Jones - Butler Road at Rock Prairie Road;
Jones - Butler Road at Rock Prairie Road;
Great Oaks Drive at Rock Prairie Road;
Post Oak Bend at Greens prairie Road;
Iron Horse Way at SH 40/ William D. Fitch Parkway;
Southern Breeze Drive at SH 40/ William D. Fitch Parkway;
Patricia Street at College Main;
Creek Meadows Blvd N at Greens Prairie Trail;
Creek Meadows Blvd N at Creek Meadows Blvd N;
Creek Meadows Blvd N at Creek Meadows Blvd N;
Whitewing Lane at Alexandria Ave;
Dove Hollow Lane at Alexandria Ave;
Turtle Dove Trail at Alexandria Ave;
Turtle Dove Trail at Alexandria Ave;
Cascades Drive at St Andrews Drive;
Cascades Court at St Andrews Drive;
Ballybunion Lane at St Andrews Drive;
Ballybunion Court at St Andrews Drive;
Veterans Park at University Drive;
Hofburg Drive at SH 40/ William D. Fitch Parkway;
Turkey Creek Road at F & B Road;
Old Arrington Road at Arrington Road;
Old Arrington Road at Old Arrington Road;
Decatur Drive at Arrington Road;
Arrington Road at SH 40/ William D. Fitch Parkway;”

January 22, 2009
Consent Agenda Item No. 2f
Investment Policy – Authorized Brokers/Dealers

To: Glenn Brown, City Manager

From: Jeff Kersten, Chief Financial Officer

Agenda Caption: Presentation, possible action and discussion on the City's authorized Brokers/Dealers for investments.

Recommendation(s): Staff recommends approval of the list.

Summary: The Investment Committee (Jeff Kersten, CFO, Cheryl Wright, City Treasurer, David Massey, and Electric Utility Director) conducted its annual review of Brokers/Dealers authorized to do business with the City. Broker/Dealer packets were mailed out and returned by several firms. The committee reviewed the submitted information and recommends retaining the firms currently on the list as well as adding two new firms, Cantor Fitzgerald and Deutsche Bank Alex Brown.

As part of the City's Investment Policy, Council is to review, approve and adopt any modifications to the list.

Budget & Financial Summary: None.

Attachments:

1. Qualified Brokers/Dealers and Investment Pool List

QUALIFIED BROKERS/DEALERS and INVESTMENT POOLS

Costal Securities, Inc.

5555 San Felipe, Suite 2200
Houston, Texas 77056
Phone: (713)435-4328

RBC Dain Rauscher, Inc.

2711 N Haskell Avenue
Cityplace, Suite 2400
Dallas, Texas 75204-2936
Phone: (214)989-1423

Morgan Stanley

1600 Highway 6 South, Suite 100
Sugarland, Texas 77478
Phone: (281)263-1600

TexPool

600 Travis Street, Suite 7200
Houston, TX 77002
Phone: (866)891-7665

Deutsche Bank Alex Brown

700 Louisiana Street, Suite 1500
Houston, TX 77002
Phone: (832)239-3311

FTN Financial Capital Markets

845 Crossover lane, Suite 150
Memphis, Tennessee 38117
Phone: (901) 435-8213

Vining Sparks

775 Ridge Lake Boulevard
Memphis, Tennessee 38120
Phone: (901)681-1008

Fidelity Investments

397 Williams Street
Marlboro, MA 01752
Phone: (800)422-8118

Cantor Fitzgerald

14185 Dallas Parkway, Suite 870
Dallas, TX 75254
Phone: (214)866-0410

January 22, 2009
Consent Agenda Item No. 2g
Texas Short Term Asset Reserve Program (TexSTAR)

To: Glenn Brown, City Manager

From: Jeff Kersten, Chief Financial Officer

Agenda Caption: Presentation, possible action and discussion on a resolution to open a second Investment Pool account with Texas Short Term Asset Reserve Program ("TexSTAR").

Recommendation(s): Staff recommends approval of the resolution.

Summary: Organized in 2002, TexSTAR is the second largest local government investment pool in the State of Texas. TexSTAR currently provides investment services to over 600 Texas cities, counties, school districts and other public entities. TexSTAR offers investment options that provide security, liquidity and efficiency and their conservatively managed fund operates in full compliance with the Texas Public Funds Investment Act. TexSTAR's pool is rated AAAM by Standard & Poor's, the highest rating a local government investment pool can achieve. The pool seeks to maintain a \$1.00 value per share as required by the Texas Public Funds Investment Act and a weighted average maturity of 60 days, with the maximum maturity of any investment limited to 13 months. TexSTAR investments consist exclusively of U. S. Government securities, repurchase agreements collateralized by U. S. Government securities, and AAA-rated no-load money market mutual funds. TexSTAR, like the City, is governed by the Texas Public Funds Investment Act. First Southwest oversees TexSTAR, and JP Morgan Fleming Asset Management manages the daily operations of the pool.

The City currently participates in the TEXPOOL investment pool. Opening a second pool account will allow the City to further diversify its investments.

The Investment Committee talked to a TexSTAR representative and contacted other local governments for references.

The resolution also designates those employees that are able to act as authorized representatives for the pool account.

Budget & Financial Summary: None.

Attachments:

1. Resolution: Application for Participation in TexSTAR



RESOLUTION NO. : _____

APPLICATION FOR PARTICIPATION IN TEXSTAR

The undersigned local government (Applicant) applies and agrees to become a Participant in the Texas Short Term Asset Reserve Program (TEXSTAR).

1. **Authorization.** The governing body of Applicant has duly authorized this application by adopting the following resolution at a meeting of such governing body duly called, noticed, and held in accordance with the Texas Open Meeting Law, chapter 551, Texas Government Code, on _____, 20__:

WHEREAS, it is in the best interests of this governmental unit ("*Applicant*") to invest its funds jointly with other Texas local governments in the Texas Short Term Asset Reserve Program (TEXSTAR) in order better to preserve and safeguard the principal and liquidity of such funds and to earn an acceptable yield; and

WHEREAS, Applicant is authorized to invest its public funds and funds under its control in TEXSTAR and to enter into the participation agreement authorized herein;

NOW, THEREFORE, BE IT RESOLVED THAT:

SECTION 1. The form of application for participation in TEXSTAR attached to this resolution is approved. The officers of Applicant specified in the application are authorized to execute and submit the application, to open accounts, to deposit and withdraw funds, to designate other authorized representatives, and to take all other action required or permitted by Applicant under the Agreement created by the application, all in the name and on behalf of Applicant.

SECTION 2. The TEXSTAR Investment Policy is adopted as Applicant's investment policy, the TEXSTAR investment officers are designated as Applicant's investment officers, and the TEXSTAR Board is designated as custodian and depository, in each case for Applicant's public funds and funds under its control that are deposited with TEXSTAR. Unless Applicant provides a contrary investment policy to TEXSTAR, it shall be Applicant's investment policy that any or all of its public funds and funds under its control may be invested in and through TEXSTAR.

SECTION 3. This resolution will continue in full force and effect until amended or revoked by Applicant and written notice of the amendment or revocation is delivered to the TEXSTAR Board.

SECTION 4. Terms used in this resolution have the meanings given to them by the application."

2. **Agreement.** Applicant agrees with other TEXSTAR Participants and the TEXSTAR Board to the Terms and Conditions of Participation in TEXSTAR, effective on this date, which are incorporated herein by reference. Applicant makes the representations, designations, delegations, and representations described in the Terms and Conditions of Participation.

3. **Authorized Representatives.** Each of the following Participant officials is designated as Participants Authorized Representative authorized to give notices and instructions to the Board in accordance with the Agreement, the Bylaws, the Investment Policy, and the Operating Procedures:

<u>Name</u>	<u>Signature</u>	<u>Title</u>	<u>Direct Phone</u>
Glenn Brown	City Manager	(979) 764-3511
Jeff Kersten	Chief Financial Officer	(979) 764-3745
Cheryl Wright	Treasurer	(979) 764-3554
.....
.....

The following Participant official listed above is designated as the Primary Contact and will receive all TexSTAR correspondence including transaction confirmations and monthly statements [required]:

<u>Name</u>	<u>E-mail address</u>
Cheryl Wright	cwright@cstx.gov

The following Participant official not listed above is designated as a Participant Inquiry Only Representative authorized to obtain account information [optional]:

<u>Name</u>	<u>Signature</u>	<u>Title</u>
Brandi Whittenton	Finance Staff Assistant

Applicant may designate other authorized representatives by written instrument signed by an existing Applicant Authorized Representative or Applicant's chief executive officer.

4. **Taxpayer Identification Number.** Applicant's taxpayer identification number is74-6000534.....

5. **Bank Information Sheet(s).** The attached [insert quantity]⁴..... Bank Information Sheet(s) is or are approved and incorporated herein by reference to establish account(s) in the name of Applicant.

Dated this

.....
City of College Station
(Name of Applicant)

By:
(Signature of official)
.....
Ben White, Mayor
(Printed name and title)

Approved and accepted:

TEXAS SHORT TERM ASSET RESERVE FUND

By: FIRST SOUTHWEST ASSET MANAGEMENT, INC.,
Participant Services Administrator

By: Date:
Authorized Signer

CITY OF COLLEGE STATION

By: _____
MAYOR

Date: _____

ATTEST:

CITY SECRETARY

Date: _____

APPROVED:

CITY MANAGER

Date: _____

CHIEF FINANCIAL OFFICER

Date: _____

Carla A. Robinson

CITY ATTORNEY

Date: _____

January 22, 2009
Consent Agenda Item No. 2h
Third Party Custodian Agreement Resolution

To: Glenn Brown, City Manager

From: Jeff Kersten, Chief Financial Officer

Agenda Caption: Presentation, possible action, and discussion on a resolution approving a new Certificate of Authorized Persons to replace the existing certificate on the Third Party Custodian Agreement between the City of College Station, Citibank Texas, N.A., and Bank of New York, and authorizing the Mayor to execute the new certificate of authorized persons.

Recommendation(s): Staff recommends approval of the resolution.

Summary: Council approved a one year extension of the depository contract between the City of College Station ("City") and Citibank, Texas, N.A. ("Bank") on September 11, 2008 with the original terms and conditions remaining in effect. The depository contract approved on November 22, 2005 included the Third Party Custodian Agreement between the City, the Bank, and Bank of New York Mellon ("Custodian"). The custodian holds the collateral that has been pledged by the Bank to secure the City's deposits above \$250,000. Weekly, the Custodian sends a collateral statement to the City verifying its collateral.

This item designates those employees that are able to act as authorized persons for the City's Bank of New York collateral account.

Budget & Financial Summary: None

Attachments:

1. Resolution
2. Certificate of Authorized Persons
3. Third Party Custodian Agreement approved November 22, 2005

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COLLEGE STATION, TEXAS, APPROVING A NEW CERTIFICATE OF AUTHORIZED PERSONS TO REPLACE THE EXISTING CERTIFICATE APPROVED AS PART OF THE THIRD PARTY CUSTODIAN AGREEMENT BETWEEN THE CITY OF COLLEGE STATION, CITIBANK TEXAS, N.A. AND THE BANK OF NEW YORK TRUST COMPANY N.A. AND AUTHORIZING THE MAYOR TO EXECUTE THE NEW CERTIFICATE OF AUTHORIZED PERSONS.

WHEREAS, the City Council of the City of College Station, Texas, approved a Third Party Custodian Agreement between the City of College Station, Citibank Texas, N.A. and the Bank of New York Trust Company, N.A. (the "Agreement") by Resolution 11-22-2005-13.13; and

WHEREAS, Exhibit B of the Agreement contained a Certificate of Authorized Persons designating those officers and employees duly authorized to deliver oral and written instructions to the City's Custodial Bank; and

WHEREAS, the City Council of the City of College Station, Texas, desires to replace Exhibit B of the Agreement with a new Certificate of Authorized Persons attached hereto; now, therefore,

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

PART 1: That the City Council hereby approves the Certificate of Authorized Persons attached hereto which designates those officers and employees authorized to deliver oral and written instructions to the City's Custodial Bank.

PART 2: That the City Council hereby authorizes the Mayor to execute the attached Certificate of Authorized Persons.

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

ADOPTED this 22nd day of January, A.D. 2009.

ATTEST:

APPROVED:

City Secretary

MAYOR

APPROVED:

City Attorney

**CERTIFICATE OF AUTHORIZED PERSONS
(Customer - Oral and Written Instructions)
Third Party Custodian Agreement**

The undersigned hereby certifies that he/she is the duly elected and acting Mayor of the City of College Station (the "Local Government"), and further certifies that the following officers or employees of the Local Government have been duly authorized in conformity with Local Government's Resolution No. 11-22-2005-13.13 to deliver Oral and Written Instructions to The Bank of New York Mellon Trust Company, N.A. ("Custodian") pursuant to the Third Party Custodian Agreement between the Local Government, Citibank, N.A. ("Bank") and Custodian dated 11/22/2005, and that the signatures appearing opposite their names are true and correct:

<u>Glenn Brown</u>	<u>City Manager</u>	
Name	Title	Signature
<u>Jeff Kersten</u>	<u>Chief Financial Officer</u>	
Name	Title	Signature
<u>Cheryl Wright</u>	<u>Treasurer</u>	
Name	Title	Signature

This certificate and above authorized person(s) will be substituted for prior certificate of authorized individuals you may currently have on file.

Ben White
Title: Mayor

Date:

RESOLUTION NO. 11-22-2005-13.13

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COLLEGE STATION, TEXAS, SELECTING A DEPOSITORY BANK, APPROVING A BANK DEPOSITORY CONTRACT, SELECTING A CUSTODIAN BANK AND APPROVING A THIRD PARTY CUSTODIAN AGREEMENT, DESIGNATING THE CITY MANAGER OR HIS DESIGNEE AS THE DESIGNATED OFFICER TO ADMINISTER THE DEPOSITORY SERVICES FOR THE CITY, AND AUTHORIZING THE MAXIMUM EXPENDITURE OF FUNDS FOR THE TERM OF THE CONTRACT.

WHEREAS, the City of College Station, Texas, solicited applications for a Bank Depository Contract pursuant to Chapter 105 of the TEXAS LOCAL GOVERNMENT CODE; and

WHEREAS, the selection of Citibank Texas, NA, is being recommended to provide banking depository services to the City of College Station, Texas, after an extensive review and selection process after taking into consideration the best interest of the City; and

WHEREAS, the City of College Station, Texas, has selected the Bank of New York as the City's Custodial Bank to hold securities pledged by Citibank Texas, NA to the City in trust for the benefit of, and subject to the control of, the City; and

WHEREAS, Chapter 105 of the TEXAS LOCAL GOVERNMENT CODE and the terms of the Bank Depository Contract require the designation of a municipal officer to represent and act on behalf of the City on all matters arising from the Bank Depository Contract; now, therefore,

BE IT RESOLVED by the City Council of the City of College Station, Texas:

PART 1: That the City Council hereby finds that the selection of Citibank Texas, NA as the City's Depository Bank is in the best interest of the City.

PART 2: That the City Council hereby designates Citibank Texas NA as the City's Depository Bank.

PART 2: That the City Council hereby approves the Bank Depository Contract with Citibank Texas, NA for an amount not to exceed \$135,000.00 over a three-year term for bank depository services.

PART 3: That the City Council hereby selects Bank of New York as the City's Custodial Bank and approves a Third Party Custodian Agreement between the City, Bank of America, and Bank of New York.

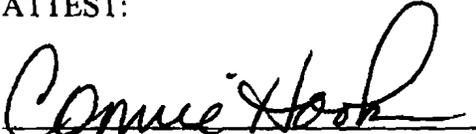
PART 4: That the City Council hereby designates the City Manager or his Designee to serve as the City's Designated Officer to represent and act on the City's behalf on all matters arising under the Depository Services Contract and Third Party Collateral Agreement.

PART 5: That the funding for this project shall be as budgeted from the General Fund in the amount of \$ 135,000.00.

PART 6: That this resolution shall take effect immediately from and after its passage.

ADOPTED this 22nd day of November, A.D. 2005.

ATTEST:


CONNIE HOOKS, City Secretary

APPROVED:


RON SILVIA, Mayor

APPROVED:



City Attorney

TAC 035

THIRD PARTY CUSTODIAN AGREEMENT
(Collateralized Municipal Deposits)

THIS AGREEMENT, made and executed as of _____ by and among City of College Station (the "Local Government"), Citibank Texas, N.A. (the "Bank") and The Bank of New York Trust Company, N.A. (the "Custodian").

WITNESSETH

WHEREAS, Local Government desires to maintain or continue to maintain public deposits with Bank;

WHEREAS, Bank desires to obtain such deposits and to provide security therefor as required by applicable law, regulation or rule;

WHEREAS, Custodian agrees to provide safekeeping services and to hold any securities pledged by Bank in a custodial account established for the benefit of Local Government as secured party pursuant to this Agreement;

NOW, THEREFORE, in consideration of the mutual promises set forth hereafter, the parties hereto agree as follows:

1. Security Requirements

(a) Bank, to secure the timely payment of Uninsured Deposits heretofore or hereafter made by Local Government, including any interest due thereon and any costs or expenses incurred by Local Government and arising out of the collection of any deposits made with Bank, has deposited with Custodian certain investment property more fully described in the initial confirmation Trust Receipt of such deposit delivered by Custodian to Bank and Local Government respectively (which investment property together with any additions thereto, substitutions therefor and the proceeds thereof, are hereinafter collectively referred to as "Collateral"), to be held by Custodian pursuant to the provisions hereof. Pursuant to the Texas Business and Commerce Code, as amended, Custodian shall act as a bailee or agent of Local Government and, to the extent not inconsistent therewith, hold the Collateral as a securities intermediary (as such term is defined in Chapter 8 of the Texas Business & Commerce Code, as amended) and in accordance with the provisions hereof. Bank hereby grants to Local Government a pledge and security interest in and to such Collateral and shall deliver Collateral to Custodian in the manner prescribed in Section 2 of this Agreement.

(b) Subject to paragraph (c) below, Local Government authorizes Custodian as its agent to approve substitutions of Collateral ("Substitute Collateral") supplied to Custodian by Bank for Collateral in the Account upon receipt of Oral Instructions or Written Instructions from Bank identifying the Collateral to be substituted. Such Oral or Written Instructions shall when received by Custodian be deemed Bank's representation and warranty, on which Custodian may rely without further inquiry, that (i) the Substitute Collateral constitutes Collateral that is eligible for deposit hereunder and (ii) has a Margin Value equal to or greater than the Margin Value of the Collateral to be substituted (each, an "Approved Substitution"). Following completion of each Approved Substitution Custodian shall update its records of the Account as soon as possible and issue a Trust Receipt to Local Government in accordance with the requirements of paragraph (f) below.

(c) Custodian assumes no responsibility to determine or monitor whether or not any Collateral originally deposited hereunder or Substitute Collateral or additional Collateral hereafter deposited are eligible for deposit under applicable law, rule or regulation or whether the Market Value of the Collateral thereof meets the requirements of any law, rule or regulation applicable to the deposit hereunder. The determination of eligibility and whether the Market Value of the Collateral satisfies statutory or regulatory requirements will be the responsibility of Bank. Custodian shall be fully protected in relying on Written or Oral Instructions of either Bank or Local Government directing Custodian to release any of the Collateral to Bank. To the extent of any conflict in the

instructions of Local Government and Bank, the instructions of Local Government shall control and Bank shall hold Custodian harmless for acting in accordance with Local Government's instructions.

(d) Custodian shall promptly issue a Trust Receipt to Local Government on any Business Day on which Collateral is transferred to and from the Account. For the avoidance of doubt, it is understood and agreed that Trust Receipts may be combined to identify more than one transaction on any one Business Day and Custodian shall not be required to issue more than one Trust Receipt to Local Government on any Business Day.

2. Custody of Collateral

(a) Bank and Local Government hereby appoint Custodian as custodian of all Collateral at any time delivered to Custodian pursuant to this Agreement. Custodian hereby accepts appointment as such Custodian and agrees to establish and maintain the Account and appropriate records identifying the Collateral as pledged by Bank to Local Government. Collateral in the Account shall be kept separate and apart from the general assets of Custodian on Custodian's books and records. Subject to the terms hereof, Custodian, in performing its duties and responsibilities pursuant to this Agreement, shall act as custodian for, and agent of, Local Government. The parties agree that all securities held in the Account shall be treated as financial assets. For purposes of the Texas Business and Commerce Code, as amended, the security interest granted by Bank in the Collateral for the benefit of Local Government is created, attaches, and is perfected for all purposes under Texas law from the time Custodian receives Collateral for deposit or credit to the Account and issues a Trust Receipt to Local Government for such Collateral. The security interest of Local Government in the Collateral and all Proceeds thereof shall terminate upon the transfer of such Collateral or Proceeds from the Account.

(b) The Bank and Local Government agree that Collateral delivered to the Custodian for deposit in or credit to the Account may be in the form of credits to the accounts of Custodian at the Book-Entry System or a Depository or by delivery to the Custodian of physical certificates in a form suitable for transfer or with an assignment in blank to the Local Government or Custodian. The Bank and Local Government hereby authorize the Custodian on a continuous and ongoing basis to deposit in the Book-Entry System and/or the Depositories all Collateral that may be deposited therein and to utilize the Book-Entry System and/or Depositories and the receipt and delivery of physical securities or any combination thereof in connection with its performance hereunder. Collateral credited to the Account and deposited in the Book-Entry System or Depositories or other financial intermediaries will be represented in accounts of The Bank of New York that include only assets held by The Bank of New York for its customers, and including but not limited to accounts in which The Bank of New York acts in a fiduciary, agency or representative capacity. Collateral that is not held in the Book-Entry System, Depositories or through another financial intermediary will be held in the Custodian's vault and physically segregated from securities and other non-cash property belonging to the Custodian.

(c)(i) Upon the initial and each subsequent deposit of Collateral and Proceeds into the Account (including but not limited to any deposit of Collateral as part of an Approved Substitution), Custodian shall promptly provide Local Government with a Trust Receipt. Additional customized Account statements may be available upon mutual agreement of Local Government and Custodian.

(ii) Local Government agrees that it shall promptly review all Trust Receipts and Account statements delivered to it by Custodian and shall promptly advise Custodian by Oral Instruction or Written Instruction of any error, omission or inaccuracy in such statements. In the event that Custodian receives such an Oral Instruction or Written Instruction identifying a specific concern with respect to a suspected error, failure or omission with respect to the Account, Custodian shall undertake to correct any errors, failures or omissions, provided that Custodian determines in its sole discretion that such error, failure or omission actually occurred and shall notify Local Government of its action concerning each such error, failure, or omission.

(d) The Account shall not be subject to any security interest, lien or any right of set-off by Custodian.

(e) With respect to all Collateral held in the Account, Custodian by itself, or through the use of the Book-Entry System or the appropriate Depository, shall, unless otherwise instructed to the contrary by Bank: (i) collect all income and other payments reflecting interest and principal on the Collateral in the Account and credit such

amounts to the account of Bank; (ii) forward to Bank copies of all information or documents that it may receive from an issuer of Collateral which, in the opinion of Custodian, is intended for the beneficial owner of the Collateral including, without limitation all proxies and other authorizations properly executed and all proxy statements, notices and reports; (iii) execute, as Custodian, any certificates of ownership, affidavits, declarations or other certificates under any tax laws now or hereafter in effect in connection with the collection of bond and note coupons; (iv) hold directly, or through the Book-Entry System or Depository, all rights issued with respect to any Collateral held by Custodian hereunder; and (v) upon receipt of Written Instructions from Bank, Custodian will exchange Collateral held hereunder for other securities and/or cash in connection with (A) any conversion privilege, reorganization, recapitalization, redemption in kind, consolidation, tender offer or exchange offer, or (B) any exercise, subscription, purchase or other similar rights.

(f) Custodian agrees to file reports with the of Public Accounts of the State of Texas (the "Comptroller") regarding the Collateral pledged to secure the Uninsured Deposits of Local Government hereunder, as and when required by the Comptroller.

3. Events of Default

In the event Bank shall fail to pay Local Government any amount of the Uninsured Deposits by Local Government covered by this Agreement in accordance with the terms of such Deposit, or should Bank fail or suspend active operations, the Uninsured Deposits in such Bank shall become due and payable immediately and Local Government shall have the right to unilaterally demand delivery of all the Collateral in the Account by Written Instructions to Custodian and to sell such securities at public or private sale. In the event of such sale, Local Government, after deducting all legal expenses and other costs, including reasonable attorneys fees, from the proceeds of such sale, shall apply the remainder towards any one or more of the liabilities of Bank to Local Government and shall return the surplus, if any, to Bank.

4. Representation and Warranties

(a) Representations of Bank. Bank represents and warrants, which representations and warranties shall be deemed to be continuing, that:

- (i) this Agreement has been legally and validly entered into, does not and will not violate any statute or regulation applicable to it and is enforceable against Bank in accordance with its terms;
- (ii) it is the legal and actual owner, free and clear of all liens and claims, of all the Collateral pledged pursuant to this Agreement;
- (iii) this Agreement was executed by an officer of Bank who was authorized by Bank's board of directors to do so and will at all times be maintained as an official record of Bank;
- (iv) all Collateral held by Custodian hereunder are eligible to secure Local Government's deposits at Bank under applicable statutes or regulations and the Market Value of the Collateral held by Custodian hereunder at all times meet the requirements of such statutes or regulations;
- (v) Bank is a bank or trust company duly authorized to do business in the state where it is located;
- (vi) all acts, conditions and things required to exist, happen or to be performed on its part precedent to and in the execution and delivery of this Agreement exist or have happened or have been performed.

(b) Representations of Local Government. Local Government hereby represents and warrants, which representations and warranties shall be deemed to be continuing, that:

- (i) this Agreement has been legally and validly entered into, does not and will not violate any statute or regulation applicable to it and is enforceable against Local Government in accordance with its terms;
- (ii) the appointment of Custodian has been duly authorized by Local Government and this Agreement was executed by an officer of Local Government duly authorized to do so;
- (iii) it will not transfer, assign its interests in or the rights with respect to any Collateral pledged pursuant to this Agreement, except as authorized pursuant to Section 3 of the Agreement;
- (iv) all acts, conditions and things required to exist, happen or to be performed on its part precedent to and in the execution and delivery of this Agreement exist or have happened or have been performed.

5. Concerning Custodian

(a) Custodian shall not be liable for any loss or damage, including counsel fees, resulting from its action or omission to act or otherwise, except for any loss or damage arising out of its own negligence or willful misconduct, and shall have no obligation hereunder for any loss or damage, including counsel fees, which are sustained or incurred by reason of any action or inaction by the Book-Entry System or any Depository. In no event shall Custodian be liable to Local Government, Bank or any third party for special, indirect or consequential damages, or lost profits or loss of business, arising in connection with this Agreement. Custodian may, with respect to questions of law, apply for and obtain the advice and opinion of counsel and shall be fully protected with respect to anything done or omitted by it in good faith and conformity with such advice or opinion. Local Government (to the extent permitted by applicable law) and Bank agree, jointly and severally, to indemnify Custodian and to hold it harmless against any and all costs, expenses, damages, liabilities or claims, including reasonable fees and expenses of counsel, which Custodian may sustain or incur or which may be asserted against Custodian by reason of or as a result of any action taken or omitted by Custodian in connection with operating under this Agreement, except those costs, expenses, damages, liabilities or claims arising out of the negligence or willful misconduct of Custodian or any of its employees or duly appointed agents. This indemnity shall be a continuing obligation of Local Government and Bank notwithstanding the termination of this Agreement.

(b) Custodian shall not be responsible for, or considered to be custodian of, any Collateral received by it for deposit in the Account until Custodian actually receives and collects such Collateral directly or by the final crediting of Custodian's account on the books of the Book-Entry System or the appropriate Depository. Custodian will be entitled to reverse any credits made on Local Government's behalf where such credits have been previously made and the Collateral are not finally collected.

(c) Custodian shall have no duties or responsibilities whatsoever except such duties and responsibilities as are specifically set forth in this Agreement and no covenant or obligation shall be implied against Custodian in connection with this Agreement.

(d) Local Government's and Bank's authorized officers and, if permitted by law, representatives of the Comptroller, upon reasonable notice, shall each have access to Custodian's books and records maintained with respect to Local Government's and Bank's respective interests in the Account during Custodian's normal business hours. Upon the reasonable request of Local Government, Bank or the Comptroller when applicable law permits, copies of any such books and records shall be provided by Custodian to the requesting party's authorized officer at the requesting party's expense.

(e) In performing hereunder, Custodian may enter into subcontracts, agreements and understandings with third parties whenever and on such terms and conditions as it deems necessary or appropriate. If any of such subcontracts, agreements, or understandings with third parties are for the deposit of Collateral for the benefit of Local Government, (i) such third party will qualify as a "permitted institution" pursuant to the Texas Public Funds Collateral Act, (ii) Custodian shall cause such third party to provide records to Custodian evidencing the deposit of Collateral

with such third party, and (iii) records of the third party relating to such Collateral will at all times state the name of Custodian. No such subcontract, agreement or understanding shall discharge Custodian from its obligations hereunder.

(f) Reliance on Pricing Services. If Custodian, as an accommodation to Bank or the Local Government, agrees to provide information concerning Market Values, Custodian is authorized to utilize any generally recognized pricing information service (including brokers and dealers of securities) in order to provide Market Values hereunder, and Bank and Local Government agree that Custodian shall not be liable for any loss, damage, expense, liability or claim (including attorneys' fees) incurred as a result of errors or omissions of any such pricing information service, broker or dealer.

(g) Force Majeure. Custodian shall not be responsible or liable for any failure or delay in the performance of its obligations under this Agreement arising out of or caused, directly or indirectly, by circumstances beyond its reasonable control, including without limitation, acts of God, earthquakes, fires, floods, wars, civil or military disturbances, sabotage, epidemics, riots, loss or malfunctions of utilities, computer (hardware or software) or communications service, labor disputes, acts of civil or military authority, or governmental, judicial or regulatory action; provided however, that Custodian shall use its best efforts to resume normal performance as soon as practicable under the circumstances.

6. Termination

Any of the parties hereto may terminate this Agreement by giving to the other parties a notice in writing specifying the date of such termination, which shall be the earlier of (i) not less than 90 days after the date of giving such notice or (ii) the date on which the Deposits are repaid in full. Such notice shall not affect or terminate Local Government's security interest in the Collateral in the Account. Upon termination hereof, Custodian shall follow such reasonable Written Instructions of Bank and Local Government concerning the transfer of custody of Collateral, collateral records and other items. Upon the date set forth in the termination notice, this Agreement shall terminate except as otherwise provided herein and all obligations of the parties to each other hereunder shall cease.

7. Miscellaneous

(a) Local Government and Bank each agree to furnish to Custodian a new Certificate substantially in the form of Exhibit A and Exhibit B, respectively, attached hereto in the event that any present Authorized Person ceases to be an Authorized Person or in the event that any other Authorized Persons are appointed and authorized. Until such new Certificate is received, Custodian shall be fully protected in acting upon Oral Instructions or Written Instructions or signatures of the present Authorized Persons.

(b) Custodian shall be entitled to rely upon any Certificate, Written or Oral Instruction actually received by Custodian and reasonably believed by Custodian to be duly authorized and delivered. Bank and Local Government each agree to send to Custodian Written Instructions confirming Oral Instructions by the close of business of the same day that such Oral Instructions are given to Custodian. Bank and Local Government each agree that the fact that such confirming Written Instructions are not received or that contrary Written Instructions or Oral Instructions are received by Custodian shall in no way affect the validity or enforceability of the transactions previously authorized and effected by Custodian.

(c) Any Written Instructions or other instrument in writing authorized or required by this Agreement shall be given to Custodian and shall be sufficiently given if sent to Custodian by regular mail to its offices at c/o The Bank of New York, One Wall Street, 5th Floor, New York, NY 10286, Attn: John Vinci, Vice President, or at such other place as Custodian may from time to time designate in writing.

(d) Any notice or other instrument in writing authorized or required by this Agreement to be given to Bank shall be sufficiently given if sent to Bank by regular mail to its offices at 111 Broadway St. Bergen, NJ 07802, or at such other place as Bank may from time to time designate in writing.

(e) Any notice or other instrument in writing, authorized or required by this Agreement to be given to Local Government shall be sufficiently given if sent to Local Government by regular mail to its offices at 1101 Texas Ave. College Station, Texas, or at such other offices as Local Government may from time to time designate in writing.

(f) In case any provision in or obligation under this Agreement shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and unenforceability of the remaining provisions or obligations shall not in any way be affected or impaired thereby and if any provision is inapplicable to any person or circumstances, it shall nevertheless remain applicable to all other persons and circumstances.

(g) This Agreement may not be amended or modified in any manner except by written agreement executed by all of the parties hereto.

(h) This Agreement shall extend to and be binding upon the parties hereto, and their respective successors and assigns; provided however, that this Agreement shall not be assignable by any party without the written consent of the other parties.

(i) This Agreement shall be construed in accordance with the substantive laws of the State of Texas, without regard to conflicts of laws principles thereof. In connection with any dispute arising hereunder, Bank, Local Government and Custodian hereby consent to the non-exclusive jurisdiction of a state or federal court situated in the county in the State of Texas in which Local Government maintains its principal office. Bank, Local Government and Custodian hereby irrevocably waive, to the fullest extent permitted by applicable law, any objection which it may now or hereafter have to the laying of venue of any such proceeding brought in such a court and any claim that such proceeding brought in such a court has been brought in an inconvenient forum. Bank, Local Government and Custodian each hereby irrevocably waives any and all rights to trial by jury in any legal proceeding arising out of or relating to this Agreement.

8. Waiver of Immunity. To the extent that in any jurisdiction any party may now or hereafter be entitled to claim, for itself or its assets, immunity from suit, execution, attachment (before or after judgment) or other legal process, each party irrevocably agrees, to the extent permitted by law, not to claim, and it hereby waives, such immunity in connection with this Agreement.

9. Definitions

Whenever used in this Agreement, the following terms shall have the following meanings:

(a) "Account" shall mean the custodial account established with Custodian for the benefit of Local Government as secured party in accordance with this Agreement.

(b) "Authorized Person" shall be any officer of Local Government or Bank, as the case may be, duly authorized to give Oral Instructions or Written Instructions on behalf of Local Government or Bank, such persons to be designated in a Certificate substantially in the form of Exhibit "A" for Local Government or Exhibit "B" for Bank attached hereto as such exhibits may be amended from time to time.

(c) "Approved Substitution" shall have the meaning set forth in paragraph (e) of Section 1 of this Agreement.

(d) "Book-Entry System" shall mean the Federal Reserve/Treasury Book-Entry System for receiving and delivering U.S. Government securities.

(e) "Business Day" shall mean any day on which Custodian and Bank are open for Business and on which the Book-Entry System and/or the Depositories are open for business.

(f) "Certificate" shall mean the Certificate of Authorized Persons attached hereto as Exhibit "A" or Exhibit "B".

- (g) "Comptroller" shall have the meaning set forth in paragraph (d) of Section 5 of this Agreement.
- (g) "Depository" shall include the Depository Trust Company and any other securities depository and clearing agency (and their successors and nominees) registered with the Securities and Exchange Commission or otherwise regulated by appropriate federal or state agencies as a securities depository or clearing agency.
- (h) "Deposits" shall mean all deposits by Local Government in Bank that are available for all uses generally permitted by Bank to Local Government for actually and finally collected funds under Bank's account agreement or policies.
- (i) "Market Value" shall mean, with respect to any Security held in the Account, the market value of such Security as made available to Custodian by a generally recognized source selected by Custodian plus, if not reflected in the market value, any accrued interest thereon, or, if such source does not make available a market value, the market value shall be as determined by Custodian in its sole discretion based on information furnished to Custodian by one or more brokers or dealers; provided however that, if agreed in writing by the parties hereto, Bank may provide Custodian with such Market Values.
- (j) "Nationally Recognized Statistical Rating Organization" shall mean Moody's, Standard and Poor's, Fitch, Duff and Phelps, BankWatch and IBCA.
- (k) "Oral Instructions" shall mean verbal instructions actually received by Custodian from an Authorized Person or from a person reasonably believed by Custodian to be an Authorized Person.
- (l) "Substitute Collateral" shall have the meaning set forth in paragraph b of Section 1 of this Agreement.
- (m) "Trust Receipt" shall mean evidence of receipt, identification, and recording, including a written or electronically transmitted advice or confirmation of transaction or statement of account. Each advice or confirmation of transaction shall identify the Collateral which is the subject of the transaction and state the Market Value thereof. Statements of account shall identify all Collateral in the Account, the Aggregate Margin Value thereof, and the applicable Collateral Requirement.
- (n) "Uninsured Deposits" shall mean that portion of Local Government's Deposits with Bank which exceeds the insurance coverage available from the Federal Deposit Insurance Corporation.
- (o) "Written Instructions" shall mean written communications actually received by Custodian from an Authorized Person or from a person reasonably believed by Custodian to be an Authorized Person by a computer, telex, telecopier or any other system whereby the receiver of such communications is able to verify by codes or otherwise with a reasonable degree of certainty the identity of the sender of such communication.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized and their respective seals to be hereunto affixed, as of the day and year first above written.

City of College Station
[LOCAL GOVERNMENT]

CITIBANK TEXAS, N.A.

[Signature] *[Signature]*

By: Ron Silvia

By: *Clay Riche*

Title: Mayor

Title: *Sr. Vice President*

THE BANK OF NEW YORK TRUST
COMPANY, N.A.

By: *[Signature]*

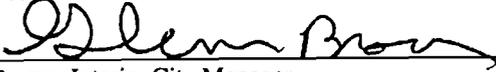
Title: **John Vinci**
Managing Director

ATTEST:

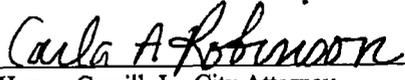


Connie Hooks, City Secretary
Date: 12-21-05

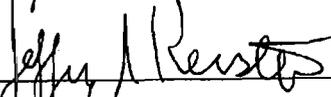
APPROVED:



Glenn Brown, Interim City Manager
Date: 12/20/05



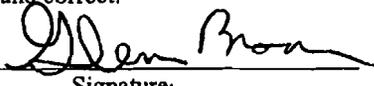
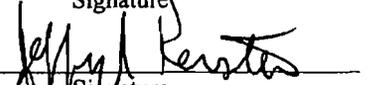
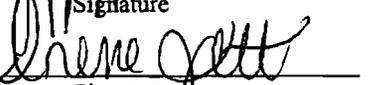
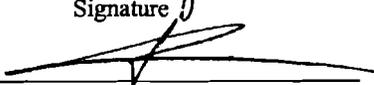
Harvey Cargill, Jr., City Attorney
Date: 12/16/05



Jeff Kersten,
Finance & Strategic Planning Director
Date: 12-9-05

**EXHIBIT B
 CERTIFICATE OF AUTHORIZED PERSONS
 (Local Government - Oral and Written Instructions)**

The undersigned hereby certifies that he/she is the duly elected and acting Mayor of the City of College Station (the "Local Government"), and further certifies that the following officers or employees of Local Government have been duly authorized in conformity with Local Government's Resolution 11-22-2005-13.13 to deliver Oral and Written Instructions to The Bank of New York Trust Company, N.A. ("Custodian") pursuant to the Third Party Custodian Agreement between Local Government, Citibank Texas, N.A. ("Bank") and Custodian dated _____, and that the signatures appearing opposite their names are true and correct:

<u>Glenn Brown</u> Name	<u>Interim City Manager</u> Title	 Signature
<u>Jeff Kersten</u> Name	<u>Director of Finance/Strategic Planning</u> Title	 Signature
<u>Irene Jett</u> Name	<u>Assist. Director of Fin./Strat. Planning</u> Title	 Signature
<u>Phillip Guillen</u> Name	<u>Accounting Manager</u> Title	 Signature
_____ Name	_____ Title	_____ Signature

This certificate supersedes any certificate of authorized individuals you may currently have on file.

[seal]



Ron Silvia

Title: Mayor

Date:

**January 22, 2009
Consent Agenda Item No. 2i
Stop Loss Coverage
Policy Renewal for Calendar Year 2009**

To: Glenn Brown, City Manager

From: Alison Pond, Human Resources Director

Agenda Caption: Presentation, possible action, and discussion on obtaining approval for Stop Loss Coverage Policy Renewal with Blue Cross and Blue Shield for our self-funded employee medical insurance plan for the calendar year 2009, in the amount of \$308,766.

Recommendation(s): Staff recommends approval of the Stop Loss Coverage Policy Renewal for calendar year 2009.

Summary: Stop loss coverage is an insurance policy that protects the City from specific large claims and/or from an aggregate amount of overall high claims. The coverage is provided by BlueCross/Blue Shield (BCBS). The 2009 expenditures for stop loss coverage were approved by Council on October 9, 2008.

Council's formal approval of the actual Stop Loss Coverage Policy Renewal for calendar year 2009 will ensure the Policy has been accepted and acknowledged by Council.

Budget and Financial Summary: Funds are available in the Employee Benefits Fund.

Attachments: None

January 22, 2009
Consent Agenda Item No. 2j
Amendment 2 to the Agreement for Gasoline and Diesel Fuel

To: Glenn Brown, City Manager

From: Jeff Kersten, Chief Financial Officer

Agenda Caption: Presentation, possible action, and discussion on the Second Amendment and Modification to the Annual Fuel Contract for City of Bryan, Texas and Second Amendment and Modification to the Annual Fuel Contract for City of College Station, Texas in order that all fuel deliveries for BVSWMA shall be separately invoiced; both the City of Bryan and City of College Station shall be jointly responsible for payment of BVSWMA invoices with BVSWMA funds and payment is so authorized in an amount not to exceed \$387,000 for BVSWMA deliveries for the fourth renewal period term.

Recommendation(s): Recommend approval of the Second Amendment and Modification to the Annual Fuel Contract for City of Bryan, Texas and Second Amendment and Modification to the Annual Fuel Contract for City of College Station, Texas.

Summary: The City of Bryan has proposed this Amendment to both Cities current agreement to provide for joint responsibility for payment of BVSWMA invoices and to authorize BVSWMA expenditures for BVSWMA deliveries for the fourth and final renewal period.

In December of 2004, the City of Bryan solicited bids for gasoline and diesel fuel on behalf of several local agencies including City of College Station, City of Hearne, Brazos County, Bryan ISD, College Station ISD and Texas A&M University. Council approved the fourth renewal of this agreement on December 11, 2008. We are in the fourth and final renewal option. The contract was amended in December 2007 to allow for two (2) additional renewal(s) so that all participating agencies will be on the same terms and rebid together in 2009. Fuel is placed in inventory and charged to multiple departments/divisions as used.

Budget & Financial Summary: Funds for the fuel purchase are available and budgeted in the BVSWMA budget.

Attachments:
Contract Amendment

**SECOND AMENDMENT and MODIFICATION
to ANNUAL FUEL CONTRACT FOR CITY OF BRYAN, TEXAS and SECOND
AMENDMENT to ANNUAL FUEL CONTRACT FOR CITY OF COLLEGE
STATION, TEXAS**

This SECOND AMENDMENT and MODIFICATION to the ANNUAL FUEL CONTRACT FOR CITY OF BRYAN, TEXAS and SECOND AMENDMENT AND MODIFICATION to the ANNUAL FUEL CONTRACT FOR CITY OF COLLEGE STATION, TEXAS, effective as of the last date of execution herein, is by and between the City of Bryan, a Texas home rule municipal corporation (“Bryan” or “City of Bryan”), City of College Station, a Texas home rule municipal corporation (“College Station” or “City of City of College Station”), and Brenco Marketing Corporation (“Brenco”).

WHEREAS, the City of Bryan issued Request for Bid #04-115 on July 8, 2004 on behalf of the City of Bryan and the City of College Station as well as other entities, and Brenco was the winning respondent; and

WHEREAS, the request for bid and response were based on a unit price per gallon of fuel determined by applying the vendor’s bid amount for profit per gallon to the unbranded average per gallon price listed in the Oil Price Information Service (OPIS) pad 3 Net Report for Hearne in effect on the day of delivery; and

WHEREAS, the Terms and Conditions or Request for Bid #04-115 call for an initial period of twelve (12) months with an option to renew for four (4) additional twelve (12) month periods; and

WHEREAS, the current ANNUAL FUEL CONTRACT FOR CITY OF BRYAN, originally dated October 28, 2004 (the “Bryan Contract”) was entered into between Brenco and the City of Bryan, and the parties renewed this contract for the fourth period on or about June 10, 2008; and

WHEREAS, the current ANNUAL FUEL CONTRACT FOR CITY OF COLLEGE STATION, originally dated December 9, 2004 (the “College Station Contract”) was entered into between Brenco and the City of College Station, and the parties renewed this contract for the fourth period on or about December 20, 2009; and

WHEREAS, the City of Bryan, the City of College Station and Brenco desire to amend and modify each of their respective Contracts to provide that all provisions of the Bryan Contract and the College Station Contract shall apply to fuel deliveries to the BSVMA location on Rock Prairie; that these deliveries shall be separately invoiced; both the City of Bryan and College Station shall be jointly responsible for payment of BVSMA invoices with BVSMA funds and payment is so authorized in an amount not to exceed \$387,000 for BVSMA deliveries for the fourth renewal period; both Cities are currently named and shall continue to be named as an additional insured for these fuel deliveries under their respective Contracts and **all indemnification provisions** of the

currently existing Contracts shall apply to delivery of fuel and gasoline; and, the Bryan Contract shall be extended until the date that the College Station Contract expires.

NOW THEREFORE, the City of Bryan, City of College Station and Brenco Marketing Corp agree to modify and amend their existing Contracts as follows:

1. All provisions of the Bryan Contract and the College Station Contract shall apply to fuel deliveries to the BVSWMA location on Rock Prairie or to Twin Oaks;
2. These BVSWMA deliveries shall be separately invoiced to the Cities, with a copy to Assistant Director of Public Works, PO Box 1000, Bryan Texas, 77805 or as otherwise directed by Bryan;
3. Both the City of Bryan and College Station shall be jointly responsible for payment of BVSWMA invoices with BVSMA funds, with College Station making payment with BVSWMA funds and payment is so authorized in an amount not to exceed \$387,000 for BVSWMA deliveries for the fourth renewal period;
4. Both Cities are currently named and shall continue to be named as an additional insured for these fuel deliveries under their respective Contracts and **all indemnification provisions** of the currently existing Contracts shall apply to delivery of fuel and gasoline to the BVSWMA locations;
5. The Bryan Contract shall be extended until the date that the College Station Contract expires; and,
6. All other terms and conditions of the ANNUAL FUEL CONTRACT FOR CITY OF BRYAN, TEXAS and the ANNUAL FUEL CONTRACT FOR THE CITY OF COLLEGE STATION shall remain unchanged.

EXECUTED by the duly authorized representatives of the Parties hereto on this 12TH day of JANUARY, 2009:

CITY OF BRYAN

BRENCO MARKETING CORP.

By: _____
D. Mark Conlee, Mayor
Date: _____

By: Donald A. Broad
Title: PRESIDENT
Date: 1-12-09

ATTEST:

Mary Lynne Stratta, City Secretary

APPROVED AS TO FORM:

Janis K. Hampton, City Attorney

CITY OF COLLEGE STATION

By: _____

Mayor

Date: _____

ATTEST:

City Secretary

APPROVED:

City Manager

Date: _____

City Attorney

Date: _____

Chief Financial Officer

Date: _____

Director of Public Works

Date: _____

STATE OF TEXAS §

§ ACKNOWLEDGMENT

COUNTY OF BRAZOS §

This instrument was acknowledged before me on the 12th day of JANUARY, 2009, by Donald H. Branch as PRESIDENT (title) of Brenco Marketing Corporation, on behalf of said Corporation.

Kathryn Lorene Salvaggio
Notary Public in and for
the State of TEXAS



January 22, 2009
Consent Agenda Item No. 2k
Annual Concrete Meter Boxes Renewal

To: Glenn Brown, City Manager

From: Jeff Kersten, Chief Financial Officer

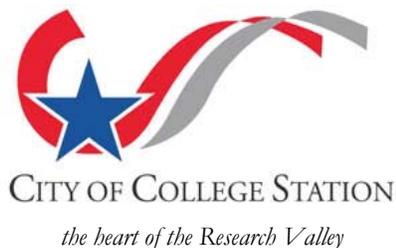
Agenda Caption: Presentation, possible action and discussion on the annual renewal agreement for concrete meter boxes with Sims Plastics of Waco for an annual expenditure of \$88,191.75. This is the first of two renewal options that is to begin on February 11, 2009 and expire on February 10, 2010. Bid #08-20.

Recommendation(s): Staff recommends approval of the renewal agreement with Sims Plastics of Waco for an annual estimated expenditure totaling \$88,191.75.

Summary: Purchases will be made as needed during the term of the agreement. The concrete meter boxes are maintained in Water Inventory in an inventory account and expensed as necessary during the agreement period.

Budget & Financial Summary: Funds are budgeted and available in the Water Fund. Various projects may be expensed as supplies are pulled from inventory and issued.

Attachments: Signed renewal agreement letter.



December 22, 2008

ATTN: Jared Stracener, Store Manager

Sims Plastics of Waco
5636 Franklin Ave.
Waco, Texas 76710

**RE: Renewal--Bid #08-20
Concrete Meter Boxes**

Dear Mr. Stracener:

The City of College Station appreciates the services provided by Sims Plastics of Waco this past year. We would like to exercise our option to renew the above referenced agreement for the term of February 11, 2009 through February 10, 2010.

If this meets with your company's approval, please complete this renewal agreement (including notarization), and return it no later than Monday, January 5, 2009. We will then issue your company a new purchase order effective February 11, 2009 through February 10, 2010.

Should you have any questions, please call me at (979) 764-3558.

Sincerely,

Lisa D. Davis, C.P.M.
Buyer

Attachment

PO Box 9960
1101 Texas Avenue
College Station, TX 77842

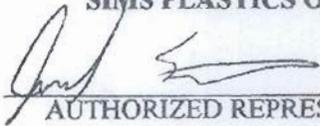
www.cstx.gov

RENEWAL ACCEPTANCE

By signing herewith, I acknowledge and agree to renew Bid No. 08-20, for Concrete Meter Boxes in accordance with all pricing, terms and conditions previously agreed to and accepted.

I understand this renewal term will be for the period beginning February 11, 2009 through February 10, 2010.

SIMS PLASTICS OF WACO



AUTHORIZED REPRESENTATIVE

12/23/08

DATE

CITY OF COLLEGE STATION

Mayor

DATE

ATTEST:

City Secretary

DATE

APPROVED:

City Manager

DATE



City Attorney

DATE

Chief Financial Officer

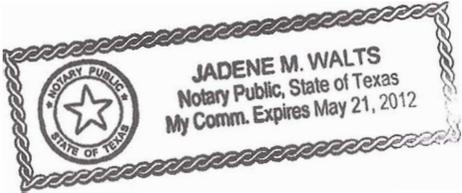
DATE

STATE OF TEXAS

CORPORATE ACKNOWLEDGMENT

COUNTY OF McLENNAN

This instrument was acknowledged on the 23 day of Dec, 2008
by JARED STRACENER in his/her capacity as Supervisor of
Sims Plastics, a TEXAS Corporation, on behalf of said corporation.



Jadene M. Walts
Notary Public in and for the
State of Texas

STATE OF TEXAS

ACKNOWLEDGMENT

COUNTY OF BRAZOS

This instrument was acknowledged on the _____ day of _____, 200 ,
by _____, in his capacity as Mayor of the City of College Station, a Texas
home-rule municipality, on behalf of said municipality.

Notary Public in and for the
State of Texas

January 22, 2009
Consent Agenda Item No. 2L
Twin Oaks Landfill Wetlands Mitigation Property Acquisition

To: Glenn Brown, City Manager

From: Mark Smith, Director of Public Works

Agenda Caption: Presentation, possible action and discussion regarding action approving a real estate contract with Mervin Peters to purchase conservation property and access easements on approximately 59.7 acres of land, at a cost of \$313,425.00.

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

Summary: This property acquisition is necessary to meet federal agency mitigation requirements for wetlands at the new landfill site on State Highway 30. The total purchase price for the land and easements is \$313,425.00 including \$20,000.00 payment in earnest money. The new landfill site will be constructed south of SH 30 and Alum Creek in Grimes County, Texas. Because this site contains wetlands that will be disturbed during construction, BVSWMA is required by the U.S. Army Corps of Engineers to obtain approval of a compensatory mitigation plan under a Clean Water Act, Section 404 Individual Permit. The plan consists of the acquisition of real property, conveyance of a conservation easement to the Texas Land Conservancy and mitigation activities on the site such as vegetative and hydrologic improvements and maintenance. An access easement is necessary to ensure that the equipment needed to perform the improvements can be delivered to the site. Easement design and construction improvements are budgeted at an estimated \$331,000.00 for the project.

Staff has negotiated with the U.S. Army Corps of Engineers a received approval of a compensatory mitigation plan. As the mitigation plan has received formal approval by the Corps, the property will be acquired at a purchase price of \$5,250 per acre, for a total of \$313,425.00. The access easement will be purchased for \$10.00. \$20,000.00 in earnest money will be paid not later than ten (10) working days after the effective date of the real estate contract. The subject mitigation property is located in northeastern Brazos County along Wixon Creek, approximately 15 miles from the new landfill site.

Budget & Financial Summary: Funding for this property acquisition is available in the BVSWMA Capital Improvements Fund. As BVSWMA is funded through an inter-local agreement, both the Cities of Bryan and College Station are sharing the cost of this project.

Attachments:

1. Real Estate Contract

REAL ESTATE CONTRACT

THIS CONTRACT OF SALE is made by and among MERVIN DANSBY PETERS (“SELLER”), the CITIES OF BRYAN AND COLLEGE STATION, TEXAS, both Texas Home Rule Municipal Corporations, situated in Brazos County, Texas (collectively “BUYER”), upon the terms and conditions set forth herein.

ARTICLE I PURCHASE AND SALE

1.1 SELLER agrees to sell and convey, and BUYER agrees to purchase and pay for, subject to any reservations or limitations expressly stated, a 59.7 acre of tract of land, more or less, for environmental mitigation purposes, of which property is more particularly described in Exhibit “A” attached hereto and made a part hereof for all purposes (“PROPERTY”), together with all and singular the rights and appurtenances pertaining to the PROPERTY, for the consideration and subject to the terms, provisions, and conditions set forth herein.

1.2 SELLER agrees to sell and convey an access easement and BUYER agrees to purchase and pay for an Access Easement for access to the PROPERTY for the purposes recited herein and in the proposed form attached hereto as Exhibit “B” and made a part hereof for all purposes (“ACCESS EASEMENT”) together with all and singular the rights and appurtenances pertaining to the ACCESS EASEMENT.

1.3 This Contract by BUYER to purchase the PROPERTY and ACCESS EASEMENT is subject to approval by the City Council of the City of Bryan, Texas, and subject to approval of the City Council of the City of College Station, Texas; such approvals indicated by signature of BUYERS’ representatives to this CONTRACT OF SALE.

1.4 BUYER has requested a Commitment for Title Insurance (the “Title Commitment”) to insure title to the BUYER for BUYER’s review together with legible copies of all instruments referred to in the Title Commitment. The BUYER shall request the title company to furnish these items to BUYER within fifteen (15) calendar days of the date of this Contract. BUYER shall have a period of fifteen (15) business days (the “Title Review Period”) after receipt of the Title Commitment and the copies of the instruments referred to in Schedule B as exceptions within which to notify SELLER of BUYER’s objection to any item shown on or referenced by those documents (the “Reviewable Matters”). Any Reviewable Matter to which BUYER does not object within the Title Review Period shall be deemed to be accepted by BUYER. If BUYER objects to any such Reviewable Matter and gives notice to SELLER as provided herein, SELLER may at SELLER’s election, on or before closing, attempt to cure same. If SELLER

fails to cure same by the closing date, or is unwilling to cure same, the closing date shall be extended for five (5) business days for BUYER to either (a) waive such objections and accept such title as SELLER is able to convey or (b) terminate this Contract by written notice to the Title Company and to SELLER, in which case the earnest money shall be refunded to BUYER, and neither SELLER nor BUYER shall have any further rights or obligations under this Contract.

1.5 (a) BUYER, at their expense, will provide a survey of the PROPERTY and ACCESS EASEMENT, showing, without limitation, all adjacent property lines, record ownership of adjoining properties, encroachments, easements, rights-of-way and other encumbrances of record. The surveys will reflect any encroachments onto or by the PROPERTY and ACCESS EASEMENT onto adjoining properties. BUYER shall have a period of fifteen (15) business days (the "Survey Review Period") after receipt of a survey within which to notify SELLER of BUYER's objection to any item shown on or referenced on the survey. Any Reviewable Matter to which BUYER does not object within the Survey Review Period shall be deemed to be accepted by BUYER. If BUYER objects to any such Reviewable Matter and gives notice to SELLER as provided herein, SELLER may at SELLER's election, on or before closing, attempt to cure same. If SELLER fails to cure same by the closing date, or is unwilling to cure same, the closing date shall be extended for five (5) business days for BUYER to either (a) waive such objections and accept such title as SELLER is able to convey or (b) terminate this Contract by written notice to the Title Company and to SELLER, in which case any earnest money shall be refunded to BUYER, and neither SELLER nor BUYER shall have any further rights or obligations under this Contract.

(b) The survey drawings shall be addressed to and certified in favor of the BUYER and the Title Company. The field notes descriptions, as prepared by the surveyor, shall be substituted for the descriptions attached to this Contract as Exhibit A and shall be used in the Special Warranty Deed and the Access Easement.

1.6 BUYER may at its cost order a Level 1 Environmental Site Assessment. BUYER shall have a period of fifteen (15) business days after receipt of the Environmental Site Assessment to review the assessment and notify SELLER of BUYER's rejection of the PROPERTY and ACCESS EASEMENT. BUYER at its option may elect to provide SELLER with an opportunity to cure the environmental problem. If BUYER elects not to provide SELLER with an opportunity to cure or if SELLER fails to cure once BUYER provides that opportunity, this Contract shall be terminated and neither party will have any further liability.

1.7 The parties agree that general real estate taxes on the PROPERTY for the then current year, interest on any existing indebtedness, and rents, if any, shall be prorated as of the closing date and shall be adjusted in cash at the closing. To the degree legally permissible by law, BUYER shall be liable for any taxes assessed and levied for prior years resulting from any change in use subsequent to the conveyance to BUYER. If the closing shall occur before the tax rate is fixed for the current year, the apportionment of taxes shall be upon the basis of the tax rate for the next preceding year applied to the latest assessed valuation. All installments that have

matured prior to the closing date on any special taxes or assessments shall be paid by SELLER; and any installments that are provided in the special assessment to mature after closing shall be assumed by BUYER.

1.8 The sale of the PROPERTY and ACCESS EASEMENT shall be made by a Special Warranty Deed and by an Access Easement, respectively, from SELLER to BUYER in the forms prepared by BUYER attached hereto as Exhibit "B".

ARTICLE II PURCHASE PRICE

2.1 BUYER shall deposit twenty thousand dollars and no cents (\$20,000) as Earnest Money with BRAZOS COUNTY ABSTRACT COMPANY ("ESCROW AGENT") not later than ten (10) working days after the effective date of this Contract. BUYER may instruct ESCROW AGENT to deposit the Earnest Money in an interest-bearing account at a federally insured financial institution, and credit any interest to BUYER.

2.2 The purchase price for said PROPERTY is estimated to be the sum of three hundred thirteen thousand four hundred twenty-five dollars and no cents (\$313,425.00) based upon an agreed upon price of \$5,250 per acre. Once a final survey is complete, the purchase price shall be adjusted based upon the actual acreage and the agreed upon cost per acre. If the total purchase price as amended is changed by more than 10% from the estimated cost, then either party may terminate this contract by notifying the other. If terminated, BUYER shall receive its earnest money, and neither party shall have any further obligation to the other. The purchase price shall be payable in full at closing. The amount of earnest money recited above shall be applied to or credited against payment of the total purchase price of the PROPERTY recited herein.

2.3 The purchase price for the ACCESS EASEMENT shall be as recited therein.

ARTICLE III REPRESENTATIONS AND WARRANTIES OF SELLER

3.1 SELLER hereby represents and warrants to BUYER as follows:

(a) SELLER has the full right, power, and authority to enter into and perform SELLER's obligations under this Contract.

(b) SELLER has no actual knowledge of any parties in possession of any portion of the PROPERTY and ACCESS EASEMENT, either as lessees, tenants at sufferance, trespassers, or other persons in possession. Additionally, SELLER has no actual knowledge of any action by adjacent landowners, or any natural or artificial conditions upon the PROPERTY and ACCESS EASEMENT, or any significant adverse fact or condition relating to the PROPERTY and

Page 3

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ACCESS EASEMENT, which has not been disclosed in writing to BUYER by SELLER, which would prevent, limit, impede or render more costly BUYER's contemplated use of the PROPERTY and ACCESS EASEMENT.

(c) SELLER has no actual knowledge of any pending or threatened condemnation or similar proceedings or assessment affecting the PROPERTY and ACCESS EASEMENT or any part thereof. SELLER has no actual knowledge of any such proceedings or assessments contemplated by any governmental entity.

(d) SELLER has no actual knowledge that the PROPERTY and ACCESS EASEMENT do not have full and free access to and from public highways, streets, or roads. SELLER has no actual knowledge that there are pending or threatened governmental proceedings that would impair or result in the termination of such access. If SELLER obtains actual knowledge of any such matter subsequent to the date of this Contract that would make any of the representations or warranties untrue if made as of closing, SELLER shall notify BUYER, and BUYER shall have the election of terminating the Contract and receiving back its earnest money, in which case neither party shall have any further obligation to the other.

(e) The PROPERTY and ACCESS EASEMENT have not been illegally subdivided or otherwise held, managed, or maintained in violation of any federal, state, or local law.

(f) SELLER has no actual knowledge that SELLER has not complied with all applicable laws, ordinances, regulations, statutes, rules and restrictions relating to the PROPERTY AND ACCESS EASEMENT or any part thereof.

(g) If SELLER obtains actual knowledge of any such matter subsequent to the date of this Contract that would make any of the representations or warranties untrue if made as of closing, SELLER shall notify BUYER, and BUYER shall have the election of terminating the Contract and receiving back its earnest money, in which case neither party shall have any further obligation to the other.

(h) SELLER has no knowledge that the PROPERTY and ACCESS EASEMENT contains any environmental hazard or that there is any condition or use of the PROPERTY and ACCESS EASEMENT that would interfere with BUYER's proposed purchase in the forms as substantially set forth in Exhibit "B."

(i) SELLER is not a "foreign person" within the meaning of the Internal Revenue Code of 1986, as amended, Sections 1445 and 7701 (i.e., SELLER is not a non-resident alien, a foreign corporation, foreign partnership, foreign trust or foreign estate as those terms are defined in the Code and regulations promulgated thereunder).

(j) To the best of SELLER's knowledge there are no unpaid charges, debts, liabilities, claims or obligations arising from any construction, occupancy, ownership, use or operation of the PROPERTY and ACCESS EASEMENT, or the business operated thereon, if

any, which could give rise to any mechanic's or materialmen's or other statutory lien against the PROPERTY and ACCESS EASEMENT, or any part thereof, or for which BUYER will be responsible.

(k) There are currently existing oil or gas leases, groundwater leases or other uses or rights on the PROPERTY and ACCESS EASEMENT and SELLER will provide satisfactory proof to BUYER within fifteen 15 days of this Contract that uses of the surface of the PROPERTY and ACCESS EASEMENT has in all cases been expressly waived and that said existing uses will not contravene the terms and conditions set forth in the Conservation Easement which is attached hereto as Exhibit "C."

This Contract is contingent upon SELLER providing surface waivers from all of the mineral interest owners ensuring a waiver of all rights with respect to the surface and to not contravene the terms and conditions of the Conservation Easement which is attached hereto as Exhibit "C," and no owner, lessee, or agent of the mineral estate shall ever have rights of ingress or egress except as may have been reserved by under the reservations and exceptions expressly listed in the Special Warranty Deed attached as Exhibit "B."

ARTICLE IV REPRESENTATIONS AND WARRANTIES OF BUYER

4.1 BUYER represents and warrants to SELLER as of the effective date and as of the closing date that:

(a) BUYER has the full right, power, and authority to purchase the EASEMENT from SELLER as provided in this Contract and to carry out BUYER's obligations under this Contract, and all requisite action necessary to authorize BUYER to enter into this Contract and to carry out BUYER's obligations hereunder has been obtained or on or before closing will have been taken.

ARTICLE V CLOSING

5.1 The closing shall be held at Brazos County Abstract Company located at 3800 Cross Park Drive, Bryan, Texas, by January 30, 2009 (the "closing date") . The BUYER is authorized to extend the time for closing with mutual consent of SELLER.

5.2 At the closing, SELLER shall:

(a) Deliver to BUYER the duly executed and acknowledged Special Warranty Deed and Access Easement prepared by BUYER conveying good and marketable title in the PROPERTY and ACCESS EASEMENT, free and clear of any and all liens, encumbrances,

except for the Reviewable Matters and subject to the BUYER's election to terminate this Contract in the event BUYER disapproves of any Reviewable Matter, which objection is to be cured by SELLER on or prior to the closing as provided by Article V of this Contract.

- (b) Deliver possession of the PROPERTY and ACCESS EASEMENT to BUYER.
- (c) Deliver to BUYER, at BUYER's expense, Title Policy insuring indefeasible title issued by Brazos County Abstract, in BUYER's favor in the full amount of the purchase price, insuring BUYER's interest in the PROPERTY and ACCESS EASEMENT subject only to such exceptions as shown on the Title Commitment and not objected to by BUYER prior to closing.
- (d) Pay one-half (1/2) of the escrow fees.
- (e) Pay any and all required property taxes and prorated taxes for the year 2007 and 2008.
- (f) Pay any and all homeowner's or maintenance fees for prior years and for the current year prorated up to the date of closing.
- (g) Pay the costs to obtain, deliver and record releases or partial releases of all liens to be released at closing.
- (h) Pay the costs to record all documents to cure title objections agreed to be cured by SELLER.
- (i) Pay the certificates or reports of ad valorem taxes.
- (j) Pay the SELLER's expenses and attorney fees.

5.3 Upon such performance by SELLER at closing, BUYER shall:

- (a) Pay the balance of the purchase price.
- (b) Pay one-half (1/2) of the escrow fees.
- (c) Prepare, at its cost, the PROPERTY and the ACCESS EASEMENT documents.
- (d) Pay the title insurance.
- (e) Pay the costs to obtain, deliver and record all documents other than those to be recorded at SELLER's expense.
- (f) Pay the BUYER's expenses or attorney fees.

- (g) Pay the additional premium for the survey/boundary deletion in the title policy, if the deletion is requested by BUYER.
- (h) Pay the costs of work required by BUYER to have the survey reflect matters other than those required under this contract.

ARTICLE VI SPECIAL CONDITIONS

6.1 BUYER agrees to grant SELLER an exclusive license to hunt, fish, and camp on the PROPERTY for a period of 99 years subject to the specific mitigation conservation terms and conditions of the Conservation Easement attached hereto as Exhibit "C", and limited to the degree that such activities do not interfere with BUYERs' use and enjoyment of the PROPERTY and subject to any subsequently granted conservation easements as they relate to such specific mitigation conservation purpose. SELLER's use and enjoyment of the license to hunt, fish and camp on the PROPERTY shall be subject to all current and future federal, state, municipal and other local law as applicable or may become applicable, regardless of the effect on the lieense to hunt, fish and camp on the PROPERTY.

ARTICLE VII BREACH BY SELLER

7.1 In the event SELLER fails to fully and timely perform any of SELLER's obligations under this Contract or fails to consummate the sale of the EASEMENT for any reason except BUYER's default, BUYER may:

- (a) Enforce specific performance of this agreement;
- (b) Bring suit for damages against SELLER; and/or
- (c) Terminate this Contract and be reimbursed all monies given to SELLER.

ARTICLE VIII BREACH BY BUYER

8.1 In the event BUYER fails to consummate the purchase of the PROPERTY or ACCESS EASEMENT (BUYER being in default and SELLER not being in default hereunder), SELLER shall have the right to

- (a) Bring suit against BUYER only for expectancy and incidental damages, if any; and/or

Page 7

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(b) Terminate the Contract and receive the Earnest Money as damages.

ARTICLE IX
MISCELLANEOUS

9.1 Survival of Covenants: Any of the representations, warranties, covenants, and agreements of the parties, as well as any rights and benefits of the parties, pertaining to the period of time following the closing date, shall survive the closing and is referenced in the conveyance deed.

9.2 Notice: Any notice required or permitted to be delivered by this Contract shall be deemed received when sent via certified first class United States mail, return receipt requested, or sent by electronic or facsimile transmission confirmed by mailing written confirmation at substantially the same time as such electronic or facsimile transmission, or personally delivered at the addresses set forth below:

SELLER: Mervin Dansby Peters
810 Lee Hollow Drive
Bryan, Tx 77802

BUYERS: City of College Station
Legal Department
1101 Texas Avenue
College Station, Texas 77840

City of Bryan
Legal Department
300 S. Texas Avenue
Bryan, Texas 77803

9.3 Texas Law to Apply: This Contract shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created by this Contract are to be performed in Brazos County, Texas.

9.4 Parties Bound: This Contract shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns. The persons executing this Contract do so in their capacities as set forth below and in no other capacity whatsoever, and such persons shall have no personal liability for executing this Contract in a representative capacity. All such liability is limited to the principal for which they execute this document as a representative.

9.5 Invalid Provision: In case any one or more of the provisions contained in this Contract shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Contract, and this Contract shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in the Contract. In lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as part of this Contract a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

9.6 Construction: The parties acknowledge that each party and its counsel have reviewed and revised this Contract and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Contract or any amendments or exhibits hereto.

9.7 Prior Agreements Superseded: This Contract embodies the entire agreement of the parties and supersedes any and all prior understandings or written or oral agreements between the parties respecting subject matter within and may only be amended or supplemented by an instrument in writing executed by the party against whom enforcement is sought. Specifically, that one certain real estate contract approved by the BUYER on or about November 19, 2007 is hereby superceded by this Contract.

9.8 Time of Essence: Time is of the essence to this Contract.

9.9 Gender: Words of any gender used in this Contract 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.

9.10 Multiple Counterparts: This Contract may be executed in a number of identical counterparts. If so executed, each of the counterparts shall, collectively, constitute but one agreement. In making proof of this Contract, it shall not be necessary to produce or account for more than one counterpart.

9.11 Memorandum of Contract: Upon request of either party, both parties shall promptly execute a memorandum of this agreement suitable for filing of record.

EXECUTED on this the _____ day of _____, 2009.

List of Exhibits:

- “A” Description of the Property and Access Easement
- “B” Special Warranty Deed and Access Easement instrument
- “C” Conservation Easement

SELLER:

BUYER:

CITY OF BRYAN

BY: Mervin Dansby Peters
Printed Name: Mervin Dansby Peters
Date: JAN. 14, 2009

BY: _____
Mayor

Date: _____
ATTEST:

City Secretary
Date: _____

APPROVED:

City Attorney
Date: _____

CITY OF COLLEGE STATION

BY: _____
Mayor

Date: _____

ATTEST:

City Secretary
Date: _____

APPROVED:

City Manager
Date: _____

Chief Financial Officer

Date: _____

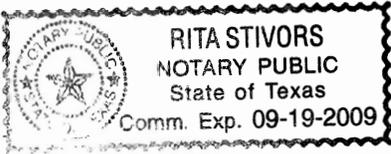
City Attorney

Date: _____

THE STATE OF TEXAS §
 §
COUNTY OF BRAZOS §

ACKNOWLEDGMENT

This instrument was acknowledged before me on the 14th day of January, 2009, by MERVIN DANSBY PETERS.



Rita Stivors
Notary Public in and for the State of Texas

THE STATE OF TEXAS §
 §
COUNTY OF BRAZOS §

ACKNOWLEDGMENT

This instrument was acknowledged before me on the _____ day of _____, 2009, by _____, as Mayor of the CITY OF BRYAN, a Texas Home Rule Municipal Corporation, on behalf of said municipality.

Notary Public in and for the State Of Texas

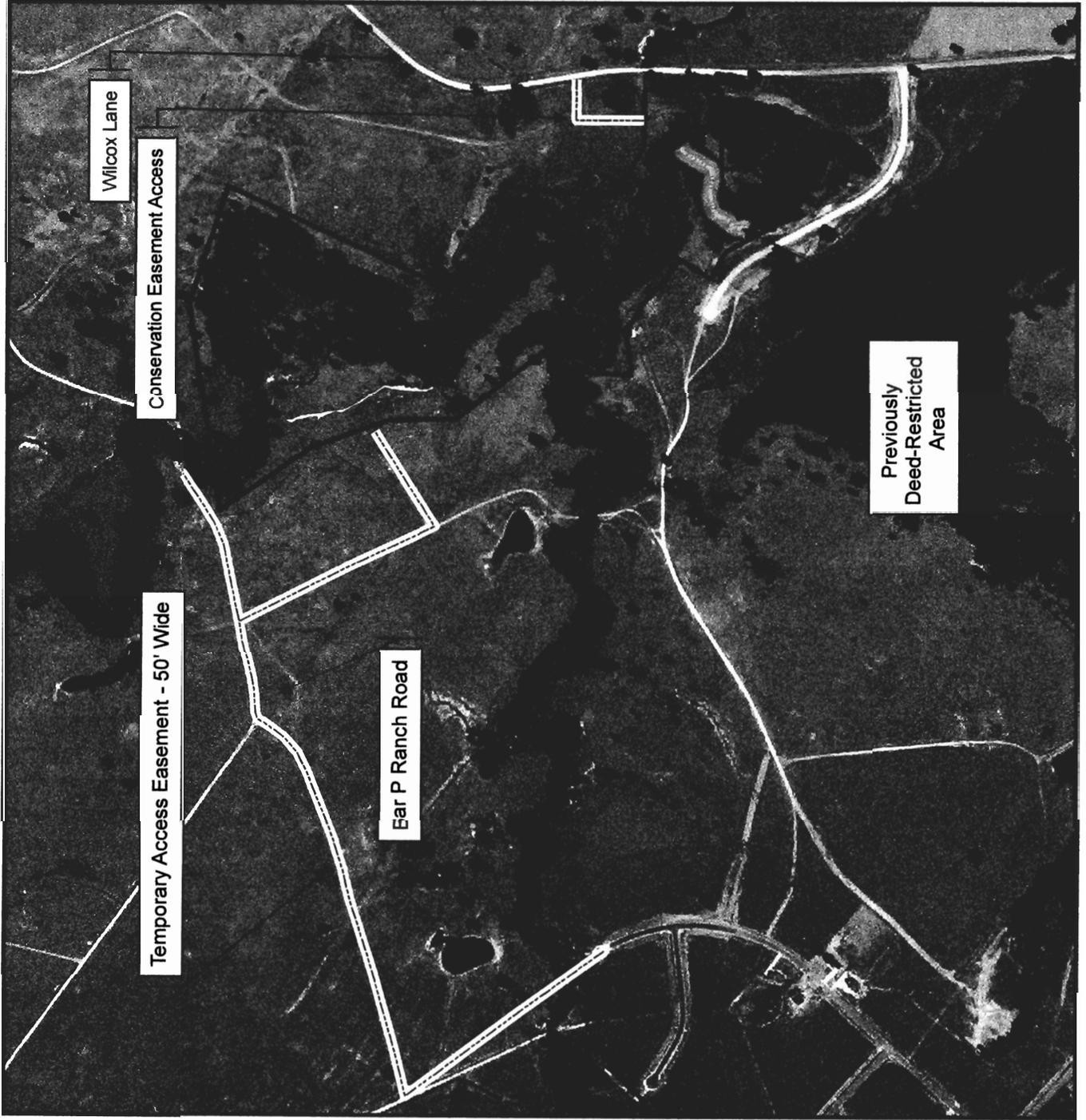
THE STATE OF TEXAS §
 §
COUNTY OF BRAZOS §

ACKNOWLEDGMENT

This instrument was acknowledged before me on the _____ day of _____, 2009, by _____, as Mayor of the CITY OF COLLEGE STATION, a Texas Home Rule Municipal Corporation, on behalf of said municipality.

Notary Public in and for the State Of Texas

BVSWMA - SH 30 Landfill - Mitigation Area Proposed Conservation Easement - Temporary and Permanent Access Easements



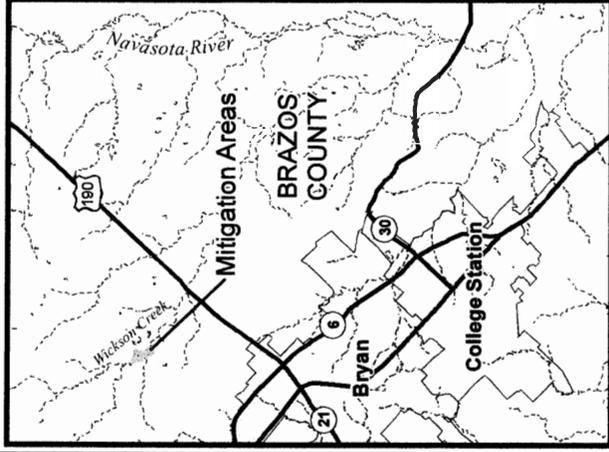
Legend

Waters of the U.S.

- Perennial Stream
- Intermittent Stream
- Ephemeral Stream
- Wetland

Features Not Waters of the U.S.

- Floodplain
- Proposed Conservation Easement
- Deed Restricted Area

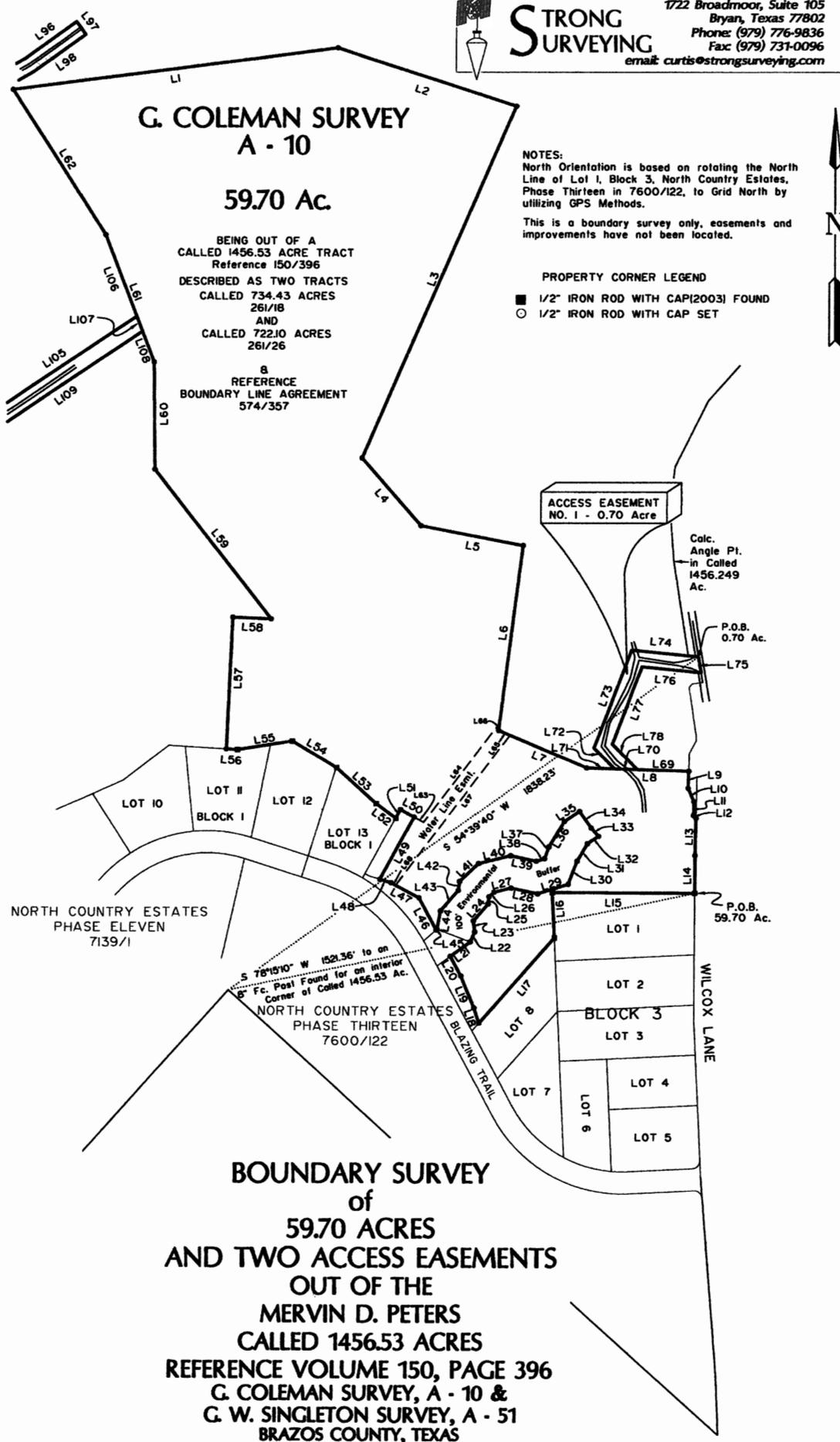


BRAZOS VALLEY SOLID WASTE MANAGEMENT AGENCY

April 2008

Version 9a

STRONG SURVEYING
 1722 Broadmoor, Suite 105
 Bryan, Texas 77802
 Phone: (979) 776-9836
 Fax: (979) 731-0096
 email: curtis@strongsurveying.com



BOUNDARY SURVEY
 of
59.70 ACRES
AND TWO ACCESS EASEMENTS
 OUT OF THE
MERVIN D. PETERS
CALLED 1456.53 ACRES
REFERENCE VOLUME 150, PAGE 396
G. COLEMAN SURVEY, A - 10 &
G. W. SINGLETON SURVEY, A - 51
BRAZOS COUNTY, TEXAS
 SCALE 1" = 300' NOVEMBER 17, 2008
 SHEET 1 OF 3

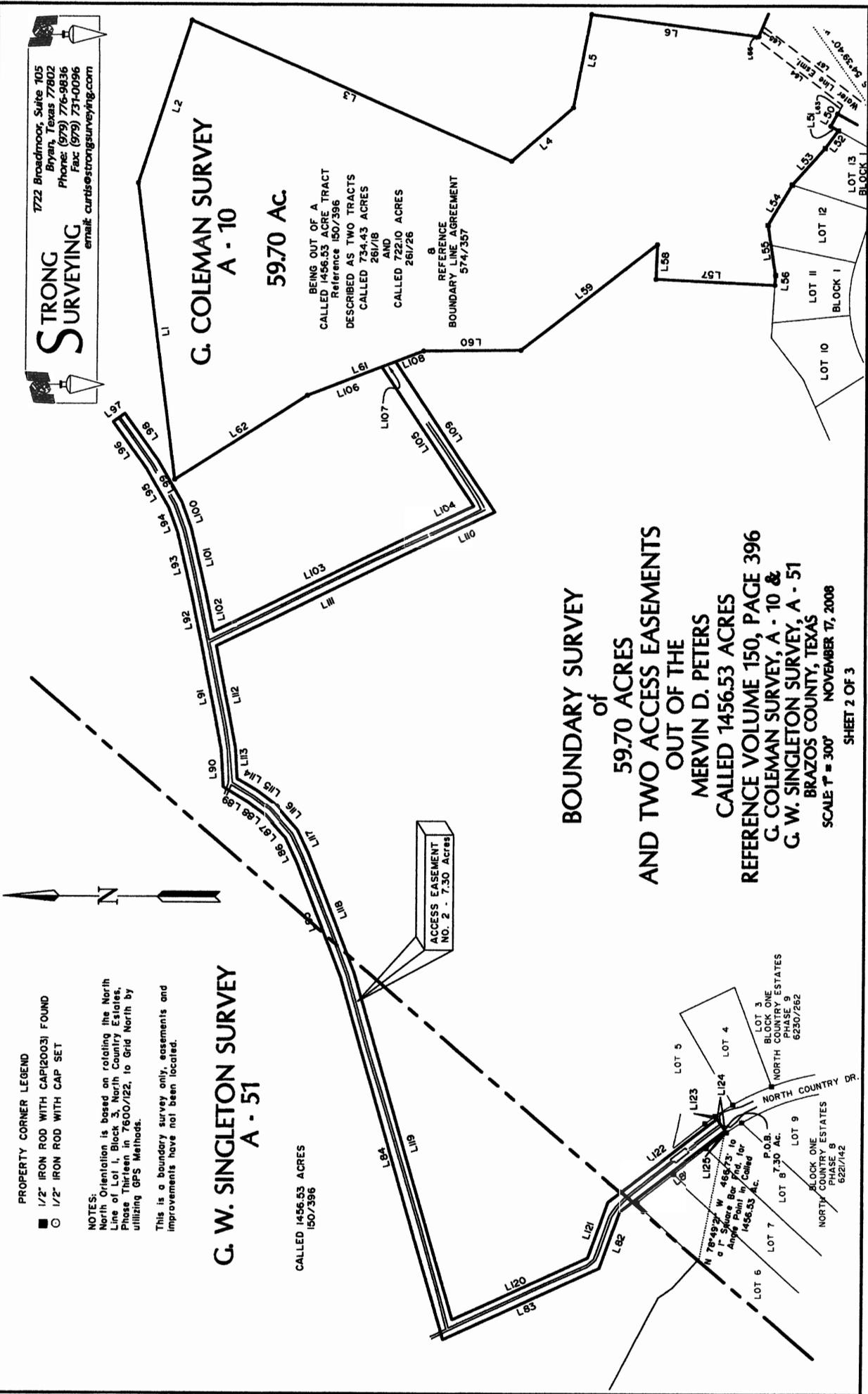
STRONG SURVEYING
 1722 Broadmoor, Suite 105
 Bryan, Texas 77802
 Phone: (979) 776-9836
 Fax: (979) 734-0096
 email: curtis@strongsurveying.com

PROPERTY CORNER LEGEND
 ■ 1/2" IRON ROD WITH CAP/10031 FOUND
 ○ 1/2" IRON ROD WITH CAP SET

NOTES:
 North Orientation is based on rotating the North Line of Lot 1, Block 3, North Country Estates, Phase Thirteen in 7600/122, to Grid North by utilizing GPS Methods.
 This is a boundary survey only, easements and improvements have not been located.

**G. W. SINGLETON SURVEY
 A - 51**

CALLED 1456.53 ACRES
 1507/396



BOUNDARY SURVEY
 of
59.70 ACRES
OUT OF THE
BOUNDARY SURVEY
 of
MERVIN D. PETERS
 CALLED 1456.53 ACRES
 REFERENCE VOLUME 150, PAGE 396
G. COLEMAN SURVEY, A - 10 &
G. W. SINGLETON SURVEY, A - 51
 BRAZOS COUNTY, TEXAS
 SCALE 1" = 300' NOVEMBER 17, 2008
 SHEET 2 OF 3

BEING OUT OF A
 CALLED 1456.53 ACRE TRACT
 Reference 1507/396
 DESCRIBED AS TWO TRACTS
 CALLED 734.43 ACRES
 261/18
 AND
 CALLED 722.10 ACRES
 261/26
 REFERENCE
 B
 BOUNDARY LINE AGREEMENT
 574/357

ACCESS EASEMENT
 NO. 2 - 7.30 ACRES

**FIELD NOTES
59.70 ACRES
OUT OF THE
MERVIN D. PETERS
CALLED 1456.53 ACRE TRACT
REFERENCE VOLUME 150, PAGE 396
DESCRIBED AS TWO TRACTS
734.43 ACRES – VOLUME 261, PAGE 18 &
722.10 ACRES – VOLUME 261, PAGE 26
G. COLEMAN SURVEY, A – 10
BRAZOS COUNTY, TEXAS
NOVEMBER 17, 2008**

All that certain lot, tract or parcel of land being 59.70 acres situated in the G. COLEMAN SURVEY, Abstract Number 10, Brazos County, Texas and being a part of that certain Called 1456.53 acre tract as referenced in deed from Curtis Wilcox et al to Marshall C. Peters of record in Volume 150, Page 396, Deed Records of Brazos County, Texas, same 1456.43 acre tract being further described in the following two tracts; 1) Being Called 734.43 acres in deed from Marshall Bookman Peters to Mervin Dansby Peters of record in Volume 261, Page 18, and 2) Being Called 722.10 acres in deed from E. E. Peters, Trustee to Mervin Dansby Peters of record in Volume 261, Page 26, both being deed records of Brazos County, Texas, said 59.70 acre tract being more particularly described by metes and bounds as follows:

BEGINNING at a 1/2" Iron Rod with Cap found for the southeast corner, said corner being the northeast corner of Lot 1, Block Three, North Country Estates, Phase Thirteen as described in Volume 7600, Page 122, said corner also being located in the west right-of-way line of Wilcox Lane, an 8" Fence Corner Post found for an Occupied interior Corner of said Called 1456.53 acre tract bears S 78 ° 15 ' 10 " W a distance of 1521.36 feet;

THENCE N 89 ° 44 ' 38 " W, along the north line of said Lot 1 a distance of 454.59 feet to a 1/2" Iron Rod with Cap found for an interior corner, said corner being the northwest corner of said Lot 1;

THENCE S 2 ° 43 ' 23 " E, along the west line of said Lot 1 a distance of 144.43 feet to a 1/2" Iron Rod with Cap found for angle point, said corner being the most northerly corner of Lot 8, Block Three, of said North Country Estates, Phase Thirteen;

THENCE S 41 ° 25 ' 56 " W, along the northwest line of said Lot 8 a distance of 362.49 feet to a 1/2" Iron Rod with Cap set for the most southerly corner;

THENCE N 18 ° 37 ' 17 " W, a distance of 51.24 feet to a 1/2" Iron Rod with Cap set for angle point;

THENCE N 22 ° 20 ' 15 " W, a distance of 110.72 feet to a 1/2" Iron Rod with Cap set for angle point;

THENCE N 28 ° 24 ' 47 " W, a distance of 70.11 feet to a 1/2" Iron Rod with Cap set for angle point;

THENCE N 53 ° 51 ' 34 " E, a distance of 78.02 feet to a 1/2" Iron Rod with Cap set for angle point, said corner being the most southerly corner of an existing 100' wide Environmental Buffer along Wickson Creek as shown in Volume 7600, Page 122;

THENCE along the southeast line of said Environmental Buffer Line the following calls:

- N 24 ° 47 ' 14 " E, a distance of 34.86 feet to a 1/2" Iron Rod with Cap set for angle point;
- N 7 ° 42 ' 04 " W, a distance of 35.32 feet to a 1/2" Iron Rod with Cap set for angle point;
- N 40 ° 51 ' 43 " E, a distance of 71.17 feet to a 1/2" Iron Rod with Cap set for angle point;
- N 7 ° 59 ' 05 " E, a distance of 23.05 feet to a 1/2" Iron Rod with Cap set for angle point;
- N 46 ° 43 ' 12 " E, a distance of 21.19 feet to a 1/2" Iron Rod with Cap set for angle point;
- N 76 ° 26 ' 37 " E, a distance of 56.37 feet to a 1/2" Iron Rod with Cap set for angle point;
- S 78 ° 06 ' 26 " E, a distance of 87.34 feet to a 1/2" Iron Rod with Cap set for angle point ;
- N 72 ° 38 ' 03 " E, a distance of 101.51 feet to a 1/2" Iron Rod with Cap set for angle point;

N 21 ° 14 ' 23 " E, a distance of 79.10 feet to a 1/2" Iron Rod with Cap set for angle point;
N 31 ° 15 ' 30 " E, a distance of 63.76 feet to a 1/2" Iron Rod with Cap set for angle point; and,
N 56 ° 15 ' 57 " E, a distance of 41.57 feet to a point in the centerline of an existing creek for corner, said corner being the most easterly corner of said 100' wide Environmental Buffer;

THENCE along the centerline of said existing creek and the northeast line of said 100' wide Environmental Buffer the following calls:

N 41 ° 16 ' 54 " W, a distance of 35.30 feet to a point in the existing centerline of said creek for angle point; and,
N 34 ° 42 ' 19 " W, a distance of 65.02 feet to a point in the centerline of said existing creek for corner, said corner being the most northerly corner of said 100' wide Environmental Buffer;

THENCE along the northwest line of said 100' wide Environmental Buffer the following calls:

S 56 ° 15 ' 57 " W, a distance of 58.01 feet to a 1/2" Iron Rod with Cap set for angle point;
S 31 ° 15 ' 30 " W, a distance of 94.70 feet to a 1/2" Iron Rod with Cap set for angle point;
S 21 ° 14 ' 23 " W, a distance of 39.75 feet to a 1/2" Iron Rod with Cap set for angle point;
S 72 ° 38 ' 03 " W, a distance of 27.28 feet to a 1/2" Iron Rod with Cap set for angle point;
N 78 ° 06 ' 26 " W, a distance of 83.82 feet to a 1/2" Iron Rod with Cap set for angle point ;
S 76 ° 26 ' 37 " W, a distance of 105.49 feet to a 1/2" Iron Rod with Cap set for angle point ;
S 46 ° 43 ' 12 " W, a distance of 82.87 feet to a 1/2" Iron Rod with Cap set for angle point ;
S 7 ° 59 ' 05 " W, a distance of 28.69 feet to a 1/2" Iron Rod with Cap set for angle point;
S 40 ° 51 ' 43 " W, a distance of 86.64 feet to a 1/2" Iron Rod with Cap set for angle point ;
S 10 ° 04 ' 28 " W, a distance of 59.23 feet to a 1/2" Iron Rod with Cap set for angle point, said corner being the most westerly corner of said 100' wide Environmental Buffer;

THENCE S 49 ° 12 ' 29 " W, a distance of 3.49 feet to a 1/2" Iron Rod with Cap set for angle point;

THENCE N 28 ° 24 ' 47 " W, a distance of 115.88 feet to a 1/2" Iron Rod with Cap set for angle point;

THENCE N 61 ° 58 ' 24 " W, a distance of 100.98 feet to a 1/2" Iron Rod with Cap set for angle point;

THENCE N 73 ° 05 ' 41 " W, a distance of 38.60 feet to a 1/2" Iron Rod with Cap set for angle point;

THENCE N 29 ° 01 ' 30 " E, a distance of 225.68 feet to a 1/2" Iron Rod with Cap set for angle point;

THENCE N 60 ° 58 ' 30 " W, a distance of 50.00 feet to a 1/2" Iron Rod with Cap set for angle point;

THENCE S 29 ° 01 ' 30 " W, a distance of 31.59 feet to a 1/2" Iron Rod with Cap set for angle point, said corner being the most easterly corner of Lot 13, Block 1, of said North Country Estates, Phase Thirteen;

THENCE N 53 ° 21 ' 05 " W, along the northeast line of said Lot 13 a distance of 78.12 feet to a 1/2" Iron Rod with Cap set for angle point;

THENCE N 48 ° 08 ' 05 " W, continuing along the northeast line of said Lot 13 a distance of 171.49 feet to a 1/2" Iron Rod with Cap set for angle point, said corner being the most northerly corner of said Lot 13 and also being the most easterly corner of Lot 12, Block 1 of said North country Estates, Phase Eleven as described in Volume 7139, Page 1;

THENCE N 59 ° 12 ' 21 " W, along the north line of said Lot 12 a distance of 164.36 feet to a 1/2" Iron Rod with Cap set for angle point, said corner being an angle point in said Lot 12;

THENCE S 81 ° 15 ' 49 " W, at a distance of 71.27 feet passing a 1/2" Iron Rod with Cap found for the northwest corner of said Lot 12 and continuing along the north line of Lot 11, Block 1 for a total distance of 178.49 feet to a 1/2" Iron Rod with Cap set for angle point, said corner being an angle point of said Lot 11;.

THENCE N 86 ° 35 ' 50 " W, along the north line of said Lot 11 a distance of 35.16 feet to a 1/2" Iron Rod with Cap set for angle point;

THENCE N 2 ° 42 ' 45 " E, a distance of 419.55 feet to a 1/2" Iron Rod with Cap set for angle point;
 THENCE S 87 ° 38 ' 43 " E, a distance of 122.21 feet to a 1/2" Iron Rod with Cap set for angle point;
 THENCE N 38 ° 04 ' 00 " W, a distance of 605.21 feet to a 1/2" Iron Rod with Cap set for angle point;
 THENCE N 0 ° 37 ' 13 " W, a distance of 340.83 feet to a 1/2" Iron Rod with Cap set for angle point;
 THENCE N 21 ° 06 ' 55 " W, a distance of 436.32 feet to a 1/2" Iron Rod with Cap set for angle point;
 THENCE N 32 ° 39 ' 03 " W, a distance of 549.82 feet to a 1/2" Iron Rod with Cap set for the northwest corner;
 THENCE N 82 ° 33 ' 04 " E, a distance of 1046.78 feet to a 1/2" Iron Rod with Cap set for angle point;
 THENCE S 72 ° 02 ' 12 " E, a distance of 600.34 feet to a 1/2" Iron Rod with Cap set for the northeast corner;
 THENCE S 23 ° 30 ' 06 " W, a distance of 1225.28 feet to a 1/2" Iron Rod with Cap set for angle point;
 THENCE S 41 ° 13 ' 17 " E, a distance of 286.51 feet to a 1/2" Iron Rod with Cap set for angle point;
 THENCE S 79 ° 03 ' 53 " E, a distance of 332.82 feet to a 1/2" Iron Rod with Cap set for angle point;
 THENCE S 7 ° 23 ' 38 " W, a distance of 593.71 feet to a 1/2" Iron Rod with Cap set for angle point;
 THENCE S 66 ° 57 ' 06 " E, a distance of 305.99 feet to a 1/2" Iron Rod with Cap set for angle point;
 THENCE S 88 ° 10 ' 41 " E, a distance of 326.16 feet to a 1/2" Iron Rod with Cap set for angle point, said corner being located in the west right-of-way line of said Wilcox Lane;

THENCE with the west right-of-way line of Wilcox Lane the following calls:
 S 1 ° 49 ' 19 " W, a distance of 54.12 feet to a 1/2" Iron Rod with Cap set for angle point;
 S 23 ° 29 ' 57 " E, a distance of 46.77 feet to a 1/2" Iron Rod with Cap set for angle point;
 S 1 ° 49 ' 27 " W, a distance of 43.98 feet to a 1/2" Iron Rod with Cap set for angle point;
 S 40 ° 38 ' 00 " E, a distance of 12.07 feet to a 1/2" Iron Rod with Cap set for angle point;
 S 1 ° 23 ' 21 " W, a distance of 117.96 feet to a 1/2" Iron Rod with Cap set for angle point;
 S 0 ° 15 ' 22 " W, a distance of 119.51 feet to the PLACE OF BEGINNING AND CONTAINING AN AREA OF 59.70 ACRES OF LAND MORE OR LESS, according to a survey performed during the month of November, 2008, under the supervision of H. Curtis Strong, registered Professional Land Surveyor No. 4961. North Orientation is based on rotating the north line of Lot 1, Block 3, North Country Estates, Phase Thirteen as recorded in Volume 7600, Page 122, to Grid North by utilizing GPS methods. See plat for other information.



**FIELD NOTES
0.70 OF ONE ACRE
ACCESS EASEMENT
OUT OF THE
MERVIN D. PETERS
CALLED 1456.53 ACRE TRACT
REFERENCE VOLUME 150, PAGE 396
DESCRIBED AS TWO TRACTS
734.43 ACRES – VOLUME 261, PAGE 18 &
722.10 ACRES – VOLUME 261, PAGE 26
AND THE
BOUNDARY LINE AGREEMENT TRACT
VOLUME 574, PAGE 357
G. COLEMAN SURVEY, A – 10
BRAZOS COUNTY, TEXAS
NOVEMBER 17, 2008**

All that certain lot, tract or parcel of land being 0.70 of one acre situated in the G. COLEMAN SURVEY, Abstract Number 10, Brazos County, Texas and being a part of that certain Called 1456.53 acre tract as referenced in deed from Curtis Wilcox et al to Marshall C. Peters of record in Volume 150, Page 396, Deed Records of Brazos County, Texas, same 1456.43 acre tract being further described in the following two tracts; 1) Being Called 734.43 acres in deed from Marshall Bookman Peters to Mervin Dansby Peters of record in Volume 261, Page 18, and 2) Being Called 722.10 acres in deed from E. E. Peters, Trustee to Mervin Dansby Peters of record in Volume 261, Page 26, both being deed records of Brazos County, Texas, and also being a part of that certain Boundary Line Agreement and Conveyance as described in Volume 574, Page 357, Deed Records of Brazos County, Texas, said 0.70 of one acre tract being more particularly described by metes and bounds as follows:

BEGINNING at a point in the centerline of Wilcox Lane for the northeast corner, an 8" Fence Corner Post found for an Occupied Interior corner of said Called 1456.53 acre tract bears S 54 ° 39 ' 40 " W a distance of 1838.23 feet;
THENCE S 9 ° 34 ' 31 " E, along the centerline of said Wilcox Lane a distance of 51.82 feet to a point for the most easterly corner;
THENCE N 84 ° 19 ' 33 " W, a distance of 190.07 feet to a point for angle point;
THENCE S 20 ° 57 ' 50 " W, a distance of 264.53 feet to a point for angle point;
THENCE S 44 ° 39 ' 16 " E, a distance of 114.45 feet to a point in a north line of a hereinafter 59.70 Acre Tract for the most southerly southeast corner, said corner being N 88 ° 10 ' 41 " W a distance of 164.78 feet from a 1/2" Iron Rod with Cap set for a northeast corner of said 59.70 acre tract;
THENCE N 88 ° 10 ' 41 " W, along the north line of said 59.70 acre tract a distance of 72.61 feet to a point for the southwest corner, a 1/2" Iron Rod with Cap set for angle point in north line of said 59.70 acre tract bears N 88 ° 10 ' 41 " W a distance of 88.77 feet;
THENCE N 44 ° 39 ' 16 " W, a distance of 94.04 feet to a point for angle point;
THENCE N 20 ° 57 ' 50 " E, a distance of 334.93 feet to a point for angle point;
THENCE S 84 ° 19 ' 33 " E, a distance of 214.60 feet to the PLACE OF BEGINNING AND CONTAINING AN AREA OF 0.70 OF ONE ACRE MORE OR LESS, according to a survey performed during the month of November, 2008, under the supervision of H. Curtis Strong, registered Professional Land Surveyor No. 4961. North Orientation is based on rotating the north line of Lot 1, Block 3, North Country Estates, Phase Thirteen as recorded in Volume 7600, Page 122, to Grid North by utilizing GPS methods. See plat for other information.



**Exhibit B-1 to
Real Estate Contract**

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

SPECIAL WARRANTY DEED

DATE: _____

GRANTORS: MERVIN DANSBY PETERS

GRANTORS' MAILING ADDRESS: 810 Lee Hollow Dr.
Brazos County
Bryan, Tx 77802

GRANTEES: CITY OF BRYAN, TEXAS,
A Texas Home Rule Corporation, and

CITY OF COLLEGE STATION, TEXAS,
a Texas Home Rule Corporation,

jointly, as Tenants in Common.

GRANTEES' MAILING ADDRESS: CITY OF BRYAN
300 S. Texas Avenue
Bryan, Texas 77803

CITY OF COLLEGE STATION
1101 Texas Avenue
Brazos County
College Station, TX 77840

CONSIDERATION: Ten and No/100 Dollars (\$10.00) and
other good and valuable consideration

PROPERTY:

IO:\Projects\BVSWMA - Grimes County Landfill\Land Acquisition\Tract 30 - Mervin Peters\contract buy in fee Ex
B-1.docx 1/14/2009

**RESERVATIONS FROM AND EXCEPTIONS
TO CONVEYANCE AND WARRANTY:**

1. Water Line and underground electrical easement depicted on plat.
2. Those rights specifically retained by Grantor as set forth in that one certain Real Estate Contract which is attached hereto as Exhibit "B" except GRANTOR expressly waives any and all reservations except for those related to any and all water, oil, gas and other minerals as further set forth below, from and exceptions to conveyance of warranty insofar as same conflicts with GRANTEE'S use of the Property as a mitigation conservation easement meeting applicable federal, state and local rules and regulations and as set forth in the Real Estate Contract which is an exhibit hereto.
3. Oil & gas leases, mineral reservations and groundwater leases of record subject to the following:

GRANTOR hereby reserves unto himself, his successors and assigns, any and all water, oil, gas and other minerals and water in, on or under the premises described on the attached Exhibit A; provided there shall be no disturbance of surface including no change in the topography of the Property except as expressly approved in writing by the Grantee and the United State Army Corps of Engineers, Fort Worth District; provided there shall be no filling, excavating, grading, dredging, mining, drilling, exploration of minerals or mineral rights or alteration of the Property except for slant drilling on adjacent property; provided there shall be no mining or exploitation of topsoil, peat, sand, gravel, rock, minerals of the surface estate, including near-surface lignite, iron, or coal, or other materials; provided there shall be no pollution, alteration, depletion, or extraction of surface water, natural water courses, lakes, ponds, marshes, wetlands, subsurface water or any other water bodies; and provided that shall be no activities conducted on the Property that would be detrimental to water purity or that could alter the natural water level or flow in or over the Property. Additionally, there shall never in any event be any ingress or egress on or across the surface of the above described premises for the purposes of exploration, development, production, pumpage, extraction or transportation of such oil, gas, water or other minerals, it being expressly contemplated by the parties to this instrument that any production or extraction of such minerals or of water shall be from the surface of other adjacent property and that there shall be no development of any minerals nor pumping of water that would require mining, shaft mining, pit mining or any other kind of mining or any type of withdrawal of water or other resources that would require utilization of the surface.

GRANTOR waives all rights with respect to the surface and no owner of the mineral estate or water shall ever have rights of ingress or egress except as may have been reserved by GRANTOR under the reservations and exceptions expressly listed in this deed or its predecessors in title.

GRANTEE and its successors and assigns shall be restricted to using the PROPERTY for mitigation conservation purposes only for a period of ninety-nine (99) years commencing as of the date hereof.

PREPARED IN THE OFFICE OF:
City of College Station
Legal Department
P. O. Box 9960
College Station, Texas 77842-9960

RETURN ORIGINAL DOCUMENT TO:
City of College Station
Legal Department
P. O. Box 9960
College Station, Texas 77842-9960

**Exhibit B-2 to
Real Estate Contract**

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

ACCESS EASEMENT

DATE: _____

GRANTOR: MERVIN DANSBY PETERS

GRANTOR'S MAILING ADDRESS: 810 Lee Hollow Drive
Brazos County
Bryan, Texas 77840

GRANTEE: CITY OF BRYAN, TEXAS,
A Texas Home Rule Corporation, and

CITY OF COLLEGE STATION, TEXAS,
a Texas Home Rule Corporation,

jointly, as Tenants in Common.

GRANTEES' MAILING ADDRESS: CITY OF BRYAN
300 S. Texas Avenue
Bryan, Texas 77803

CITY OF COLLEGE STATION
1101 Texas Avenue
Brazos County
College Station, TX 77840

CONSIDERATION: Ten Dollars (\$10.00) and other good
and valuable consideration.

PROPERTY: see Exhibit "A" attached hereto and made a part hereof

ESTATE GRANTED:

1. GRANTOR grants to GRANTEES an access easement across his property to use for access to the Property described in that Special Warranty Deed attached as Exhibit "B" and made a part hereof also granted by GRANTOR in favor of GRANTEES as may be necessary or desired by GRANTEES to comply with the requirements and rights set forth in said deed.
2. GRANTOR does hereby grant, bargain, sell and convey unto GRANTEES, their successors and assigns, an access easement in and to the above-described Property.
3. This access easement shall stay in force and effect until such time as another mutually agreed upon access easement is granted by GRANTOR to GRANTEES for access to the Property, at which time this access easement shall revert to GRANTOR.

RESERVATIONS AND RESTRICTIONS:

1. This conveyance is only for the right, privilege and easement for the aforesaid purposes. GRANTOR and his successors and assigns shall have the right to use and to grant to others the right to use the access easement area for any purpose which will not unreasonably interfere with the safe and reasonable use to be made by GRANTEES therein.
2. GRANTEES covenant and agree to interfere as little as possible with the normal flow of vehicular and pedestrian traffic over and upon any existing roadways or pathways located within the access easement, and to restore the surface of any such roadway or pathway by regrading and reseeding whenever and wherever disturbed by GRANTEES, to as good a condition as existed at the time of such disturbance.
3. It is further understood and agreed that the access easement granted herein shall be perpetual.
4. It is expressly understood that the GRANTOR or future Owner of the Property described herein for this access easement reserves the right to use same for all purposes which do not interfere with or prevent its use by the GRANTEES as set forth herein.
5. GRANTOR warrants that the right of GRANTEES shall be superior to those of all persons claiming under or through GRANTOR but not otherwise.

EXHIBITS

- "A" legal description of the access easement
"B" Special Warranty Deed

GRANTOR:

MERVIN DANSBY PETERS

- 3 -

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STATE OF TEXAS §
 §
COUNTY OF BRAZOS §

ACKNOWLEDGMENT

This instrument was acknowledged before me on the _____ day of _____, 2009, by MERVIN DANSBY PETERS.

Notary Public in and for
the State of Texas

PREPARED IN THE OFFICE OF:
City of College Station
Legal Department
P. O. Box 9960
College Station, Texas 77842-9960

RETURN ORIGINAL DOCUMENT TO:
City of College Station
Legal Department
P. O. Box 9960
College Station, Texas 77842-9960

**Exhibit "C" to
Real Estate Contract**

STATE OF TEXAS

COUNTY OF BRAZOS

CONSERVATION EASEMENT

This Grant of CONSERVATION EASEMENT ("Easement") is made by the CITY OF BRYAN and the CITY OF COLLEGE STATION, both Texas home-rule municipalities, jointly as tenants in common ("Grantors"), in favor of the Texas Land Conservancy, a nonprofit corporation organized and existing under the laws of the State of Texas, with an address of P.O. Box 162481, Austin, TX 78716 ("Grantee"); and the United States Army Corps of Engineers ("USACE"), with an address of Regulatory Branch (CESWF-PER-R), Fort Worth District, 819 Taylor Street, Room 3A37, P.O. Box 17300, Fort Worth, Texas, 76102-0300.

WITNESSETH

WHEREAS, Grantors are the sole owners in fee simple of certain property in Brazos County, Texas, more particularly described in Exhibit A, attached hereto and incorporated herein by reference, which consists of approximately 60 acres (hereinafter referred to as the "Property");

WHEREAS, the Property possesses certain conservation values of great importance to Grantors, Grantee, and Third Party and is a natural area that qualifies as a "...relatively natural habitat of fish, wildlife, or plants, or similar ecosystem," as that phrase is used in Public Law 96-541, Section 170(h)(4)(A)(ii) of the Internal Revenue Code, as amended, and in regulations promulgated there under;

WHEREAS, the Property also meets the requirements of Treasury Regulations Section 1.170A-14;

WHEREAS, the preservation of the Property is a condition of the Department of the Army Section 404 Permit Number _____, dated _____ or a revision thereof (the "Permit"), and attached hereto as Exhibit "B". The Permit requires certain restrictions to be placed on the Property in order to provide compensation for unavoidable adverse impacts to waters of the United States. It is the intent of this Conservation Easement granted herein to assure that the Property will be retained and maintained forever in the vegetative and hydrologic condition described in the success criteria of the Mitigation Plan as set forth in Exhibit "C". Any activities not included in the Permit that may be conducted on the Property and that will affect the

Conservation Easement - Page 1

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vegetative and hydrologic conditions outlined in the success criteria of the Mitigation Plan, must be approved by the USACE, Fort Worth District, Regulatory Branch, prior to initiation. The Conservation Easement granted by this instrument is created pursuant to the Texas Uniform Conservation Easement Act of 1983 contained in Chapter 183 of the Texas Natural Resources Code.

WHEREAS, the Property contains native forest remnant floodplain with potential to be enhanced, native plants, and native wildlife typical of the Texas Post Oak Savannah region; these are hereinafter referred to as the "Conservation Values" of the Property.

WHEREAS, the specific Conservation Values of the Property are further documented in Exhibit C, USACE Approved Compensatory Mitigation Plan and, Exhibit D, Baseline Documentation attached hereto and incorporated herein by reference, which consists of photographs, a written description, and other documentation that the Parties agree provide, collectively, an accurate representation of the Property at the time of this grant and which is intended to serve as objective, though nonexclusive, information for monitoring compliance with the terms of this grant;

WHEREAS, the purpose of the Conservation Easement includes but is not limited to one or more of the following (the "Purposes"):

- (a) retaining or protecting natural, scenic, or open-space aspects of the Property; and
- (b) protecting natural resources;

NOW THEREFORE, for good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, and pursuant to the law of Texas, and in particular Chapter 183 of the Texas Natural Resources Code, Grantors hereby voluntarily give, grant and convey to Grantee a conservation easement in perpetuity over the Property of the nature and character and to the extent hereinafter set forth:

1. DURATION. The duration of this Easement will be for perpetuity from the date of recording at the courthouse of Brazos County; this Easement will run with the land and bind all successive owners of the Property.

2. PURPOSE. The purpose of this Easement is to assure that the Property will be maintained and protected forever in its natural and scenic condition, including open space, to protect native plants, animals, and plant communities on the Property; and to prevent any use of the Property that will impair or interfere with the Conservation Values of the Property, while allowing uses of the Property that may be conducted in a manner which is compatible with, and not destructive of, the Conservation Values of the Property.

Grantors will not perform, nor allow others to perform, any act on or affecting the Property that

Conservation Easement – Page 2

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is inconsistent with the purposes of this Easement. Grantors understand that nothing in this Easement relieves Grantors of any obligation or restriction on uses of the Property imposed by law.

3. PROPERTY USES. Neither Grantors, nor their respective agents, assigns, successors, or personal representatives, nor any purchasers, lessees or other users of the Property may use, disturb or allow through intent or negligence, the use or disturbance of the Property in any manner that is inconsistent with the purposes of this Easement. Without limiting the generality of the foregoing, the following is a listing of activities and uses, which are expressly allowed or expressly prohibited:

3.1. Subdivision. The Property may not be further divided, subdivided or partitioned.

3.2. Commercial Development. Commercial or industrial activities or uses of the Property are not permitted.

3.3. Maintenance of Existing Improvements. Grantors may maintain, remodel, and repair existing buildings, structures, fences, wells, dams and reservoirs, utilities, soft-surface roads, and other improvements, and in the event of their destruction, to reconstruct or replace said improvements with another of similar size, function, capacity, location and material that do not alter the existing footprint of such structures. Maintenance of existing roads shall be limited to removal of dead vegetation, necessary pruning or removal of obstructing trees and plants, and/or application of permeable materials (e.g. sand, gravel, crushed stone) as necessary to correct or prevent erosion.

3.4. Biocides. There shall be no use of pesticides, including but not limited to insecticides, fungicides, rodenticides and herbicides, except as expressly allowed in the Mitigation Plan and, unless approved in writing by Grantors, Grantee and USACE to control problem animals or invasive species detrimental to the Conservation Values of the Property.

3.5. Disturbance of Natural Habitat. There shall be no removing, destroying, cutting, trimming, mowing, shredding, clearing, altering of any vegetation, or disturbing, or changing in any way the natural habitat existing on the Property, except as expressly allowed in the Mitigation Plan and in order to fulfill the objectives and standards of that plan. Grantors may remove diseased, invasive or non-native trees, shrubs, or plants; cut and mow firebreaks and existing road rights-of-way; and remove trees, shrubs, or plants to accommodate maintenance of permitted improvements or other uses expressly permitted under the terms of this Easement. With written approval of Grantee and USACE, Grantors may remove potentially invasive plants from the Property for habitat management purposes consistent with the intent of this Easement. Except as necessary for activities expressly permitted in this Easement and with written permission from Grantee and USACE, there shall be no farming, tilling, or destruction and removal of native vegetation on the Property.

3.6 Livestock. There shall be no livestock grazing.

3.7. Dumping. There shall be no dumping or storing of any material, such as trash, wastes, ashes, sewage, garbage, scrap material, sediment discharges, oil and petroleum by-products, leached compounds, toxic materials or fumes, or any “hazardous substances” (as hereinafter defined). For the purposes of this paragraph, the phrase “hazardous substances” shall be defined as in the federal Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9601 et seq.) and/ or a substance whose manufacture, processing, distribution in commerce, use, possession or disposal is banned, prohibited or limited pursuant to the federal Toxic Substances Control Act (15 U.S.C. 2601 et seq.).

3.8. Horse and Vehicle Traffic. Horseback riding and the operation of motorcycles, all-terrain vehicles or other motorized recreational vehicles are not permitted on the Property. Off-road use of automobiles, trucks, vans or other motor vehicles on the Property is prohibited, except as is necessary for inspection, construction or maintenance of permitted improvements, and fire protection or emergency purposes.

3.9. Signage. Construction or placement of any signs, billboards or other advertising displays on the Property is not permitted, except that signs whose placement, number and design do not significantly diminish the scenic character of the Property may be placed to state the name and address of the Property and the names of persons living on the Property, to advertise or regulate permitted on-site activities, to advertise the Property for sale or rent, to post the Property to control unauthorized entry or use, or to identify the property as being protected by this Easement.

3.10. Invasive Species. There shall be no further planting of invasive or potentially invasive non-native plant species anywhere on the Property. Grantee will provide a list of potentially invasive species upon request.

3.11. Predator and Nuisance Species Control. Grantors, with written approval of Grantee and USACE, shall have the right to control, destroy, or trap predatory, exotic, invasive and problem animals that pose a material threat to people, livestock, other animals, or habitat condition in accordance with applicable state and federal laws and requirements.

3.12. Excavation and Mineral Extraction. There shall be no change in the topography of the Property except as expressly provided in the Mitigation Plan and unless approved in writing by the Grantee and the USACE, Fort Worth District. There shall be no surface filling, excavating, grading, dredging, mining, drilling, exploration of minerals or mineral rights or alteration of the Property. Surface mining or exploitation of topsoil, peat, sand, gravel, rock, minerals of the surface estate, including near-surface lignite, iron, or coal, or

other materials, is expressly prohibited.

3.13. Pollution, Disturbance to Hydrology. There shall be no pollution, alteration, depletion, or extraction of surface water, natural water courses, lakes, ponds, marshes, wetlands or any other water bodies, nor shall activities be conducted on the Property that would be detrimental to water purity or that could alter the natural water level or flow in or over the Property.

3.14. Hunting, Fishing or Trapping. Commercial leasing for hunting, fishing or trapping is prohibited on the Property. The Grantors may allow personal or family hunting, fishing or trapping activities in accordance with appropriate federal, state and local laws and in accordance with restrictions properly imposed by the Mitigation Plan.

Despite the above-referenced prohibitions, Grantee or its successors in interest may determine, with the approval of the USACE, that a disturbance at the Property is necessary to maintain the Conservation Values for the life of this Easement. Additionally, in the event of an emergency, Grantee or its successors in interest may determine that a disturbance at the Property is necessary to reduce the threat to human health or the environment. However, any such determination must be reasonable, made in writing, and signed by Grantee after effective notification and approval of the USACE or their designated representative.

Grantors or Grantors' respective agents, assigns, successors, or personal representatives, or potential or actual purchasers, lessees or other users of the Property shall notify Grantee and USACE of any activities on the Property that are inconsistent with the intended purpose of this Easement.

4. RIGHTS OF GRANTEE. To accomplish the purpose of this Easement, the following irrevocable rights are conveyed to Grantee and USACE (to be exercised individually or collectively) by this Easement:

4.1. Right to Enforce. The right to preserve and protect the Conservation Values of the Property and enforce the terms of this Easement; to prevent any activity on or use of the Property that is inconsistent with the purpose of this Easement; and to require the restoration of such areas or features of the Property that may have been altered or adversely affected by such inconsistent activities. The Conservation Easement may be enforced by the Grantee and the USACE, or its successor agencies, in an action at law or equity against any person(s) or other entity/entities violating or attempting to violate the Conservation Easement. Any forbearance on the part of USACE or Grantee to exercise its rights in the event of a violation shall not be deemed or construed to be a waiver of USACE's rights hereunder in the event of any subsequent failure of Grantors to comply. In the event of a breach of this Agreement by Grantors, the Grantee, any third party or any third party working for or under the direction of Grantors or the Grantee, the USACE shall be notified

immediately. If USACE becomes aware of a breach of this Agreement, USACE will notify the Grantee and Grantors of the breach. Grantors shall have thirty (30) days after receipt of such notice to undertake actions that are reasonably calculated to correct the conditions constituting the breach. If the conditions constituting the breach are corrected in a timely and reasonable manner, no further action shall be warranted or authorized. If the conditions constituting the breach are such that more than thirty (30) days are required to cure the breach, Grantors shall not be in default hereunder if Grantors undertake the cure of such breach during the thirty (30) day period following notice of the breach and diligently pursues the cure of the breach to completion. If Grantors fail to initiate such corrective action within thirty (30) days or fail to complete the necessary corrective action, the Grantee may enforce the Conservation Easement by appropriate legal proceedings, including an action for damages, injunctive and other relief. Notwithstanding the foregoing, the Grantee reserves the immediate right, without notice, to obtain a temporary restraining order, injunctive relief or other appropriate relief if the breach of any provision of the Conservation Easement is materially impairing or would irreversibly or otherwise materially impair the benefits to be derived from the Conservation Easement. Grantors and the Grantee acknowledge that under such circumstances, damage to the Grantee would be irreparable and remedies at law will be inadequate. The rights and remedies of the Grantee provided hereunder shall be in addition to, and not in lieu of, all other rights and remedies available to Grantee in connection with the Conservation Easement. The costs of a breach of this Agreement and the costs of any correction or restoration, including the Grantee's expenses, court costs and attorney's fees, shall be paid by Grantors. The USACE shall have the same right to enforce the terms and conditions of the Conservation Easement as the Grantee.

4.2. Right of Entry. Grantee and USACE shall have the right to enter onto and inspect the Property one or more times annually to ensure that the purposes of this Easement are intact and to enforce the terms of the Easement. Such right of entry shall also apply to volunteers, representatives, and/or contractors hired by Grantee or USACE. Grantee and USACE or volunteers, representatives, and/or contractors hired by Grantee or USACE must enter the premises of the Property through the designated permanent access easement as provided in Exhibit E. Access to the Property from any point other than the designated permanent access easement is expressly prohibited unless written authorization is obtained from the Grantors and the landowner(s) of the adjacent property (ies) at the point of desired access. Temporary access easements are provided during the course of the construction phase of the Mitigation Plan including but not limited to, wetland creation, installation of berms, other water control devices, planting of vegetation and any repair necessary to maintain the requirements as set forth in the Mitigation Plan.

4.3. Discretionary Consent. Consent of Grantee and USACE for activities otherwise prohibited or requiring such consent under Section 3, may be given under the following conditions and circumstances. If, owing to unforeseen or changed circumstances, any of the prohibited activities listed in Section 3 are deemed to be desirable by Grantors, Grantee and

USACE, Grantee and USACE may give permission for such activities, subject to the limitations herein. Such requests for permission, and permission for activities requiring the consent of Grantee and/or USACE, shall be in writing, and shall describe the proposed activity in sufficient detail to allow Grantee and USACE to judge the consistency of the proposed activity with the purpose of this Easement. Grantee and USACE may give their permission only if they determine that such activities (1) do not violate the purpose of this Easement and (2) either enhance or do not impair any significant conservation interests associated with the Property. In such circumstances, Grantee agrees to hold Grantors harmless to any alleged violations resulting from such determination by Grantee. No permission granted and nothing herein shall be construed as an agreement by USACE to indemnify or hold harmless any party.

4.4. Remedies. With reasonable notice, USACE and/or Grantee or Grantee's representatives (a volunteer stewardship committee) may enter the Property for the purpose of inspecting for violations. If Grantors violate or fail to prevent or abate a violation of this Easement, as determined by Grantee or USACE, then Grantors shall be deemed to be in default of their obligations under this Easement. Grantee or USACE shall give Grantors written notice of the event of default within five (5) business days after that entity becomes aware of the event. Grantors shall have thirty (30) calendar days to cure the default, make a written request to Grantee and USACE for an extension for curing the default, or give Grantee and USACE written notice of intent to dispute the default. Any extension to cure the default must be granted in writing by Grantee and USACE. Within a reasonable time following receipt of Grantors' written request for extension, Grantee and/or USACE shall consult with Grantors regarding the appropriate actions and reasonable time period necessary to cure the default. Thereafter, Grantee or USACE shall issue a second letter to Grantors that sets forth its determination of appropriate actions and reasonable time period for curing the default. If Grantors fail to respond to the initial notice of default, states in writing their intent to dispute the default, or fails to cure any event of default within the time period specified in the second notice letter, then Grantee and/or USACE may bring an action at law or equity in a court in Brazos County or another court of competent jurisdiction to enforce the terms of this Easement, to require the restoration of the Property, to enjoin non-compliance, and/or recover any damages arising from the non-compliance as well as the costs of Grantee and/or USACE in pursuing these remedies to the degree such costs are permitted to be recovered from Grantors. Notwithstanding the foregoing, nothing in this paragraph prohibits Grantee or USACE from immediately seeking a temporary restraining order, injunction, or similar judicial remedy if necessary to avoid irreparable harm to the Conservation Values protected by this Easement.

Any prior failure of Grantors, Grantee, or USACE to enforce the terms of this Easement or to insure compliance with the Easement does not thereafter waive or otherwise forfeit the right to take action as necessary to enforce and/or ensure compliance with this Easement.

4.5. Transfer of Easement. The Parties recognize and agree that the benefits of this easement are in gross and assignable. Subject to approval of USACE and the Grantors, which will not be unreasonably withheld, Grantee shall have the right to transfer or assign this Easement to any private nonprofit organization that, at the time of transfer, is a "qualified organization" under Section 170(h) of the U.S. Internal Revenue Code and Chapter 183 of the Texas Natural Resources Code, provided that the organization expressly agrees to assume the responsibility imposed on Grantee by this Easement. Any transfer shall also comply with Treasury Regulations Section 1.170A-14(c)(2).

5. GRANTOR'S RESERVED RIGHTS. Grantor hereby reserves the following rights:

5.1. Existing Uses. The right to undertake and continue any activity or use of the Property not requiring permission by Grantee and/or USACE, not prohibited by this Easement and not inconsistent with the purposes of this Easement.

5.2. Transfer. Grantors shall have the right to sell, give, mortgage, lease or otherwise transfer or convey the Property to any third party, subject to the terms of this Easement. Grantors agree that the terms, conditions, restrictions, and purposes of this Easement or references hereto will be inserted by Grantors in any subsequent deed or other legal instrument by which Grantors divest either the fee simple title to the Property, any possessory interest, or other interest in the Property. In the event that Grantors sell, give, mortgage, lease, or otherwise transfer or convey the Property to any other person, agency or entity, Grantors shall notify Grantee and USACE in writing at least thirty (30) days prior to such transfer of the Property. The document of conveyance shall expressly refer to this Easement and have the organizational and financial resources to undertake Grantee responsibilities hereunder. Grantee shall notify the USACE upon receipt of Grantors' intent to transfer the Property as per the requirements in Section 7 of this document. Before or at the time Grantors notify Grantee of the transfer, Grantors must provide documentation to Grantee and USACE that the party taking title to the Property has been notified and agrees to accept the Easement and its requirements and restrictions.

6. MINERAL INTERESTS; OTHER ENCUMBRANCES. This Easement is subject and subordinate to the existing rights of certain third party mineral estate owner(s), ground leases and other encumbrances to the title of the Property. Grantors are the surface owners of the Property. Grantors herein represent that there is a waiver of the right to use any of the surface of the Property for production of oil, gas, other minerals reserved thereby and that furthermore, Grantors have entered an agreement with the owner of the mineral rights to waive all surface interest in mineral exploration within the Property and that any exploration, development, or production of these rights must utilize offsite drilling or extraction locations and horizontal/diagonal drilling techniques. Grantors shall not be deemed in violation of this Easement to the extent that the provisions of this Easement are, by reason of subordination, not binding upon the holder of such outstanding interest. Grantors shall ensure that the holder of any encumbrance complies with all applicable

statutes and regulations and with all conditions of any applicable easement, lease, right-of-way, surface use agreement, or similar document, including any requirement to restore any adversely affected area to its pre-existing condition. Grantors shall be responsible for restoring any adversely affected area to its pre-existing condition.

There is currently a private water line and underground electrical easement as reserved and shown on Exhibit E. Grantee and USACE approve the use of this easement for transportation of water and electricity as shown in said exhibit and is not contrary or otherwise impair the conservation interests associated with the Property.

7. **NOTICE.** Any notice or demand which is required herein shall be given in writing and shall be deemed to be duly given only if hand delivered or mailed by registered mail, return receipt requested, postage pre-paid, or via facsimile, to the identified contact at the address specified herein to the parties to this document and to Mr. Mervin Peters. Hand delivery shall include delivery by overnight mail or other mail or other delivery services. Notice shall be deemed to have been received on the date that it is hand delivered or the date of receipt as shown on the return receipt, or the date of receipt as indicated by the U.S. Post Office, should delivery be refused. Changes in contact or address information for notice or demand purposes may be accomplished by sending notice of such change to all others recited below:

7.1. GRANTORS:

City of College Station
Attn: Dir. of Public Works
1101 Texas Avenue
College Station, Texas 77840
Telephone: 979/764-3500
Facsimile: 979/764-

City of Bryan
Attn: Director of Public Works
300 S. Texas Avenue
Bryan, Texas 77803
Telephone: 979-209-5900
Facsimile: 979-209-5959

7.2. GRANTEE:

Texas Land Conservancy
P.O. Box 162481
Austin, Texas 78716
Telephone: (512) 301-6363
Facsimile: (512) 301-6364

7.3. USACE:

Regulatory Branch (CESWF-PER-R)
Fort Worth District
United States Army Corps of Engineers
P.O. Box 17300
Fort Worth, Texas, 76102-0300.
Telephone: 817-886-1731
Facsimile: 817-886-6493

7.4

Mervin Peters
810 Lee Hollow Drive
Bryan, Texas 77840

8. ACCESS. Grantors shall guarantee access to the easement along existing roads or other reasonable routes of entry for the Grantee, USACE, volunteers, representatives, and/or contractors hired by the Grantee or USACE. This right of access shall be the dominant right and run with all exchanges or sales of fee simple Property. Any agreements for rights of access to the Grantors' Property shall apply to the Grantee, USACE, lessee, volunteers, representatives, and/or contractors hired by the Grantee or USACE. Nothing in this Easement shall give, grant or create a public right to enter upon or use the Property or any portion therein. Additionally, Grantee and USACE or volunteers, representatives, and/or contractors hired by Grantee or USACE must enter the premises of the Property through the designated permanent access easement as provided in Exhibit E.

9. SUBORDINATION OF LIENS. Any liens or security interests that Grantors place on the Property shall be subordinate to Grantee's and USACE' interests in this Easement and subject to the terms of this Easement.

10. RESPONSIBILITIES OF GRANTOR. Other than as specified herein in the Permit and the Mitigation Plan, , this Easement is not intended to impose any legal or other responsibility on Grantors, or in any way to affect any existing obligation of Grantors as owner of the Property. Among other things, this shall apply to:

10.1. Liens and Taxes. To the extent required by law, Grantors shall be solely responsible for payment of and agrees to pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authorities, and shall furnish Grantee with satisfactory evidence of payment upon request. Grantor shall keep the Property free of any and all liens, including, without limitation liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantor. Grantor shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority, and shall upon written request by Grantee furnish Grantee with satisfactory evidence of payment.

10.2 Warranty. Grantor warrants, covenants, and represents that it owns the Property in fee simple, and that the Grantor either owns all interests in the Property which may be impaired by the granting of the Conservation easement or that there are no other outstanding mortgages, tax liens, encumbrances, or other interests in the Property, except those expressly mentioned in this Easement, which have not been expressly subordinated to the Conservation Easement. Grantor further warrants that Grantee shall have the use of and shall enjoy all benefits derived from and arising out of the Conservation Easement, and that Grantor will warrant and defend title to the Property against all persons claiming by, through or under Grantor, but not otherwise.

10.3 Management, Upkeep and Maintenance. Grantors shall be solely responsible for

the upkeep and maintenance of the Property, to the extent it may be required by law. Grantee or USACE shall have no obligation for upkeep or maintenance of the Property.

11. PARTIES SUBJECT TO EASEMENT, COVENANT RUNNING WITH THE LAND IN PERPETUAL DURATION. This Easement shall be binding against Grantors as well as Grantor's lessees, agents, personal representative, successors, and assigns and all other successors in interest to Grantors and shall be interpreted as a covenant running with the land.

12. FORCE MAJEURE. If any party is rendered unable, wholly or in part, by force majeure to carry out any of its obligations under this Contract, then the obligations of such party, to the extent affected by such force majeure and to the extent that due diligence is being used to resume performance at the earliest practicable time, is suspended during the continuance of the force majeure. The term "force majeure," means acts of God, strikes, lockouts, orders of any kind of the government of the United States or the State of Texas or any civil or military authority (but an order of the City shall not be an event of force majeure for the City), lightning, earthquakes, fires, hurricanes, storms, floods, explosions, breakage or accidents to machinery, or similar events not within the control of the party claiming the force majeure.

13. LIABILITY AND INDEMNIFICATION. To the degree permitted by law, Grantors shall indemnify Grantee against, and hold the Grantee harmless from, any and all loss, cost, claim, liability, or expense (including reasonable attorneys' fees) arising from or with respect to the Property, unless due to the gross negligence or willful misconduct of Grantee.

Grantee shall indemnify Grantors against, and hold the Grantors harmless from, any and all loss, claim, liability, or expense (including reasonable attorneys' fees) arising from or with respect to the Property, unless due to the gross negligence or willful misconduct of Grantors.

14. SEVERABILITY. If any provision of this Easement or the application to any person or circumstance is found to be invalid, the remainder of the provisions of this Easement and the application of such provisions to persons or circumstances other than those as to which it is found to be invalid shall not be affected thereby.

15. SUCCESSORS AND ASSIGNS. The term Grantors shall include the successors, assigns, administrative agents and personal representatives of each entity, including any subsequent fee simple owner(s) of the Property. The term Grantee shall include the Texas Land Conservancy, its successors, assigns, administrative agents, and personal representatives. The term USACE shall include the USACE, their successors, assigns, administrative agents, and personal representatives.

16. AMENDMENT OF EASEMENT. This Easement may be abandoned, altered, amended or relocated only with the written consent of Grantors, Grantee and USACE. Any such amendment shall be consistent with the purposes of this Easement and shall comply with Sec.

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170(h) of the Internal Revenue Code, or any regulations promulgated in accordance with that section. Any such amendment shall also be consistent with Texas Natural Resources Code § 183.001 *et seq.*, or any regulations promulgated pursuant to that law. Grantors, Grantee and USACE have no right or power to agree to any amendment that would adversely affect the enforceability of this Easement.

17. CONDEMNATION AND EMINENT DOMAIN. Whenever all or part of the Property is taken by exercise of eminent domain or acquired by purchase in lieu of condemnation, whether by public, corporate, or other authority so as to abrogate the restrictions imposed by this Easement, Grantors and Grantee shall take appropriate actions at the time of the taking to recover the full value of the taking and all incidental or direct damages resulting from it, and the proceeds shall be placed in a trust account for the purpose of conducting conservation activities or acquiring alternate property. Grantors and Grantee shall be named as co-trustees on the account with rights to fund the conservation activities or acquire alternate property.

18. EXTINGUISHMENT OF EASEMENT. If it is determined by a court of competent jurisdiction or by mutual agreement of Grantors, Grantee, and USACE that circumstances have arisen that render the purposes of this Easement impossible to accomplish, this Easement may be extinguished, in whole or in part, by a court with jurisdiction at the joint request of Grantors and Grantee, following written notification and agreement by the USACE, and in a manner that complies with Treasury Regulations Section 1.170A-14(c)(2).

At the time of conveyance of this Easement to Grantee, this Easement gives rise to a real property right immediately vested in Grantee. If this Easement is extinguished and the Property is sold or taken for public use, then as required by Treasury Regulations Section 1.170A-14(g)(6), Grantee shall be entitled to a percentage of the gross sale proceeds or condemnation award (minus any amount attributable to new improvements made after the date of this conveyance, which amount shall be reserved to Grantors) equal to the ratio of the appraised value of this Easement to the unrestricted fair market value of the Property, as these values are determined on the date of this Easement. Grantors' said proceeds shall be placed in a trust account for the purpose of conducting conservation activities or acquiring alternate property. Grantors, Grantee and Third Party shall be named as co-trustees on the account with rights to fund conservation activities or acquire alternate property.

19. REVERSION. If Grantee ever ceases to exist or no longer qualifies as a "Holder" under Section 183.001(2) of the Texas Natural Resources Code or other applicable state law, this Easement automatically reverts back to the Grantors. Grantors shall identify another qualified Holder approved in writing by the USACE and shall convey this Easement to such Holder within 180 days of reversion. Until Grantors convey the Easement to a new Holder, Grantors shall manage the Property in accordance with the terms and restrictions of this Easement.

20. CONSTRUCTION. This Easement shall be literally construed in favor of the grant to

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affect the purpose of this Easement and the policy and purpose of Chapter 183 of the Texas Natural Resources Code. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

21. INTERPRETATION. The interpretation and performance of this Easement shall be governed by the laws of the State of Texas, resolving any ambiguities and questions of the validity of specific provisions so as to give maximum effect to its conservation purposes.

22. COUNTERPARTS. The Parties may execute this instrument in two or more counterparts, which together shall constitute one and the same document.

23. TITLE. Grantors covenant and represent that Grantors are the sole owners and are seized of the Property in fee simple and have good right to grant and convey this Easement; that the Property is free and clear of any and all encumbrances that would affect this Easement, including but not limited to, any mortgages not subordinated to this Easement, and that Grantee shall have the use of and enjoy all of the benefits derived from and arising out of this Easement.

24. RE-RECORDING. In order to ensure the perpetual enforceability of the Easement, Grantee is authorized to re-record this instrument or any other appropriate notice or instrument.

25. MERGER. The Parties agree that the terms of this Easement shall survive any merger of the fee and easement interest in the Property.

26. EXHIBITS. The following Exhibits are incorporated within this Easement:

- Exhibit A – Description of Property
- Exhibit B – Approved Permit
- Exhibit C – USACE Approved Compensatory Mitigation Plan
- Exhibit D – Baseline Documentation
- Exhibit E – Special Warranty Deed, Permanent and Temporary Access Easements

27. ACCEPTANCE AND EFFECTIVE DATE. As attested by the signature of its authorized representative affixed hereto, Grantee hereby accepts without reservation the rights and responsibilities conveyed by this Easement. This Easement shall become effective upon the date of recording in the Official Public Records of Brazos County, Texas.

TO HAVE AND TO HOLD, this Grant of Conservation Easement unto Grantee and USACE, and their successors and assigns, forever.

IN WITNESS WHEREOF Grantors, Grantee, and USACE have set their hands below.

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GRANTORS:

CITY OF BRYAN

CITY OF COLLEGE STATION

By: _____
Mayor

By: _____
Mayor

Date: _____

Date: _____

ACKNOWLEDGMENT

This instrument was acknowledged before me on the ____ day of _____, 2009, by _____, Mayor of the City of Bryan, Texas, on behalf of said City of Bryan, Texas.

Given under my hand and seal of office this ____ day of _____, 2009.

Notary Public

My commission expires the ____ day of _____, _____.

ACKNOWLEDGMENT

This instrument was acknowledged before me on the ____ day of _____, 2009, by Ben White, Mayor of the City of College Station, Texas, on behalf of said City of College Station, Texas.

Given under my hand and seal of office this ____ day of _____, 2009.

Notary Public

My commission expires the ____ day of _____, _____.

GRANTEE:

TEXAS LAND CONSERVANCY

By: _____

Title: _____

Date: _____

This instrument was acknowledged before me on the ____ day of _____, 2009, by _____, as _____ of the Texas Land Conservancy, on behalf of said Texas Land Conservancy.

Given under my hand and seal of office this ____ day of _____, 2009.

Notary Public

My commission expires the ____ day of _____, _____.

USACE:

ARMY CORPS OF ENGINEERS (USACE)

By: _____

Title: _____

Date: _____

ACKNOWLEDGMENT

This instrument was acknowledged before me on the ____ day of _____, 2009, by _____, as _____ of the ARMY CORPS OF ENGINEERS (USACE), on behalf of said ARMY CORPS OF ENGINEERS (USACE)

Given under my hand and seal of office this ____ day of _____, 2009.

Notary Public

My commission expires the ____ day of _____, _____.

EXHIBIT A

DESCRIPTION OF PROPERTY

Attachment A: Metes and Bounds Legal Description

Attachment B: Metes and Bounds Survey of Property

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EXHIBIT B

APPROVED PERMIT

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EXHIBIT C

USACE APPROVED COMPENSATORY MITIGATION PLAN

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EXHIBIT D

BASELINE DOCUMENTATION

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BASELINE DOCUMENTATION

Prepared by: Name:
 Qualifications:
 Date: _____

Date(s) of Site Visit(s):
Est. Date of Conveyance:
Duration of Easement: Perpetuity
Property Owner (Grantor): Name:
 Address:
 Phone: _____

Name of Proposed Easement Area:
Directions to Property:
Total Acres:
County:
Description of Property: General:

 Shape
 Description:

 Surrounding
 Ownership &
 Uses: _____

Geology/Soils:
Topography:
Wetlands:

Vegetation: Endangered,
Threatened, or
Rare:

Trees:

Vines:

Shrubs:

Grasses/
Sedges:

Other:

Wildlife: Endangered,
Threatened, or
Rare:

Birds:

Insects:

Mammals:

Reptiles:

Amphibians:

Recreation:

**Agency/
Organization
Contributors:**

Sources:

Attachments: Encumbrances

Prohibited Uses Checklist

Activity	YES	NO	If YES, Description
Any agricultural, commercial, or industrial activity?			
Any mowing, farming, tilling or places where native vegetation is removed?			
Any evidence of the presence of or of grazing by domestic livestock or other domesticated animal species?			
Any dumped or stored waste, trash, etc.?			
Any evidence of horseback riding?			
Any evidence of off-road use of motorized vehicles, including recreational vehicles?			
Any telephone, telegraph, cable television, electric, gas, oil, chemical, water, sewer or other utility lines/pipelines ?			
Has the Property been subdivided?			
Any structure on the Property, including signs?			
Any non-native, exotic plants or animal species?			
Any exterior artificial illumination?			

Conservation Easement – Page 25

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Any roads or paths?			
Any evidence of hunting, fishing or trapping?			
Any dredged/filled area or constructed ponds or dikes or other alteration in natural watercourses?			
Any evidence of mining?			
Any evidence of pollution, alteration, depletion, or extraction of water?			

Certification

We, the undersigned signatories, do hereby certify that the information contained in this baseline documentation, including referenced attachments, as collected on _____ is an accurate representation of the protected Property at the time of the effective date of the conservation easement.

Grantors

CITY OF BRYAN

CITY OF COLLEGE STATION

By: _____
Mayor

By: _____
Mayor

Date: _____

Date: _____

Grantee

TEXAS LAND CONSERVANCY

By: _____

Title: _____

Date: _____

EXHIBIT E

**SPECIAL WARRANTY DEED, PERMANENT AND TEMPORARY ACCESS
EASEMENTS**

Conservation Easement – Page 27

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Conservation Easement – Page 28

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

TEMPORARY ACCESS EASEMENT

DATE: _____

GRANTOR: MERVIN DANSBY PETERS

GRANTOR'S MAILING ADDRESS: 810 Lee Hollow Drive
Brazos County
Bryan, Texas 77840

GRANTEES: CITY OF BRYAN, TEXAS,
A Texas Home Rule Corporation, and

CITY OF COLLEGE STATION, TEXAS,
a Texas Home Rule Corporation,

jointly, as Tenants in Common.

GRANTEES' MAILING ADDRESS: CITY OF BRYAN
300 S. Texas Avenue
Bryan, Texas 77803

CITY OF COLLEGE STATION
1101 Texas Avenue
Brazos County
College Station, TX 77840

CONSIDERATION: Ten Dollars (\$10.00) and other good and valuable consideration.

PROPERTY:

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See Exhibit "A" attached hereto and made a part hereof

ESTATE GRANTED:

1. GRANTOR grants to GRANTEES a temporary access easement to use for access to the proposed Property attached as Exhibit "B" and made a part hereof as may be necessary or desired by GRANTEES to comply with the requirements and rights set forth in said attached Special Warranty Deed attached as Exhibit "B".
2. GRANTOR does hereby grant, bargain, sell and convey unto GRANTEES, its successors and assigns, a temporary access easement in and to the above-described parcel of land for the purposes recited in the Special Warranty Deed referenced above attached as Exhibit "B" for a duration commencing as of the date of granting the Property referenced above and ending six years thereafter.

RESERVATIONS AND RESTRICTIONS:

1. This conveyance is only for the right, privilege and easement for the aforesaid purposes. GRANTOR and its successors and assigns shall have the right to use and to grant to others the right to use the easement area for any purpose which will not unreasonably interfere with the safe and reasonable use to be made by GRANTEES therein.
2. GRANTEES covenant and agree to interfere as little as possible with the normal flow of vehicular and pedestrian traffic over and upon the site, and to restore the surface of the site, whenever and wherever disturbed by GRANTEES, to as good a condition as existed at the time of such disturbance.
3. This conveyance is made and is to be accepted on the following condition: GRANTOR grants to GRANTEES that one certain tract of land as described in Exhibit "B." On the performance of this condition and except as set forth in paragraph 4 below, this Temporary Access Easement will be in effect for a period of six years, after which time any and all rights conveyed herein revert to GRANTOR.
4. In the event GRANTOR desires to relocate the Temporary Access Easement granted herein, this Temporary Access Easement will expire before the expiration set forth in paragraph 3 above in the event GRANTOR conveys to GRANTEES another Temporary Access Easement to use for access to the Property attached as Exhibit "B" as may be necessary or desired by GRANTEES to comply with the requirements and rights set forth in said attached Special Warranty deed.
5. GRANTOR warrants the rights and interests herein described unto the GRANTEES, and its successors and assigns, forever, and GRANTOR does

FIELD NOTES
7.30 ACRE
ACCESS EASEMENT
OUT OF THE
MERVIN D. PETERS
CALLED 1456.53 ACRE TRACT
REFERENCE VOLUME 150, PAGE 396
DESCRIBED AS TWO TRACTS
734.43 ACRES – VOLUME 261, PAGE 18 &
722.10 ACRES – VOLUME 261, PAGE 26
G. COLEMAN SURVEY, A – 10 &
G. W. SINGLETON SURVEY, A - 51
BRAZOS COUNTY, TEXAS
NOVEMBER 17, 2008

All that certain lot, tract or parcel of land being 7.30 acres situated in the G. COLEMAN SURVEY, Abstract Number 10, and the G. W. SINGLETON SURVEY, Abstract No. 51, Brazos County, Texas and being a part of that certain Called 1456.53 acre tract as referenced in deed from Curtis Wilcox et al to Marshall C. Peters of record in Volume 150, Page 396, Deed Records of Brazos County, Texas, same 1456.43 acre tract being further described in the following two tracts; 1) Being Called 734.43 acres in deed from Marshall Bookman Peters to Mervin Dansby Peters of record in Volume 261, Page 18, and 2) Being Called 722.10 acres in deed from E. E. Peters, Trustee to Mervin Dansby Peters of record in Volume 261, Page 26, both being deed records of Brazos County, Texas, said 7.30 acre tract being more particularly described by metes and bounds as follows:

BEGINNING at a point in the north right-of-way line of North Country Drive for the most southerly corner, a 1/2" Iron Rod with Cap found for the northwest corner of said right-of-way bears S 54 ° 42 ' 11 " W a distance of 8.26 feet, a 1" Square Bar found for an interior angle point of said Called 1456.53 acre tract bears N 78 ° 49 ' 21 " W a distance of 466.73 feet;
 THENCE N 37 ° 39 ' 37 " W, a distance of 462.74 feet to a point for angle point;
 THENCE N 70 ° 20 ' 57 " W, a distance of 212.94 feet to a point for angle point;
 THENCE N 25 ° 00 ' 57 " W, a distance of 599.29 feet to a point for the most westerly corner;
 THENCE N 73 ° 43 ' 29 " E, a distance of 1322.31 feet to a point for angle point;
 THENCE N 68 ° 28 ' 57 " E, a distance of 435.89 feet to a point for angle point;
 THENCE N 64 ° 27 ' 45 " E, a distance of 86.41 feet to a point for angle point;
 THENCE N 48 ° 09 ' 55 " E, a distance of 110.96 feet to a point for angle point;
 THENCE N 36 ° 32 ' 58 " E, a distance of 67.06 feet to a point for angle point;
 THENCE N 30 ° 46 ' 05 " E, a distance of 106.06 feet to a point for angle point;
 THENCE N 86 ° 42 ' 29 " E, a distance of 128.73 feet to a point for angle point;
 THENCE N 79 ° 01 ' 03 " E, a distance of 385.75 feet to a point for angle point;
 THENCE N 78 ° 09 ' 37 " E, a distance of 168.54 feet to a point for angle point;
 THENCE N 76 ° 53 ' 21 " E, a distance of 224.08 feet to a point for angle point;
 THENCE N 69 ° 45 ' 41 " E, a distance of 89.23 feet to a point for angle point;
 THENCE N 59 ° 55 ' 51 " E, a distance of 161.30 feet to a point for angle point;
 THENCE N 54 ° 20 ' 24 " E, a distance of 199.55 feet to a point for the most northerly corner;
 THENCE S 35 ° 39 ' 36 " E, a distance of 50.00 feet to a point for an east corner;
 THENCE S 54 ° 20 ' 24 " W, a distance of 202.00 feet to a point for angle point;
 THENCE S 59 ° 55 ' 51 " W, a distance of 168.04 feet to a point for angle point;
 THENCE S 69 ° 45 ' 41 " W, a distance of 96.65 feet to a point for angle point;
 THENCE S 76 ° 53 ' 21 " W, a distance of 227.75 feet to a point for angle point;

THENCE S 78 ° 09 ' 37 " W, a distance of 141.64 feet to a point for angle point;
THENCE S 26 ° 00 ' 04 " E, a distance of 818.37 feet to a point for angle point;
THENCE S 25 ° 18 ' 25 " E, a distance of 192.40 feet to a point for angle point;
THENCE N 56 ° 11 ' 17 " E, a distance of 585.46 feet to a point in the west line of a hereinafter
59.70 acre tract for a north corner, a 1/2" Iron Rod with Cap set for an angle point in the west line
of said 59.70 acre tract bears N 21 ° 06 ' 55 " W a distance of 279.71 feet;
THENCE S 21 ° 06 ' 55 " E, along the west line of said 59.70 acre tract a distance of 51.25 feet to
a point for the most westerly corner, a 1/2" Iron Rod with Cap set for an angle point in the west line
of said 59.70 acre tract bears S 21 ° 06 ' 55 " E a distance of 105.35 feet;
THENCE S 56 ° 11 ' 17 " W, a distance of 632.22 feet to a point for angle point;
THENCE N 25 ° 18 ' 25 " W, a distance of 250.13 feet to a point for angle point;
THENCE N 26 ° 00 ' 04 " W, a distance of 831.05 feet to a point for angle point;
THENCE S 79 ° 01 ' 03 " W, a distance of 365.66 feet to a point for angle point;
THENCE S 86 ° 42 ' 29 " W, a distance of 105.54 feet to a point for angle point;
THENCE S 30 ° 46 ' 05 " W, a distance of 82.04 feet to a point for angle point;
THENCE S 36 ° 32 ' 58 " W, a distance of 74.67 feet to a point for angle point;
THENCE S 48 ° 09 ' 55 " W, a distance of 123.20 feet to a point for angle point;
THENCE S 64 ° 27 ' 45 " W, a distance of 95.33 feet to a point for angle point;
THENCE S 68 ° 28 ' 57 " W, a distance of 439.94 feet to a point for angle point;
THENCE S 73 ° 43 ' 29 " W, a distance of 1266.33 feet to a point for angle point;
THENCE S 25 ° 00 ' 57 " E, a distance of 520.13 feet to a point for angle point;
THENCE S 70 ° 20 ' 57 " E, a distance of 206.72 feet to a point for angle point;
THENCE S 37 ° 39 ' 37 " E, a distance of 479.47 feet to a point in the north right-of-way line of
said North Country Drive for a west corner, a 1/2" Iron Rod with Cap found for the most northerly
corner of said right-of-way bears N 54 ° 42 ' 11 " W a distance of 11.70 feet;

THENCE S 54 ° 42 ' 11 " W, a distance of 50.04 feet to the PLACE OF BEGINNING AND
CONTAINING AN AREA OF 7.30 ACRES OF LAND MORE OR LESS, according to a survey
performed during the month of November, 2008, under the supervision of H. Curtis Strong,
registered Professional Land Surveyor No. 4961. North Orientation is based on rotating the north
line of Lot 1, Block 3, North Country Estates, Phase Thirteen as recorded in Volume 7600, Page
122, to Grid North by utilizing GPS methods. See plat for other information.



**FIELD NOTES
59.70 ACRES
OUT OF THE
MERVIN D. PETERS
CALLED 1456.53 ACRE TRACT
REFERENCE VOLUME 150, PAGE 396
DESCRIBED AS TWO TRACTS
734.43 ACRES – VOLUME 261, PAGE 18 &
722.10 ACRES – VOLUME 261, PAGE 26
G. COLEMAN SURVEY, A – 10
BRAZOS COUNTY, TEXAS
NOVEMBER 17, 2008**

All that certain lot, tract or parcel of land being 59.70 acres situated in the G. COLEMAN SURVEY, Abstract Number 10, Brazos County, Texas and being a part of that certain Called 1456.53 acre tract as referenced in deed from Curtis Wilcox et al to Marshall C. Peters of record in Volume 150, Page 396, Deed Records of Brazos County, Texas, same 1456.43 acre tract being further described in the following two tracts; 1) Being Called 734.43 acres in deed from Marshall Bookman Peters to Mervin Dansby Peters of record in Volume 261, Page 18, and 2) Being Called 722.10 acres in deed from E. E. Peters, Trustee to Mervin Dansby Peters of record in Volume 261, Page 26, both being deed records of Brazos County, Texas, said 59.70 acre tract being more particularly described by metes and bounds as follows:

BEGINNING at a 1/2" Iron Rod with Cap found for the southeast corner, said corner being the northeast corner of Lot 1, Block Three, North Country Estates, Phase Thirteen as described in Volume 7600, Page 122, said corner also being located in the west right-of-way line of Wilcox Lane, an 8" Fence Corner Post found for an Occupied interior Corner of said Called 1456.53 acre tract bears S 78 ° 15 ' 10 " W a distance of 1521.36 feet;

THENCE N 89 ° 44 ' 38 " W, along the north line of said Lot 1 a distance of 454.59 feet to a 1/2" Iron Rod with Cap found for an interior corner, said corner being the northwest corner of said Lot 1;

THENCE S 2 ° 43 ' 23 " E, along the west line of said Lot 1 a distance of 144.43 feet to a 1/2" Iron Rod with Cap found for angle point, said corner being the most northerly corner of Lot 8, Block Three, of said North Country Estates, Phase Thirteen;

THENCE S 41 ° 25 ' 56 " W, along the northwest line of said Lot 8 a distance of 362.49 feet to a 1/2" Iron Rod with Cap set for the most southerly corner;

THENCE N 18 ° 37 ' 17 " W, a distance of 51.24 feet to a 1/2" Iron Rod with Cap set for angle point;

THENCE N 22 ° 20 ' 15 " W, a distance of 110.72 feet to a 1/2" Iron Rod with Cap set for angle point;

THENCE N 28 ° 24 ' 47 " W, a distance of 70.11 feet to a 1/2" Iron Rod with Cap set for angle point;

THENCE N 53 ° 51 ' 34 " E, a distance of 78.02 feet to a 1/2" Iron Rod with Cap set for angle point, said corner being the most southerly corner of an existing 100' wide Environmental Buffer along Wickson Creek as shown in Volume 7600, Page 122;

THENCE along the southeast line of said Environmental Buffer Line the following calls:

N 24 ° 47 ' 14 " E, a distance of 34.86 feet to a 1/2" Iron Rod with Cap set for angle point;

N 7 ° 42 ' 04 " W, a distance of 35.32 feet to a 1/2" Iron Rod with Cap set for angle point;

N 40 ° 51 ' 43 " E, a distance of 71.17 feet to a 1/2" Iron Rod with Cap set for angle point;

N 7 ° 59 ' 05 " E, a distance of 23.05 feet to a 1/2" Iron Rod with Cap set for angle point;

N 46 ° 43 ' 12 " E, a distance of 21.19 feet to a 1/2" Iron Rod with Cap set for angle point;

N 76 ° 26 ' 37 " E, a distance of 56.37 feet to a 1/2" Iron Rod with Cap set for angle point;

S 78 ° 06 ' 26 " E, a distance of 87.34 feet to a 1/2" Iron Rod with Cap set for angle point ;

N 72 ° 38 ' 03 " E, a distance of 101.51 feet to a 1/2" Iron Rod with Cap set for angle point;

THENCE N 2 ° 42 ' 45 " E, a distance of 419.55 feet to a 1/2" Iron Rod with Cap set for angle point;
 THENCE S 87 ° 38 ' 43 " E, a distance of 122.21 feet to a 1/2" Iron Rod with Cap set for angle point;
 THENCE N 38 ° 04 ' 00 " W, a distance of 605.21 feet to a 1/2" Iron Rod with Cap set for angle point;
 THENCE N 0 ° 37 ' 13 " W, a distance of 340.83 feet to a 1/2" Iron Rod with Cap set for angle point;
 THENCE N 21 ° 06 ' 55 " W, a distance of 436.32 feet to a 1/2" Iron Rod with Cap set for angle point;
 THENCE N 32 ° 39 ' 03 " W, a distance of 549.82 feet to a 1/2" Iron Rod with Cap set for the northwest corner;
 THENCE N 82 ° 33 ' 04 " E, a distance of 1046.78 feet to a 1/2" Iron Rod with Cap set for angle point;
 THENCE S 72 ° 02 ' 12 " E, a distance of 600.34 feet to a 1/2" Iron Rod with Cap set for the northeast corner;
 THENCE S 23 ° 30 ' 06 " W, a distance of 1225.28 feet to a 1/2" Iron Rod with Cap set for angle point;
 THENCE S 41 ° 13 ' 17 " E, a distance of 286.51 feet to a 1/2" Iron Rod with Cap set for angle point;
 THENCE S 79 ° 03 ' 53 " E, a distance of 332.82 feet to a 1/2" Iron Rod with Cap set for angle point;
 THENCE S 7 ° 23 ' 38 " W, a distance of 593.71 feet to a 1/2" Iron Rod with Cap set for angle point;
 THENCE S 66 ° 57 ' 06 " E, a distance of 305.99 feet to a 1/2" Iron Rod with Cap set for angle point;
 THENCE S 88 ° 10 ' 41 " E, a distance of 326.16 feet to a 1/2" Iron Rod with Cap set for angle point, said corner being located in the west right-of-way line of said Wilcox Lane;

THENCE with the west right-of-way line of Wilcox Lane the following calls:

- S 1 ° 49 ' 19 " W, a distance of 54.12 feet to a 1/2" Iron Rod with Cap set for angle point;
- S 23 ° 29 ' 57 " E, a distance of 46.77 feet to a 1/2" Iron Rod with Cap set for angle point;
- S 1 ° 49 ' 27 " W, a distance of 43.98 feet to a 1/2" Iron Rod with Cap set for angle point;
- S 40 ° 38 ' 00 " E, a distance of 12.07 feet to a 1/2" Iron Rod with Cap set for angle point;
- S 1 ° 23 ' 21 " W, a distance of 117.96 feet to a 1/2" Iron Rod with Cap set for angle point;
- S 0 ° 15 ' 22 " W, a distance of 119.51 feet to the PLACE OF BEGINNING AND CONTAINING

AN AREA OF 59.70 ACRES OF LAND MORE OR LESS, according to a survey performed during the month of November, 2008, under the supervision of H. Curtis Strong, registered Professional Land Surveyor No. 4961. North Orientation is based on rotating the north line of Lot 1, Block 3, North Country Estates, Phase Thirteen as recorded in Volume 7600, Page 122, to Grid North by utilizing GPS methods. See plat for other information.



January 22, 2009
Consent Agenda Item No. 2m
Exempt Purchase for BSWMA Litigation Professional Services

To: Glenn Brown, City Manager

From: Mark Smith, Director of Public Works

Agenda Caption: Presentation, possible action and discussion to authorize additional funds for professional services from Bickerstaff, Heath, Delgado & Acosta, LLP. for litigation concerning the Brazos Valley Solid Waste Management Agency (BSWMA) in the amount of \$202,000.00 for total funds of \$252,000.00. Approval by the Council of this request will ratify an additional \$40,040.19 expended and provide funds for additional legal costs associated with this project.

Recommendation(s): Staff recommends approval of \$202,000.00 in additional funds for this project as listed.

Summary: The BSWMA litigation purchase request for FY08 in the amount of \$50,000.00 has been expended, as well as an additional \$40,040.19. Therefore, a total of \$90,040.19 has been expended to date. There will also be additional costs for legal services that have not yet been billed to the City. Approval by the Council of this request will ratify the additional \$40,040.19 already expended and cover the additional legal costs associated with this project.

This request for approval of additional funds is for professional services from Bickerstaff, Heath, Delgado & Acosta, LLP. and is thereby exempt from competitive bidding in accordance with LGC 252.022 (a)(4) procurement for personal, professional, or planning services:

Purchase Order:

Purchase Order #081060 - \$252,000.00

Budget & Financial Summary: These funds will be paid from City of College Station General Funds and will not be reimbursed by BSWMA or the City of Bryan. Funds for the additional professional services are not budgeted in the FY 2009 City of College Station General Fund.

Attachments: None.

January 22, 2009
Consent Agenda Item No. 2n
Exempt Purchase for BVSWMA Condemnation Professional Services

To: Glenn Brown, City Manager

From: Mark Smith, Director of Public Works

Agenda Caption: Presentation possible action and discussion to authorize additional funds for professional services from Bickerstaff, Heath, Delgado & Acosta, LLP. for the Brazos Valley Solid Waste Management Agency (BVSWMA) condemnations for the Twin Oaks Landfill Facility property in the amount of \$27,737.90 for total funds of \$177,737.90. Approval by the Council of this request will ratify an additional \$27,737.90 expended.

Recommendation(s): Staff recommends approval of \$27,737.90 additional funds for this project as listed.

Summary: The College Station City Council originally approved the BVSWMA condemnation purchase request for FY08 on September 27, 2007 in the amount of \$75,000.00 and an additional change order for \$75,000.00 on August 6, 2008 which has been expended, as well as an additional \$27,737.90. Therefore, a total of \$177,737.90 has been expended to date. Approval by the Council of this request will ratify the additional \$27,737.90 already expended and close the purchase request.

College Station City Council also approved an additional BVSWMA condemnation purchase request for FY08 on September 25, 2008 for FY09 in the amount of \$25,000.00. This purchase request is expected to cover all future expenses regarding condemnation professional services from Bickerstaff, Heath, Delgado & Acosta, LLP.

This request for approval of additional funds is for professional services from Bickerstaff, Heath, Delgado & Acosta, LLP. and is thereby exempt from competitive bidding in accordance with LGC 252.022 (a)(4) procurement for personal, professional, or planning services:

Purchase Order:

Purchase Order #080029 - \$177,737.90

Budget & Financial Summary: Funds for the additional professional services are not budgeted in the Twin Oaks Land Purchase capital project. However, it was recommended on August 6, 2008 that additional needed budget would be transferred from the Highway 30 Access project and that these funds would be requested back during the FY09 budget process. As BVSWMA is funded through an inter-local agreement, both of the Cities of Bryan and College Station are sharing in the cost of this project, however the expenses are currently being charged to the City General Fund until approval of the expenditure is approved by the City of Bryan. Once approved by the City of Bryan, staff expects the General Fund to be reimbursed by the BVSWMA Fund.

Attachments: None.

January 22, 2009
Consent Agenda Item No. 2o
Construction Contract #09-75 for Swimming Pool
UV Water Treatment System Purchase and Installation

To: Glenn Brown, City Manager

From: Marco A. Cisneros, Director, Parks and Recreation

Agenda Caption: Presentation, possible action, and discussion regarding a resolution awarding the bid and approval of (Contract Number #09-75) with Progressive Commercial Aquatics, Inc. in the amount of \$102,314 and ten (10) construction days for the purchase and installation of a UV Water Treatment System at four (4) swimming pools.

Recommendation(s): Staff recommends approval of the resolution and award of (Contract Number #09-75) with Progressive Commercial Aquatics, Inc. in the amount of \$102,314 and ten (10) construction days for the purchase and installation of a UV Water Treatment System at four (4) swimming pools.

Summary: The UV system is an ultra-violet light water treatment designed to better purify the water from bacterial growth. The UV-C light system guarantees double disinfection through a significant reduction in the amount of chloramines along with the destruction of bacteria, viruses and other micro-organisms present in the water for use in swimming pools. The installation of this water treatment system is an additional boost to providing safe, quality health conditions at the city swimming pools.

Budget & Financial Summary: Three (3) sealed, competitive bids were received and opened on December 8, 2008. The bid summary is attached. Funds for this project will come from the General Fund 2009 Budget. This item was approved in the FY09 Budget.

Attachments:

- 1) Resolution
- 2) Bid Tabulation #09-14

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COLLEGE STATION, TEXAS, APPROVING A CONSTRUCTION CONTRACT #09-075 FOR INSTALLATION OF A UV WATER TREATMENT SYSTEM AT FOUR (4) CITY PUBLIC SWIMMING POOLS.

WHEREAS, the City of College Station, Texas, solicited bids for installation of UV water treatment systems at four (4) swimming pools: two in Bee Creek Park, one in Southwood Athletic Park, and one pool in Thomas Park; and

WHEREAS, the selection of Progressive Commercial Aquatics is being recommended as the lowest responsible bidder for the construction services related to the installation and purchase of ultraviolet light water treatment for swimming pools as set forth in said bid specifications; now, therefore,

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

PART 1: That the City Council hereby finds that Progressive Commercial Aquatics is the lowest responsible bidder.

PART 2: That the City Council hereby approves the contract with Progressive Commercial Aquatics, in the amount of \$102,314 for the labor, materials, and equipment required for the UV system installations at four (4) swimming pools located at Bee Creek Park, Southwood Athletic Park and Thomas Park.

PART 3: That the funding for this contract shall be as budgeted from the Fiscal Year 2009 general fund.

PART 4: That this resolution shall take effect immediately from and after its passage.

ADOPTED this the 22nd day of January 2009.

ATTEST:

APPROVED:

CITY SECRETARY

MAYOR

APPROVED:

CITY ATTORNEY



City of College Station - Purchasing Department
Bid Tabulation for #09-14
"Purchase and Installation of Ultraviolet Light Water Treatment System"
Open Date: Monday, December 8, 2008 @ 2:00 p.m.

ITEM	QTY	UNIT	DESCRIPTION	Progressive Commercial Aquatics, Inc. (Houston, TX)	Texas Aquatic Supply (Dallas, TX)	Texas Aquatic Supply (Dallas, TX) **Alternate**
				TOTAL BID AMOUNT	TOTAL BID AMOUNT	TOTAL BID AMOUNT
Base Bid - U/V Systems						
1	1	LS	Main Pool	\$30,545.00	\$37,000.00	\$40,139.00
			Manufacturer/Model	Astral #MP140UV	Siemens/Barrier M-700	Hanovia #PMD320E1/8AW
2	1	LS	Instructional/Baby Pool	\$14,899.00	\$23,000.00	\$24,280.00
			Manufacturer/Model	Astral #MP030UV	Siemens/Barrier M-80	Hanovia #PMD152C1/3AW
Total Base Bid (Items 1 & 2)				\$45,444.00	\$60,000.00	\$64,419.00
Add Alternate #1 - U/V System						
A-1	1	LS	Cindy Hallaran Pool	\$28,937.00	\$26,000.00	\$28,655.00
			Manufacturer/Model	Astral #MP140UV	Siemens/Barrier M-135	Hanovia #PMD200C1/6AW
Add Alternate #2 - U/V System						
A-2	1	LS	Thomas Pool	\$27,933.00	\$30,000.00	\$33,596.00
			Manufacturer/Model	Astral #MP125UV	Siemens/Barrier M-275	Hanovia #PMD200D1/6AW
Add Alternate #3 - U/V System						
A-3	1	LS	Splash Park	\$16,942.00	\$22,000.00	\$22,793.00
			Manufacturer/Model	Astral #MP030UV	Siemens/Barrier M-80	Hanovia #PMD152C1/3AW
Total Number of Calendar Days to Substantial Completion				10 days ("from delivery of units from mfg.")	8 - 10	8 - 10
Executed 5% Bidder's Bond				✓	✓	✓
Certification from bid package				✓	✓	✓
Acknowledged Addendums 1 & 2				✓	✓	✓
Provided detailed specifications and warranty information				N/A	No	✓

NOTES

Texas Aquatic Supply, Inc. (Alternate Bid/Hanovia): Bidder added the following comments to their proposal: "Each unit price includes extra UV bulb and 4,000 hours full warranty on UV bulbs. Over and above specifications."

January 22, 2009
Consent Agenda Item No. 2p
Texas Avenue Utilities Relocation AFA Amendment No. 3

To: Glenn Brown, City Manager

From: Chuck Gilman, Director of Capital Projects

Agenda Caption: Presentation, possible action, and discussion regarding an Advanced Funding Agreement No. 3 with the Texas Department of Transportation to finalize the reimbursement on this project. Upon execution of Amendment No. 3, the Texas Department of Transportation will reimburse the City of College Station \$682,826.86.

Recommendation(s): Staff recommends approval of the Advanced Funding Agreement No. 3.

Summary: The total reimbursement on this project is \$741,406.32. The \$682,826.86 amount will be paid as part of the AFA, and the remaining \$58,579.46 in eligible consultant's fees will be paid by TXDOT through the approved utility agreements that were executed with this project.

Budget & Financial Summary: The total cost after reimbursement for the utility relocation project is \$1,747,254.58.

Attachments:

1. AFA Amendment No. 3
2. Location Map

CSJ 0050-01-060 and 0050-01-072
District Bryan (17)
Code Chart 64 09050 (College Station)
Project STP 2004(390)
CFDA No. _____

STATE OF TEXAS §

COUNTY OF TRAVIS §

**ADVANCE FUNDING AGREEMENT
AMENDMENT No. 3**

THIS AMENDMENT IS MADE BY AND BETWEEN the State of Texas, acting through the Texas Department of Transportation, hereinafter called the State, and the City of College Station, a Home Rule Municipal Government, acting by and through its duly authorized officials, hereinafter called the Local Government.

WITNESSETH

WHEREAS, the State and the Local Government executed a contract on March 31 of 2004 to effectuate their agreement to adjust water and sanitary sewer lines along BS 6-R (Texas Avenue) from George Bush Drive East to FM 2818 (Harvey Mitchell Parkway); and,

WHEREAS, Amendment No. 1 to this agreement was fully executed on March 29, 2005, and amended the original agreement to reflect the actual contract cost as bid by the State's contractor; and

WHEREAS, Amendment No. 2 to this agreement was fully executed on July 16, 2008, and amended Attachment A to the agreement to reflect the final construction contract costs; and

WHEREAS, the original agreement was based on the State's assumption that all the Local Government's utility lines to be adjusted were in the State's right of way; and

WHEREAS, this assumption was based on a mistake of fact; and

WHEREAS, the parties recognize that a fixed payment of \$682,826.86 by the State to the Local Government will result in the proper accounting for this project; and

WHEREAS, it has become necessary to amend that contract.

NOW THEREFORE, the parties agree to amend the advance funding agreement to correct the State's mistake of fact as follows:

CSJ 0050-01-060 and 0050-01-072
District Bryan (17)
Code Chart 64 09050 (College Station)
Project STP 2004(390)
CFDA No. _____

AGREEMENT

Article 1. Description of Amended Items

Attachment A is deleted in its entirety and is replaced with Attachment A-1, which is attached to this amendment and is incorporated by reference in it. All other provisions of the original contract are unchanged and remain in full force and effect.

Article 2. Signatory Warranty

The signatories to this amendment warrant that each has the authority to enter into this agreement on behalf of the organization they represent.

IN WITNESS WHEREOF, THE STATE AND THE LOCAL GOVERNMENT have executed duplicate counterparts to effectuate this agreement.

THE LOCAL GOVERNMENT

City of College Station
Name of Local Government

By: _____
Signature

Ben White
Printed Name

Mayor, City of College Station
Title

Date

THE STATE OF TEXAS

Executed for the Executive Director and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved and authorized by the Texas Transportation Commission.

By: _____
Signature

Bryan Alan Wood, P.E.
Printed Name

District Engineer, Bryan District
Title

Date

CITY OF COLLEGE STATION

ATTEST:

Connie Hooks, City Secretary

Date: _____

APPROVED:

City Manager

Date: _____

City Attorney

Date: _____

Chief Financial Officer

Date: _____

ATTACHMENT A-1
PAYMENT PROVISION AND WORK RESPONSIBILITIES

Description of the Work Items

The parties agree that the project to relocate and adjust the existing water and sanitary sewer lines belonging to the Local Government along Business State Highway 6 – (Texas Avenue) between George Bush Drive East and FM 2818 (Harvey Mitchell Parkway) is complete.

Utility Agreements

The Local Government entered into two Utility Agreements with the State. One that sets out the reimbursement of eligible costs for the relocation of the water lines (Utility Agreement – U10128) and one that sets out the reimbursement of eligible costs for the relocation of the sanitary sewer lines (Utility Agreement – U10646).

The following pages show the calculation of the amounts eligible for reimbursement to the Local Government by the State based on the actual cost of construction.

FINAL PROJECT COSTS

SEQ NO.	SHT NO.	Spec.	REF NO	LINE NO	ITEM NO.	VALUE LINE NO.	VALUE ITEM CODE	BID ITEM DESCRIPTION	UNITS	PAID TO DATE QUANTITY	UNIT BID PRICE	PAID AMOUNT
1	QT1	W.104	9	1720	36920509			24" WATER LINE	LF	185.00	\$91.00	\$16,835.00
2	QT1	W.104	10	1725	36920510			16" WATER LINE	LF	808.00	\$85.00	\$62,620.00
3	QT1	W.104	11	1730	36920511			16" WATER LINE	LF	168.00	\$92.00	\$15,456.00
4	QT1	W.105	12	1735	36920512			12" WATER LINE	LF	7969.40	\$40.00	\$302,531.20
5	QT1	W.105	13	1740	36920513			8" WATER LINE	LF	224.00	\$39.00	\$8,736.00
6	QT1	W.105	14	1745	36920514			8" WATER LINE	LF	241.00	\$35.00	\$8,435.00
7	QT1	W.105	15	1750	36920515			3" WATER LINE	LF	0.00	\$33.00	\$0.00
8	QT1	WS.3	16	1755	36920516			36" CASING BY OPEN CUT	LF	9.00	\$200.00	\$1,800.00
9	QT1	WS.3	17	1760	36920517			30" CASING BY OPEN CUT	LF	60.00	\$170.00	\$10,200.00
10	QT1	WS.5	18	1775	36920520			30" CASING BY BORE-WATER LINE	LF	219.00	\$360.00	\$78,840.00
11	QT1	WS.5	20	1780	36920521			24" CASING BY BORE-WATER LINE	LF	560.00	\$280.00	\$145,600.00
12	QT1	WS.3	22	1785	36920522			24" RCP CASING BY OPEN CUT	LF	0.00	\$160.00	\$0.00
13	QT1	WS.3	23	1780	36920523			21" RCP CASING BY OPEN CUT	LF	12.00	\$90.00	\$1,080.00
14	QT1	WS.3	24	1800	36920525			16" CASING BY OPEN CUT-WATER LINE	LF	0.00	\$115.00	\$0.00
15	QT1 / QT3	WS.3	26	1805	36920526			24" CASING BY OPEN CUT	LF	40.00	\$200.00	\$8,000.00
16	QT1 / QT3	WS.5	27	1810	36920527			UNCASED BORE (12" & 8")	LF	535.00	\$85.00	\$45,475.00
17	QT1	W.104	28	1815	36920528	1816	36920528	24" X 11.25 M.J. BEND	EA	0.00	\$1,780.00	\$0.00
18	QT1	W.104	29	1820	36920529	1821	36920529	24" X 8" M.J. TEE	EA	1.00	\$2,055.00	\$2,055.00
19	QT1	W.104	30	1825	36920530	1826	36920530	24" X 24" M.J. TEE	EA	1.00	\$2,920.00	\$2,920.00
20	QT1	W.203	31	1830	36920531			24" BUTTERFLY M.J. VALVE	EA	1.00	\$6,800.00	\$6,800.00
21	QT1	W.104	32	1835	36920532	1836	36920532	24" X 12" M.J. REDUCER	EA	1.00	\$1,042.00	\$1,042.00
22	QT1	W.104	33	1840	36920533	1841	36920533	CONNECT TO EX. 24" LINE	EA	2.00	\$2,512.00	\$5,024.00
23	QT1	W.104	34	1845	36920534	1846	36920534	18" X 18" M.J. TEE	EA	1.00	\$1,954.00	\$1,954.00
24	QT1	W.104	35	1850	36920535	1851	36920535	18" X 12" M.J. TEE	EA	0.00	\$1,700.00	\$0.00
25	QT1	W.104	36	1855	36920536	1856	36920536	18" X 12" M.J. REDUCER	EA	3.00	\$705.00	\$2,115.00
26	QT1	W.104	37	1860	36920537	1861	36920537	18" X 11.25 M.J. BEND	EA	4.00	\$1,176.00	\$4,704.00
27	QT1	W.104	38	1865	36920538	1866	36920538	18" X 8" M.J. TEE	EA	1.00	\$1,791.00	\$1,791.00
28	QT1	W.104	39	1870	36920539	1871	36920539	CONNECT TO EX. 18" LINE	EA	3.00	\$4,405.00	\$13,215.00
29	QT1	W.104	40	1875	36920540	1876	36920540	18" X 22.5 M.J. BEND	EA	2.00	\$1,176.00	\$2,352.00
30	QT1	W.203	41	1880	36920541			18" M.J. BUTTERFLY VALVE	EA	4.00	\$5,000.00	\$20,000.00
31	QT1	W.104	42	1885	36920542	1886	36920542	16" X 12" M.J. REDUCER	EA	2.00	\$553.00	\$1,106.00
32	QT1	W.104	43	1890	36920543	1891	36920543	16" X 16" M.J. TEE	EA	1.00	\$1,275.00	\$1,275.00
33	QT1	W.104	44	1895	36920544	1896	36920544	CONNECT TO EX. 16" LINE	EA	1.00	\$1,886.00	\$1,886.00
34	QT1	W.105	45	1900	36920545	1901	36920545	12" X 8" M.J. TEE	EA	5.00	\$508.00	\$2,540.00
35	QT1	W.105	46	1905	36920546	1906	36920546	12" X 45 M.J. BEND	EA	16.00	\$416.00	\$6,656.00
36	QT1	W.105	47	1910	36920547	1911	36920547	12" X 8" M.J. TEE	EA	8.00	\$542.00	\$4,336.00
37	QT1	W.105	48	1915	36920548	1916	36920548	12" X 12" M.J. CROSS	EA	1.00	\$933.00	\$933.00
38	QT1	W.105	49	1920	36920549	1921	36920549	12" X 11.25 M.J. BEND	EA	10.00	\$537.00	\$5,370.00
39	QT1	W.105	50	1925	36920550	1926	36920550	12" X 12" M.J. TEE	EA	3.00	\$700.00	\$2,100.00
40	QT2	W.105	51	1930	36920551	1931	36920551	12" M.J. CAP	EA	1.00	\$370.00	\$370.00
41	QT2	W.105	52	1935	36920552	1936	36920552	12" X 22.5 M.J. BEND	EA	1.00	\$537.00	\$537.00
42	QT2	W.105	53	1940	36920553	1941	36920553	12" X 6" M.J. REDUCER	EA	0.00	\$225.00	\$0.00
43	QT2	W.105	54	1945	36920554	1946	36920554	CONNECT TO EXISTING 12" LINE	EA	7.00	\$1,410.00	\$9,870.00
44	QT2	W.203	55	1950	36920555			12" M.J. GATE VALVE	EA	29.00	\$1,350.00	\$39,150.00
45	QT2	W.203	56	1955	36920556			8" M.J. GATE VALVE	EA	9.00	\$675.00	\$6,075.00
46	QT2	W.105	57	1960	36920557	1961	36920557	8" X 45 M.J. BEND	EA	12.00	\$220.00	\$2,640.00
47	QT2	W.105	58	1965	36920558	1966	36920558	8" X 90 M.J. BEND	EA	2.00	\$220.00	\$440.00
48	QT2	W.105	59	1970	36920559	1971	36920559	CONNECT TO EXISTING 8" LINE	EA	8.00	\$1,630.00	\$13,040.00
49	QT2	W.203	60	1975	36920560			6" M.J. GATE VALVE	EA	6.00	\$540.00	\$3,240.00
50	QT2	W.105	61	1980	36920561	1981	36920561	CONNECT TO EXISTING 6" LINE	EA	6.00	\$1,580.00	\$9,480.00
51	QT2	W.105	62	1985	36920562	1986	36920562	15" X 45 M.J. BEND	EA	10.00	\$182.00	\$1,820.00

FINAL PROJECT COSTS

SEQ NO.	SHT NO.	Spec.	REF NO	LINE NO	ITEM NO.	VALUE LINE NO.	VALUE ITEM CODE	BID ITEM DESCRIPTION	UNITS	PAID TO DATE QUANTITY	UNIT BID PRICE	PAID AMOUNT
52	QT2	W.105	63	1990	36920563	1991	36920563	CONNECT TO EXISTING 3" LINE	EA	1.00	\$655.00	\$655.00
53	QT2	W.205	64	1995	36920564	1996	36920564	TYPE 1 FIRE HYDRANT ASSEMBLY	EA	11.00	\$2,928.00	\$32,208.00
54	QT2	W.205	65	2000	36920565	2001	36920565	TYPE 2 FIRE HYDRANT ASSEMBLY	EA	4.00	\$2,628.00	\$10,512.00
55	QT2	W.205	66	2005	36920566	2006	36920566	TYPE 3 FIRE HYDRANT ASSEMBLY	EA	14.00	\$2,628.00	\$39,592.00
56	QT2 / QT3	W.207	67	2010	36920567			2" WATER METER	EA	29.00	\$1,800.00	\$52,200.00
57	QT2	W.201	68	2015	36920568			2" SINGLE WATER SERVICE	EA	32.00	\$1,000.00	\$32,000.00
58	QT2	W.201	69	2020	36920569			2" DOUBLE WATER SERVICE	EA	1.00	\$1,100.00	\$1,100.00
59	QT2	W.207	70	2025	36920570			3" WATER METER	EA	1.00	\$3,500.00	\$3,500.00
60	QT2	W.203	71	2030	36920571			6" BLOWOFF ASSEMBLY	EA	2.00	\$2,300.00	\$4,600.00
61	QT2	W.204	72	2035	36920572			1" AIR RELEASE	EA	1.00	\$900.00	\$900.00
62	QT2	WS.9	73	2040	36920573			DRY RIP RAP CHANNEL LINING	SY	77.00	\$38.00	\$2,772.00
63	QT3	W.205	77	2045	36920574			ADJUST EX. FIRE HYDRANT LOCATION	EA	1.00	\$2,000.00	\$2,000.00
64	QT3	WS.8	79	2050	36920575			GROUT FILL EXISTING 12" WATER LINE	LF	2207.00	\$7.00	\$15,449.00
65	QT3	WS.8	80	2055	36920576			GROUT FILL EXISTING 18" WATER LINE	LF	830.00	\$12.50	\$10,375.00
66	QT3	WS.8	81	2060	36920577			GROUT FILL EXISTING 6" WATER LINE	LF	6080.00	\$4.30	\$26,058.00
67	QT3	WS.8	82					GROUT FILL EXISTING 6" WATER LINE	LF	0.00	\$4.20	\$0.00
68	QT3	WS.8	83	2070	36920579			GROUT FILL EXISTING 24" WATER LINE	LF	258.00	\$25.00	\$6,450.00
69	QT2	104-0521	74	1660	1040521			REMOVE CONC (CURB OR C&G)	LF	0.00	\$2.75	\$0.00
70	QT2/QT3	351-051	76	1665	3510501			REPAIR EXIST FLEX PAV STRUCT (B*)	SY	77.00	\$150.00	\$11,550.00
71	QT2/QT3	402-0508	78	1670	4020508			TRENCH EXCAVATION PROTECTION	LF	13442.00	\$1.00	\$13,442.00
72	QT2	529-0502	75	1675	5290502			CONCRETE CURB AND GUTTER (TYPE 2)	LF	0.00	\$14.00	\$0.00
73	QT2	W.105	90	2110	96080504			4" X 50 M.J. BEND	EA	3.00	\$170.00	\$510.00
74	QT2	W.104	92	2115	96080505			12" WATER LINE DIP CL 350	LF	18.00	\$75.00	\$1,350.00
75	QT2	W.105	93	2120	96080506			4" WATER LINE	LF	28.50	\$34.00	\$969.00
76	QT2	W.105	94	2125	96080507			8" X 4" REDUCER	EA	1.00	\$250.00	\$250.00
77	QT2 / QT3	WS.3	91	2130	96080508			20" CASING BY OPEN CUT	LF	450.70	\$160.00	\$72,112.00
78				2135	96080509			ELECTRICAL CONDUIT	LS	3313.50	\$1.00	\$3,313.50
79	QT2	W.104	96	2140	96080510			WATER LINE AT BEE CREEK	LS	9326.93	\$1.00	\$9,326.93
80	QT2	W.104	97	2145	96080511			12" WATER LINE DIP CL 350 RESTRAINED	LF	174.50	\$131.81	\$22,965.95
81	QT2	W.105	96	2205	96080512			12" X 6" REDUCER	EA	1.00	\$250.00	\$250.00
82	QT2	W.105	102	2235	96080517			16" X 90 M.J. BEND	EA	1.00	\$1,620.00	\$1,620.00
83				2240	96080519			DEEPER BORE COSTS HARVEY & REDMON	LS	1.00	\$7,059.94	\$7,059.94
84				2245	96080520			BORE DELAYS	LS	1.00	\$8,590.86	\$8,590.86
85				2250	96080521			MOB / DEMOB COSTS	LS	1.00	\$3,492.16	\$3,492.16
86	QT2	W.105	98	2210	96080513			CONNECT TO 24" RCCP	LS	1.00	\$14,331.22	\$14,331.22
87	QT2	W.105	99	2215	96080514			24" X 45 M.J.	EA	1.00	\$2,150.00	\$2,150.00
88	QT2	W.104	100	2220	96080515			24" DIP	LF	94.00	\$109.20	\$10,264.80
89	QT2	W.105	101	2225	96080516			12" PVC REMOVE AND REPLACE	LF	70.00	\$50.01	\$3,500.70
90				2260	96080523			3" WATER LINE CONN AT MOTEL #	LS	1.00	\$2,638.71	\$2,638.71
91				2275	96080526			MODIFICATION TO INLETS A3 & A11	LS	1.00	\$332.04	\$332.04
92				2285	96080527			REMOVE AND REPLACE CONC PAVEMENT	SY	146.00	\$124.68	\$18,203.28
93				2305	96080531			CEMENT STABILIZED BACKFILL	LS	1.00	\$5,256.00	\$5,256.00
94	QT2	WS.3	104	2310	96080532			CONCRETE CAP	LF	0.00	\$60.00	\$0.00
95	QT2	W.105	105	2311	96080533			12" X 90 M.J. BEND	EA	2.00	\$600.00	\$1,200.00
96	QT2	W.105	106	2314	96080534			18" X 45 M.J. BEND	EA	2.00	\$1,100.00	\$2,200.00
97	QT2	W.105	107	2315	96080535			4" M.J. GATE VALVE	EA	2.00	\$475.00	\$950.00
98	QT2	W.105	108	2320	96080538			16" M.J. BUTTERFLY VALVE	EA	1.00	\$4,850.00	\$4,850.00
99	QT2			2325	96080537			EQUIPMENT CHANGE TO SAVE A&M HARDS	LS	1.00	\$3,032.00	\$3,032.00
								TOTALS WATER LINE				\$1,424,634.29

FINAL PROJECT COSTS

ACTUAL CONSTRUCTION COSTS

SANITARY SEWER CONSTRUCTION COST	\$	827,307.20	
WATER LINE CONSTRUCTION COST	\$	1,424,634.29	
			<u>\$ 2,251,941.49</u>
ROADWORK	\$	17,816,221.07	

MOBILIZATION COSTS

CITY'S PORTION OF MOBILIZATION = 12.6%			
	\$	2,251,941.49	= 12.6%
		<u>\$17,816,221.07</u>	
ITEM 500 MOBILIZATION BID PRICE = \$ 1,700,000.00			
	\$	1,700,000.00	x 12.6% = \$ 214,200.00

ENGINEERING COSTS

TXDOT ENGINEERING (1% OF SEWER & WATER PROJECT COST)			
	\$	2,251,941.49	x 1.0 % = \$ 22,519.41

SANITARY & WATER PROJECT COST RATIOS/PERCENTAGES

SANITARY SEWER PROJECT PERCENTAGE = 36.74%			
	\$	827,307.20	= 36.74%
		<u>\$ 2,251,941.49</u>	
WATER PROJECT PERCENTAGE = 63.26 %			
	\$	1,424,634.29	= 63.26 %
		<u>\$ 2,251,941.49</u>	

SUMMARY OF FINAL PROJECT COSTS

SANITARY SEWER			
SANITARY SEWER CONSTRUCTION	\$		827,307.20
MOBILIZATION (36.74%)	\$	214,200.00 x 36.74% =	\$ 78,697.08
TXDOT ENGINEERING (36.74%)	\$	22,519.41 x 36.74% =	\$ 8,273.63
		SANITARY SEWER TOTAL	<u>\$ 914,277.91</u>
WATER LINE			
WATER LINE CONSTRUCTION	\$		1,424,634.29
MOBILIZATION (63.26%)	\$	214,200.00 x 63.26% =	\$ 135,502.92
TXDOT ENGINEERING (63.26%)	\$	22,519.41 x 63.26% =	\$ 14,245.78
		WATER LINE TOTAL	<u>\$ 1,574,382.99</u>
		GRAND TOTAL	<u>\$ 2,488,660.90</u>

ELIGIBLE UTILITY RELOCATION REIMBURSEMENT

**TEXAS AVENUE RELOCATION OF WATER & SANITARY SEWER LINES
BY THE CITY OF COLLEGE STATION
TO BE REIMBURSED BY TXDOT**

Water Line Costs Summary

Actual Water Construction, E&C, & Mobilization Costs	\$1,574,382.99
Less Betterment (3.43%)	<u>54,001.34</u>
	\$1,520,381.65
Eligibility Ratio (7.56% X 1,520,381.65)	\$114,940.85

Water Line Reimbursement \$114,940.85

Sanitary Sewer Line Summary

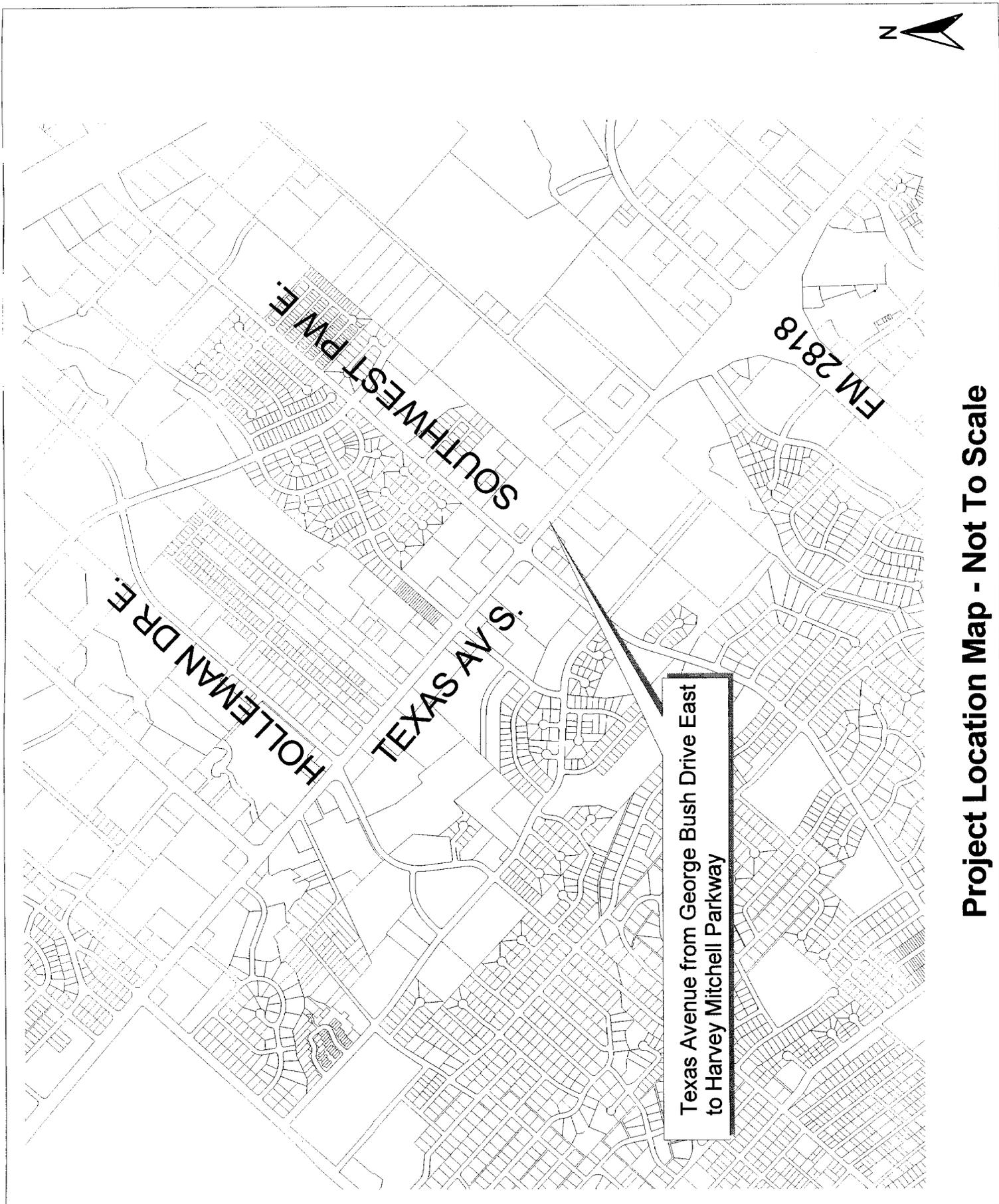
Actual Sewer Construction, E&C, & Mobilization Costs	\$914,277.91
Less Betterment (2.43%)	<u>22,216.95</u>
	\$892,060.96
Eligibility Ratio (63.66% X \$894,490.86)	\$567,886.01

Sanitary Sewer Line Reimbursement \$567,886.01

Water Line Reimbursement \$114,940.85

Sanitary Sewer Line Reimbursement \$567,886.01

Total Reimbursement to the City of College Station \$682,826.86



Texas Avenue from George Bush Drive East
to Harvey Mitchell Parkway

Project Location Map - Not To Scale

January 22, 2009

Consent Agenda Item No. 2q

Letter of Acknowledgement from the Heart of Texas Regional Advisory Council for the Office of Assistant Secretary of Preparedness and Response (OASPR) Grant

To: Glenn Brown, City Manager

From: Robert Alley, Fire Chief

Agenda Caption: Presentation, possible action and discussion regarding the approval of a resolution accepting the terms and conditions in the Letter of Acknowledgement from the Heart of Texas Regional Advisory Council and accept the Office of Assistant Secretary of Preparedness and Response (OASPR) Grant in the amount of \$7,000.00.

Recommendation(s): Staff recommends acceptance of the LOA and the OASPR Grant.

Summary: The City of College Station was awarded \$7,000.00 grant from the Office of Assistant Secretary of Preparedness and Response (OASPR) through the Trauma Service Area N. The funding will be used by the Emergency Management Division of the Fire Department to purchase equipment that will enhance the response capabilities to terrorist threats or catastrophic events. Attached is the equipment list for the OASPR Grant Program which funds will be expended to enhance our WEBEOC Capabilities for the Region and the hospitals.

Budget & Financial Summary: This equipment grant is a purchase and reimbursement type program. For this grant there is no budget and financial impact to the city.

Attachments:

Letter of Acknowledgement
OASPR Grant Equipment List, City of College Station
Resolution

**Letter of Acknowledgement
Between**

**Heart of Texas Regional Advisory Council
Serving TSA M & TSA N
P.O. Box 8600
Waco, Texas 76714**

And

City of College Station, Texas

Facility/Agency Name

1101 Texas Ave

Address

College Station, TX 77840

City, State Zip Code

Ben White, Mayor

Representative

REGARDING: HOSPITAL PREPAREDNESS PROGRAM FUNDS

BACKGROUND

The US Department of Health & Human Services (HHS) provides funding for community preparedness and hospital preparedness. The HHS funding is awarded via two separate but interrelated cooperative agreements. HHS Centers for Disease Control and Prevention (CDC) provides funds for strengthening public health preparedness to address bioterrorism, outbreaks of infectious diseases and public health emergencies. This funding stream focuses on the critical tasks necessary for the public health community to prepare for and respond to a terrorist event or other public health emergencies, emphasizing integrated response systems. The ability to quickly and effectively distribute preventive medication in affected areas is one of the nation's top priorities to be addressed by these funds.

The Office of Assistant Secretary of Preparedness and Response (OASPR) provides funds for states through the Hospital Preparedness Program (HPP) to develop a comprehensive all-hazards approach to enhance hospital response capability (for responding to mass casualty events).

National Preparedness Goal (The Goal)

The goal is a collective vision for National preparedness, and establishes National Priorities to guide preparedness efforts at the Federal, State, local and tribal levels. The Goal establishes a framework that guides entities at all levels of government in the development and maintenance of capabilities to prevent, protect against, respond to, and recover from major events, including "Incidents of National Significance" as defined in the National Response Plan (NRP). Additionally, the Goal will assist entities at all levels of government in the development and maintenance of the capabilities to identify, prioritize, and protect critical infrastructure.

The Goal outlines seven priorities that fall into two categories: three overarching priorities and four capability-specific priorities.

Overarching:

1. Expanded Regional Collaboration
2. Implement the National Incident Management System (NIMS) and NRP
3. Implement the National Infrastructure Protection Plan (NIPP)

Capability-specific

4. Strengthen Information Sharing and Collaboration Capabilities
5. Strengthen Interoperable Communications Capabilities
6. Strengthen Chemical, Biological, Radiological/Nuclear, and Explosive (CBRNE) Detection, Response, and Decontamination Capabilities
7. Strengthen Medical Surge and Mass Prophylaxis

The HPP will continue to support capabilities-based planning by setting priorities that must be met by the end of the budget period. In an effort to continue strengthening healthcare medical surge capability across the nation, Level One and Level Two Sub-capabilities are mandated of recipients. These must be completed by July 31, 2009.

Level One Sub-capabilities

- A. Interoperable communications system(s)
- B. Tracking of bed availability
- C. ESAR-VHP System
- D. Fatality management planning
- E. Medical evacuation/shelter-in-place planning
- F. Partnership/Coalition development

Level One Sub-capabilities

- A. Alternate care sites
- B. Mobile medical assets
- C. Pharmaceutical caches
- D. Personal protective equipment
- E. Decontamination
- F. Medical Reserve Corps
- G. Critical Infrastructure Protection

Training, exercises and corrective actions, National Incident Management System (NIMS) compliance and needs of at-risk populations shall be considered components of each sub-capability addressed by the States and jurisdictions and incorporated into all work on the sub-capabilities.

For preparedness efforts in the counties that constitute Trauma Service Area – M and Trauma Service Area - N, DSHS has contracted with the Heart of Texas Regional Advisory Council (HOTRAC) for distribution of the OASPR HPP funds.

PURPOSE

The purpose of this letter is to form an agreement between the HOTRAC – as the DSHS contractor – and the preparedness stakeholder, outlining the responsibilities of each party. As a condition of grant funds participation, the preparedness stakeholder agrees to work to achieve identified hospital/healthcare capabilities, maintain minimum levels of readiness and monitor readiness as described by OASPR guidance.

CONDITIONS

To facilitate the administration of these funds, the currently established Emergency Preparedness and Response Committee (EPR) in each TSA will assist in accomplishing the sub-capabilities listed above. The EPR consists of all participating hospitals in the Trauma Service Area, representatives of Emergency Medical Services, Emergency Management, Council of Governments and local and regional Public Health staff.

The preparedness stakeholder agrees to participate in all actual emergency response activities in their region, which may include but are not limited to receiving patients that are appropriate for their classification and capabilities from the scene of a major incident. The preparedness stakeholder also agrees to comply with the EPR expenditure plans, which are developed on a consensus basis, to address response capability goals. A summary of both parties' responsibilities follows.

HOTRAC Responsibilities:

1. Provide guidance to the preparedness stakeholder(s) and EPR regarding the development of OASPR preparedness, response capabilities, surge capacity of hospitals and other health care facilities, trauma care and emergency medical service systems to include but not limited to:
 - a. Emergency medical management and treatment capabilities;
 - b. Medical evacuation/shelter-in-place and fatality management;
 - c. Hospital-cased - rapid distribution and administration of medical countermeasures;
 - d. Effective utilization of any available public and private mobile medical assets and the integration of federal assets;
 - e. Evaluation of alternate care sites in collaboration with public health and health care systems in reference to medical surge for the region.
2. Distribute goods and services to participating stakeholders according to the EPR expenditure plan in support of and in compliance with the OASPR guidelines.
3. Ensure compliance with the DSHS HPP contract, including monitoring of the progress of response capabilities.
4. Provide administrative support to the EPR main meetings and EPR workgroups.

5. Represent the EPR in trainings, exercises/drills and other pertinent meetings on an “as needed” basis.

Participating Preparedness Stakeholder Responsibilities:

The following are standard conditions required of Texas Department of State Health Services contracts and sub-agreements:

Funds are pooled and expended centrally from the HOTRAC to obtain economies of scale and provide unified preparedness levels. Approved expenses specific to a preparedness stakeholder are paid by the HOTRAC after invoices and proof of payment are provided by the entity.

1. *If an acute care hospital*, will maintain a minimum level of preparedness of PPE (12 level C sets) and decontamination capability, provide required annual training and submit documentation to the HOTRAC.
2. *If a hospital*, report bed availability in a timely manner using EMSsystem.
3. *If a hospital*, complete and/or update evacuation/shelter-in-place plan to include transportation plans by July 31, 2009 and provide a copy to HOTRAC.
4. *If a hospital*, complete and/or update a prophylaxis distribution plan for patients, employees and their families by July 31, 2009 and provide a copy to HOTRAC.
5. *Hospitals* participating in the Hospital Preparedness Program should plan to manage a surge capacity of 10%-20% above the daily staffed beds average.
6. Provide 75% representation at the monthly EPR planning group meetings or quarterly RAC Pre-hospital meetings.
7. Properly store, monitor and maintain all equipment purchased with HPP funds. Should any equipment and/or supplies become lost, stolen, missing, etc.; the entity will notify HOTRAC within 48 hours of such. Any lost, missing, etc. equipment and/or supplies will be replaced by the receiving entity.
8. Participate in HOTRAC conducted surveys and monthly reports assessing emergency preparedness.
9. Participate in the update/revision of local and regional Health & Medical Plans.
10. Continued implementation of NIMS including all training requirements.
11. Provide updated points of contacts twice a year no later than February 15th and September 30th. These contacts will include but should not be limited to CEO, CNO/DON/Trauma Coordinator, disaster preparedness contact, 24/7 contact for disaster response activities.
12. Collaborate in the development of a regional mass fatality plan.
13. Participate in the evaluation of patient tracking systems.
14. Participate in the integration of local and regional emergency preparedness and response activities.
15. Submit copies of After-Action Reports and corrective action plans to the HOTRAC within 45 days of the exercises. A minimum of 2 exercises must be completed per contract year. One exercise must be multi-agency/multi-jurisdictional.

- 16. Participate in all actual emergency response activities in the region, which may include but not limited to receiving patients that are appropriate for your classification and capabilities from the scene of a major incident.
- 17. Report the status of Continuation of Operations Plans.

TERM

This agreement may be amended upon agreement of both parties. When changes in the capabilities occur or when other changes modify the intent of the agreement, those changes will be subject to renegotiation. This contract will continue as long as the OASPR program funds equipment and/or supplies have been received or are maintained by stakeholder.

Both parties reserve the right and privilege to terminate and cancel this Agreement with or without cause at any time either party deems this to be in its best interest. The notice of termination shall be in writing and shall provide the other party with a minimum of thirty (30) days notice. Upon termination, equipment and/or supplies may be removed from stakeholder.

I understand that signatories to the Agreement are subject to Federal A-133 audits, DSHS audits, HOTRAC monitoring visits and other performance measures related specifically to expenditures of the OASPR funds.

By my signature, I attest to understanding the goals of OASPR Hospital Preparedness Program (HPP), and as one of the participating preparedness stakeholders in TSA M or N, will support an appropriate share of activity (as determined by its specific EPR) to support and comply with the benchmarks as displayed in this Agreement and its attachments.

Ben White, Mayor

Stakeholder Representative Signature	Printed Name	Date

HOTRAC Executive Director Signature	Printed Name	Date

TSA N
OASPR Grant Fundeing Year 7 (FY-09)

Line	Item	Quantity	Price	Sub-Total	Account Number
1	SSL Certificates	2	\$ 149.00	\$ 298.00	001-4250-569-21-71
2	Double-Take	2	\$ 2,494.98	\$ 4,989.96	001-4250-569-21-71
3	Weather Station	1	\$ 1,712.04	\$ 1,712.04	001-4250-569-21-71

Grant Total \$ 7,000.00

List Total \$ 7,000.00

Remaining \$ -

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COLLEGE STATION, TEXAS, ACCEPTING THE TERMS AND CONDITIONS IN THE LETTER OF ACKNOWLEDGEMENT FROM THE HEART OF TEXAS REGIONAL ADVISORY COUNCIL AND ACCEPT THE OFFICE OF ASSISTANT SECRETARY OF PREPAREDNESS AND RESPONSE (OASPR) GRANT.

WHEREAS, the Office of Assistant Secretary of Preparedness and Response (OASPR) Grant Office for Domestic Preparedness, a component of the U.S. Department of Homeland Security, has awarded the Heart of Texas Regional Advisory Council the OASPR Grant; and

WHEREAS, the Heart of Texas Regional Advisory Council has served the City of College Station with notice of receipt of the 2008 Office of Assistant Secretary of Preparedness and Response (OASPR) Grant for Domestic Preparedness in the amount of \$7,000.00; and

WHEREAS, the City Council appoints the Emergency Management Coordinator, Brian Hilton as the authorized contact person for the 2008 OASPR Grant Program; now therefore

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

PART 1: That the City Council hereby accepts the terms and conditions in the Letter of Acknowledgement from the Heart of Texas Regional Advisory Council and accepts the Office of Assistant Secretary of Preparedness and Response (OASPR) Grant.

PART 2: That this resolution shall take effect immediately from and after its passage.

ADOPTED this _____ day of _____, A.D. 2009.

ATTEST:

APPROVED:

CONNIE HOOKS, City Secretary

BEN WHITE, Mayor

APPROVED:

City Attorney

**January 22, 2009
Regular Agenda Item 1
Smoking Ordinance**

To: Glenn Brown, City Manager

From: Hayden Migl, Assistant to the City Manager

Agenda Caption: Public hearing, presentation, possible action, and discussion regarding proposed changes to the City's smoking ordinance.

Recommendation(s): N/A

Summary: The City Council had this as a workshop item at its November 5, 2008 meeting. Staff was directed at that meeting to suggest possible ways to make the current smoking ordinance more comprehensive.

The proposed changes are amendments made to the current smoking ordinance rather than adopting an entirely new ordinance. The proposed changes to the ordinance are:

- Elimination of the exemption for bars and bar areas
- Elimination of the exemption for restaurants during late night hours
- Elimination of smoking in workplaces

Council also directed staff to engage the public in this effort. A public meeting was held on December 15 to gather citizen input about this issue. Approximately 40 individuals were in attendance and the notes from that meeting, as well as a few other comments gathered by staff, are attached.

Due to some of the comments made by business owners at the public meeting, staff is proposing a slight modification to the regulations around entry ways for bars and bar areas. The proposed change is to reduce the distance smoking is prohibited to ten feet (10') for bars and bar areas. This should allow a greater portion of the patios and porches to be used as well as allowing smoking on College Main when that road is blocked off to vehicle traffic.

Council was presented the proposed changes at their January 8 workshop meeting and they did not suggest any additional changes.

Budget & Financial Summary: N/A

Attachments:

1. Smoking ordinance
2. Notes from December 15, 2008 Public Meeting

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 7, "HEALTH AND SANITATION", OF THE CODE OF ORDINANCES OF THE CITY OF COLLEGE STATION, TEXAS, BY AMENDING SECTION 9, "TOBACCO PRODUCTS AND SMOKING", AS SET OUT BELOW; PROVIDING A SEVERABILITY CLAUSE; DECLARING A PENALTY; AND PROVIDING AN EFFECTIVE DATE.

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

- PART 1: That Chapter 7, Section 9, of the Code of Ordinances of the City of College Station, Texas, be amended as set out in Exhibit "A", attached hereto and made a part of this ordinance for all purposes.
- PART 2: That if any provisions of any section of this ordinance shall be held to be void or unconstitutional, such holding shall in no way effect the validity of the remaining provisions or sections of this ordinance, which shall remain in full force and effect.
- PART 3: That any person, firm, or corporation violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not less than Twenty-five Dollars (\$25.00) nor more than Two Thousand Dollars (\$2000.00). Each day such violation shall continue or be permitted to continue, shall be deemed a separate offense. Said Ordinance, being a penal ordinance, becomes effective ten (10) days after its date of passage by the City Council, as provided by Section 35 of the Charter of the City of College Station.

PASSED, ADOPTED and APPROVED this 22nd day of January, 2009.

ATTEST:

APPROVED:

City Secretary

MAYOR

APPROVED:



City Attorney

EXHIBIT “A”**SECTION 9: TOBACCO PRODUCTS AND SMOKING**A. Definitions

- (1) **Public Meeting** means a meeting required to be open to the public under TEX. GOVT. CODE, Chapter 551.
- (2) **Public Place** means an enclosed, indoor area to which the public has access and includes, but is not limited to the following:
 - (a) the common areas of a retail store, office, grocery store, or other commercial establishments;
 - (b) a restaurant or cafeteria;
 - (c) a public or private or secondary school;
 - (d) a public or private institution of higher education;
 - (e) a hospital or nursing home;
 - (f) an elevator;
 - (g) City and school buses;
 - (h) City building, owned or leased by the City and used for City purposes;
 - (i) an enclosed theater, auditorium, movie house, or arena;
 - (j) a courtroom or a jury waiting or deliberation room; or
 - (k) bar or bar area
- (3) **Smoke** or **smoking** includes:
 - (a) carrying or holding a lighted pipe, cigar or cigarette of any kind or any other lighted smoking equipment or device;
 - (b) lighting a pipe, cigar, or cigarette of any kind or any other smoking equipment or device; or
 - (c) emitting or exhaling the smoke of a pipe, cigar, or cigarette of any kind or any other smoking equipment or device.
- (4) **Bar.** A bar is an establishment that is dedicated predominately to the serving of alcohol rather than food.

- (5) **Bar area.** A bar area is an area physically separated from a food serving area dedicated predominately to the serving of alcohol rather than food.
- (6) **Workplace** means an enclosed area in which employees work or have access during the course of their employment.

B. Offense; Penalty.

- (1) A person commits an offense if the person smokes at a public meeting, in a public place, in a workplace or in any other enclosed, indoor area in which “no smoking” signs are conspicuously posted by the person in charge, and the person is not in an area designated as a smoking area under Subsection C below.
- (2) It is an exception to the application of provision (1) of this subsection that the person is smoking:
 - (a) as an actor or actress in a theatrical performance; or
 - (b) a tobacco specialty shop.

Smoking shall be allowed and smoking signs are not required to be posted by the person in charge under Subsection C when smoking is permitted by Subsection B(2)a and B(2)b.

C. Designation of No Smoking and Smoking Areas

- (1) The person in charge shall designate the following areas as “non-smoking”:
 - (a) food order areas, cashier areas, check-out lines for stores;
 - (b) City library;
 - (c) elevators;
 - (d) City and school buses, including associated terminals;
 - (e) restrooms;
 - (f) movie theaters, hospitals, and rest home facilities;
 - (g) within a twenty foot (20’) radius of the entry way of all public places, except for bars and bar areas where there shall be a ten foot (10’) radius around the entry way;
 - (h) all other public places including restaurants and cafeterias; and
 - (i) workplaces.
- (2) Smoking areas shall not be designated to cover areas in provisions (1)(a) through (1)(i) of this subsection. It is not required that any smoking areas be designated.

D. Signs

- (1) The person in charge of a public place or workplace shall place signs visible at each entrance of the building to notify persons entering that smoking is prohibited or that smoking is prohibited except in areas designated as smoking areas.
- (2) The person in charge shall conspicuously post signs in areas designated as a smoking area that smoking is permitted in the area.

E. Facilities to Extinguish Smoking Material

All public places shall be equipped for extinguishments of smoking materials. Facilities for extinguishments of smoking materials that are located in areas of public places other than designated smoking areas shall be accompanied by clearly visible signs, stating “no smoking”.

F. Owner/Operator Responsible

A person commits an offense if he is the owner, operator, manager or an employee of an establishment and he intentionally permits or fails to make a reasonable effort to prevent smoking in a “no smoking” area.

Smoking Ordinance Public Meeting December 15, 2008

1. Presentation of current ordinance and proposed changes by Hayden Migl
2. Public comments and questions

Jonathan Mays: 801 Luther Street West

--Question: Definition of work place and other exceptions

--Answer: gave definition of workplace. This extends current ordinance from public areas to private areas as well.

--Question: How will you measure 20 feet from entry way

--Answer: measured from all directions in relation to a doorway. This is in the current ordinance.

As long as there is an area over 20 feet from the doorway, it will be allowed.

--Question: Houston Street on Northgate – will that technically be banned?

--Answer: yes, it will be banned. Staff is researching to find these details

--Question: rooftop bar?

--Answer: entrances should be 20 feet away

--Question: would it be marked off?

--Answer: enclosed areas are what matters

--Question: reason for exception for tobacco shops; that is still a workplace; so the employees must be ok working in areas filled with smoke.

--Answer: I can't answer that. I am here to answer questions based on enforcement and details of the ordinance.

Dave Hill: 113 Ashburn

--Issue before us is a smoking ordinance ban. My personal belief is that it goes much deeper. This is a choice people should make for themselves. In 2001, the City of College Station and City of Bryan passed the original ban. There was no public vote and no one had any input. As a voter, I had no say in it. That to me, goes to the root of the issue. I do not smoke but feel a person has a right to decide where they go to eat, drink and what they choose to do there. Where does this end? Where does legislating morality end? I have lived here for 15 years but I think the Council is taking on issues when other things should be looked at. I do oppose this ban. I would beg the City Council to put this on a ballot and let the citizens of the community vote for or against this.

Brian Ogg: Cougar Trail outside of College Station

--A lot of the people who are affected by this are not here. Be aware the students have gone home for Christmas break and they are the ones who are really affected. It does not belong in the U.S., the State or the City of College Station. Keep that stuff in Austin where it belongs. I chose to live here for the people and the community. Don't change the community to something I don't want it to be. To Council, the last thing you want to do is wake up the students.

Noah Smith: Raymond Stotzer

--I don't smoke, I'm allergic to smoke but I know what I'm getting myself into. It seems to me that if people, particularly the bar owners, were really into this, they would have done so voluntarily. De facto, the bars have said it is ok by not banning it. I believe that if truly, we shouldn't have smoking, people would have gone to bars with no smoking. This is legislation to force something on people.

Mike Manson: Dominik Drive

--I represent the old folks, specifically a group of faculty members. We go to a watering hole on Friday afternoon, smoke cigars, and talk about the past week and the week to come. I also want to talk about the sports fans who like to watch football, have a few beers, and smoke a few cigarettes. The Council has to keep in mind that compromise is important. I agree people and bar owners should have the choice. Second hand smoke for employees: everyone that works there has a waiver that says they understand they work in a place where they will be around second hand smoke.

Jennifer Ganter: Dixie Chicken Inc.

--We are against the smoking ban. I am for compromise. The patios and porches are bigger and still not 20 feet away from the entry way. I would like it to say that any patio is fine. We aren't going to church. Our employees are able to work in our restaurant where there is no smoking allowed. It is not true that ten bar owners in town support this ban. Please let them know that's where we stand and we'd like them to take that into advisement.

Jeanie Basset: Brothers Blvd

--I thought it was great when there was a smoking area and non smoking area because smokers had their rights. When you walk into a restaurant in Dallas or Houston with smoking areas, you know immediately you are in a restaurant with smoking. Kids have a right to work in a place where they want to or don't, but waitressing is a job available to students. I was of the mind that smokers have the right to smoke, but I also think that non smokers have the right to not be around smoke. Reports have been coming out that bars and restaurants are making more money and hospitals are making less money. As the bans are coming into effect, health in whole cities is improving. The universities in towns where they have gone non-smoking have not been hurt. There are areas for compromise, but we need to be honest about what is right for all. Non-smokers can't get away from smoke.

Jess Fields: 1331 Harvey Mitchell Parkway

--I realize students have to work when they go to college. I work quite a bit. But to imply that people have to work at bars is kind of silly. There are plenty of places people can work. It's all about choice. The first ban that I know of was by Hitler. I acknowledged this morning that second smoke is dangerous. I will buy into the evidence that you present. People still have a choice to do harm to their bodies. We could ban fast food restaurants, bars and tobacco entirely. If we want to impose our values on people we can do that. Let's not tell people if they disagree they are so wrong that we are going to force them out of the market place. If you ban smoking in a city that is self contained you don't have the same economic effects, but Bryan is right next to College station. Bryan has plenty of bars and less business regulations than College Station. Students will choose to go somewhere else, they will go to Bryan bars and we will feel the economic harm. This is about choice. People don't have to go to the establishments.

If it is so that we have 5 -10 times more people who would come to bars if it is non-smoking, then it only makes sense that bar owners would not allow smoking. But, you realize there are people that do smoke. Ask City Council to suggest that people open bars that don't allow smoking.

Jodi Young: Rockhollow in Bryan Texas

--You are all talking about personal choice, and I'd like the option to not be around second hand smoke. I think the Dixie Chicken would be amazing if it were smoke free. I go to Houston so I can go home and not smell like an ash tray. I would like the option to not be subjected to second hand smoke.

Mark Cisillio:

--I've been here for 47 years. Boy have we come a long way since then. We are a better city now than we were then. I had the privilege as a pediatrician as serving when TAMU became the first public university in the nation to outlaw smoking on campus. Folks love to come to Kyle Field and yell for the Aggies and they still do. But you can't smoke there because second hand smoke is dangerous. I don't smoke or drink but I have family members who do both. I sit around it because it is at their home and worth the trade off. I favor open government and I favor the dialogue. I think it would be outstanding if the City of College Station said let's have a discussion, an open debate and let's go from there. I go to church close to the Dixie Chicken and I understand the view that some people want to go have a fun time. My mother died this past summer at 87 from complications of smoking. She started in the Great Depression. It was ok and done everywhere, and she died of emphysema and lung disease. We know more about it now. Sudden infant death has increased. Inter-uterine exposure increases. I think open honest dialogue is a great thing. You have to look at the economics of Bryan. I think this is a great step and appreciate being here. A&M is an incredible institution and keeping things the way they are isn't the way it used to always be.

Melissa Cunningham:

--Not with American Cancer Society. I think it's cute that you think it is a moral issue. It's not, it's a smoking issue. It's one thing to smoke, and it's another thing to make others inhale all the fumes. I think it's unfair that the gentleman made threats about the students coming back. It's not about taking away rights of the smoker. It's about taking away the right of the way to breathe. I'm ok with opening up to patios. I think that's a reasonable compromise.

Erica Alcalla:

--Resident of Bryan and Manager of Mad Hatters. All of my employees sign a waiver saying they know they will ingest smoke. They are also standing on their feet all day long. That is bad, should we take away that right? I am a smoker and I hate that. I think a smoking ban in bars would hurt us. Question about patios? It would only be to the enclosed area. Only 5 feet of our patio, if we're lucky, would be permitted to smoke. Have 20 employees, only 4 of them don't smoke. We carry complimentary cigarettes for people who want one and don't want to buy a whole pack. There were 3 non smokers out of a group of 40 people in a private party last night. This will hurt us. I've been to bars of both types. How are you going to deal with this on a nightly basis? I think there are far greater problems. When I call for assistance when there is a fight I have to wait for 10 minutes. This can only make it longer.

Kristine Weaver:

--Some of the things I've heard have gotten off track. This is a public health issue. This is not to tell smokers they cannot smoke. I've heard the comments about what will they do next regarding fast food restaurants. To talk about something that you want to do to yourself is one thing. But when you impose your behavior is wrong. Where your rights to smoke start, end when a non-smokers' rights begin. There are laws that regulate behavior when it hurts someone else. Alcohol, yes you can go drink, but you cannot drink until you are impaired and drive because that behavior could possibly hurt someone else or yourself. It is a public health issue and the government does have a right to protect citizens from a hazard to their health. It's the same reason we don't have to worry about the safety of our food when we go to a restaurant. It's about your right to breathe clean air.

Shawn Miller: Marion Pugh

--A public health issue is just that. I like the idea of putting this on a ballot or letting the money talk. If a bar wants to allow smoking, shouldn't this be a decision of the bar owner? I think the patios are a great place to smoke. This is something that needs further thought. There hasn't been a lot of thought to the economic interest

David Weaver: Hicks Lane

--I'm not in favor of smoking but like people that smoke, I'm not against them. I want to talk about the people who do smoke. If I could wave a magic wand and make you a non-smoker I would. The thing that is important is we have to watch out for the younger people. I work next to Hurricane Harry's. I see hundreds of young people, who are influenced in so many different ways, go into Harry's. Do we want them to go in and get hooked on smoking? We all realize smoking is addicting, the more you are around it, the chances increase for others to smoke. Those people are going to continue to go to Hurricane Harry's. If they are not smoking there, those people are better off. I want people to remember their concerns. A lot of people who smoke wouldn't if they had a chance.

Barry Ivins, Owner of Corner Bar

--Who will enforce? Continue being the fire marshal but could also be code enforcement. At the direction of the city manager. Would be a low priority call if police responded.

--I have customers that do and don't smoke. I don't care either way. There should not be a restriction on open air. All the businesses on Northgate are close together, it will be eliminated on College Main. The closest place you could smoke would be on campus. We banned drinking on the Promenade because it couldn't be policed. No way they can enforce this. There should be things of higher priority for the city.

John Whittington: owner of The Tap

--The smoking ban is coming. We are aware of it. You can't defend it. I'm not here about the health issues. No one smokes in the restaurants after 10 o'clock at night. We're the bars. We are eliminating it inside, but let's allow it on the patios. 20 feet is entirely too far. I'd like to know who wants to stop it in bars, I'd like to see the names.

Greg Taggart: 1008 Medira

--I didn't plan on coming here tonight. Smoking is tacky, tasteless, it's not cool, it's bad for you. I don't like it. This isn't about a public health issue. No one member of the public is forced to go into the Tap. I'm not being paid to represent anything. This is an issue of liberty. No one is forced to enter a bar. There are lots of places you can get a beer without suffering smoke. A member of the public has that choice. I'm going to put up with the smoke or we're not going to go there. Every merchant has that decision to go for the smoke free crowd. They go for an economic decision. Who forces a staff member to work in a bar? People who are offended by smoking have the choice to leave to show that right. The clean air people who want to enjoy that, maybe that opens up a whole new option "clean air bars". What is the limit of the intrusion on private business matters?

Luke Potts: Holleman Drive

--Seems like many of you here think this centers around the intrusion of government. Sometimes the government does need to get itself involved. Tobacco kills people and causes cancer. When you smoke a cigarette, it causes cancer. When you inhale second hand smoke it can cause cancer and kill you. I became an advocate of smoking ordinances when I had to listen to a 16 year old boy hear he had one year to live because of second hand smoke from parents. This is not a choice. The only negative thing

that bar owners can come up with are economic issues. Studies have shown that the economy has taken off. Some feel that people will go to Bryan. Studies have shown there is a much bigger crowd of people who do not smoke and are now going to start going to those bars. Nothing to fear about the economy. Other studies have been done and show a decrease in new smokers. Families live in this area and we want to decrease the number of smokers. We need to look at long term effects and see that only positive things will come out of this.

Phone Calls from Citizens Unable to Attend the Meeting

Laura Ann and Lucille Grymes

--We are very much in favor of making the smoking ordinance stricter, especially when walking out of restaurants and bars.

Audrey Patton

--Support the ban.

Gary Mitchell

--I definitely wanted to attend the meeting but did not hear about it until too late. The American Cancer Society website does not have any links to the studies they cite and they don't have a list of those in support of expanding the smoking ordinance. I've travelled a lot and seen how this affects the economics and this will be tasking already limited resources. I hope more of the information behind this becomes public. I think there are a lot more important issues that the City and you could be working on.

Paul Perry

--I live in Bryan and I am responding to the article in The Eagle. I'm afraid that so many constitutional rights are being taken away from citizens. I feel like restricting it in a bar is going too far. I realize secondhand smoke is dangerous but so are the coal-burning power plants and vehicle emissions. I'm afraid government is getting too big and getting too involved. If you really wanted to go after smoking, then maybe you should ban the sale of cigarettes.

January 22, 2009
Regular Agenda Item No. 2
Article 7 of the Unified Development Ordinance

To: Glenn Brown, City Manager

From: Bob Cowell, AICP, Director of Planning & Development Services

Agenda Caption: Public hearing, presentation, possible action, and discussion on an amendment to the Unified Development Ordinance, Article 7, General Development Standards as it relates to detention ponds and storm water management design.

Recommendation(s): The Planning and Zoning Commission recommended approval of the amendment by a vote of 6 to 0 at their December 18th meeting.

Summary: On January 18, 2007, after a discussion on storm water drainage with the acting City Engineer, Commissioner Bill Davis requested that a future agenda item be scheduled to discuss the design of detention and retention facilities in the College Station area. The specific topic regarding these facilities was that of aesthetics. The subsequent study that was completed focused only on detention and retention pond aesthetics and did not examine any other characteristics, such as water filtration or drainage control. A presentation to the Planning and Zoning Commission on December 6, 2007 outlined the findings of that study.

The feedback received from the Commission was positive. There were several comments expressing approval of improving the aesthetics of detention ponds. While it was decided that retention ponds should not be a focus at this point, the Commission did point to several issues identified in the presentation that deserved additional attention. This resulted in a directive to provide additional landscaping and design options and standards specifically for detention pond aesthetics. The primary focus of the current proposal is to amend the Unified Development Ordinance (UDO) to:

1. remove detention pond screening regulations that detract from the aesthetics of a site;
2. provide alternatives to existing material and design options; and,
3. add regulations regarding exposed concrete involved in storm water management.

Staff had the opportunity to meet with the Building and Land Development Forum (BLDF) on July 29, 2008, to discuss the possibility of providing incentives to the development community to increase the aesthetics of detention ponds. Though the attending members encouraged Staff's initiative, there was not an incentive that the Planning and Development Services Department was able to provide that would off-set the additional expenses of creating a detention pond which would be a site amenity. With this information staff was tasked with adapting the language of the UDO to become more flexible to creative design initiatives brought forward by developers.

Removal of Regulation

The UDO (Section 7.9.B.2) states that "Detention ponds shall be screened using berms, shrubs, brick/stone/masonry walls or a combination of these to achieve a 3-foot high screen above the visible perimeter of the pond's finished grade." As previously discussed with the P&Z, this regulation tends to draw attention to detention ponds rather than screen them. The first staff proposal to increase detention pond aesthetics is to remove this standard.

Alternative Materials and Design Options

Staff is proposing the use of permeable concrete in detention ponds, as well as for non-public, all-weather driving surfaces. At present, the UDO does not explicitly mention permeable concrete as an option for developers. Permitting the use of these materials would allow developers to pursue these options in their site plans to help satisfy storm water management guidelines.

Another proposed design option is related to the use of decorative storm water management initiatives integrated with the building. An increased aesthetic setting would result from periods of rainfall and allow developers and architects to develop more unique site plans and building designs. Staff would like to add this design option to the list of architectural features that may be used to meet non-residential architectural standards.

Additional Regulations

It is proposed that exposed concrete used in detention ponds, retaining walls, or other storm water management methods be treated to replicate a natural material such as stone or wood, when it would be seen from the right-of-way or neighboring property.

Budget & Financial Summary: N/A

Attachments:

1. Draft Planning and Zoning Commission Meeting Minutes, December 18, 2008
2. Ordinance – **LEGAL HAS REVIEWED AND SIGNED THE ORDINANCE**



MINUTES
PLANNING AND ZONING COMMISSION
Regular Meeting
Thursday, December 18, 2008
at 7:00 p.m.
City Hall Council Chambers
1101 Texas Avenue
College Station, Texas

COMMISSIONERS PRESENT: John Nichols, Noel Bauman, Paul Greer, Doug Slack, Thomas Woodfin and Hugh Stearns

COMMISSIONERS ABSENT: None

CITY COUNCIL MEMBERS PRESENT: None

CITY STAFF PRESENT: Staff Planners Jason Schubert, Matt Robinson and Lauren Hovde, Graduate Civil Engineer Erika Bridges, Senior Assistant City Engineer Carol Cotter, City Engineer Alan Gibbs, Transportation Planning Coordinator Joe Guerra, Planning Administrator Molly Hitchcock, Director Bob Cowell, Assistant Directors Lance Simms and Gabriel Elliott, First Assistant City Attorney Carla Robinson, Action Center Representative Kerry Mullins and Staff Assistant Brittany Caldwell

1. Call Meeting to Order.

Chairman John Nichols called the meeting to order at 7:20 p.m.

Regular Agenda

6. Public hearing, presentation, possible action, and discussion on an amendment to the Unified Development Ordinance, Article 7, General Development Standards as it relates to detention ponds and storm water management. **Case #08-0050001 (LH)**

Lauren Hovde, Staff Planner, presented the amendment to the Unified Development Ordinance, Article 7, General Development Standards as it relates to detention ponds and storm water management.

There was general discussion regarding the amendment.

Chairman Nichols opened the public hearing.

No one spoke during the public hearing.

Chairman Nichols closed the public hearing.

Commissioner Woodfin motioned to approve the amendment. Commissioner Slack seconded the motion, motion passed (6-0).

Meeting adjourned at 8:12 p.m.

Approved:

John Nichols, Chairman
Planning and Zoning Commission

Attest:

Brittany Caldwell, Staff Assistant
Planning and Development Services

DRAFT

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 12, "UNIFIED DEVELOPMENT ORDINANCE", SECTION 7.2.G.2.c "PERMANENT SURFACES", SECTION 7.5.C.9 "LANDSCAPING REQUIREMENTS", SECTION 7.8 "DRAINAGE AND STORMWATER MANAGEMENT", SECTION 7.9.B.1 "REQUIRED SCREENING", AND SECTION 7.9.B.2 "BUILDING MASS AND DESIGN" OF THE CODE OF ORDINANCES OF THE CITY OF COLLEGE STATION, TEXAS, BY AMENDING CERTAIN SECTIONS AS SET OUT BELOW; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

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

PART 1: That Chapter 12, "Unified Development Ordinance", Section 7.2.G.2.c "Permanent Surfaces", Section 7.5.C.9 "Landscaping Requirements", Section 7.8 "Drainage and Stormwater Management", Section 7.9.B.1 "Required Screening", and Section 7.9.B.2 "Building Mass and Design" of the Code of Ordinances of the City of College Station, Texas, be amended as set out in Exhibit "A", attached hereto and made a part of this ordinance for all purposes.

PART 2: Should any part of this ordinance be held illegal or invalid for any reason, the holding shall not affect the remaining sections or portion of sections or provisions of this ordinance.

PART 3: That any person, firm, or corporation violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punishable by a fine of not less than Twenty-Five Dollars (\$25.00) nor more than Two Thousand Dollars (\$2,000.00). Each day such violation shall continue or be permitted to continue, shall be deemed a separate offense. Said Ordinance, being a penal ordinance, becomes effective ten (10) days after its date of passage by the City Council, as provided by Section 35 of the Charter of the City of College Station.

PASSED, ADOPTED and APPROVED this 22nd day of January, 2009.

APPROVED:

Mayor

ATTEST:

City Secretary

ORDINANCE NO. _____

Page 2

APPROVED:

City Attorney

EXHIBIT “A”**I.**

That Section 7.2.G.2.c, “Permanent Surfaces,” of Chapter 12, “Unified Development Ordinance,” of the Code of Ordinances of the City of College Station, Texas, is hereby amended to read in its entirety as follows:

C. Permanent Surfaces**1) All-Weather Surface (Permanent)**

In some development scenarios, an emergency access or turnaround must be constructed to meet emergency access purposes and is not required for public traffic, service vehicles or sanitation vehicles. In these cases, the area required for emergency access only may consist of permanent pavement surface as specified in the CITY OF COLLEGE STATION SITE DESIGN STANDARDS.

Per Ordinance No. 2902 (June 8, 2006)

2) Permeable Surface

- (a) The use of porous materials such as permeable concrete and pavers to mitigate storm water sheeting and pooling of water may be used in off-street parking areas if the material meets vehicular loading standards and is approved by the Administrator.
- (b) Fire lanes may also be constructed of porous materials such as permeable concrete and pavers to mitigate storm water sheeting and pooling of water, so long as it is demonstrated that the permeable surface can obtain sufficient load and compaction ratings for its application as approved by The City of College Station Fire and Sanitation Departments.
- (c) Permeable surfaces approved as provided above shall be maintained in accordance with industry standards and to achieve mitigation of storm water sheeting and pooling of water. Failure to maintain permeable surfaces as required herein, shall constitute a violation of the Section of the UDO for which penalty provisions may be involved.

II.

That Section 7.5.C.9, “Landscaping Requirements,” of Chapter 12, “Unified Development Ordinance,” of the Code of Ordinances of the City of College Station, Texas, is hereby amended to read in its entirety as follows:

9. Landscaping must be reasonably dispersed throughout all visible areas of the site, including a grassed detention pond area.

III.

That Section 7.8, “Drainage and Stormwater Management,” of Chapter 12, “Unified Development Ordinance,” of the Code of Ordinances of the City of College Station, Texas, is hereby amended to read in its entirety as follows:

7.8. Drainage and Stormwater Management

Any reference to this Section shall also apply to Chapter 13 of the CODE OF ORDINANCES, FLOOD HAZARD PROTECTION.

A. Detention Pond Aesthetic Design

Detention ponds should be treated as aesthetic site amenities, adding quality and depth to the visual environment of the site. Therefore, the detention pond area shall be integrated into the overall landscaping design of the site by reasonably dispersing the required landscaping points.

1. Unless the landscape plan is sealed by a landscape architect and approved by the Administrator, only plantings found in the College Station Plan List for Detention Pond Areas may be used in a detention area.
2. If visible from any right-of-way or abutting property, concrete structures (such as weirs, outlets, and spillways) and retaining walls over 6” in height shall be treated so as to replicate stone, wood, or other alternatives approved by the Administrator. The treatment shall be complementary to the structures on the site.
3. Variations to the requirements of this Section may be approved if the development project is employing Leadership in Energy and Environmental Design (LEED) development standards, using stormwater management to acquire LEED points. The project must be LEED certifiable (it does not have to be registered as a LEED project but must be eligible for certification), be sealed by a Landscape Architect, and show reasonable evidence that the requirements as set forth in this Section were used as a guide.

IV.

That Section 7.9.B.1, “Required Screening” and Section 7.9.B.2 “Building Mass and Design,” of Chapter 12, “Unified Development Ordinance,” of the Code of Ordinances of the City of College Station, Texas, is hereby amended to read in its entirety as follows:

B. Standards for All Non-Residential Structures

1. Required Screening

All mechanical equipment shall be screened from view or isolated so as not to be visible from any public right-of-way or residential district within 150 feet of the perimeter boundary of the subject lot or tract, measured from a point five (5') feet above grade. Such screening shall be coordinated with the building architecture, materials, colors and scale to maintain a unified appearance. Acceptable methods of screening are: encasement, parapet walls, partition screens, brick/stone/masonry walls or fences.

Detention ponds shall be integrated into the overall landscaping theme and design of the site as described in Section 7.8.A, Detention Pond Aesthetic Design.

2. Building Mass and Design

In order to provide visual interest, the first two (2) stories of any façade facing a public right-of-way shall use architectural relief every forty-five horizontal feet (45') by incorporating a minimum of two (2) different design elements within each forty-five foot (45') section from the options below. All other façades shall incorporate a minimum of two (2) different design elements within each sixty-foot (60') section as described above. Wall sections less than forty-five feet (45') or sixty feet (60') respectively, shall also be required to provide the two (2) different design elements.

- Canopies, permanent decorative awnings, or windows accompanied by overhangs;
- Wall plane projections or recessions with a minimum of four foot (4') depth;
- Pilasters or columns;
- Recessed entries, stoops, porches, or arcades;
- Balconies that extend from the building;
- Boxed or bay windows;
- Decorative stormwater management initiatives physically integrated with the building, as approved by the Administrator. An example is shown below.



Pictures used with permission from the City of Portland, Environmental Services (2008)

January 22, 2009
Regular Agenda Item 3
Appointment to Joint Relief Funding Review Committee

To: Glenn Brown, City Manager

From: Connie Hooks, City Secretary

Agenda Caption: Presentation, possible action, and discussion regarding the City's appointment to the Joint Relief Funding Review Committee.

Recommendation(s): N/A

Summary: In December of 2008, J. Kevin Byrne's term on the Joint Relief Funding Review Committee expired. In an effort to locate interested candidates to be considered for that position, staff solicited interest from past applicants. Only one applicant, Earl Apgar, asked to be considered. Mr. Apgar was recently appointed to the Historic Preservation Committee, though, and is therefore ineligible to serve on the Joint Relief Funding Review Committee concurrently.

Staff contacted Mr. Byrne and he has agreed to serve an additional term. If appointed, this would be Mr. Byrne's third term on the committee.

Budget & Financial Summary: N/A

Attachments:

1. Letter of interest to serve from Kevin Byrne

From: Debbie Eller
To: Lucy Taylor
Date: 1/13/2009 8:06 AM
Subject: Fwd: Joint Relief Funding Review Committee

>>> "Kevin Byrne" <byrne@suddenlink.net> 1/13/2009 5:30 AM >>>

Debbie;

As we discussed, I would be happy to serve another term on the committee if needed. I have enjoyed the experience and pleasure of working with everyone and working to better improve the needs of our home town.

Please let me know if you need additional information.

Thanks

Kevin