



**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, February 12, 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 of minutes for City Council workshop and regular meeting, January 22, 2009.

b. Presentation, possible action, and discussion on a resolution amending the Custody Agreement between the City and Bank of New York Mellon and to amend the authorized persons on the account.

c. Presentation, possible action, and discussion regarding Addendum 1 to the Service Agreement with SunGard Mailing Services consenting to the assignment by SunGard Mailing Services to Pinnacle Data Systems L.L.C. for Utility Bill Printing and Mailing services.

d. Presentation, possible action, and discussion to ratify a change order to the 2008 Blue Cross Blue Shield purchase order 080370, in the amount \$66,000.

- e. Presentation, possible action, and discussion on the City of College Station 2009 Legislative Program.
- f. Presentation, possible action, and discussion regarding a contract with Dan Shelley for state legislative and consulting services in the amount of \$48,000.
- g. Presentation, possible action, and discussion regarding approval of Change Order #2, in the amount of \$281,903.50 to contract 07-229 with Brazos Valley Services, to adjust quantities for construction of the parallel water transmission line.
- h. Presentation, possible action, and discussion regarding approval of a Needs Resolution that will authorize City staff to negotiate for the purchase of easements needed for the Koppe Bridge Lift Station project.
- i. Presentation, possible action and discussion to approve an annual purchase order for disposal of heavy brush at the City of Bryan Composting Facility. This item is exempt from competitive bidding as described in Texas Local Government Code, Chapter 252.022.
- j. 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.
- k. Presentation, possible action, and discussion on consideration of an ordinance modifying Chapter 10, "Traffic Code," Section 2.E of the Code of Ordinances of the City of College Station by updating the Traffic Control Device Inventory – Schedule IV.
- l. Presentation, possible action, and discussion regarding an Agreement for Services with the Brazos Valley Softball Umpires Association to provide officiating services for City athletic leagues and programs (Contract Number 09-085) in an amount not to exceed \$128,980.00 per year.
- m. Presentation, possible action, and discussion to authorize funds for professional legal services from Coats Rose Ryman and Lee for litigation concerning the Weingarten Realty suit. Legal costs and expert costs are estimated to be \$650,000.
- n. Presentation, possible action, and discussion rejecting proposals received for RFP #08-99 for design, production and event management services related to a signature event for the City.
- o. Presentation, possible action, and discussion rejecting proposals received from RFP #09-16 for property management services at the Chimney Hill Shopping Center.
- p. Presentation, possible action, and discussion regarding a resolution awarding a construction contract to Jamail & Smith Construction, in the amount of \$96,538.89, for the purchase of twenty-seven (27) and installation of twenty-six (26) traffic control bollards in the Northgate District.
- q. Presentation, possible action, and discussion concerning the City Internal Auditor's Purchasing Card Follow-up Audit Report.

r. Presentation, possible action, and discussion concerning a resolution approving special warranty deeds conveying one-half undivided interest to the City of Bryan in land acquired by condemnation for Twin Oaks Landfill.

### **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 on an ordinance Budget Amendment #2 amending ordinance number 3114 which will amend the budget for the 2008-2009 Fiscal Year and authorizing amended expenditures in the amount of \$614,535 and increase the number of regular full-time positions in the budget by nine police officers; and presentation, possible action and discussion on several contingency transfers.
2. Public hearing, presentation, possible action, and discussion on an ordinance rezoning 3.67 acres from C-3, Light Commercial to PDD, Planned Development for the property located at 2849 Barron Road generally located at the southeast corner of William D. Fitch Parkway and Barron Road
3. Public hearing, presentation, possible action, and discussion on a request to rezone 10.44 acres from A-O ,Agricultural Open, to R-1, Single Family Residential, abutting Decatur Road next to Spring Creek Townhomes
4. Public hearing, presentation, possible action, and discussion regarding a Comprehensive Plan Amendment from Single-Family Residential Medium Density to Retail Regional for 5.79 acres for the property located at 4074 State Highway 6 South (Secure Care Storage Facility).
5. Public hearing, presentation, possible action and discussion on a Comprehensive Land Use Plan amendment from Industrial R&D to Residential Attached for 1.32 acres located at 300 Holleman Drive, located next to the Verizon building near Lassie Lane.

6. Public hearing, presentation, possible action, and discussion on consideration of an ordinance amending Chapter 10, "Traffic Code," to restrict parking on the north side of Greens Prairie Road adjacent to Forest Ridge Elementary School.
7. Presentation, possible action, and discussion regarding an exception to Policy to allow the Grey Wolf Trail development to connect to the City sewer system.
8. Presentation, possible action, and discussion regarding an Interlocal Agreement between the City of College Station and the College Station ISD (CSISD) for the purchase and installation of fencing for the joint City/School Parks at Pebble Creek and Jack and Dorothy Miller Parks.
9. 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, February 12, 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 9<sup>th</sup> day of February, 2009 at 2:00 p.m.



\_\_\_\_\_  
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](http://www.cstx.gov). The Agenda and Notice are readily accessible to the general public at all times. Said Notice and Agenda were posted on February 9, 2009 at 2:00 p.m. 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.

\_\_\_\_\_  
*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*

City Council Regular Meeting

Page 5

Thursday, February 12, 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](http://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*



**Mayor**  
Ben White  
**Mayor ProTem**  
Lynn McIlhaney  
**City Manager**  
Glenn Brown

**Councilmembers**  
John Crompton  
James Massey  
Dennis Maloney  
Lawrence Stewart  
David Ruesink

**Draft Minutes**  
**City Council Workshop & Regular Meeting**  
**Thursday, January 22, 2009 at 3:00 pm and 7:00 pm**  
**City Hall Council Chambers, 1101 Texas Avenue**  
**College Station, Texas**

**COUNCIL PRESENT:** Mayor White, Council members Maloney, Crompton, Massey, Ruesink, Stewart

**COUNCIL ABSENT:** Mayor Pro Tem McIlhaney

**STAFF PRESENT:** City Manager Brown, Assistant City Manager Merrill, Assistant City Manager 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.**

No discussion was held.

**Workshop Agenda Item No. 2 -- Presentation, possible action, and discussion regarding City-wide Grounds Maintenance of Public Property, specifically related to Parks and Recreation, as requested by Council at the August 28, 2008 meeting.**

Director of Parks and Recreation Tony Cisneros presented a report on the City's responsibility to maintain public properties throughout the City. He displayed a GIS map of city maintenance properties and a sample grounds maintenance bid tab.

Numerous discussion points were made about level of service. Council stated that additional data is necessary before direction is given on this item.

Staff was directed to prepare a cost benefit analysis of private grounds maintenance services and internal resources, as well as providing more companies the opportunity to bid. It was also noted that the HOA's may be interested in providing neighborhood park maintenance.

No official action was taken.

**Workshop Agenda Item No. 3 -- Presentation, possible action, and discussion regarding City Facility Landscape and Streetscape Guidelines, as requested by Council at the August 28, 2008 meeting.**

Director of Parks and Recreation Tony Cisneros provided this presentation in response to Council's request at the August 28, 2008 meeting. He presented a summary of the proposed guidelines for the development and

City Council Workshop & Regular Minutes  
Thursday, January 22, 2009

redevelopment of city facility landscape and streetscapes. Parks and Recreation Advisory Board voted unanimously to recommend approval of these guidelines.

Council directed staff to move forward if cost were feasible.

No formal action was taken.

**Workshop Agenda Item No. 4 -- Presentation, possible action and discussion regarding the Expansion of College Station Utilities' Underground Electric System.**

Director of Electric Utilities David Massey and Assistant Director Tim Crabb presented an overview of past, present, and proposed underground locations of electric power lines within the City's Electric service territory. Specific discussion related to power lines along thoroughfares, high-profile areas, and power lines within residential and commercial developments.

Council requested additional information. For example; special rate class and other ratios in Texas.

No formal action was taken.

**Workshop Agenda Item No. 5 -- Council Calendar**

Council reviewed activity calendar.

**Workshop Agenda Item No. 6 -- 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.**

Council member Maloney inquired about the process for designation of County Commissioner Precincts. City Manager Glenn Brown reported on the city's involvement in the 2010 Census activity.

**Workshop Agenda Item No. 7 -- 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).**

Council member Massey – IGC meeting & the RVP gave an update on the Innovation center.

Council member Maloney – Transportation meeting.

Council member Ruesink – reported on the CVB meeting and the Sister's Cities meeting. He requested a proclamation for visiting delegates from Sister City Kazan Russia.

Mayor White – reported on Metropolitan Planning Organization meeting and Wolf Pen Creek TIF Board.

At 5:10 pm Mayor White announced that the City Council would convene into executive session pursuant to Section 551.071 of the Open Meetings Act to seek the advice of our city attorney.

City Council Workshop & Regular Minutes  
Thursday, January 22, 2009

**Workshop Agenda Item No. 8 -- Executive Session will immediately follow the workshop meeting in the Administrative Conference Room.**

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

**Workshop Agenda Item No. 9 -- 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 6:55 pm, Council adjourned from the executive session and returned to Council Chambers. No formal action was taken.

**Workshop Agenda Item No. 10 -- 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. Mayor White led the audience in the Pledge of Allegiance. Fire Chief R.B. Alley provided the invocation.

City Council Workshop & Regular Minutes  
Thursday, January 22, 2009

Council member Maloney made a motion to approve the request for absence from Mayor Pro Tem McIlhaney. Council member Massey seconded the motion, which carried 6-0.

FOR: Mayor White, Crompton, Massey, Maloney, Stewart and Ruesink

AGAINST: None

**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 November 20, 2008, December 4, 2008, and January 8, 2009 meeting.
- b. Approved 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. Approved **Ordinance No. 3157** 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. Approved **Ordinance No. 3158** 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. Approved **Ordinance No. 3159** 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. Approved the City's authorized Brokers/Dealers for investments.
- g. Approved **Resolution No. 01-22-09-2g** to open a second Investment Pool account with Texas Short Term Asset Reserve Program ("TexSTAR").
- h. Approved **Resolution No. 01-22-09-2h** on 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. Approved the 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. Approved 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

City Council Workshop & Regular Minutes  
Thursday, January 22, 2009

payment is so authorized in an amount not to exceed \$387,000 for BVSWMA deliveries for the fourth renewal period term.

k. Approved 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. Approved 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. Approved the 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 and ratify an additional \$40,040.19 expended and provide funds for additional legal costs associated with this project.

n. Approved the 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 of ratifying an additional \$27,737.90 expended.

o. Approved **Resolution No. 01-22-09-2o** 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. Approved the 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. Approved **Resolution No. 01-22-09-2q** 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.

Council member Maloney moved to approve consent agenda items 2a thru 2q. Council member Stewart seconded the motion, which carried 6-0.

FOR: Mayor White, Crompton, Massey, Maloney, Stewart, Ruesink

AGAINST: None

ABSENT: Mayor Pro Tem McIlhaney

**Regular Agenda Item No. 1 -- Public hearing, presentation, possible action, and discussion regarding proposed changes to the City's smoking ordinance.**

Hayden Migl, Assistant to the City Manager presented the proposed smoking ordinance.

Mayor White opened the public hearing.

Arin Robertson, 800 Marion Pugh #315 – TAMU student from TAMU School of Rural Public Health spoke in favor of ordinance.

City Council Workshop & Regular Minutes  
Thursday, January 22, 2009

Ashley Pudnos, 603 Southwest Pkwy #103 – TAMU student from TAMU School of Rural Public Health spoke in favor of ordinance.

Jennifer Pate, 4637 N. Graham Rd – TAMU student from TAMU School of Rural Public Health spoke in favor of ordinance.

Brooks Macdonald, 2920 Kent #184 opposed the ordinance.

Anthony Salvaggio, TAMU Student spoke in favor of ordinance.

Jess Fields, spoke in opposition to the ordinance.

Philip Brinson, 3711 Briarpark, Houston – owner of Fast Eddies Billiards, expressed that the ordinance will negatively impact his business.

Cary Haynes, 1501 Stallings # 47 – TAMU student in favor of smoking ordinance.

Brian Calwell, 16716 Woodlake Dr. spoke in favor of smoking ordinance.

Arthur Castro, 1203 Haines Dr. – supported the ordinance.

Ben Reese, 2405 Trace Meadows spoke in favor of smoking ordinance.

Joyner Faulk, 1423 Magnolia – expressed concerns of smoking hazards and health issues.

Dr. Mark Sicilio, 126 Lee expressed the hazards of second hand smoking and public health issues. He also explained about 15 products in cigarettes that harm the body.

Alicia Ramirez, 600 University Oaks Blvd. spoke in favor of the smoking ordinance.

Dr. Erin Fleener, a local oncologist spoke against the ordinance due to public health concerns

Bryan Alg – spoke against the ordinance.

Jerry Fowler – spoke against the ordinance.

Nichols Dyer – spoke against the ordinance.

Donald Mess – spoke against the ordinance.

Gina Midorff of BVCASA spoke in favor of smoking ordinance.

Jennifer Peters – TAMU student spoke in favor of smoking ordinance.

Sergio Espena – TAMU student spoke against the ordinance.

Bryan Johnson – TAMU student spoke against the ordinance.

Sarah Mendez, representing Brazos County Health Department supported the ban of smoking in bars.

Kristine Weaver - American Cancer Association spoke in favor of the ordinance.

Luke Bonds – TAMU student spoke in favor of the ordinance.

Daniel owner of Mad hatters, - against ordinance and inquired if the owner or business will be in violation if someone smokes (smoking ordinance.)

Karen Torres - in favor of smoking ordinance.

Austin English – in political science and against ordinance.

Mayor White closed the public hearing.

Council member Maloney moved to approve **Ordinance No. 3160** 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 for a severability clause; declaring a penalty and providing an effective date. Council member Massey seconded the motion, which carried 6-0.

FOR: Mayor White, Crompton, Massey, Maloney, Stewart and Ruesink

AGAINST: None

ABSENT: Mayor Pro Tem McIlhaney

City Council Workshop & Regular Minutes  
Thursday, January 22, 2009

**Regular Agenda Item No. 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.**

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

Mayor White opened the public hearing. Tom Woodfin, a member of the Planning and Zoning Commission made positive comments about the proposed amendment. Mayor White closed the public hearing.

Council member Crompton made a motion to approve **Ordinance No. 3161** amending Chapter 12, 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. Council member Maloney seconded the motion, which carried 6-0.

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

**Regular Agenda Item No. 3 -- Presentation, possible action, and discussion regarding the City’s appointment to the Joint Relief Funding Review Committee.**

City Secretary Connie Hooks requested Council make reappointment to the Joint Relief Funding Review Committee.

Council member Maloney made a motion to approve the reappointment of Kevin Byrne for a three year term expiring December 2011. Council member Massey seconded the motion, which carried 6-0.

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

**Regular Agenda Item No. 4 -- Adjourn.**

Hearing no objections, Mayor White adjourned the meetings at 8:36 pm on Thursday, January 22, 2009.

PASSED AND APPROVED this 12<sup>th</sup> day of February, 2009.

APPROVED

\_\_\_\_\_  
Mayor Ben White

ATTEST:

\_\_\_\_\_  
City Secretary Connie Hooks

**February 12, 2009**  
**Consent Agenda Item No. 2b**  
**Bank of New York Custody Agreement**

**To:** Glenn Brown, City Manager

**From:** Jeff Kersten, Chief Financial Officer

**Agenda Caption:** Presentation, possible action, and discussion on a resolution amending the Custody Agreement between the City and Bank of New York Mellon and to amend the authorized persons on the account.

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

**Summary:** In 1993 the City of College Station ("City") entered into a Custody Agreement with Texas Commerce Bank which eventually became known as JP Morgan Chase. In 2007, Bank of New York Mellon ("BONY") purchased the Corporate Trust division of JP Morgan Chase. The custody agreement appoints BONY as the City's custodian of all U.S. Securities and cash delivered and authorizes the custodian to hold the securities in registered form in the City's name. BONY furnishes the City with a monthly summary of all account transfers and activity. The custody agreement pertains only to the investments purchase or sold.

The resolution designates those employees that are able to act as authorized person for the City's investments.

**Budget & Financial Summary:** None.

**Attachments:**

1. Resolution
2. Bank of New York Custody Agreement
3. Certificate of Authorized Persons

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COLLEGE STATION, TEXAS, APPROVING A NEW CUSTODY AGREEMENT AND CERTIFICATE OF AUTHORIZED PERSONS TO REPLACE THE EXISTING AGREEMENT AND CERTIFICATE BETWEEN THE CITY OF COLLEGE STATION, AND THE BANK OF NEW YORK TRUST COMPANY N.A. AND AUTHORIZING THE MAYOR TO EXECUTE THE NEW CUSTODY AGREEMENT AND CERTIFICATE OF AUTHORIZED PERSONS.

WHEREAS, the City Council of the City of College Station, Texas, approves a Custody Agreement between the City of College Station, and the Bank of New York Trust Company; and

WHEREAS, the Agreement contains 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 accept 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 12th day of February, A.D. 2009.

ATTEST:

APPROVED:

\_\_\_\_\_  
City Secretary

\_\_\_\_\_  
MAYOR

APPROVED:

Carlo A. Robinson  
City Attorney



The **BANK**  
of **NEW YORK**

## CUSTODY AGREEMENT

(U.S. Securities)

AGREEMENT, dated as of February 1, 2009 between ("Customer") The City of College Station, Texas and The Bank of New York Trust Company, National Association ("Custodian").

### ARTICLE I DEFINITIONS

Whenever used in this Agreement, the following words shall have the meanings set forth below:

1. "Authorized Person" shall be any person, whether or not an officer or employee of Customer, duly authorized by Customer to give Oral and/or Written Instructions on behalf of Customer, such persons to be designated in a Certificate of Authorized Persons which contains a specimen signature of such person.
2. "BNY Affiliate" shall mean any office, branch or subsidiary of The Bank of New York Company, Inc.
3. "Book Entry System" shall mean the Federal Reserve/Treasury book entry system for receiving and delivering securities, its successors and nominees.
4. "Business Day" shall mean any day on which Custodian, Book Entry System and relevant Depositories are open for business.
5. "Depository" shall include the Depository Trust Company, the Participants Trust Company and any other securities depository or clearing agency (and their respective successors and nominees) registered with the Securities and Exchange Commission or otherwise authorized to act as a securities depository or clearing agency.
6. "Oral Instructions" shall mean instructions received verbally by Custodian.
7. "U.S. Securities" shall include, without limitation, common stock and other equity securities, bonds, debentures and other debt securities, notes, mortgages or other obligations, and any instruments representing rights to receive, purchase, or subscribe for the same, or representing any other rights or interests therein (whether represented by a certificate or held in the Book-Entry System, a Depository or on the books of the issuer).
8. "Written Instructions" shall mean written communications actually received by Custodian by S.W.I.F.T., tested telex, letter, email, facsimile transmission, or other method or system specified by Custodian as available for use in connection with the services hereunder.

### ARTICLE II APPOINTMENT OF CUSTODIAN; ACCOUNTS; REPRESENTATION AND WARRANTIES

1. Customer hereby appoints Custodian as custodian of all U.S. Securities and cash at any time delivered to Custodian during the term of this Agreement, and authorizes Custodian to hold U.S. Securities in registered form in its name or the name of its nominees. Custodian hereby accepts such appointment and agrees to establish and maintain one or more securities accounts and cash accounts in the name of Customer (collectively, the "Account") in which it will hold U.S. Securities and cash as provided herein.
2. Customer hereby represents and warrants, which representations and warranties shall be continuing and shall be deemed to be reaffirmed upon each Oral or Written Instruction given by Customer, that:

(a) Customer is duly organized and existing under the laws of the jurisdiction of its organization, with full power to carry on its business as now conducted, to enter into this Agreement and to perform its obligations hereunder;

(b) This Agreement has been duly authorized, executed and delivered by Customer, constitutes a valid and legally binding obligation of Customer, enforceable in accordance with its terms, and no statute, regulation, rule, order, judgment or contract binding on Customer prohibits Customer's execution or performance of this Agreement; and

(c) Either Customer owns the U.S. Securities in the Account free and clear of all liens, claims, security interests and encumbrances (except those granted herein) or, if the U.S. Securities are owned beneficially by others, Customer has the right to pledge such U.S. Securities to the extent necessary to secure Customer's obligations hereunder, free of any right of redemption or prior claim by the beneficial owner. Custodian's security interest pursuant to Article V hereof shall be a first lien and security interest subject to no setoffs, counterclaims or other liens prior to or on a parity with it in favor of any other party (other than specific liens granted preferred status by statute), and Customer shall take any and all additional steps which are required to assure Custodian of such priority and status, including notifying third parties or obtaining their consent to, Custodian's security interest.

### ARTICLE III CUSTODY AND RELATED SERVICES

1. Subject to the terms hereof, Customer hereby authorizes Custodian to hold any Securities received by it from time to time for Customer's account. Custodian shall be entitled to utilize the Book Entry System and Depositories to the extent possible in connection with its performance hereunder. Securities and cash deposited by Custodian in the Book-Entry System or a Depository will be held subject to the rules, terms and conditions of the Book-Entry System or such Depository. Custodian shall identify on its books and records the U.S. Securities and cash belonging to Customer, whether held directly or indirectly through the Book-Entry System or a Depository. U.S. Securities and cash of Customer deposited in the Book Entry System or a Depository will be represented in accounts which include only assets held by Custodian for its customers.

2. Custodian shall furnish Customer with a monthly summary of all account transfers and activity; unless client has given other direction. Customer hereby waives the right to receive hard copy written transaction advices. The forgoing waiver may be rescinded at any time in writing to the custodian. Customer may elect to receive advices, confirmations, reports or statements electronically through the Internet. By electing to use the Internet for this purpose, Customer acknowledges that such transmissions are not encrypted and therefore are insecure. Customer further acknowledges that there are other risks inherent in communicating through the Internet such as the possibility of virus contamination and disruptions in service, and agrees that Custodian shall not be responsible for any loss, damage or expense suffered or incurred by Customer or any person claiming by or through Customer as a result of the use of such methods.

3. With respect to all U.S. Securities held in the Account, Custodian shall, unless otherwise instructed to the contrary:

(a) Receive all income and other payments and advise Customer as promptly as practicable of any such amounts due but not paid;

(b) Present for payment and receive the amount paid upon all U.S. Securities which may mature and advise Customer as promptly as practicable of any such amounts due but not paid;

(c) Forward to Customer all information or documents that it may receive from an issuer of U.S. Securities which, in the opinion of Custodian, are intended for the beneficial owner of U.S. Securities;

(d) 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;

(e) Hold directly, or through the Book Entry System or a Depository, all rights and similar U.S. Securities issued with respect to any U.S. Securities credited to the Account hereunder; and

(f) Endorse for collection checks, drafts or other negotiable instruments.

4. (a) Custodian shall notify Customer of such rights or discretionary actions or of the date or dates by when such rights must be exercised or such action must be taken provided that Custodian has received, from the issuer or the relevant Depository, timely notice of such rights or discretionary corporate action or of the date or dates such rights must be exercised or such action must

be taken. Communication shall be delivered by Inform, S.W.I.F.T., tested telex, letter, email, facsimile transmission, or other method or system specified by Custodian as available for use in connection in this agreement. Absent actual receipt of such notice, Custodian shall have no liability for failing to so notify Customer and Custodian shall follow timely directions received in writing through one of the Communication processes so specified by the Custodian.

(b) Whenever U.S. Securities (including, but not limited to, warrants, options, tenders, options to tender or non mandatory puts or calls) confer optional rights on Customer or provide for discretionary action or alternative courses of action by Customer, Customer shall be responsible for making any decisions relating thereto and for directing Custodian to act. In order for Custodian to act, it must receive Customer's Written Instructions at Custodian's offices, addressed as Custodian may from time to time request, not later than noon (Florida time) at least two (2) Business Days prior to the last scheduled date to act with respect to such U.S. Securities (or such earlier date or time as Custodian may notify Customer). Absent Custodian's timely receipt of such Written Instructions, Custodian shall not be liable for failure to take any action relating to or to exercise any rights conferred by such U.S. Securities.

5. Custodian will make available to Customer proxy voting services upon the request of, Customer in accordance with terms and conditions to be mutually agreed upon by Custodian and Customer.

6. Custodian shall promptly advise Customer upon its notification of the partial redemption, partial payment or other action affecting less than all U.S. Securities of the relevant class. If Custodian or Depository holds any such U.S. Securities in which Customer has an interest as part of a fungible mass, Custodian or Depository may select the U.S. Securities to participate in such partial redemption, partial payment or other action in any non-discriminatory manner that it customarily uses to make such selection.

7. Custodian shall not under any circumstances accept bearer interest coupons which have been stripped from United States federal, state or local government or agency securities unless explicitly agreed to by Custodian in writing.

8. Any foreign exchange transaction effected by Custodian in connection with this Agreement may be entered with Custodian or a BNY Affiliate acting as principal or otherwise through customary banking channels. Customer may issue standing Written Instructions with respect to foreign exchange transactions but Custodian may establish rules or limitations concerning any foreign exchange facility made available to Customer. Customer shall bear all risks of holding cash denominated in a foreign currency. Without limiting the foregoing, Customer shall bear the risks that rules or procedures imposed by Depositories, exchange controls, asset freezes or other laws, rules, regulations or orders shall prohibit or impose burdens or costs on the transfer to, by or for the account of Customer of property held outside Customer's jurisdiction or denominated in a currency other than its home jurisdiction or the conversion of cash from one currency into another currency. Custodian shall not be obligated to substitute another currency for a currency whose transferability, convertibility or availability has been affected by such law, regulation, rule or procedure. Custodian shall not be liable to Customer for any loss resulting from any of the foregoing events.

9. To the extent that Custodian has agreed to provide pricing or other information services in connection with this Agreement, Custodian is authorized to utilize any vendor (including brokers and dealers of Securities) reasonably believed by Custodian to be reliable to provide such information. Customer understands that certain pricing information with respect to complex financial instruments (e.g., derivatives) may be based on calculated amounts rather than actual market transactions and may not reflect actual market values, and that the variance between such calculated amounts and actual market values may or may not be material. Where vendors do not provide information for particular Securities or other property, an Authorized Person may advise Custodian regarding the fair market value of, or provide other information with respect to, such Securities or property as determined by it in good faith. Custodian shall not be liable for any loss, damage or expense incurred as a result of errors or omissions with respect to any pricing or other information utilized by Custodian hereunder.

10. As an accommodation to Customer, Custodian may provide consolidated recordkeeping services pursuant to which Custodian reflects on Account statements Securities not held in Custodian's vault or for which Custodian or its nominee is not the registered owner ("Non-Custody Securities"). Non-Custody Securities shall be designated on Custodian's books as "shares not held" or by other similar characterization. Customer acknowledges and agrees that it shall have no security entitlement against Custodian with respect to Non-Custody Securities, that Custodian shall rely, without independent verification, on information provided by Customer regarding Non-Custody Securities (including but not limited to positions and market valuations) and that Custodian shall have no responsibility whatsoever with respect to Non-Custody Securities or the accuracy of any information maintained on Custodian's books or set forth on account statements concerning Non-Custody Securities.

11. From time to time Custodian may make available to Customer or its agent(s) certain services, computer programs or other products or services (collectively, "Tools") that allow Customer or its agent(s) to perform certain analytic, accounting, compliance, reconciliation and other functions with respect to the Securities and other assets in the Account. By way of example, Tools may assist Customer or its agent(s) in analyzing the performance of investment managers appointed by Customer, determining

on a post-trade basis whether transactions for the Account comply with Customer's investment guidelines, evaluating assets at risk, and account reconciliation. Such Tools, whether or not modified to meet specific needs of Customer, are provided "AS IS" and CUSTODIAN DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE TOOLS, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE. ANYTHING IN THIS AGREEMENT TO THE CONTRARY NOTWITHSTANDING, CUSTODIAN SHALL NOT BE LIABLE FOR ANY LOSS, EXPENSE, DAMAGE, LIABILITY OR CLAIM SUFFERED OR INCURRED BY CUSTOMER, ITS AGENT(S) OR ANY OTHER PERSON AS A RESULT OF USE OF, OR RELIANCE UPON, ANY TOOLS BY CUSTOMER, ITS AGENT(S) OR ANY OTHER PERSON.

**ARTICLE IV  
PURCHASE AND SALE OF U.S. SECURITIES;  
CREDITS TO ACCOUNT**

1. Promptly after each purchase or sale of U.S. Securities by Customer, an Authorized Person shall deliver to Custodian Written Instructions specifying all information necessary for Custodian to settle such purchase or sale. Custodian shall account for all purchases and sales of U.S. Securities on the actual settlement date unless otherwise agreed by Custodian.

2. Customer understands that when Custodian is instructed to deliver U.S. Securities against payment, delivery of such U.S. Securities and receipt of payment therefor may not be completed simultaneously. Customer assumes full responsibility for all credit risks involved in connection with Custodian's delivery of U.S. Securities pursuant to instructions of Customer.

3. Custodian may, as a matter of bookkeeping convenience or by separate agreement with Customer, credit the Account with the proceeds from the sale, redemption or other disposition of U.S. Securities or interest, dividends or other distributions payable on U.S. Securities prior to its actual receipt of final payment therefor. All such credits shall be conditional until Custodian's actual receipt of final payment and may be reversed by Custodian to the extent that final payment is not received. Payment with respect to a transaction will not be "final" until Custodian shall have received immediately available funds which under applicable law or rule are irreversible and not subject to any security interest, levy or other encumbrance, and which are specifically applicable to such transaction.

**ARTICLE V  
OVERDRAFTS OR INDEBTEDNESS**

If Custodian in its sole discretion advances funds to Customer or there shall arise for whatever reason an overdraft in the Account (including, without limitation, overdrafts incurred in connection with the settlement of securities transactions or funds transfers) or if Customer is for any other reason indebted to Custodian, Customer agrees to repay Custodian on demand the amount of the advance, overdraft or indebtedness plus accrued interest at a rate ordinarily charged by Custodian to its institutional custody customers. In order to secure repayment of Customer's obligations to Custodian hereunder, Customer hereby agrees that Custodian shall have a continuing lien and security interest in, and right of set-off against, all U.S. Securities, money and other property now or hereafter held in the Account (including proceeds thereof), and any other property at any time held by it for the account of Customer. In this regard, Custodian shall be entitled to all the rights and remedies of a pledgee under common law and a secured party under the New York Uniform Commercial Code and any other applicable laws, rules or regulations as then in effect.

**ARTICLE VI  
CONCERNING CUSTODIAN**

1. (a) Except as otherwise expressly provided herein, Custodian shall not be liable for any costs, expenses, damages, liabilities or claims including attorneys' and accountants' fees (collectively, "Losses") incurred by or asserted against Customer, except those Losses arising out of the negligence or willful misconduct of Custodian. Custodian shall have no obligation hereunder for Losses which are sustained or incurred by reason of any action or inaction by the Book-Entry System or any Depository or issuer of Securities. In no event shall Custodian be liable to Customer or any third party for special, indirect or consequential damages, or lost profits or loss of business, arising in connection with this Agreement.

(b) Customer agrees to indemnify, save and hold Custodian harmless from and against any and all Losses sustained or incurred by or asserted against Custodian by reason of or as a result of any action or inaction, or arising out of Custodian's performance hereunder, including reasonable fees and expenses of counsel incurred by Custodian in a successful defense of claims by Customer; provided, that Customer shall not indemnify Custodian for those Losses arising out of Custodian's negligence or willful misconduct. This indemnity shall be a continuing obligation of Customer, its successors and assigns, notwithstanding the termination of this Agreement.

2. Without limiting the generality of the foregoing, Custodian shall be under no obligation to inquire into, and shall not be liable for, any losses incurred by Customer or any other person as a result of the receipt or acceptance of fraudulent, forged or invalid U.S. Securities, or U.S. Securities which are otherwise not freely transferable or deliverable without encumbrance.
3. Custodian may, with respect to questions of law specifically regarding the Account, obtain the advice of counsel and shall be fully protected with respect to anything done or omitted by it in good faith in conformity with such advice.
4. Custodian shall be under no obligation to take action to collect any amount payable on U.S. Securities in default, or if payment is refused after due demand and presentment.
5. Custodian shall have no duty or responsibility to inquire into, make recommendations, supervise, or determine the suitability of any transactions affecting any Account.
6. Customer shall pay to Custodian the fees and charges as may be specifically agreed upon from time to time and such other fees and charges at Custodian's standard rates for such services as may be applicable. Customer shall reimburse Custodian for all costs associated with the conversion of Customer's U.S. Securities hereunder and the transfer of U.S. Securities and records kept in connection with this Agreement. Customer shall also reimburse Custodian for out of pocket expenses which are a normal incident of the services provided hereunder. Custodian may debit the Account for amounts payable hereunder which remain in arrears for over 60 days.
7. In addition to the rights of Custodian under applicable law and other agreements, at any time when Customer shall not have honored any and all of its obligations to Custodian, whether or not relating to or arising under this Agreement, Custodian shall have the right without notice to Customer to retain or set-off, against such obligations of Customer, any U.S. Securities or cash Custodian or a BNY Affiliate may directly or indirectly hold for the account of Customer, and any obligations (whether matured or unmatured) that Custodian or a BNY Affiliate may have to Customer. Any such asset of, or obligation to, Customer may be transferred to Custodian and any BNY Affiliate in order to effect the above rights.
8. (a) Subject to the terms below, Custodian shall be entitled to rely upon any Written or Oral Instructions actually received by Custodian and reasonably believed by Custodian to be duly authorized and delivered. Customer agrees that an Authorized Person shall forward to Custodian Written Instructions confirming Oral Instructions by the close of business of the same day that such Oral Instructions are given to Custodian. Customer agrees that the fact that such confirming Written Instructions are not received or that contrary Written Instructions are received by Custodian shall in no way affect the validity or enforceability of transactions authorized by such Oral Instructions and effected by Custodian.  
  
(b) If Custodian receives Written Instructions which appear on their face to have been transmitted by an Authorized Person via (i) computer facsimile, email, the Internet or other insecure electronic method, or (ii) secure electronic transmission containing applicable authorization codes, passwords and/or authentication keys, Customer understands and agrees that Custodian cannot determine the identity of the actual sender of such Written Instructions and that Custodian shall conclusively presume that such Written Instructions have been sent by an Authorized Person. Customer shall be responsible for ensuring that only Authorized Persons transmit such Written Instructions to Custodian and that all Authorized Persons treat applicable user and authorization codes, passwords and/or authentication keys with extreme care.  
  
(c) Customer acknowledges and agrees that it is fully informed of the protections and risks associated with the various methods of transmitting Written Instructions to Custodian and that there may be more secure methods of transmitting Written Instructions than the method(s) selected by Customer. Customer agrees that the security procedures (if any) to be followed in connection with its transmission of Written Instructions provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances.  
  
(d) If Customer elects to transmit Written Instructions through an on-line communication system offered by Custodian, Customer's use thereof shall be subject to the Terms and Conditions attached hereto as Appendix I. If Customer elects (with Custodian's prior consent) to transmit Written Instructions through an on-line communications service owned or operated by a third party, Customer agrees that Custodian shall not be responsible or liable for the reliability or availability of any such service.
9. Upon reasonable request and provided Custodian shall suffer no significant disruption of its normal activities, Customer shall have access to Custodian's books and records relating to the Account during Custodian's normal business hours. Upon reasonable request, copies of any such books and records shall be provided to Customer at Customer's expense.
10. It is understood that Custodian is authorized to supply any information regarding the Account which is required by any law, regulation or rule now or hereafter in effect.

11. 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; interruptions, loss or malfunctions of utilities, computer (hardware or software) or communications service; accidents; labor disputes; acts of civil or military authority or governmental actions; it being understood that Custodian shall use its best efforts to resume performance as soon as practicable under the circumstances.

12. Custodian is hereby authorized to assign its rights and delegate its duties hereunder to any BNY Affiliate, whenever and on such terms and conditions as it deems necessary or appropriate to perform its services hereunder, without any further notice to Customer. Customer agrees to be bound by all actions taken by a BNY Affiliate pursuant to the preceding sentence to the same extent as if they were taken by Custodian, it being understood and agreed that no such assignment or delegation shall discharge Custodian from its obligations hereunder. Customer each further agrees that any BNY Affiliate providing services pursuant to the foregoing authorization shall be entitled to all of the protections afforded to Custodian under this Agreement (including, without limitation, pursuant to Articles V and VI). If so advised by Custodian, Customer shall provide Oral or Written Instructions or other information to a BNY Affiliate rather than to Custodian.

13. 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.

#### ARTICLE VII TERMINATION

Either party may terminate this Agreement by giving to the other party a notice in writing specifying the date of such termination, which shall be not less than ninety (90) days after the date of such notice. Upon termination hereof, Customer shall pay to Custodian such compensation as may be due to Custodian, and shall likewise reimburse Custodian for other amounts payable or reimbursable to Custodian hereunder. Custodian shall follow such reasonable Oral or Written Instructions concerning the transfer of custody of records, U.S. Securities and other items as Customer shall give; provided, that (a) Custodian shall have no liability for shipping and insurance costs associated therewith, and (b) full payment shall have been made to Custodian of its compensation, costs, expenses and other amounts to which it is entitled hereunder. If any U.S. Securities or cash remain in the Account, Custodian may deliver to Customer such U.S. Securities and cash. Upon termination of this Agreement, except as otherwise provided herein, all obligations of the parties to each other hereunder shall cease.

#### ARTICLE VIII MISCELLANEOUS

1. Customer agrees to furnish to Custodian a new Certificate of Authorized Persons in the event of any change in the then present Authorized Persons. Until such new Certificate is received, Custodian shall be fully protected in acting upon Oral Instructions and Written Instructions of such present Authorized Persons.

2. Any notice or other instrument in writing, authorized or required by this Agreement to be given to Custodian, shall be sufficiently given if addressed to Custodian and received by it at its offices at 10161 Centurion Parkway, Jacksonville, Florida 32256 or at such other place as Custodian may from time to time designate in writing.

3. Any notice or other instrument in writing, authorized or required by this Agreement to be given to Customer shall be sufficiently given if addressed to Customer and received by it at its offices at 1101 Texas Ave. College Station, TX 77842 or at such other place as Customer may from time to time designate in writing.

4. Each and every right granted to either party hereunder or under any other document delivered hereunder or in connection herewith, or allowed it by law or equity, shall be cumulative and may be exercised from time to time. No failure on the part of either party to exercise, and no delay in exercising, any right will operate as a waiver thereof, nor will any single or partial exercise by either party of any right preclude any other or future exercise thereof or the exercise of any other right.

5. In case any provision in or obligation under this Agreement shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations shall not in any way be affected thereby. This Agreement may not be amended or modified in any manner except by a written agreement executed by both parties. This Agreement shall extend to and shall be binding upon the parties hereto, and their respective successors and assigns; provided however, that this Agreement shall not be assignable by either party without the written consent of the other.

6. (a) This Agreement shall be construed in accordance with the substantive laws of the State of Florida, without regard to conflicts of laws principles thereof. Customer and Custodian hereby consent to the jurisdiction of a state or federal court situated in Florida in connection with any dispute arising hereunder. To the extent that in any jurisdiction Customer 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, Customer irrevocably agrees not to claim, and it hereby waives, such immunity. Customer 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.

(b) The parties hereto agree that the establishment and maintenance of the Account, and all interests, duties and obligations with respect thereto, shall be governed by the laws of the State of Florida.

(c) **For Governmental Entities:** If permissible by law; to the extent that in any jurisdiction Customer 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, Customer irrevocably agrees not to claim, and it hereby waives, such immunity

7. The parties hereto agree that in performing hereunder, Custodian is acting solely on behalf of Customer and no contractual or service relationship shall be deemed to be established hereby between Custodian and any other person.

8. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but such counterparts shall, together, constitute only one instrument.

9. Customer hereby acknowledges that Custodian is subject to federal laws, including the Customer Identification Program (CIP) requirements under the USA PATRIOT Act and its implementing regulations, pursuant to which Custodian must obtain, verify and record information that allows Custodian to identify Customer. Accordingly, prior to opening an Account hereunder Custodian will ask Customer to provide certain information including, but not limited to, Customer's name, physical address, tax identification number and other information that will help Custodian to identify and verify Customer's identity such as organizational documents, certificate of good standing, license to do business, or other pertinent identifying information. Customer agrees that Custodian cannot open an Account hereunder unless and until the Custodian verifies the Customer's identity in accordance with its CIP.

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

**CITY OF COLLEGE STATION, TEXAS**

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

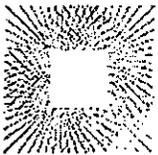
74-6000534  
Tax Identification No

**THE BANK OF NEW YORK TRUST CO. N.A.**

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date



*The* **BANK**  
*of* **NEW YORK.**

bnyfus.doc  
(12/05)

APPENDIX I

THE BANK OF NEW YORK  
ON-LINE COMMUNICATIONS SYSTEM (THE "SYSTEM")

TERMS AND CONDITIONS

1. License; Use. (a) This Appendix I shall govern Customer's use of the System and any computer software provided by BNY to Customer in connection herewith (collectively, the "Software"). In the event of any conflict between the terms of this Appendix I and the main body of this Agreement with respect to Customer's use of the System, the terms of this Appendix I shall control.

(b) Upon delivery to Customer of Software and/or System access codes, Custodian grants to Customer a personal, nontransferable and nonexclusive license to use the Software and the System solely for the purpose of transmitting Written Instructions, receiving reports, making inquiries or otherwise communicating with Custodian in connection with the Account(s). Customer shall use the Software and the System solely for its own internal and proper business purposes and not in the operation of a service bureau. Except as set forth herein, no license or right of any kind is granted to Customer with respect to the Software or the System. Customer acknowledges that Custodian and its suppliers retain and have title and exclusive proprietary rights to the Software and the System, including any trade secrets or other ideas, concepts, know-how, methodologies, or information incorporated therein and the exclusive rights to any copyrights, trademarks and patents (including registrations and applications for registration of either), or other statutory or legal protections available in respect thereof. Customer further acknowledges that all or a part of the Software or the System may be copyrighted or trademarked (or a registration or claim made therefor) by Custodian or its suppliers. Customer shall not take any action with respect to the Software or the System inconsistent with the foregoing acknowledgments, nor shall Customer attempt to decompile, reverse engineer or modify the Software. Customer may not copy, sell, lease or provide, directly or indirectly, any of the Software or any portion thereof to any other person or entity without Custodian's prior written consent. Customer may not remove any statutory copyright notice or other notice included in the Software or on any media containing the Software. Customer shall reproduce any such notice on any reproduction of the Software and shall add any statutory copyright notice or other notice to the Software or media upon Custodian's request.

(c) If Customer subscribes to any database service provided by Custodian in connection with its use of the System, delivery of such database to Customer shall constitute the granting by Custodian to Customer of a non-exclusive, non-transferable license to use such database for so long as this Appendix I is in effect. It is understood and agreed that any database supplied by Custodian is derived from sources which Custodian believes to be reliable but Custodian does not, and cannot for the fees charged, guarantee or warrant that the data is correct, complete or current. All such databases are provided as an accommodation by Custodian to its customers and are compiled without any independent investigation by Custodian. However, Custodian will endeavor to update and revise each database on a periodic basis as Custodian, in its discretion, deems necessary and appropriate. Customer also agrees that Customer will promptly install all updates and revisions to each database which Custodian provides and that Custodian cannot bear any responsibility whatsoever for Customer's failure to do so. CUSTODIAN IS NOT RESPONSIBLE FOR ANY RESULTS OBTAINED BY CUSTOMER FROM USE OF DATABASE SERVICES PROVIDED BY CUSTODIAN.

2. Equipment. Customer shall obtain and maintain at its own cost and expense all equipment and services, including but not limited to communications services, necessary for it to utilize the Software and obtain access to the System, and Custodian shall not be responsible for the reliability or availability of any such equipment or services.

3. Proprietary Information. The Software, any data base and any proprietary data, processes, information and documentation made available to Customer (other than which are or become part of the public domain or are legally required to be made available to the public) (collectively, the "Information"), are the exclusive and confidential property of Custodian or its suppliers. However, for the avoidance of doubt, reports generated by Customer containing information relating to the Account(s) are not deemed to be within the meaning of the term "Information". Customer shall keep the Information confidential by using the same care and discretion that Customer uses with respect to its own confidential property and trade secrets, but not less than reasonable care. Upon termination of the Agreement or the licenses granted herein for any reason, Customer shall return to Custodian any and all copies of the Information which are in its possession or under its control. The provisions of this Section 3 shall not affect the copyright status of any of the Information which may be copyrighted and shall apply to all information whether or not copyrighted.

4. Modifications. Custodian reserves the right to modify the Software from time to time and Customer shall install new releases of the Software as Custodian may direct. Customer agrees not to modify or attempt to modify the Software without Custodian's prior written consent. Customer acknowledges that any modifications to the Software, whether by Customer or Custodian and whether with or without Custodian's consent, shall become the property of Custodian.

5. NO REPRESENTATIONS OR WARRANTIES. CUSTODIAN AND ITS MANUFACTURERS AND SUPPLIERS MAKE NO WARRANTIES OR REPRESENTATIONS WITH RESPECT TO THE SOFTWARE, THE SYSTEM, ANY SERVICES OR ANY DATABASE, EXPRESS OR IMPLIED, IN FACT OR IN LAW, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. CUSTOMER ACKNOWLEDGES THAT THE SOFTWARE, THE SYSTEM, ANY SERVICES AND ANY DATABASE ARE PROVIDED "AS IS." TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL CUSTODIAN OR ANY SUPPLIER BE LIABLE FOR ANY DAMAGES, WHETHER DIRECT, INDIRECT SPECIAL, OR CONSEQUENTIAL, WHICH CUSTOMER MAY INCUR IN CONNECTION WITH THE SOFTWARE, SERVICES OR ANY DATABASE, EVEN IF CUSTODIAN OR SUCH SUPPLIER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL CUSTODIAN OR ANY SUPPLIER BE LIABLE FOR ACTS OF GOD, MACHINE OR COMPUTER BREAKDOWN OR MALFUNCTION, INTERRUPTION OR MALFUNCTION OF COMMUNICATION FACILITIES, LABOR DIFFICULTIES OR ANY OTHER SIMILAR OR DISSIMILAR CAUSE BEYOND THEIR REASONABLE CONTROL.

6. Security; Reliance; Unauthorized Use. Custodian will establish security procedures to be followed in connection with the System. Customer understands and agrees that the security procedures are intended to determine whether instructions received by Custodian through the System are authorized but are not (unless otherwise specified in writing) intended to detect any errors contained in such instructions. Customer will cause all persons utilizing the Software and the System to treat all applicable user and authorization codes, passwords and authentication keys with the highest degree of care and confidentiality. Custodian is hereby irrevocably authorized to comply with and rely upon on Written Instructions, whether or not authorized, received by it through the System in accordance with the security procedures. Customer acknowledges that it is its sole responsibility to assure that only Authorized Persons use the System and that to the fullest extent permitted by applicable law Custodian shall not be responsible nor liable for any unauthorized use thereof or for any losses sustained by Customer arising from or in connection with the use of the System or Custodian's reliance upon and compliance with Written Instructions received through the System.

7. System Acknowledgments. Custodian shall acknowledge through the System its receipt of each transmission communicated through the System, and in the absence of such acknowledgment Custodian shall not be liable for any failure to act in accordance with such transmission and Customer may not claim that such transmission was received by Custodian.

8. EXPORT RESTRICTIONS. EXPORT OF THE SOFTWARE IS PROHIBITED BY UNITED STATES LAW. CUSTOMER MAY NOT UNDER ANY CIRCUMSTANCES RESELL, DIVERT, TRANSFER, TRANSSHIP OR OTHERWISE DISPOSE OF THE SOFTWARE (IN ANY FORM) IN OR TO ANY OTHER COUNTRY. IF CUSTODIAN DELIVERED THE SOFTWARE TO CUSTOMER OUTSIDE OF THE UNITED STATES, THE SOFTWARE WAS EXPORTED FROM THE UNITED STATES IN ACCORDANCE WITH THE EXPORT ADMINISTRATION REGULATIONS. DIVERSION CONTRARY TO U.S. LAW IS PROHIBITED. Customer hereby authorizes Custodian to report its name and address to government agencies to which Custodian is required to provide such information by law.

9. Encryption. Customer acknowledges and agrees that encryption may not be available for every communication through the System, or for all data. Customer agrees that Custodian may deactivate any encryption features at any time, without notice or liability to Customer, for the purpose of maintaining, repairing or troubleshooting the System or the Software.

10. On-Line Inquiry and Modification of Records. In connection with Customer's use of the System, Custodian may, at Customer's request, permit Customer to enter data directly into a Custodian database for the purpose of modifying certain information maintained by Custodian's systems, including, but not limited to, change of address information. To the extent that Customer is granted such access, Customer agrees to indemnify and hold Custodian harmless from all loss, liability, cost, damage and expense (including attorney's fees and expenses) to which Custodian may be subjected or which may be incurred in connection with any claim which may arise out of or as a result of changes to Custodian database records initiated by Customer.

**SEC 14b-2**

Securities and Exchange Commission ("SEC") shareholder communications rules and the Shareholders Communications Act of 1985 (the "Act") require the Bank of New York ("BNY") to disclose to issuers of U.S. securities, upon the issuers' request, the name, address and securities position of our customers who are the "beneficial owners" (as defined in the Act) of the issuer's securities held by BNY, if the beneficial owner does not object to such disclosure. (For these purposes, securities include debt and equity securities, including bonds, money market funds and mutual funds.) The Act also requires BNY to disclose to issuers of U.S. securities, upon the issuers' request, the name and address of our customers who are acting as a "respondent bank" (as defined in the Act) with respect to the securities held by BNY. Under the Act, "respondent banks" do not have the option of objecting to such disclosure upon the issuers' request.

The Act defines a "beneficial owner" as any person who has, or shares, the power to vote a security (pursuant to an agreement or otherwise), or who directs the voting of a security. The Act defines a "respondent bank" as any bank, association or other entity that exercises fiduciary powers which holds securities on behalf of beneficial owners and deposits such securities for safekeeping with a bank, such as BNY. Under the Act, you are either the "beneficial owner" or a "respondent bank."

In accordance with these requirements, please return the below completed signed form to my attention. Please do not hesitate to contact me if you have any questions.

By signing this form, you agree that: (i) your selections below apply to all of your current BNY accounts and to all BNY accounts you may open in the future; and (ii) your selections below amend any contrary selections or directions in any prior agreement or other prior writing from you as to your status as a beneficial owner or respondent bank, and, for beneficial owners, as to your objection or non-objection to the disclosure of your information to requesting issuers.

**For "beneficial owners" and "respondent banks," please complete the following:**

<p><input checked="" type="checkbox"/> I am the beneficial owner of the securities held by BNY.</p> <p><input type="checkbox"/> I am not the beneficial owner of the securities held by BNY, but I am acting as a "respondent bank" with respect to the securities held by BNY.</p> <p>"Respondent banks" will receive an omnibus proxy and will need to make their own proxy voting arrangements for their clients to vote as part of the omnibus proxy.</p> <p><i>If we do not receive a response within 10 business days, we will assume that you are the beneficial owner. and we will follow the procedure below for beneficial owners.</i></p>
--

**For "beneficial owners" only, please also complete the following:**

<p><u>Only</u> if you are the beneficial owner of the securities, please complete the following:</p> <p><input type="checkbox"/> I object to the disclosure of my name, address, and securities position to requesting issuers.</p> <p><input type="checkbox"/> I do not object to the disclosure of my name, address, and securities position to requesting issuers.</p> <p>For your protection, SEC regulations prohibit any issuer from using this information for any purpose other than communicating with its shareholders. Please note, however, that should we not receive your response within 10 business days, <i>we will assume you have no objection to the disclosure of this information and we will make this information available to any issuer of securities that we hold for you, upon the issuer's request.</i></p>
--

Authorized Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title (if applicable): \_\_\_\_\_

**CERTIFICATE OF AUTHORIZED PERSONS  
(Customer - Oral and Written Instructions)  
Custody 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. \_\_\_\_\_ to deliver Oral and Written Instructions to The Bank of New York Mellon Trust Company, N.A. ("BONY") pursuant to the Custody Agreement between the Local Government and BONY dated 02/01/2009, and that the signatures appearing opposite their names are true and correct:

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

**CITY OF COLLEGE STATION**

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

Mayor

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

**ATTEST:**

\_\_\_\_\_  
City Secretary

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

**APPROVED:**

\_\_\_\_\_  
City Manager

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

*Carla A. Robinson*  
\_\_\_\_\_

City Attorney

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

\_\_\_\_\_  
Chief Financial Officer

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

February 12, 2009  
Consent Agenda Item No. 2c  
Contract Assignment by SunGard Mailing Services to Pinnacle Data Systems

**To:** Glenn Brown, City Manager

**From:** Jeff Kersten, Chief Financial Officer

**Agenda Caption:** Presentation, possible action, and discussion regarding Addendum 1 to the Service Agreement with SunGard Mailing Services consenting to the assignment by SunGard Mailing Services to Pinnacle Data Systems L.L.C. for Utility Bill Printing and Mailing services.

**Recommendation(s):** Staff recommends approval of the contract assignment by SunGard Mailing Services to Pinnacle Data Systems.

**Summary:** This contract is for printing and mailing approximately 400,000 utility bills and 60,000 late notices annually. Council approved the original contract on April 12, 2007 and renewed the contract on June 12, 2008. Pinnacle Data Systems L.L.C. has acquired SunGard Mailing Services effective November 1, 2008 and agrees to honor the terms and conditions of the original agreement between the City of College Station and SunGard Mailing Services.

**Budget & Financial Summary:** Funds are budgeted and available in the Utility Customer Service budget.

**Attachments:**  
Addendum No. 1 to the Services Agreement (Assignment)

Addendum No. 1

To the Service Agreement

Due to the acquisition of SunGard Mailing Services by Pinnacle Data Systems L.L.C., effective November 1, 2008, and pertaining to the agreement dated April 23, 2007 between City of College Station, Texas (Customer) and SunGard Mailing Services paragraph 15 Customer agrees to consent to the assignment of said agreement. Furthermore, Pinnacle Data Systems L.L.C. agrees to honor the terms and conditions of the agreement dated April 23, 2007 between the City of College Station, Texas and SunGard Mailing Services.

This addendum is deemed effective November 1, 2008 and is hereby made a part of and incorporated into the agreement dated April 23, 2007 by and between City of College Station, Texas and SunGard Mailing Services.

**Consent to Assignment**

Customer hereby consents to the assignment by SunGard Mailing Services to Pinnacle Data Systems L.L.C. of the agreement for the print and mail services provided by SunGard Mailing Services to Customer. Furthermore, Pinnacle Data Systems L.L.C. agrees to honor the terms and conditions of the agreement dated April 23, 2007 between the City of College Station, Texas and SunGard Mailing Services.

CITY OF COLLEGE STATION, TEXAS

Pinnacle Data Systems L.L.C.

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

By: 

Name: \_\_\_\_\_

Name: Robert Reddiger

Title: \_\_\_\_\_

Title: President

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

Date: 1-14-09

**ATTEST:**

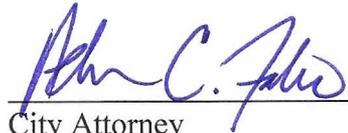
\_\_\_\_\_  
City Secretary

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

**APPROVED:**

\_\_\_\_\_  
City Manager

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



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

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

\_\_\_\_\_  
Chief Financial Officer

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

**February 12, 2009  
Consent Agenda Item No. 2d  
2008 Medical Claims Expenditures**

**To:** Glenn Brown, City Manager

**From:** Alison Pond, Human Resources Director

**Agenda Caption:** Presentation, possible action, and discussion to ratify a change order to the 2008 Blue Cross Blue Shield purchase order 080370, in the amount \$66,000.

**Recommendation(s):** Staff recommends approval of the ratification.

**Summary:** The original purchase order reflects the projected claims costs that Council approved in October 2007, in the amount of \$ 3,523,880. The \$66,000 increase represents less than a 2% deviation in the original projection, of line #2, medical claims. The additional amount is due to large, unexpected medical claims that were incurred in late December 2008.

Blue Cross Blue Shield has paid these claims and this formal action will ensure proper ratification of the change order.

**Budget and Financial Summary:** Funds are available in the employee benefits fund.

**Attachments:**

February 12, 2009  
Consent Agenda item 2E  
2009 State Legislative Program

To: Glenn Brown, City Manager

From: David Neeley – Assistant City Manager

**Agenda Caption:** Presentation, possible action, and discussion regarding College Station 2009 State Legislative Program

**Recommendation(s):** City Council is asked to consider the adoption of its 2009 State Legislative Program and to direct City Manager to pursue the priorities as established by Council

**Summary:** Staff is requesting Council consideration of Three (3) different elements of the 2009 State Legislative Program.

First and foremost, the City of College Station strongly supports the Texas A&M University and urges the legislature to approve full funding of the University's budgetary appropriations request for 2009. As further support for TAMU, the Council supports the passage of SB 467 relating to the use of aviation and air transportation sales and use tax proceeds for aviation facilities development. The passage of SB 467 would greatly benefit TAMU's Easterwood Airport by providing that the funds collected under the act could be used for airport facilities development.

Second, Council consideration and support for the 2009 TML Resolutions and the TML Legislative Program, the IGC Joint Cities/ Brazos County Legislative "Areas of Interest", the CSISD Legislative Action Plan, and the Texas Association of Regional Councils Legislative Objectives.

Third, the Council is requested to establish legislative priorities for the City of College Station. Staff recommends the following legislative priorities for Council consideration:

- **Transportation**

- Support state-funded and local-option funding choices to be utilized for transportation purposes.

- Support legislation that would discontinue the diversion of transportation revenues to non-transportation purposes and appropriate all revenues from highway user fees and taxes to fund transportation projects.

- :

- **Municipal Revenue**

- Oppose any changes to the current property and sales tax systems as well as other income producing structures that would cause the City to lose revenue or the ability to raise revenue

- **Erosion of Municipal Powers**

Oppose any legislation that erodes the authority of city government or is detrimental to cities

- **Collective Bargaining**

Oppose legislation that would impose mandated collective bargaining rights

- **Annexation – Land Use Authority**

Oppose any legislation that erodes the authority of cities to annex

Oppose any legislation that would restrict the zoning authority of cities

- **Un-Funded Mandates**

Oppose any legislation that would require expenditures by the City without a source of revenue provided by the State

**Budget & Financial Summary: None**

**Attachments:**

- Resolution establishing 2009 Legislative Priorities for the City of College Station
- TAMU Legislative Initiatives Statement – SB 467 (Bill Text)
- Texas Association of Regional Councils – Objectives for the 81<sup>st</sup> Legislative Session
- IGC Legislative Overview – College Station-Bryan-Brazos County Joint Legislative Areas of Interest 2009
- College Station Independent School District Legislative Action Plan

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COLLEGE STATION, TEXAS, ESTABLISHING THE 2009 LEGISLATIVE PRIORITIES FOR THE CITY OF COLLEGE STATION.

WHEREAS, the City Council of the City of College Station, Texas, is committed to an active legislative program on behalf of the citizens of College Station; and

WHEREAS, the City Council of the City of College Station, Texas, has reviewed and participated in the legislative program developed by the Texas Municipal League; and

WHEREAS, the City Council of the City of College Station, Texas, has identified specific legislative priorities for the City of College Station, now, therefore,

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

SECTION 1: That the City Council hereby supports the Legislative Program adopted by the Texas Municipal League:

SECTION 2: That the City Council hereby strongly supports the Texas A&M University and the Texas A&M University System and in doing so urges legislative approval and full funding of the budgetary appropriations request of Texas A&M University. In addition, the City Council hereby supports the passage of SB 467 relating to the use of certain aviation and air transportation related sales and use tax proceeds for aviation facilities development as it would greatly benefit TAMU's Easterwood Airport.

SECTION 3: That the City Council hereby supports the Legislative Action Plan adopted by the IGC, The Texas Association of Regional Councils (COG) and the College Station ISD.

SECTION 4: That the City Council hereby sets as the legislative priorities for the City of College Station for the 2009 Legislative Session the following items:

- **Transportation**

Support state-funded and local-option funding choices to be utilized for transportation purposes.

Support legislation that would discontinue the diversion of transportation revenues to non-transportation purposes and appropriate all revenues from highway user fees and taxes to fund transportation projects.

- **Municipal Revenue**

Oppose any changes to the current property and sales tax systems as well as other income producing structures that would cause the City to lose revenue or the ability to raise revenue

- **Erosion of Municipal Powers**

Oppose any legislation that erodes the authority of city government or is detrimental to cities

- **Collective Bargaining**

Oppose legislation that would impose mandated collective bargaining rights.

- **Annexation – Land Use Authority**

Oppose any legislation that erodes the authority of cities to annex.

Oppose any legislation that would restrict the zoning authority of cities.

- **Un-Funded Mandates**

Oppose any legislation that would require expenditures by the City without a source of revenue provided by the State.

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

ADOPTED this 12<sup>th</sup> day of February, A.D. 2009.

ATTEST:

APPROVED:

\_\_\_\_\_  
CONNIE HOOKS, City Secretary

\_\_\_\_\_  
BEN WHITE, Mayor

APPROVED:

  
\_\_\_\_\_  
Carla A. Robinson  
City Attorney

## THE TEXAS A&M UNIVERSITY SYSTEM

Bill Jones, Chairman, Austin, Term Expires February 1, 2009  
Erle Nye, Dallas, Term Expires February 1, 2009  
John D. White, Vice Chairman, Houston, Term Expires February 1, 2009  
Anthony Cullins, Student Regent, Dallas, Term Expires May 31, 2009  
Lupe Fraga, Houston, Term Expires February 1, 2011  
Gene Stallings, Powderly, Term Expires February 1, 2011  
Ida Clement Steen, San Antonio, Term Expires February 1, 2011  
Morris Foster, Houston, Term Expires February 1, 2013  
J.L. Huffines, Dallas, Term Expires February 1, 2013  
James P. Wilson, Sugar Land, Term Expires February 1, 2013

## EXCEPTIONAL ITEM REQUESTS

The Exceptional Items requested in Texas A&M University's Legislative Appropriations Request are as follows:

1. University Bound!
2. Keeping Texas Scholars in Texas

## TUITION REVENUE BOND REQUEST

The Tuition Revenue Bond requested in Texas A&M University's Legislative Appropriations Request is for Facilities Renewal.

## ADMINISTRATOR'S STATEMENT

Texas A&M University's purpose is to "develop leaders of character dedicated to serving the greater good." This purpose statement reflects on the University's unique responsibility as a land-grant institution for the State of Texas and its founding heritage as the state's first institution of higher education in 1876 to essentially "educate the masses."

Today, Texas A&M holds the distinction as one of the few institutions nationwide that also holds sea- and space-grant status. As the flagship university for The Texas A&M University System, Texas A&M is recognized as a Tier One national research institution, with membership in the prestigious American Association of Universities. Texas A&M's enrollment includes more than 46,500 students (fall 2007), which ranks seventh nationally, and the University conducts research valued at more than \$550 million annually, which ranks among the top 20 institutions nationwide.

Texas A&M continues to be focused on one goal: to be one of the top 10 public institutions of higher education in the country by the year 2020. This ambitious goal is codified in the University's long-range strategic plan, better known as Vision 2020. Six imperatives, or areas of emphasis, have been established in order to better focus the Vision 2020 effort: Elevating the faculty, improving diversity and globalization, improving the undergraduate and graduate academic experience, enhancing physical space and infrastructure, enlightening governance and attaining resource parity. Adhering to these six imperatives has empirically moved Texas A&M forward and is essential to the University's contribution to the state's "Closing the Gaps" plan for higher education.

The state's current distribution methodology and level of base and formula funding is the foundation upon which the University relies to fulfill its core missions of teaching, research and public service. And,

we are grateful for that funding and recognize that the legislature has the obligation to fund many other necessary and worthy state services. However, the level of that funding does not fully address the costs of base operations for nationally competitive research universities, given their increased costs of faculty salaries, research support and equipment, and overall infrastructure demands. With several universities in the state aspiring to and approaching research university status, Texas A&M respectfully asks that the legislature maintain, and intensify if possible, its commitment and funding for the state's two existing public comprehensive research universities at the same time it begins to provide the support needed for other universities to earn such status.

At the same time the university seeks to earn legislative support for stronger base funding, we remain committed to keeping Texas A&M affordable and accessible for students across the state who hold high academic, scholastic, and leadership promise. This past fall, the University held its increase in tuition and fees to 4.99%, or \$7.25 per semester credit hour, the lowest such increase in nearly a decade.

Even with the rise in the cost of tuition, Texas A&M continues to attract record numbers of applicants year after year, with more than 24,000 students applying for admission for the fall 2008 semester alone – an increase of 2,100 students over the previous year. The Class of 2012 includes more than 8,200 students, the largest freshman class in the university's 132-year history, signaling that Texas A&M is committed to "Closing the Gaps" and continues to be a good value, particularly for a Tier One research institution. In fact, the University continues to be ranked by "U.S. News & World Report" and "Kiplinger's" in their "best value" categories on an annual basis.

Following is a summary of Texas A&M's progress in regards to Vision 2020, with related additional funding requests:

Elevating the Faculty. Through the support of the Texas Legislature, Texas A&M has reached the completion of its Faculty Reinvestment Initiative, a bold effort that was initiated in the 78<sup>th</sup> Session to add 447 members to the University's faculty over a five-year period. Noted as the most ambitious faculty expansion program in the history of U.S. higher education, the overall impact of this initiative has been a reduction in the University's faculty-student ratio and increased research expenditures, which are critical to a Tier One research institution.

More specifically, Texas A&M has replaced more than 115 faculty teaching and research positions that were lost between 1992 and 2002, which has contributed to the continuing decrease in the University's student-faculty ratio from 22.5:1 in 2001 to 19.5:1 in 2007. It must be noted that Texas A&M's overall enrollment has also increased by 2,000 students over this same time period. These faculty members have contributed greatly to the University's overall research portfolio as well. In Texas A&M's nationally ranked College of Engineering, for example, the 103 faculty members added as part of the Faculty Reinvestment Initiative have brought in more than \$65 million in external research funding. Of these faculty, three were members of the National Academy of Engineering and 13 were recipients of the prestigious National Science Foundation award for junior faculty, contributing to the College of Engineering's national ranking of seventh for graduate programs and ninth for undergraduate programs. In addition, seven of Texas A&M's 11 engineering degree programs are now ranked in the top 10 nationally.

While the Faculty Reinvestment Initiative primarily addressed the need for additional teaching faculty on the Texas A&M campus, additional funding through the Texas Competitive Knowledge Fund (CKF) is requested to provide an acceleration in research. Established in the 80<sup>th</sup> Session to support instructional

excellence and research, \$95 million was appropriated to the Competitive Knowledge Fund, of which Texas universities with research expenditures in excess of \$50 million annually are eligible to participate (Texas A&M, University of Texas, University of Houston and Texas Tech University). Allocations from the Fund are based on these research expenditures – for every \$10 million of research expenditures, the Legislature allocates \$1 million to the university's budget. Based on FY2003 research expenditures, the Fund generated approximately \$40 million for Texas A&M for the current biennium, which was used in its entirety to support salary commitments through the Faculty Reinvestment Initiative.

Texas A&M requests that the Legislature double the overall allocation to this incentive-based Fund to \$190 million, and also increase the distribution to the participating universities based on a \$10 million to \$2 million match. The resulting addition of at least \$40 million in allocations to Texas A&M through the Fund would enable the University to recruit and hire approximately 20 established "superstar" researchers in specific areas of statewide importance, based on the institution's Academic Master Plan, who will then be able to leverage the state's investment to secure additional research funding. Additional funding will directly address the Academic Excellence and Research goals for the state outlined in "Closing the Gaps," in terms of the state's two flagship universities achieving top-10 status, increasing Texas' level of federal science and engineering research and development obligations, and increasing research expenditures. The overall benefit to the state will be accelerated science and technology contributions to the state's economy through new discoveries and technology commercialization.

Improving Diversity and Globalization. Texas A&M has made significant strides in increasing the number of underrepresented students on its campus, particularly at the undergraduate level. The Class of 2012 is projected to include the highest number of Hispanic and African-American freshman in the University's history, with more than 1,400 and 300, respectively. Both of these numbers represent a 20 percent increase over the previous year. In addition, approximately 25 percent of the freshman class are first generation college students, another key indicator that Texas A&M is serving the state's underrepresented population. For graduate students, the University has experienced a 62.2 percent increase in the number of African-Americans and a 37.9 percent increase in Hispanics pursuing advanced degrees since 2003.

Much of this success in diversifying Texas A&M's student body can be attributed to the University's eight Prospective Student Centers located in key locations across the state: San Antonio, Laredo, Rio Grande Valley, Houston (2), Dallas, Corpus Christi and College Station. These centers are jointly staffed with admissions and financial aid experts, with a goal of simplifying the pathway from high school to admission into Texas A&M. In addition, the University has focused on targeted, high-touch recruitment, earlier financial aid decisions and earlier admissions.

However, the number of Hispanic and African-American students at Texas A&M is still relatively small, and frankly, there is much more the University can do to reach these populations. The key issue is that the pool of Hispanic and African-American students from which Texas A&M can recruit is very small. According to the most recent data available, there were 76,000 Hispanic high school graduates in the state, with 40,000 of these students taking a college entrance placement exam, either the SAT or ACT. Of these 40,000 Hispanic students, only 4,450 scored at or above the TEA criterion score of either 1110 on the SAT or 24 on the ACT. For African-American students, there were 27,000 high school graduates, with 18,000 of these students taking a college entrance placement exam. Of these 18,000 African-American students, only 1,400 scored at or above the criterion. Given this small pool, the competition for high-achieving Hispanic and African-American amongst the state's universities has become intense,

and also includes renowned out-of-state institutions such as Stanford, North Carolina, Harvard and others. This competition directly affects Texas A&M's yield, or the number of minority students who actually enroll in the University.

To address this important issue, Texas A&M requests an Exceptional Item titled "University Bound!" which builds upon the Early College Education Program established by the Texas Legislature in the 79<sup>th</sup> Session. This legislation authorized the use of funds to establish programs that provide college credit to high school students in grades nine through 12. Initial indications are that these programs include larger percentages of underrepresented students who do better in school and are better prepared for college. Most of these Early College High Schools have partnered with community colleges, while a few have partnered with regional four-year institutions. Unfortunately, there is not an established pathway for these students to attend a flagship, Tier One institution such as Texas A&M.

The University requests \$8 million over the biennium for the "University Bound!" program, which will hire 20 academic program counselors who will work with the Early College High Schools or other high schools with linkages to the Prospective Student Centers to provide direct support for students, families and teachers. These counselors will then establish and conduct training programs for the college entrance exams and develop summer academic camps to transition students into Texas A&M. In addition, the University will provide matching scholarships from Texas A&M donors. This initiative addresses the Participation and Success goals outlined in "Closing the Gaps" by increasing the participation in higher education by Hispanics and African-Americans, while also increasing the number of minorities completing degrees, particularly in engineering and the health sciences. These students will also be afforded admission to a flagship institution, allowing them to receive a world-class education and be exposed to educational opportunities not offered by community colleges and regional universities.

Improving Undergraduate and Graduate Academic Experience. At the core of this Vision 2020 imperative is the implementation of "The Murano Report," which is a series of recommendations based on the university-wide Report on Enhancing the Undergraduate Experience. Five overarching goals comprise The Murano Report: Enhance opportunities for undergraduates to participate in inquiry and research-based education, increase faculty interactions with undergraduates through smaller classes, assess undergraduate programs and advising, raise funds for study abroad scholarships, and increase opportunities for students to participate in learning communities.

Significant progress has been made toward these goals over the past few years. In Spring 2008, Texas A&M had its largest participation ever in Student Research Week, with 33 percent of the presenters representing the undergraduate ranks. The number of freshman classes at Texas A&M with fewer than 30 students has increased 15 percent over the past four years. And, more than 2,400 freshmen, or 32 percent of the incoming class, now participate in learning communities across the campus. The end result has been a 15 percentage point increase in the University's four-year graduation rate over a three-year period, while Texas A&M continues to significantly outpace the four-, five- and six-year statewide graduation rates.

To address Texas A&M's graduate academic experience, the University requests an Exceptional Item to "Keep Texas Scholars in Texas." Graduate students are the key to building, maintaining and growing successful research programs for the State of Texas. In addition, attracting high-tech companies to Texas hinges on the availability of a well-trained workforce with advanced degrees. Unfortunately, the state is experiencing a "brain drain" in terms of students pursuing graduate degrees outside the state. For

example, out of 48 Texas students who competed in the National Science Foundation Graduate Fellowship Program, 32 of these students left the state in pursuit of a graduate degree.

This Exceptional Item request will create an incentive fellowship program that entices students graduating from a Texas university with a bachelor's degree to pursue a graduate education here in the state. Texas A&M requests \$5.4 million over the biennium to support 60 graduate students for two years with an annual \$30,000 stipend. This initiative is vital to stop the "brain drain" and ensure that Texas' best and brightest contribute to the economic growth of the state. In addition, this program will increase the pipeline for the next generation of scientists and university researchers here in Texas. This Exceptional Item addresses the Success goal for the state in "Closing the Gaps" by increasing the number of students completing doctoral degrees at Texas universities.

Enhancing Physical Space and Infrastructure. To meet the demand of the increased number of faculty and the overall growth of the student body, Texas A&M is in the midst of a major era of expansion in terms of the physical campus. More than \$800 million in new construction is either underway or in the planning stages, another record for the University and one of the largest such undertakings in higher education. Some of the more notable projects include the \$100 million Interdisciplinary Life Sciences Building, two new physics buildings funded substantially by a generous gift from George P. Mitchell '40, the Texas Institute for Preclinical Studies and the Veterinary Medicine Research Tower addition. Many of these projects combine resources from the University, Texas Legislature, Permanent University Fund and successful fund raising with the assistance of Texas A&M former students. Texas A&M has also initiated a campus-wide process in which future construction will be prioritized according to the University's Academic Master Plan.

Despite the tremendous amount of new construction on the campus, adequate space for teaching and research by the University's world-class faculty is at a premium. Many of Texas A&M's historical and heavily used buildings are in dire need of modern electrical and HVAC systems, technology-enabled classroom space and ADA accommodations. Infrastructure funds provided to the University by the Legislature have been used to cover the ever-escalating costs of utilities, leaving little funding for adequate maintenance of Texas A&M's existing buildings and infrastructure.

Texas A&M requests a Tuition Revenue Bond of \$95 million to begin a Facilities Renewal process, which is expected to span over several Legislative Sessions. This initiative will restore two key instructional facilities that are also of historic significance, while also providing for efficient, modern and safe classrooms and offices in other existing facilities across the campus. This TRB will significantly enhance Texas A&M's ability to address the Excellence goal outlined in "Closing the Gaps," in addition to enhancing the academic experience of students and the University's ability to recruit and retain top faculty.

Enlightening governance. Texas A&M is committed to a culture of collaboration and communication amongst students, faculty and staff across the campus. Several university-wide councils have been established to supplement regular standing committees and provide an avenue for stakeholder groups to provide input, feedback and suggestions to University administrators and ensure that issues of importance are given proper attention and resolution. Newly formed groups include the Council on Climate and Diversity, which was established in Fall 2007, and University Staff Council, which began meeting in Fall 2008.

Attaining resource parity. In 2004, the percentage of Texas A&M's budget funded by tuition and fees surpassed the percentage of state appropriations for the first time in the University's history. In an era of increasing utilities and infrastructure costs and the highly competitive environment for research institutions, students and their families have had to shoulder this increasing burden through rising tuition and fees. Texas A&M is committed to addressing the rising costs of higher education through a partnership with the Texas Legislature, while also generating additional revenue streams through philanthropy, technology commercialization, sponsored research, corporate partnerships and other avenues.

In summary, Texas A&M University, working in partnership with the Texas A&M System and the Legislature, has made significant progress over the past decade. With the state providing sufficient General Revenue, Exceptional Item Funding and access to Tuition Revenue Bonds; the University effectively managing costs and enhancing efficiencies, increasing private and federal funding and judiciously planning programs; and students and their families paying a "fair share" for excellence in education, Texas A&M can uphold excellence in higher education and keep the opportunity to attend a flagship, Tier One institution affordable. Affordability without excellence, however, is a promise for a meager future for Texas students and the state, while excellence without affordability is no promise at all. Working in partnership, Texas can have both, ensuring a future that the state's citizens deserve.

81R2065 BEF-D

By: Zaffirini

S.B. No. 467

A BILL TO BE ENTITLED  
AN ACT

relating to the use of certain aviation and air transportation-related sales and use tax proceeds for aviation facilities development.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 151.801, Tax Code, is amended by amending Subsections (a), (d), and (e) and adding Subsection (c-2) to read as follows:

(a) Except for the amounts allocated under Subsections (b), ~~and~~ (c), and (c-2), all proceeds from the collection of the taxes imposed by this chapter shall be deposited to the credit of the general revenue fund.

(c-2) An amount equal to 75 percent of the following shall be credited to the Texas Department of Transportation and deposited as specified in Section 21.1045, Transportation Code:

(1) the proceeds from taxes imposed by this chapter that are collected by an airline; and

(2) the proceeds from taxes imposed by this chapter  
on:

(A) an airline;

(B) the sale or use of an aircraft or an aircraft part or accessory;

(C) the rental of an aircraft;

(D) the sale of a taxable item sold at an airport;  
and

(E) any other sale or use the comptroller determines by rule to be related to aviation or air transportation.

(d) The comptroller shall determine the amount to be deposited to the highway fund under Subsection (b) according to available statistical data indicating the estimated average or actual consumption or sales of lubricants used to propel motor vehicles over the public roadways. The comptroller shall determine the amounts to be deposited to the funds or accounts under Subsection (c) according to available statistical data indicating the estimated or actual total receipts in this state from taxable sales of sporting goods. The comptroller shall determine the amount to be deposited under Subsection (c-2) according to available statistical data indicating the estimated or actual total receipts in this state from taxable sales or uses described by Subsection (c-2). If satisfactory data are not available, the comptroller may require taxpayers who make taxable sales or uses of those lubricants, ~~or~~ of sporting goods, or of taxable items subject to the taxable sales or uses described by Subsection (c-2) to report to the comptroller as necessary to make the allocation required by Subsection (b), ~~or~~ (c), or (c-2).

(e) In this section:

(1) "Aircraft" has the meaning assigned by Section 151.328.

(2) "Airline" means a certificated or licensed operator of aircraft for the purpose of transporting persons or property for hire in the regular course of business in this state.

(3) "Motor vehicle" means a trailer, a semitrailer, or a self-propelled vehicle in or by which a person or property can be transported upon a public highway. "Motor vehicle" does not include a device moved only by human power or used exclusively on

stationary rails or tracks, a farm machine, a farm trailer, a road-building machine, or a self-propelled vehicle used exclusively to move farm machinery, farm trailers, or road-building machinery.

(4) ~~(2)~~ "Sporting goods" means an item of tangible personal property designed and sold for use in a sport or sporting activity, excluding apparel and footwear except that which is suitable only for use in a sport or sporting activity, and excluding board games, electronic games and similar devices, aircraft and powered vehicles, and replacement parts and accessories for any excluded item.

SECTION 2. Subchapter C, Chapter 21, Transportation Code, is amended by adding Section 21.1045 to read as follows:

Sec. 21.1045. AVIATION DEVELOPMENT ACCOUNT. (a) The aviation development account is a separate account in the general revenue fund.

(b) The account consists of:

(1) credits made to the department under Section 151.801, Tax Code;

(2) transfers to the account; and

(3) interest earned on money in the account.

(c) Money in the account may be used only for grants and loans under this subchapter.

(d) Any money in the account not used in a fiscal year remains in the account. The account is exempt from the application of Section 403.095, Government Code.

SECTION 3. This Act takes effect September 1, 2009.



# *Texas Association of Regional Councils*

## **81<sup>st</sup> Legislative Session Objectives**

### **Emergency Communications**

- TARC supports funding for the 24 planning regions to support and fully implement statewide Next Generation 9-1-1.
- TARC supports increasing the Equalization Surcharge Fee under Health and Safety Code Section 771.072 (b).
- TARC supports efforts to fully fund Emergency Medical Dispatch Services statewide.

### **Health and Human Services**

- TARC supports the State goal of developing a statewide service-delivery system that utilizes regional councils and addresses local needs.
- TARC supports the use of the State Planning Regions as designated by the Governor, pursuant to Chapter 391, Local Government Code, for more efficient regional decentralization of state health and human services programs.
- TARC supports the Department of Aging and Disability Services' Legislative Appropriations Request for the expansion of the Area Agencies on Aging benefits counseling program.

### **Emergency Preparedness**

- TARC supports the creation of a permanent funding stream to support Radio Interoperability infrastructure and the long-term maintenance and upgrades of the regional systems necessary to establish and maintain the State Communications Interoperability Plan (SCIP).
- TARC supports efforts to provide full funding of the State Disaster Contingency Fund.

### **State Planning Assistance Grant**

- TARC supports maintaining the appropriation for the State Planning Assistance Grant, as administered by the Office of the Governor, Criminal Justice Division.

### **Transportation**

- TARC supports the use of regional councils of governments to unify and coordinate urban and rural transportation planning for the 24 planning regions of the State.
- TARC supports state and federal initiatives to provide funding for regional councils of governments to actively provide transportation planning and coordination as Rural Planning Organizations (RPOs).
- TARC supports the implementation of multi-modal transportation initiatives that result in increased transportation options for all Texans and economic stimulus for our State.

### **Criminal Justice and Law Enforcement**

- TARC supports a dedicated funding stream to support law enforcement academies and training.
- TARC supports full funding for the Office of the Governor, Criminal Justice Division, Criminal Justice Planning Fund (Fund 421).
- TARC supports the Texas Association of Counties' position on the expansion of the Court Technology Fund.

### **Environmental Quality**

- TARC supports the allocation by TCEQ of no less than 50% of tipping fees to regional councils for local and regional waste reduction programs, as provided by current law.

### **Community and Economic Development**

- TARC supports efforts to establish rural economic development programs utilizing regional councils as eligible entities to apply for and administer funds.
- TARC supports the reinstatement of vocational education to enhance statewide workforce creation and economic development.
- TARC supports efforts to streamline the Community Development Block Grant Regional Review Committee appointment process.

## **College Station-Bryan-Brazos County Joint Legislative Areas of Interest 2009**

Oppose revenue caps of any form, appraisal caps or changes in calculation methodology for effective tax rate that would result in a form of revenue cap.

Appraisal district regulation reform with more state oversight, in lieu of the above, would be acceptable provided that there are no additional costs to cities and counties for appraisal district office/appraisal review board operations.

Favor an additional one-half cent sales tax, as a local option approved by voters, to fund transportation projects.

Acceptable as voter approved on the local level, with all revenues from the additional sales tax to be used for local transportation projects only.

Land use and development issues (annexation, eminent domain, regulatory takings, permit vesting, zoning, permit fees, manufactured/industrialized housing regulations)

Oppose any measures that would erode local authority and control or create an unfunded mandate on local government.

Water issues (mandated water conservation programs, water rights, irrigation system requirements, tap fees, evaporation technology, CCN issues, fire flow/protection)

Acknowledgement that water issues are of state-wide concern but oppose any measures that erode local authority or create unfunded mandates through new regulations or programs.

Oppose any proposed legislation that would erode local authority (home rule cities), impose unfunded mandates upon local governments, or cause a loss of sovereign immunity for local governmental entities.

Oppose mandated collective bargaining for public safety personnel.

We believe employer-employee issues are best resolved at the local level.

## **CSISD Legislative Action Plan**

### **School Finance**

College Station ISD believes the Texas school finance system needs significant revision. We believe that the legislature should provide relief for districts by providing an escalating Cost of Education increase on an annual basis so that the target revenue for school districts can adjust to changing market conditions related to the costs of goods and services.

By adopting a Cost of Education index, some capacity is developed in the funding system.

### **Pathways to Graduation**

College Station ISD believes students should be provided multiple pathways to high school graduation. Each pathway to graduation should be academically rigorous and intense. Three pathways to graduation should be considered: 1) math and science, 2) fine arts and 3) career and technology.

### **Accountability System**

College Station ISD believes that the accountability system in Texas should be significantly modified so that schools and school districts, whether large or small, have an equal chance of performing at a recognized or exemplary level. A new accountability system should reward the academic gains students make in a year's time and schools should be evaluated over a three year period of time.

## Coalition to INVEST IN TEXAS SCHOOLS

### Core Principles on School Finance Revised September 2008

The following statements of core principles were developed collaboratively by all participating Coalition organizations and are a framework for evaluating legislative proposals related to school finance.

#### TEXAS CONSTITUTION

*Article 7, Section 1 – Support and Maintenance of a System of Public Free Schools.* A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, it shall be the duty of the Legislature of the State to establish and make suitable provision for the support and maintenance of an efficient system of public free schools.

**Adequacy** – For the school finance system to provide a “general diffusion of knowledge,” it should:

- Fully fund the foundation school program;
- Recognize the dynamic nature of educational requirements and expectations, changing socio-economic factors, and appropriate cost differentials, providing up-to-date cost adjustments for varying student needs and district characteristics; and
- Provide a meaningful opportunity for each Texas student and school district to meet all local, state, and federal performance expectations.

**Equity** – For the school finance system to provide “an efficient system of public free schools,” it should:

- Close the funding gap in order to provide “substantially equal access to similar revenue per student at similar tax effort,” considering all state and local tax revenues; and
- Replace the current hold-harmless system of funding with an adequate and equitable formula-based system for all school districts.

**Capacity** – For the school finance system to “make suitable provision for the support and maintenance of an efficient system of public free schools,” it should:

- Create stable state revenue sources in order to increase and maintain the state share of public school funding;
- Cease using local property value growth as a source of state revenue and reallocate those funds into public education;
- Assure funding for enrollment growth and inflation each year; and
- Provide state support for existing debt and new instructional facilities, ensuring that support for facilities meets the equity principle.

**Meaningful Discretion** – For the school finance system to avoid creating an unconstitutional de facto state property tax, it should:

- Allow local school boards “meaningful discretion” in the levying of taxes and the allocation of tax proceeds beyond that required to meet the state’s educational requirements; and
- Provide “meaningful discretion,” by allowing a local board’s sole discretionary authority to apply to all 17 cents of its property taxing authority.

**Local Control** – The Coalition opposes the use of public funds to provide financial resources to private elementary and secondary schools through funding of programs or materials, tax credits, or vouchers.

**February 12, 2009**  
**Consent Agenda Item No. 2f**  
**State Legislative Services**

**To:** Glenn Brown, City Manager

**From:** David Neeley, Assistant City Manager

**Agenda Caption:** Presentation, possible action, and discussion regarding a contract with Dan Shelley for state legislative and consulting services in the amount of \$48,000.

**Recommendation(s):** Staff recommends approval of the contract for state legislative and consulting services.

**Summary:** On January 8, 2009, Council approved the 2009 Legislative Program establishing priorities for the Legislative year now in session. Professional legislative services have been provided by Dan Shelley over the past three years. These services have been beneficial for the City of College Station in pursuing our legislative priorities in Austin. The Shelley's are available to meet with senate and house committee members; they stand ready to testify on behalf of the City when requested; and will work with City staff to support the 2009 TML Resolutions, BCS Legislative Program and the Intergovernmental Committee Joint Legislative "Areas of Interest".

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

**Attachments:**

1. Contract

## CONSULTANT CONTRACT

This Contract is by and between the **City of College Station**, a Texas Municipal Home-Rule Corporation (the "City") and Dan Shelley Attorney at Law, a Sole Proprietor (the "Contractor"), whereby Contractor agrees to perform and the City agrees to pay for the work described herein.

### ARTICLE I

1.01 This Contract is for Legislative and Lobbying Consulting Services (the "Project"). The scope and details of the work to be provided to the City by Contractor are set forth in **Exhibit "A"** to this Contract and are incorporated as though fully set forth herein by reference. Contractor agrees to perform or cause the performance of all the work described in **Exhibit "A."**

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

1.03 The total amount of payments, excluding expense reimbursements, by the City to Contractor for all services to be performed under this contract may not, under any circumstances, exceed **Forty Eight Thousand and no/100 (\$48,000)**. The Consultant will separately invoice the City for expenses related to representing the City including, but not limited to travel, lodging and business meals incurred on behalf of the City. Such itemized expenses, with corresponding paid receipts, shall be paid separately and shall be reviewed and approved in advance by an authorized City representative.

1.04 The City may from time to time request changes in the scope and focus of the activities, investigations, and studies conducted or to be conducted by Contractor pursuant to this Contract, provided, however, that any such change that in the opinion of Contractor, the City Manager, or the City's Project Manager varies significantly from the scope of the work set out herein and would entail an increase in cost or expense to the City shall be mutually agreed upon in advance in writing by Contractor and the City's Project Manager. Written change orders may be approved by the City Manager or his delegate provided that the change order does not increase the amount set forth in paragraph 1.03 of this Contract to more than **Fifty Thousand Dollars (\$50,000.00)**. Changes in the scope which would require an expenditure by the City of more than **Fifty Thousand Dollars (\$50,000.00)** shall be approved in advance by the City Council. **Any request by the Contractor for an increase in the Scope of Services and an increase in the amount listed in paragraph 1.03 of this Contract shall be made and approved by the City prior to the Contractor providing such services or the right to payment for such additional services shall be waived.**

1.05 Except as provided in Article VI hereinbelow, the term of this Contract shall be for one (1) year from the effective date of this Contract. Thereafter, upon the mutual consent of both parties, including budget approval by the City, this Contract may be renewed on an annual basis, under the same terms and conditions, for up to two (2) additional years (three (3) years total). If, for any reason, funds are not appropriated to continue the contract, the contract shall become null and void and shall terminate.

1.06 **Time is of the essence of this Contract.** The Contractor shall be prepared to provide the professional services in the most expedient and efficient manner possible in order to complete the work by the times specified.

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

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

## ARTICLE II

2.01 The City shall direct Contractor to commence work on the Project by sending Contractor a "letter of authorization" to begin work on the Project.

2.02 Upon receipt of the letter of authorization to begin work on the implementation of the Project, Contractor shall meet with the City for the purpose of determining the nature of the Project, including but not limited to the following: meeting with the City's staff to coordinate

Project goals, schedules, and deadlines; coordinating data collection; briefing the City's management staff; documenting study assumptions and methodologies; devising the format for any interim reports and the final report to the City.

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

### ARTICLE III

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

3.02 Contractor shall keep the City informed of the progress of the work and shall guard against any defects or deficiencies in its work.

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

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

### ARTICLE IV

**4.01 Indemnification.** Contractor agrees to and shall indemnify and hold harmless and defend the City, its officers, agents, and employees from and against any and all claims, losses, damages, causes of action, suits and liability of every kind, including all expenses of litigation, court costs, and attorney's fees, for injury to or death of any person, for damage to any property, or for any breach of contract, arising out of, or in connection with the work done by Contractor under this Contract. In the event of personal injury to or death of Contractor' employees, such indemnity shall apply regardless of whether the claims, losses, damages, causes of action, suits or liability arise in whole or in part from the negligence of the City. Such indemnity shall not apply, however, to liability arising from the personal injury, death, or property damage of persons other than the Contractor or its employees where such liability is caused by or results from the negligence of the City.

**4.02** Contractor assumes full responsibility for the work to be performed hereunder and hereby releases, relinquishes, and discharges the City, its officers, agents, and employees from all claims, demands, and causes of action of every kind and character, including the cost of defense thereof, for any injury to or death of any person (whether employees of either of the parties hereto or other third parties) and any loss of or damage to property (whether property of either of the parties, their employees, or other third parties) that is caused by or alleged to be caused by, arising out of, or in connection with Contractor's work to be performed hereunder. This release shall apply regardless of whether said claims, demands, and causes of action are covered, in whole or in part, by insurance and regardless of whether such loss, damage, injury, or death was caused in whole or in part by the negligence of the City.

#### **ARTICLE V Insurance**

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

#### **ARTICLE VI**

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

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

## ARTICLE VII

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

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

City:  
City of College Station  
Attn: David Neeley  
Asst. City Manager  
P.O. Box 9960  
College Station, Texas 77842

Contractor:  
Dan Shelley, Attorney at Law  
Attn: Dan Shelley  
305 W. 13<sup>th</sup> Street (78701)  
P.O. Box 1316  
Austin, TX 78767-1316

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

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

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

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

7.07 If any provision of this Contract shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court of competent jurisdiction finds that any provision of this Contract is invalid or unenforceable, but

that by limiting such provision it may become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

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

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

7.10 This Contract will be effective when signed by the last party whose signing makes the Contract fully executed.

**DAN SHELLEY, ATTORNEY AT LAW**

**CITY OF COLLEGE STATION**

By: *Dan Shelley*  
Printed Name: DAN Shelley  
Title: Attorney  
Date: 1-25-2009

By: \_\_\_\_\_  
Mayor  
Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
City Secretary

\_\_\_\_\_  
Date

APPROVED:

\_\_\_\_\_  
City Manager

\_\_\_\_\_  
Date

*Carla A Robinson*  
City Attorney

\_\_\_\_\_  
Date

\_\_\_\_\_  
Chief Financial Officer

\_\_\_\_\_  
Date

**Exhibit "A"**  
**Scope of Services**

**Dan Shelley**  
Attorney at Law

---

305 W. 13<sup>th</sup> Street (78701)  
P.O. Box 1316  
Austin, TX 78767-1316

January 26, 2009

Cheryl Turney, C.P.M.  
Purchasing Manager  
Purchasing Department  
City of College Station  
1101 Texas Avenue  
P.O. Box 9960  
College Station, Texas 77842

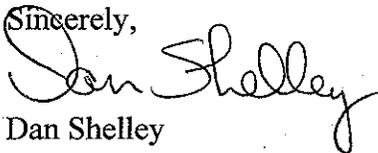
Dear Ms. Turney,

I am pleased to offer the following information concerning Jennifer and my interest and qualifications in representing the City of College Station (City) as its legislative and lobbying consultants.

As the following materials reflect, we have extensive governmental relations experience and a proven track record of working effectively on behalf of clients, including municipalities. We will provide the City a high degree of professional service. We are qualified to work with the City on key issues such as appropriations, economic development, transportation and infrastructure, environmental, local government powers as well as other important issues. We are prepared to assist the City with its endeavors before the State Legislature.

Thank you for the opportunity to re-apply for this important proposal. We are available to meet with the City to further discuss our qualifications and accomplishments and how they can be used to benefit the City.

Sincerely,

  
Dan Shelley

**REQUEST FOR PROPOSAL**

**LEGISLATIVE and LOBBYING  
CONSULTING SERVICES**



**RFP #06-48**

**Offices of Dan Shelley  
305 W. 13<sup>th</sup> Street  
Austin, Texas 78701**

**January 26, 2009**

**ELECTRONIC PROPOSAL**

# **Table of Contents**

**Tab A:** Qualifications and Experience

**Tab B:** Rates and Expenses

**Tab C:** Methodology

**Tab D:** References

**Tab E:** Certification

**Addenda**

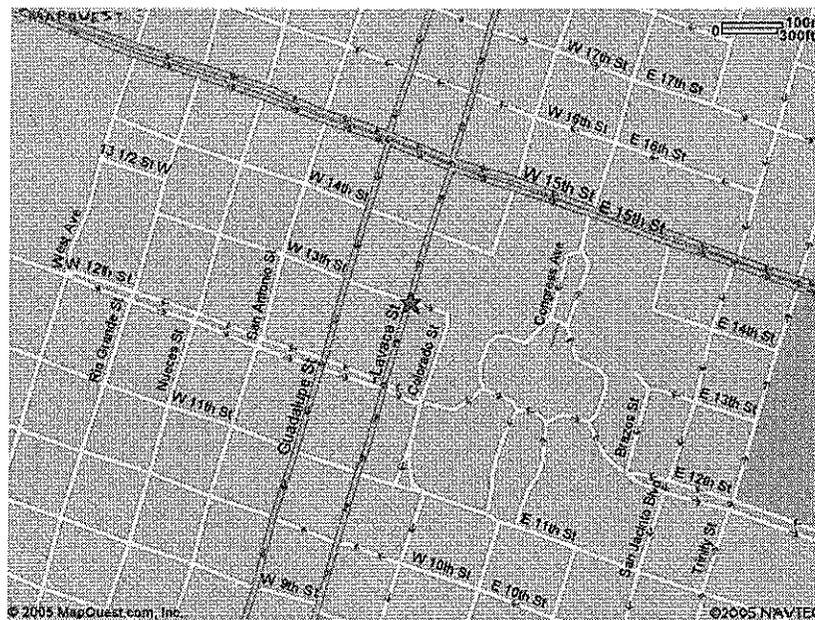
# **Tab A**

## **Qualifications and Experience**

## 1. GENERAL INFORMATION

**Offices of Dan Shelley**  
**305 W. 13<sup>th</sup> Street**  
**Austin, Texas 78701**  
**512.478.9937**  
**512.478.2011 (Facsimile)**

The Offices of Dan Shelley provide legislative consulting services to a diverse group of clients seeking representation before the Texas Legislature and state agencies. Our offices are located one block west of the State Capitol on 13<sup>th</sup> Street providing quick access to the State Capitol and agencies within the Capitol complex. Clients are encouraged to utilize our convenient location for their needs while in Austin, including specific technological requirements. In addition, elected officials from both major political parties including the Office of the Governor, Secretary of State, members of the Texas Legislature and Congress, statewide elected officials, officials from various state agencies and associations utilize the Offices of Dan Shelley for meetings, receptions and fundraisers. The following Mapquest map signifies the general location of our offices.



## **2. LEGISLATIVE AND LOBBY MEMBERS**

Dan Shelley will serve as the lead point of contact for this proposal as well as the lead for state relations in representing the City upon successful bid. Jennifer Shelley Rodriguez will also provide services on this contract with regard to legislative and lobbying services within the State of Texas.

Dan Shelley established a legislative and business consulting business in 1996 following ten years of public service in the Texas House of Representatives, Texas Senate and Office of the Governor as legislative director for then-Governor George W. Bush. Dan briefly returned to public service in 2004 and 2005 as Governor Rick Perry's legislative director. Dan's former colleagues in the Texas Legislature include Governor Rick Perry, Agriculture Commissioner Susan Combs, Land Commissioner Jerry Patterson, State Senator Steve Ogden, Congressman Chet Edwards and many other current officeholders and officials within state and federal government.

Jennifer Shelley Rodriguez assists her father, Dan Shelley, with all aspects of his business. Jennifer joined Dan upon graduation from Baylor School of Law in 1998. Prior to the completion of law school, Jennifer honed skills in the legislative process by staffing a member of the Texas House of Representatives and working in the legal and governmental affairs divisions of a major state agency. Jennifer has established and maintained relationships with many elected officials and staff over the past eleven years. Her strengths also include legislative research, drafting and analysis.

Resumes for Dan Shelley and Jennifer Shelley Rodriguez are included in the addendum.

## **3/4. EXPERIENCE**

The Offices of Dan Shelley represent clients including the City of Coppell, City of Grapevine and Harris County. These entities consist of elected and appointed officials held accountable to their respective constituencies. More detailed experiences are described in subsequent sections of the proposal.

## **5. SUCCESS**

We have represented the City of Grapevine since 2000. Initially we were hired to thwart attempts by the Cities of Dallas and Fort Worth to force a legislative mandated taking of tax receipts received in the City of Grapevine on Dallas Fort Worth International Airport (DFW) property. We were able to help broker a legislatively imposed settlement agreement favorable to the City of Grapevine and accepted by the Cities of Dallas and Fort Worth. The successful protection of Grapevine's revenues enabled the City to continue its projects and programs without interference from the interests of neighboring

cities and entities. Our representation of Grapevine continues today on all municipal related issues at the state level.

Dan Shelley previously represented the City of Humble in its efforts to leave the Metropolitan Transit Authority of Harris County (Metro). Humble had been a member of Metro for many years and collected a one cent sales tax. Humble leaders determined they no longer wished to retain membership in a authority they did not utilize. However, the applicable state statute did not allow for a provision for the City to petition or vote to get out of the Metro's service area. He helped broker a compromise that allowed Humble to retain its half of the one cent sales tax for its own transportation needs and remit the other half of the one cent to the Metro.

Dan Shelley has been included on a team of lobbyists for Harris County since 1997. The many diverse issues he has worked on behalf of the County include funding for the local hospital authority, eminent domain powers, fireworks regulation and homeland security.

## **6. AREAS OF EXPERTISE**

We have a solid reputation for implementing winning strategies because we know how to analyze a problem and design the most effective solution. We see the big picture while thoroughly understanding the intricacies of the legislative process, working with leaders of both major political parties.

Effective state representation is about relationships and cultivating trust. On a daily basis, we work with the Office of the Governor, the executive agencies, Republican and Democratic members of the House and Senate and their staffs to inform them about and lobby for the issues that are of importance to our clients. We have a proven record in pursuing and obtaining appropriations funding and policy initiatives. Utilizing our networks in Austin, we are able to provide our clients with timely and accurate information, thus ensuring that our clients have the advantage of that information and also have our expertise in interpreting what such information brings.

We know who the key players are – but more importantly, they know us. Our mission is simple: To provide you with the best advice possible by utilizing our contacts and expertise to develop an individually tailored strategy that meets your needs and achieves your objectives. We will do that by identifying the goal and solution, articulating the most compelling message, selecting the most effective messengers, and delivering the message to the right audience at the right time.

## **7. UNIQUE CHARACTERISTICS**

Together, Dan Shelley and Jennifer Shelley Rodriguez have years of experience in government service and consulting in the State of Texas. We have a professional history of representing businesses, associations and public entities with elected and appointed

boards. We have coordinated efforts with volunteers, private consultants, representatives of government agencies, elected officials and staff as a part of achieving goals and objectives for clients. Furthermore, we have been public servants and active members of our community in various capacities.

Dan spent four sessions as a member of the Texas Legislature and two regular and two special sessions in the Office of the Governor serving as legislative director for two governors. He currently serves on the Board of Directors for Mercy Ships.

Jennifer is a proud product of the College Station community. She spent her childhood and adolescence enjoying the benefits of this remarkable setting. She attended College Station public schools beginning with South Knoll Elementary School and graduating from A&M Consolidated High School in 1991. College Station is a significant part of her history and she welcomes the opportunity to return to this community by representing its interests in government.

# **Tab B**

## **Rates and Expenses**

## **DETAILED FEE SCHEDULE**

For the state legislative and lobbying consulting services to be provided under this proposal, we requests a lump sum fee not to exceed \$48,000 for a period of twelve consecutive months. This proposed fee is payable on a monthly basis in the amount of \$4,000 each month. We will separately invoice the City for expenses related to representing the City including, but not limited to travel, lodging and business meals incurred on behalf of the City. Such itemized expenses, with corresponding paid receipts, shall be paid separately and shall be reviewed and approved in advance by an authorized City representative.

# **Tab C**

## **Methodology**

## 1. PLAN OF ACTION

Upon implementation of the contract, we will immediately work with the City to determine a state program for City priorities and objectives. This program will include current strategies and objectives as well as a feasible vision for future years to come. We will also work with the City to quickly produce a comprehensive assessment of our combined political reach and leverage. This assessment will assist us in developing strategies with the legislature, leadership and state agencies. Simultaneously, we will commence drafting a strategy and agenda for the City's policy priorities, as directed by the City, focused on obtaining results.

We will maintain frequent and regular communications with the City. In addition, we will coordinate common efforts with the government relations divisions of TAMU, Texas Municipal League, The City of Bryan, Texas Association of Counties and Brazos County. We envision this as an ongoing process. We will make onsite visits to confer with City officials and staff about state programs and other state issues. We will gladly welcome visits by City officials and make our offices available to them. We will aid the City's government relations staff by assisting with travel arrangements in Austin for City officials and staff, facilitating meetings between the City officials with members of the Texas Legislature and leadership and key individuals in targeted agencies. We will also provide briefing materials and give briefings to City officials on how to best communicate the most effective message aimed at accomplishing its state program's goals and objectives. We will contact the City regularly to review and comment on proposals the City will prepare for state agencies and identify the most effective path of action to create the most favorable consideration of those proposals.

We will also brief the City on emerging state issues and priorities and how the City can best identify ways to fit their priorities into state priorities. We will include this information in monthly reports to City staff as well as update progress and direction of state programs of interest to the City. We will also provide annual performance reports summarizing the accomplishments and activities relating to the City's state programs and other areas of interest. Furthermore, we will routinely provide reports in accordance with the proposed contract agreement to City officials and staff to keep all parties up to date with major legislation before the legislature, major state actions and priorities, and the progress of the state program.

Upon implementation of the contract, we will immediately commence work with the members of the Texas House and Senate to insure adequate funding for the City's priorities, including transportation, infrastructure, economic development, environmental services and education. In addition, we will seek and identify areas in the state budget and existing available grant and program funds as well as non-traditional sources of funding to address the City's priorities.

On behalf of the City, we will work with the Texas Legislature, state leadership and agencies to fulfill the legislative and regulatory objectives of the City. We will utilize a bipartisan approach for the City to maximize legislative impact in state government.

## 2. DETAILED PROJECT PLAN

We will work with the City to develop a state program to satisfy the City's objectives. We will attempt to incorporate all the political assets available to the City, and utilize those assets on your behalf to focus on obtaining results through implementation. The strategy we develop will include detailed tactics and time-lines and include the following major elements:

- A. Assist the City in cultivating support of the City's priorities with its elected officials in the Texas Legislature. We will assure that the City's senator and representative and their staffs understand the City's priorities and how those priorities can help them.
- B. Work with members of the House and Senate Appropriations and Transportation Committees and subcommittees for the purpose of achieving the City's appropriations objectives. Our approach will be bipartisan utilizing our relationships.
- C. We will work with other relevant committees in the legislature and key individuals in state agencies to pursue the City's goals. We will schedule and promote meetings with these members and key individuals within county government, as well as engage in the necessary follow-up and continued communication with those targeted members and individuals that will be essential to meeting the City's goals.
- D. We will work with the Appropriations and Finance committees, Intergovernmental Affairs and Urban Affairs committees of the Texas Legislature and other committees deemed necessary. We have numerous relationships throughout Texas government. These contacts are crucial not only for gaining support of the City's objectives, but also for obtaining important intelligence affecting these objectives.
- E. We will work with the leadership in Austin to pursue state policy items that are beneficial to the City, such as transportation, economic development, advanced technology, and education programs. Utilize the political and governmental resources of the City in the lobbying effort. These resources might include federal, state, and local elected officials, agency heads, and others.

# **Tab D**

## **References**

## **REFERENCES**

### **State Relations**

#### **City of Grapevine, Texas**

Contact: Bruno Rumbelow  
City Manager  
200 South Main Street  
Grapevine, TX 76051  
Phone: 817-410-3104

#### **Harris County, Texas**

Contact: Cathy Sisk  
Director, Harris County Office of Legislative Relations  
1019 Congress, 16<sup>th</sup> Floor  
Houston, TX 77002  
Phone: 713-755-7872

#### **Texas Lottery Commission**

Contact: Nelda A. Treviño  
Director of Governmental Affairs  
P.O. Box 16630  
Austin, TX 78761-6630  
Phone: 512-344-5190

# **Tab E**

## **Certification**

CERTIFICATION

The undersigned affirms that they are duly authorized to execute this contract, that this RFP has not been prepared in collusion with any other firm, and that the contents of this RFP have not been communicated to any other firm prior to the official opening of this RFP. Additionally, the undersigned affirms that the firm is willing to sign the enclosed Standard Form of Agreement (if applicable).

Signed By: Dan Shelley

Title: Consultant

Typed Name: Dan Shelley

Company Name: Offices of Dan Shelley

Phone No.: 512-478-9937

Fax No.: 512-478-2011

Email: DanShelley2000@aol.com

Bid Address: P.O. Box 1316, Austin, TX 78767-1316

Order Address: P.O. Box 1316, Austin, TX 78767-1316

Remit Address: P.O. Box 1316, Austin, TX 78767-1316

Federal Tax ID No.: 585-26-9919

Date: January 26, 2009

# Addenda

## **DAN SHELLEY**

Dan Shelley is an attorney with a strong academic background and extensive work experience in state governmental issues. He received his BBA in marketing in 1971 from Texas Tech University in Lubbock where he was also a member of the Red Raider basketball team. Upon graduation Dan entered the United States Air Force achieving the rank of Captain while serving as a B-52 navigator. While serving in the Air Force he obtained his MA in education from Louisiana Tech University. Following an honorable discharge from the Air Force, Dan entered law school at South Texas College of Law in Houston and received his JD in the spring of 1980.

In 1987, Dan joined the ranks of the Texas House of Representatives as a member of the Harris County delegation from District 127. He served in the House from 1987 to 1993 where he was a colleague of House Speaker Tom Craddick and Governor Rick Perry. During his tenure in the House Dan served as a member of the Science & Technology Committee, Natural Resources Committee, Energy Committee and Transportation Committee. In 1992, he was elected to the Texas Senate from District 6 in Harris County. As a member of the Senate, Dan was appointed by the late Lieutenant Governor Bob Bullock to serve on the State Affairs Committee, Natural Resources Committee and Health and Human Services Committee. In 1995, Governor George W. Bush asked Dan to serve his inaugural legislative session as the Governor's Legislative Director.

In 1996, Dan departed the Governor's Office for the private sector to work as a legislative and business consultant where he achieved many successes for clients. In September of 2004, Dan returned to the Capitol to serve as Legislative Director for Governor Rick Perry. Dan occupied this position during the 79<sup>th</sup> Regular Legislative Session and the two special sessions that followed before returning to the private sector to continue his consulting business.

**Experience**

<i>Legislative and Business Consultant</i> October 2005 - Present	Austin, Texas
<i>Legislative Director, Governor Rick Perry</i> September 2004- September 2005	Austin, Texas
<i>Legislative and Business Consultant</i> 1996 – Present	Austin, Texas
<i>Legislative Director, Governor George W. Bush</i> 1995 – 1996	Austin, Texas
<i>Law Practice, McManus &amp; Shelley, Attorneys at Law</i> 1980 - 1994	Harris Co., Texas
<i>Texas Air National Guard, Captain</i> 1977 – 1980 F-101 Systems Operator	
<i>United States Air Force, Captain</i> 1972 – 1977 B-52 Navigator/Radar Navigator	

**Government Service**

<i>Texas State Senator, District 6</i> 1993 – 1995	Harris County, Texas
<i>Texas State Representative, District 127</i> 1987 – 1993	Harris County, Texas

**Education**

*Texas Tech University*  
Bachelor of Business Administration, Marketing, 1971

*Louisiana Tech University*  
Master of Arts, Education, 1977

*South Texas College of Law*  
Doctor of Jurisprudence, 1980

**Civic Involvement**

*Mercy Ships*  
Executive Committee Board

Client list available upon request.

# JENNIFER SHELLEY RODRIGUEZ

Upon graduation from Baylor School of Law in Jennifer Shelley Rodriguez entered a business and legislative consulting practice with her father, Dan Shelley. Prior to attending law school, Jennifer received her undergraduate degree from the University of Texas at Austin.

In addition to consulting independently, Jennifer has experience working on a legislative staff and working for the governmental affairs division of a state agency. She has training in the researching, drafting and publishing of legislation, administrative rules and fiscal notes.

Jennifer's advocacy on behalf of clients includes legislative and rule drafting, issue development, monitoring of legislative and agency meetings, research and writing and other services for individual clients.

## Experience

<i>Legislative Consultant</i> 1998 – Present	Austin, Texas
<i>Texas Lottery Commission, Government Affairs Assistant</i> 75 <sup>th</sup> Legislative Session	Austin, Texas
<i>Texas Lottery Commission, Legal Intern</i> July 1995 – January 1996	Austin, Texas
<i>State Representative Tony Goolsby, Administrative Aide</i> 74 <sup>th</sup> Legislative Session	Austin, Texas

## Education

Baylor University School of Law  
Doctor of Jurisprudence, General Civil Litigation, 1998

University of Texas at Austin  
Bachelor of Arts, Sociology, 1994

## Qualifications

- \*Comprehensive knowledge of the Texas legislative process and ethics laws.
- \*Existing relationships with many state officials, legislators and staffs.
- \*Ability to research and draft legislation.
- \*Experience as a legislative staff person, state agency employee and lobbyist.
- \*Strong written and oral communication skills.
- \*Legal training and active membership in the State Bar of Texas.

## **Exhibit "B"**

### **Payment Terms**

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

The proposed fee is payable on a monthly basis in the amount of \$4,000 each month.

The Consultant will separately invoice the City for expenses related to representing the City including, but not limited to travel, lodging and business meals incurred on behalf of the City. Such itemized expenses, with corresponding paid receipts, shall be paid separately and shall be reviewed and approved in advance by an authorized City representative.

**Exhibit "C"**

**Insurance Requirements and  
Certificate(s) of Insurance**

## Insurance Requirements

1. The Contractor agrees to maintain the types and amounts of insurance required in this Contract throughout the term of the Contract. The following insurance policies shall be required:

- (a) Commercial General Liability
- (b) Business Automobile Liability

2. For each of these policies, the Contractor's insurance coverage shall be primary insurance with respect to the City, its officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officials, employees or volunteers, shall be considered in excess of the Contractor's insurance and shall not contribute to it. Certificates of insurance and endorsements shall be furnished to and approved by the City's Risk Manager *before* any letter of authorization to commence planning will issue or any work on the Project commences. No term or provision of the indemnification provided by the Contractor to the City pursuant to this Contract shall be construed or interpreted as limiting or otherwise affecting the terms of the insurance coverage. **All Certificates of Insurance and endorsements shall be furnished to the City's Representative at the time of execution of this Agreement, attached hereto as Exhibit "D", and approved by the City *before* work commences.**

3. The Contractor shall include all subcontractors as additional insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

4. General Requirements Applicable to All Policies.

- (a) Only insurance carriers licensed and admitted to do business in the State of Texas will be accepted.
- (b) Deductibles shall be listed on the certificate of insurance and are acceptable only on a "per occurrence" basis for property damage only.
- (c) "Claims made" policies will not be accepted, except for Professional Liability insurance.
- (d) Each insurance policy shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) calendar days prior written notice has been given to the City of College Station by certified mail, return receipt requested.
- (e) Upon request, certified copies of all insurance policies shall be furnished to the City.
- (f) The certificates of insurance shall be prepared and executed by the insurance company or its authorized agent. Each certificate shall contain the following provisions and warranties: (a) that the insurance company is licensed and admitted to do business in the State of Texas; (b) that the insurance policy is underwritten on forms provided by the Texas State Board of Insurance or ISO; (c) all endorsements and coverages according to the requirements of this Contract; (d) the form of notice of cancellation, termination, or change in coverage provisions; and (e) original endorsements affecting coverage required by this Contract.
- (g) The City of College Station, its officials, employees, and volunteers are to be added as "Additional Insureds" to the Commercial General Liability and Business Automobile Liability Policies. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees, and volunteers.

5. **Commercial (General) Liability requirements:**

- (a) Coverage shall be written by a carrier with an "B+:VII" or better rating in accordance with the current Best Key Rating Guide.
- (b) Minimum Combined Single Limit of \$1,000,000 per occurrence per project for bodily injury and property damage with a \$2,000,000 annual aggregate limit.
- (c) Coverage shall be at least as broad as Insurance Service's Office Number CG 00 01.
- (d) No coverage shall be deleted from the standard policy without notification of individual exclusions being attached for review and acceptance.
- (e) The coverage shall include but not be limited to: premises/operations; independent contracts, products/completed operations, contractual liability (insuring the indemnity provided herein), and where exposures exist, "Explosion Collapse and Underground" coverage.
- (f) The City shall be named as an additional insured and the policy shall be endorsed to waive subrogation and to be primary and non contributory.

6. **Business Automobile Liability requirements:**

- (a) Coverage shall be written by a carrier with an "B+:VII" or better rating in accordance with the current Best Key Rating Guide.
- (b) Minimum Combined Single Limit of \$1,000,000 per occurrence for bodily injury and property damage.
- (c) The Business Auto Policy must show Symbol 1 in the Covered Autos portion of the liability section in Item 2 of the declarations page.
- (d) The coverage shall include owned, leased or rented autos, non-owned autos, any autos and hired autos.

**Certificate of Insurance**



February 12, 2009  
Consent Agenda Item No. 2g  
Change Order #2 Parallel Water Transmission Line

**To:** Glenn Brown, City Manager

**From:** David Coleman, Director of Water Services.

**Agenda Caption:** Presentation, possible action, and discussion regarding approval of Change Order #2, in the amount of \$281,903.50 to contract 07-229 with Brazos Valley Services, to adjust quantities for construction of the parallel water transmission line.

**Recommendation:** Staff recommends Council approve this change order.

**Summary:** In September of 2007, City Council approved award of construction contract 07-229, in the amount of \$5,521,133.50 to Brazos Valley Services, to construct 4 miles of 36 inch diameter water line. This line provides the last link in the parallel water transmission line, which is required to provide the City with the necessary water supply capacity to meet its future water demand.

In April of 2008, City Council approved Change Order #1 to this contract, in the amount of \$310,749 to comply with a court ordered mediation to resolve a dispute with a property owner. This change provided additional directional boring to avoid open trenching (which would damage the landscape) and also minimized business disruption.

Since April of 2008, construction has proceeded smoothly, but since the work is all underground, many unforeseen obstructions have been encountered over the 4 mile length of the project. Quantities of each type of work must be adjusted to compensate for these unforeseeable conditions, and Change Order #2 is a compilation of all these quantity adjustments. The dollar amount of the change is 5.1% of the original contract value, which is very reasonable for construction work of this nature and complexity. For example, two major factors causing the increased quantities are: First, TXDoT directed hand digging and boring under driveways at Hwy 21; and second, a route change is necessitated due to underground anchors for a BTU high voltage line.

The design engineer, Malcolm-Pirnie, has thoroughly reviewed the details of this change order, and has agreed they are reasonable. This will be the final change order for the contract, and staff recommends approval.

**Budget & Financial Summary:** The FY09 budget for this project is \$9,138,793. Funds in the amount of \$8,956,164 have been expended or committed to date, leaving a balance of \$182,629. The change order is for \$281,903.50 which means \$99,274.50 must be transferred. The additional \$99,274.50 will be transferred from the Capital Projects Contingency, which is currently budgeted in the Water Capital Improvement Projects Fund.

**Attachment:**  
Change Order 2

CHANGE ORDER NO. 2  
CONTRACT # 07-229

DATE: 1/13/09

PROJECT DESCRIPTION: Paralle Transmission Line --HWY 21  
to Villa Maria

P.O.# 08-0116

W/O# WFO352317/003

**OWNER:**

City of College Station  
P.O. Box 9960  
College Station, Texas 77842

**CONTRACTOR:**

Brazos Valley Services  
PO Box 985  
Bryan, TX 77806  
Ph:979-255-9272

**PURPOSE OF THIS CHANGE ORDER:** To increase the quantity of boring, fiber optic conduit installation and 36" ductile iron installation performed by the contractor and decrease quantities of various bid items in various locations along the 20,000 linear feet alignment.

- Item 1: 6" pvc irrigation line replacement in Tamu research ordhard
- Item 2: 6" ductile iron fittings for irrigation line
- Item 3: Additonal labor and equipment to lengthen bore at Leonard Rd. and FM 2818
- Item 4: Additonal labor and equipment to lengthen bore at Hwy 21 and FM 2818 (Pena property)
- Item 5: Additonal labor /equipment / fittings to install Air Relief station at 138+00
- Item 6: Installation of chain link access gate at Pena property sta 33+50
- Item 7: Additonal 36" ductile iron sleeves necessary to complete tie in at sta 28+50 and71+00
- Item 8: Additonal Structural backfill under sidewalk at sta 72+19
- Item 9: Additonal labor/equipment to hand tunnel under City of Bryan wastewater lines
- Item10: Additonal labor/equipment to hand tunnel under BTU Guide Wires
- Item11: Trench Safety Systems
- Item12: Jacked casing for 36" ductile iron pipe
- Item13: Jacked casing for 4" fiber optic conduit
- Item14: Casing for 36" ductile iron pipe by open cut
- Item15: Casing for 4" fiber optic conduit by open cut
- Item16: Pavement repair
- Item17: 36" ductile iron piping
- Item18: Combination air valves with manholes
- Item19: Fiber optic 4" conduit pvc
- Item20: Fiber optic pull boxes
- Item21: Access Gates
- Item22: Additional Granular Bedding
- Item23: Additional corrosion monitoring stations

ITEM NO.	UNIT	DESCRIPTION	UNIT PRICE	ORIGINAL QUANTITY	REVISED QUANTITY	ADDED COST
1	LF	6" irrigation line	\$ 18.00	0	380	\$6,840.00
2	EA	6" irrigation line fittings	\$400.00	0	2	\$800.00
3	EA	Add'l labor /equipment for bore	\$8000.00	0	1	\$8,000.00
4	EA	Add'l labor /equipment for bore	\$28,000.00	0	1	\$28,000.00
5	EA	Add'l labor/equip/ mat for AR sta	\$8,000.00	5	6	\$8,000.00
6	EA	Chain link access gate	\$3,500.00	0	1	\$3500.00
7	EA	36" ductilie iron sleeves	\$5,000.00	0	2	\$10,000.00
8	EA	Structural backfill	\$5,000.00	0	1	\$5,000.00
9	EA	Add'l labor/equip to hand tunnel	\$31,920.00	0	1	\$31,920.00
10	EA	Add'l labor/equip to hand tunnel	\$52,200.00	0	1	\$52,200.00
11	LF	Trench Safety Systems	\$ .50	23,000	21,783	(\$608.50)
12	LF	Jacked Casing for 36" ductile pipe	\$740.00	1645	1598	(\$34,780.00)
13	LF	Jacked casing for 4" fiber optic cond	\$58.00	1645	1598	(\$2,726.00)
14	LF	Casing for 36" ductile open cut	\$378.00	675	786	\$41,958.00

15	LF	Casing for 4" fiber open cut	\$20.00	675	786	\$2,220.00
16	SY	Pavement repair	\$55.00	2100	2550	\$24,750.00
17	LF	36" ductile iron piping	\$132.00	20,000	19,842	\$(20,856.00)
18	EA	Comb air valves w/manholes	\$26,200.00	5	7	\$52,400.00
19	LF	Fiber optic 4" conduit pvc	\$3.00	20,000	19,862	(\$414.00)
20	EA	Fiber optic pull boxes	\$500.00	40	35	(\$2,500.00)
21	EA	Access gates	\$1500.00	15	8	(\$10,500)
22	CY	Additional granular bedding	\$25.00	0	2742	\$68,550.00
23	EA	Additional corrosion monitoring sta	\$350.00	26	55	\$10,150.00

THE NET AFFECT OF THIS CHANGE ORDER IS A **\$281,903.50 Increase**

ORIGINAL CONTRACT AMOUNT	\$ 5,521,133.50	
Change Order No. 1	\$ 310,749.00	5.6 % of Original Contract Amount
Change Order No. 2	\$ 281,903.50	5.1 % of Original Contract Amount
REVISED CONTRACT AMOUNT	\$ 6,113,786.00	

ORIGINAL CONTRACT TIME	365 Days
Change Order No. 1 Time Extension or Reduction	30 Days
Change Order No. 2 Time Extension or Reduction	30 Days
REVISED CONTRACT TIME	425 Days

ORIGINAL SUBSTANTIAL COMPLETION DATE  
10/25/08

REVISED SUBSTANTIAL COMPLETION  
DATE 12/24/08

APPROVED:

_____ A/E CONTRACTOR <i>Ricky J. Placosta</i> _____ CONSTRUCTION CONTRACTOR	_____ Date 1/14/09 _____ Date	_____ CHIEF FINANCIAL OFFICER <i>Alvin C. Falso</i> _____ CITY ATTORNEY	_____ Date _____ Date
_____ PROJECT ENGINEER	_____ Date	_____ CITY MANAGER	_____ Date
_____ CITY ENGINEER <i>D. L. ...</i> _____ DEPARTMENT DIRECTOR/ADMINISTRATOR	_____ Date 23 Jan 09 _____ Date	_____ MAYOR	_____ Date
		_____ CITY SECRETARY	_____ Date

**February 12, 2009**  
**Consent Agenda Item No. 2h**  
**Resolution Determining Need (Easement Acquisition)**  
**Koppe Bridge Lift Station (Wastewater)**

**To:** Glenn Brown, City Manager

**From:** Chuck Gilman, PE, Director of Capital Projects

**Agenda Caption:** Presentation, possible action, and discussion regarding approval of a Needs Resolution that will authorize City staff to negotiate for the purchase of easements needed for the Koppe Bridge Lift Station project.

**Recommendation(s):** Staff recommends approval of the Resolution.

**Summary:** The project provides for the construction of a force main sewer from the proposed Meadow Creek Lift Station to the Creek Meadow Lift Station. It will allow the Meadow Creek Package Plant to be taken off line, eliminating the ongoing operational and administrative costs for the plant. The project will also eliminate the potential for drainage disputes with downstream landowners.

**Budget & Financial Summary:** Funding source for the project is Utility Revenue Bonds. The project budget, including land, engineering and construction is \$400,000.

**Attachments:** Resolution Determining Need  
Exhibit "A" to the Resolution  
Project Location Map

**RESOLUTION DETERMINING NEED**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COLLEGE STATION, TEXAS, RELATING TO: (1) THE AUTHORITY OF THE CITY TO INITIATE, COMPLETE, AND ACQUIRE, BY PURCHASE OR CONDEMNATION, RIGHT-OF-WAY AND EASEMENT INTEREST IN CERTAIN PROPERTY FOR THE KOPPE BRIDGE LIFT STATION PROJECT; (2) A DECLARATION THAT PUBLIC NECESSITY EXISTS FOR THE CITY TO ACQUIRE SUCH INTEREST, THROUGH PURCHASE OR CONDEMNATION; AND (3) ESTABLISHING PROCEDURES FOR THE ACQUISITION OF SUCH INTEREST IN THE PROPERTY.

WHEREAS, the City of College Station, Texas ("City") is a home rule municipality duly incorporated and chartered under the Constitution and laws of Texas; and

WHEREAS, the City owns, operates, constructs, repairs and maintains a city wastewater system as a public service; and

WHEREAS, the City's ownership, operation, construction, repair, and maintenance of the city wastewater system is a benefit to the public; and

WHEREAS, the City, through a condemnation proceeding, may exercise the power of eminent domain to acquire property in order to carry out the ownership, operation, construction, repair, and maintenance of its wastewater system pursuant to Chapter 251 of the Texas Local Government Code, Chapter 21 of the Texas Property Code, and Article II of the City's Charter; and

WHEREAS, the City is engaged in the following project regarding installation and improvements to a force main sewer between the Meadow Creek lift station and the Creek Meadow lift station, including the installation of a force main sewer and other public utilities, (the "Project"); and

WHEREAS, the City determines that the best interests and needs of the public, including the health, safety and welfare of the public, require that the City complete the Project, through the City's acquisition, by purchase or condemnation proceeding, of the right-of-way and easements as provided in Exhibit A, attached hereto and incorporated herein by reference for all purposes (the "Right-of-Way and Easements"); now, therefore

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

PART 1: That the City Council of the City of College Station, Texas, hereby officially determines that there is a public necessity for the Right-of-Way and Easements, and the public welfare and convenience will be served by the acquisition of the Right-of-Way and Easements.

- PART 2: That the City Manager is hereby authorized to contract, on behalf of the City of College Station, with a professional appraiser for the appraisal services, with a professional real estate agent to act as a Land Agent for the City and with attorneys for preparation of title opinions needed by the City from time to time in connection with acquisition of the Right-of-Way and Easements.
- PART 3: That the City's Land Agent or other staff appraiser is hereby authorized and directed to examine the independent appraisal reports as they are submitted to the City to determine whether said appraisal reports are supported by sufficient data. Based upon such examination of said appraisal reports, the Land Agent or other staff appraiser shall make a recommendation to the City Manager as to the establishment and approval of the amount of the just compensation for the Right-of-Way and Easements.
- PART 4: After consideration of said recommendation, the City Manager shall establish and approve the amount determined for acquisition of the Right-of-Way and Easements.
- PART 5: Upon establishment and approval by the City Manager of the amount of just compensation for the acquisition of the Right-of-Way and Easements, the City's Land Agent or other staff appraiser is authorized to communicate a written offer to the property owners for the acquisition of such interest at the full amount determined and established to be just compensation therefore and to negotiate with said owners on behalf of the City.
- PART 6: That the Mayor after approval by City Council, or the City Manager as delegated, is hereby authorized to execute all documents necessary to acquire said Right-of-Way and Easements for the Project, on behalf of the City of College Station.
- PART 7: That, if necessary, and should a property owner fail to accept a bona fide, good faith offer from the City to purchase the required Right-of-Way and Easements, City representatives shall have the authority to initiate and complete condemnation proceedings against said owner, in order to acquire through condemnation all required property interests and title regarding such property.
- PART 8: That the City Manager be and is hereby authorized to sell any such surplus improvements, or order the demolition thereof, if any, located on the real property acquired in connection with this Project.

PART 9: That this resolution shall take effect immediately from and after its passage.

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, A.D. 2009.

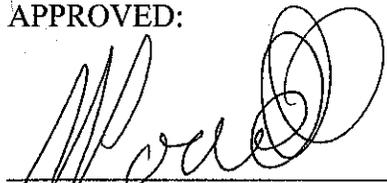
ATTEST:

APPROVED:

\_\_\_\_\_  
City Secretary

\_\_\_\_\_  
MAYOR

APPROVED:

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

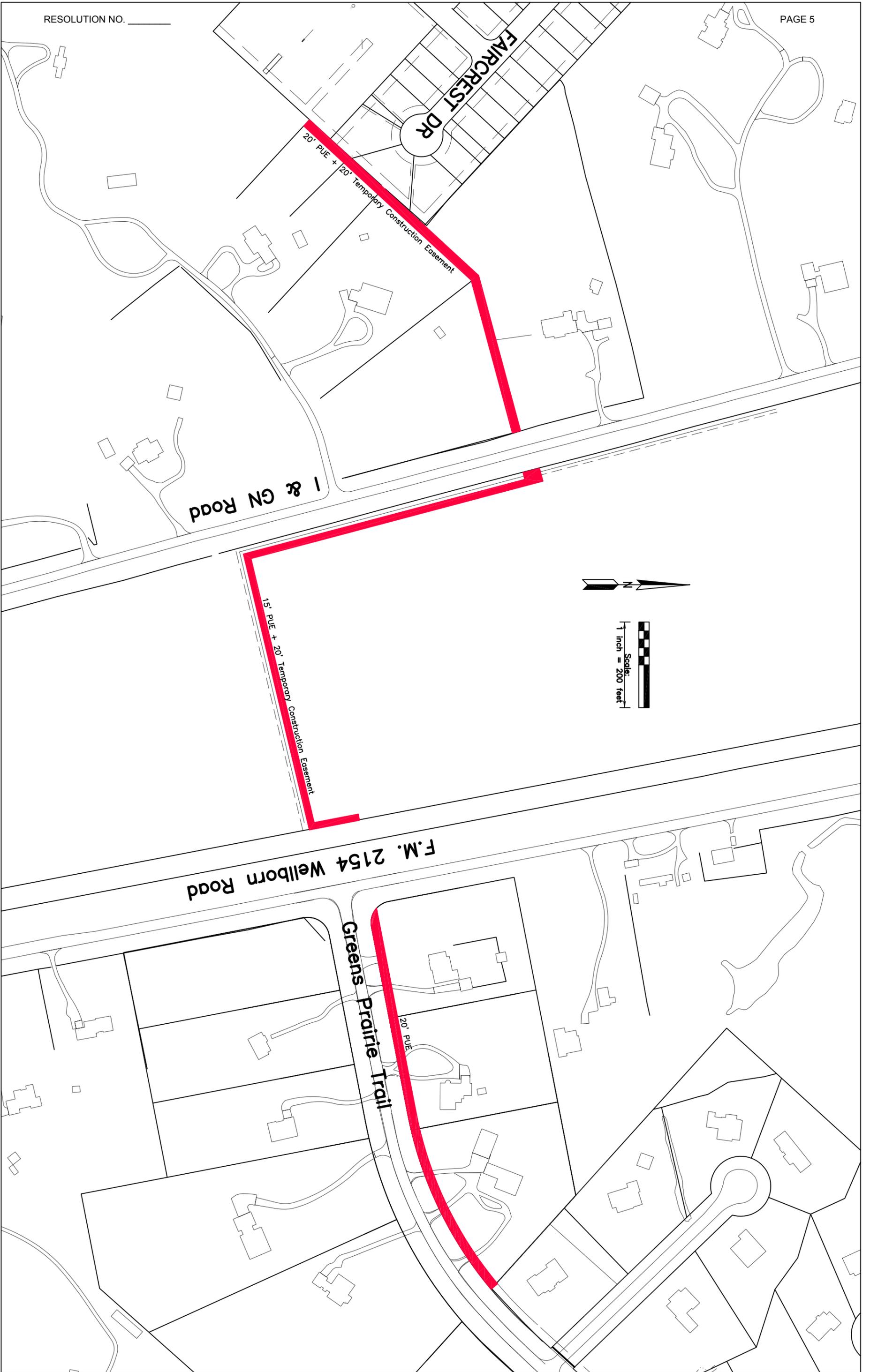
**EXHIBIT "A" TO RESOLUTION DETERMINING NEED**

<b>Tract Name</b>	<b>Property Owner (current or former)</b>	<b>Permanent Public Utility Easement</b>	<b>Temporary Construction Easement</b>
Richard Miller	Richard Miller and wife, Karen Miller	20' wide	20' wide
McCleskey	James L. McCleskey and Joan M. McCleskey	20' wide	20' wide
Dorothy Santana	Richard Mate Della Santana and Dorothy Nell Della Santana, Co-Trustees of the Santina Revocable Trust	15' wide	20' wide

**In addition**, being a twenty foot (20') wide strip of Permanent Public Utility Easements extending along and adjoining the north right-of-way line of Greens Prairie Trail, extending across the tracts or parcels of land described below:

<b>Property Owner (current or former)</b>	<b>Legal Description</b>
Teresa Criswell Smith and Kyle Lynn Smith	2.128 acres being Lot 3, Block 1, Crossroad Woods Addition, Brazos County, Texas; said 2.128 acres of land conveyed to Teresa Criswell Smith and Kyle Lynn Smith by deed recorded in Volume 3626, Page 310, Official Records of Brazos County, Texas.
Roy M. Robinson and Cynthia A. Robinson	2.128 acres being Lot 2, Block 1, Crossroad Woods Addition, Brazos County, Texas; said 2.128 acres of land conveyed to Roy M. Robinson and Cynthia A. Robinson by deed recorded in Volume 4272, Page 101, Official Records, Brazos County, Texas.
Timothy D. Foster and Judith M. Foster	2.345 acres being Lot 1, Block 1, Crossroad Woods Addition, Brazos County, Texas; said 2.345 acres of land conveyed to Timothy D. Foster and Judith M. Foster by deed recorded in Volume 4482, Page 182, Official Records, Brazos County, Texas.

The above mentioned Permanent Public Utility Easements and Temporary Construction Easements are depicted on a project map which is attached hereto and incorporated herein. The Richard Miller, McCleskey and Dorothy Santana tracts are more particularly described by field notes and plats, which are attached hereto and incorporated herein.



**Joe Orr, Inc.**  
*Surveyors & Engineers*  
 2167 Post Oak Circle  
 College Station, Texas  
 (979) 693-2777/693-3378

Proposed 20' Easement  
 Richard Miller Tract  
 Samuel Davidson survey A-13  
 Brazos County, Texas  
 November 11, 2008

All that certain tract or parcel of land lying and being situated in the Samuel Davidson survey, Abstract No. 13, in Brazos County, Texas, being a part of that 2.136 acre tract conveyed to Richard Miller and wife, Karen Miller by deed recorded in Volume 5585, Page 72 of the Official Public Records of Brazos County, Texas, being an easement twenty feet (20') in width adjoining the northwest line of said Miller tract and being more particularly described as follows:

Beginning at the common corner of the said Miller tract and that 2.56 acre tract conveyed to James L. McCleskey and Joan M. McCleskey by deed recorded in Volume 1607, Page 178 of the Official Public Records of Brazos County, Texas, in the southeast line of Meadowcreek Subdivision described by plat recorded in Volume 7138, Page 121 of the Official Public Records of Brazos County, Texas, from which a 3/4" iron rod found due south 0.4 feet.

Thence S 47° 18' 06" E – 20.00 feet along the line between the said Miller and McCleskey tracts;

Thence S 42° 40' 01" W – 234.90 feet through the said Miller tract to the line between the said Miller tract and that 5.50 acre tract conveyed to Larry G. Young by deed recorded in Volume 3217, Page 40 of the Official Public Records of Brazos County, Texas;

Thence N 47° 18' 06" W – 20.00 feet along the line between the said Miller tract and the said Young tract to a 5/8" iron rod found at the common corner of same in the southeast line of Common Area No. 4 of Meadowcreek Subdivision;

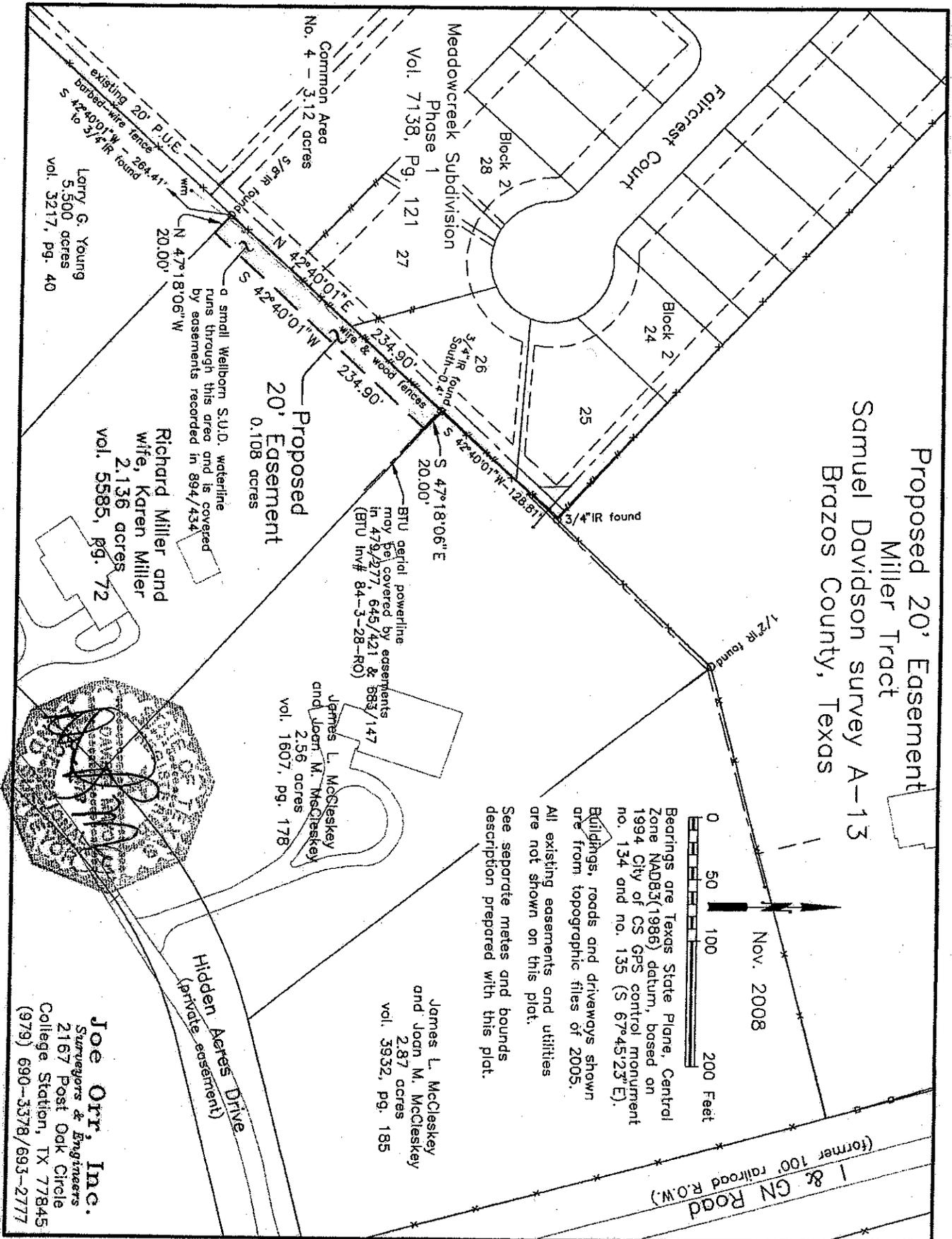
Thence N 42° 40' 01" E – 234.90 feet along the line between Meadowcreek Subdivision and the said Miller tract to the Point of Beginning and containing 0.108 acres of land more or less.

Bearings are Texas State Plane, Central Zone NAD83(1986) datum, based on 1994 City of College Station GPS control monument no. 134 and no. 135 (S 67°45'23" E).

See survey plat prepared with this description.



C:\Program Files\AutoCAD 2002\DWG\KoppeSwr08a.dwg, Miller, 11/11/2008 11:17:11 AM



**Joe Orr, Inc.**  
*Surveyors & Engineers*  
 2167 Post Oak Circle  
 College Station, Texas  
 (979) 693-2777/693-3378

Proposed 20' Temporary Easement  
 Richard Miller Tract  
 Samuel Davidson survey A-13  
 Brazos County, Texas  
 22 January 2009

All that certain tract or parcel of land lying and being situated in the Samuel Davidson survey, Abstract No. 13, in Brazos County, Texas, being a part of that 2.136 acre tract conveyed to Richard Miller and wife, Karen Miller by deed recorded in Volume 5585, Page 72 of the Official Public Records of Brazos County, Texas, being an easement twenty feet (20') in width lying 20' southeast of the northwest line of said Miller tract and being more particularly described as follows:

Beginning in the common line of the said Miller tract and that 2.56 acre tract conveyed to James L. McCleskey and Joan M. McCleskey by deed recorded in Volume 1607, Page 178 of the Official Public Records of Brazos County, Texas, at a point located S 47° 18' 06" E – 20.00 feet from the common corner of the said tracts in the southeast line of Meadowcreek Subdivision described by plat recorded in Volume 7138, Page 121 of the Official Public Records of Brazos County, Texas.

Thence S 42° 40' 01" W – 234.90 feet through the said Miller tract to the line between the said Miller tract and that 5.50 acre tract conveyed to Larry G. Young by deed recorded in Volume 3217, Page 40 of the Official Public Records of Brazos County, Texas to a point located S 47° 18' 06" E – 20.00 feet from a 5/8" iron rod found at the common corner of said Miller and Young tracts in the southeast line of the said Meadowcreek Subdivision;

Thence S 47° 18' 06" E – 20.00 feet along the line between the said Miller and Young tracts;

Thence N 42° 40' 01" E – 234.90 feet through the said Miller tract to the said common line of the said Miller and McCleskey tracts;

Thence N 47° 18' 06" W – 20.00 feet along said line to the Point of Beginning and containing 0.108 acres of land more or less.

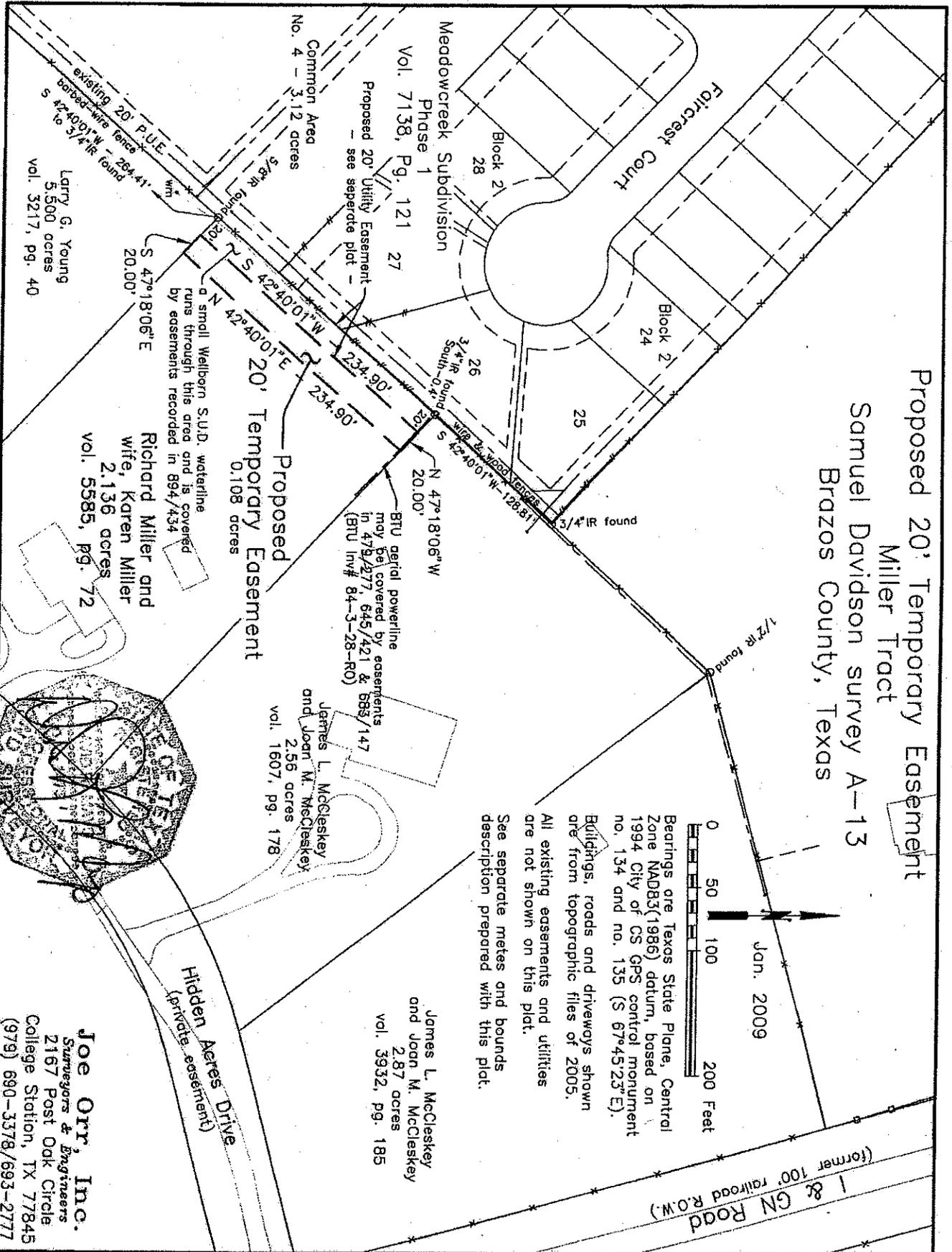
Bearings are Texas State Plane, Central Zone NAD83(1986) datum, based on 1994 City of College Station GPS control monument no. 134 and no. 135 (S 67°45'23" E).

See survey plat dated January 2009.



C:\Program Files\AutoCAD 2002\DWG\KoppeSwr08a.dwg, Miller\_Temp, 1/22/2009 12:14:32 PM

# Proposed 20' Temporary Easement Miller Tract Samuel Davidson survey A-13 Brazos County, Texas



**Joe Orr, Inc.**  
*Surveyors & Engineers*  
2167 Post Oak Circle  
College Station, Texas  
(979) 693-2777/693-3378

Proposed 20' Easement  
McCleskey Tracts  
Samuel Davidson survey A-13  
Brazos County, Texas  
November 11, 2008

All that certain tract or parcel of land lying and being situated in the Samuel Davidson survey, Abstract No. 13, in Brazos County, Texas, being a part of that 2.56 acre tract conveyed to James L. McCleskey and Joan M. McCleskey by deed recorded in Volume 1607, Page 178 of the Official Public Records of Brazos County, Texas, and a part of that 2.87 acre tract conveyed to James L. McCleskey and Joan M. McCleskey by deed recorded in Volume 3932, Page 185 of the Official Public Records of Brazos County, Texas, being an easement twenty feet (20') in width adjoining the northwest lines of said tracts and being more particularly described as follows:

Beginning at a ¾" iron rod found in the northwest line of the said McCleskey 2.56 acre tract at the common corner of the Meadowcreek Subdivision Phase 1 described by plat recorded in Volume 7138, Page 121 of the Official Public Records of Brazos County, Texas, and that 4.895 acre tract conveyed to Barbara Layman Williams by deed recorded in Volume 5206, Page 196 of the Official Public Records of Brazos County, Texas.

Thence N 42° 49' 47" E – 172.10 feet along the line between the said Williams tract and the said McCleskey 2.56 acre tract to a ½" iron rod found at the common corner of the said McCleskey 2.56 acre tract and the said McCleskey 2.87 acre tract;

Thence N 74° 55' 50" E – 375.70 feet along the line between the said Williams tract and the said McCleskey 2.87 acre tract to the common corner of the said Williams tract and the said McCleskey 2.87 acre tract in the southwest line of I&GN Road as fenced;

Thence S 14° 58' 07" E – 20.00 feet along the southwest line of I&GN Road;

Thence through the said McCleskey tracts parallel to and twenty feet (20') from the northwest line of same as follows;

S 74° 55' 50" W – 369.91 feet;

S 42° 49' 47" W – 166.32 feet;

S 42° 40' 01" W – 128.79 feet to the line between the said McCleskey 2.56 acre tract and that 2.136 acre tract conveyed to Richard Miller and wife, Karen Miller by deed recorded in Volume 5585, Page 72 of the Official Public Records of Brazos County, Texas;

Thence N 47° 18' 06" W – 20.00 feet along the line between the said McCleskey 2.56 acre tract and the said Miller tract to the common corner of said tracts in the southeast line of Meadowcreek Subdivision from which a 3/4" iron rod was found due south 0.4 feet;

Thence N 42° 40' 01" E – 128.81 feet along the line between Meadowcreek Subdivision and the said McCleskey 2.56 acre tract to the Point of Beginning and containing 0.308 acres of land more or less.

Bearings are Texas State Plane, Central Zone NAD83(1986) datum, based on 1994 City of College Station GPS control monument no. 134 and no. 135 (S 67°45'23" E).

See survey plat prepared with this description.





**Joe Orr, Inc.**  
*Surveyors & Engineers*  
2167 Post Oak Circle  
College Station, Texas  
(979) 693-2777/693-3378

Proposed 20' Temporary Easement  
McCleskey Tracts  
Samuel Davidson survey A-13  
Brazos County, Texas  
22 January 2009

All that certain tract or parcel of land lying and being situated in the Samuel Davidson survey, Abstract No. 13, in Brazos County, Texas, being a part of that 2.56 acre tract conveyed to James L. McCleskey and Joan M. McCleskey by deed recorded in Volume 1607, Page 178 of the Official Public Records of Brazos County, Texas, and a part of that 2.87 acre tract conveyed to James L. McCleskey and Joan M. McCleskey by deed recorded in Volume 3932, Page 185 of the Official Public Records of Brazos County, Texas, being an easement twenty feet (20') in width lying 20' southeast of the northwest lines of said tracts and being more particularly described as follows:

Beginning in the common line of the said McCleskey 2.56 acre tract and that 2.136 acre tract conveyed to Richard Miller and wife, Karen Miller by deed recorded in Volume 5585, Page 72 of the Official Public Records of Brazos County, Texas at a point located S 47° 18' 06" E – 20.00 feet from the common corner of the said 2.56 acre and 2.136 acre tracts in the southeast line of the Meadowcreek Subdivision Phase 1 described by plat recorded in Volume 7138, Page 121 of the Official Public Records of Brazos County, Texas.

Thence S 47° 18' 06" E – 20.00 feet along the common line of the said Miller and McCleskey tracts to the southwest corner of this tract;

Thence through the said McCleskey tracts parallel and forty feet (40') from the northwest line of same as follows;

N 42° 40' 01" E – 128.77 feet;

N 42° 49' 47" E – 160.54 feet;

N 74° 55' 50" E – 364.12 feet to a point in the southwest line of I&GN Road as fenced, from where a ½" iron rod found at the southeast corner of the said McCleskey 2.87 acre tract bears S 14° 58' 07" E – 390.46 feet;

Thence N 14° 58' 07" W – 20.00 feet along the said southwest line of I&GN Road to the northeast corner of this tract;

Thence through the said McCleskey tracts parallel and twenty feet (20') from the northwest line of same as follows;

S 74° 55' 50" W – 369.91 feet;

S 42° 49' 47" W – 166.32 feet;

S 42° 40' 01" W – 128.79 feet to the Point of Beginning and containing 0.303 acres of land more or less.

Bearings are Texas State Plane, Central Zone NAD83(1986) datum, based on 1994 City of College Station GPS control monument no. 134 and no. 135 (S 67°45'23" E).

See survey plat dated January 2009.





**Joe Orr, Inc.**  
*Surveyors & Engineers*  
 2167 Post Oak Circle  
 College Station, Texas  
 (979) 693-2777

Proposed 15' Easement  
 Dorothy Santina Tract  
 Samuel Davidson Survey A-13  
 Brazos County, Texas  
 22 January 2009

All that certain tract or parcel of land lying and being situated in the Samuel Davidson survey, Abstract No. 13, in Brazos County, Texas, being a part of that 83.84 acre tract conveyed to Dorothy N. Santina by deed recorded in Volume 330, Page 712 of the Deed Records of Brazos County, Texas, being an easement Fifteen Feet (15') in width adjoining the north side of the existing 15' waterline easement to Wellborn Special Utility District described in Volume 3433, Page 265 of the Official Public Records of Brazos County, Texas, and being more particularly described as follows:

Beginning at the intersection of the southwest line of the Union Pacific Railroad right-of-way and the northwest line of the said Wellborn Special Utility District easement at a point located 50' from the centerline of the railroad tract.

Thence through the said Santina tract as follows:

S 76° 35' 04" W – 662.15 feet along said existing easement northwest line;  
 N 14° 53' 33" W – 677.50 feet along said existing easement northeast line;  
 S 75° 06' 27" W – 16.50 feet across the said Wellborn SUD easement to an old fenceline on the occupied southwest line of the said Santina tract;

Thence N 14° 53' 33" W – 40.00 feet along said old fence to the northwest corner of this tract;

Thence through the said Santina tract as follows:

N 75° 06' 27" E – 31.50 feet;  
 S 14° 53' 33" E – 702.88 feet;  
 N 76° 35' 04" E – 633.17 feet;  
 N 10° 54' 24" W – 104.65 feet;  
 N 79° 05' 36" E – 15.00 feet to the southwest right-of-way line of the Union Pacific Railroad at a point from where the City of College Station monument no. 134 bears  
 N 8° 24' 34" W – 6363.3 feet;

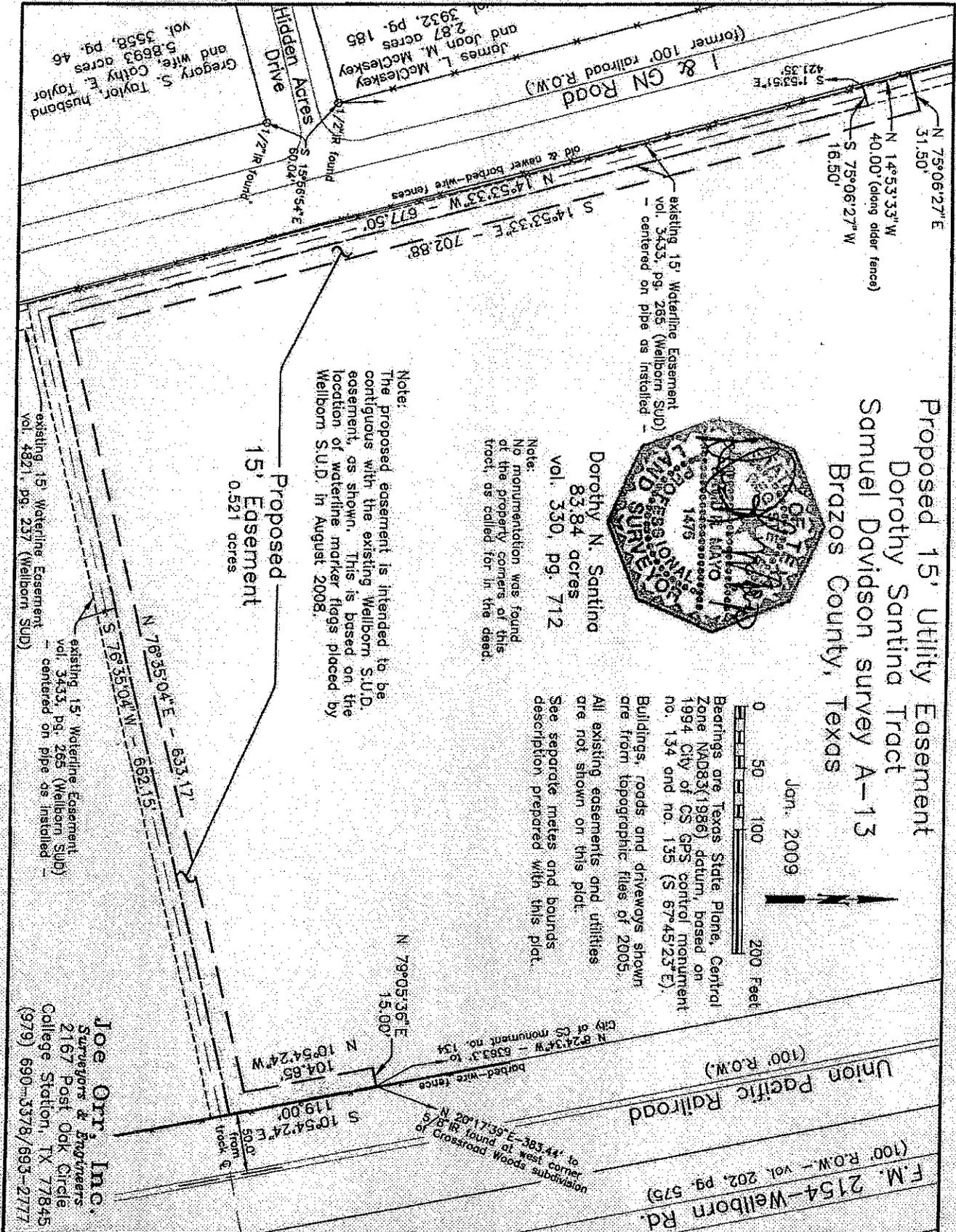
Thence S 10° 54' 24" E – 119.00 feet along said right-of-way line to the Point of Beginning and containing 0.521 acres of land more or less.

Bearings are Texas State Plane, Central Zone NAD83(1986) datum, based on 1994 City of College Station GPS control monument no. 134 and no. 135 (S 67° 45' 23" E).

See survey plat dated January 2009.



C:\Program Files\AutoCAD 2002\DWG\KoppeSwr08a.dwg, Santana\_15UE, 1/22/2009 10:48:00 AM



**Joe Orr, Inc.**  
*Surveyors & Engineers*  
 2167 Post Oak Circle  
 College Station, Texas  
 (979) 693-2777

Proposed 20' Temporary Easement  
 Dorothy Santana Tract  
 Samuel Davidson Survey A-13  
 Brazos County, Texas  
 22 January 2009

All that certain tract or parcel of land lying and being situated in the Samuel Davidson survey, Abstract No. 13, in Brazos County, Texas, being a part of that 83.84 acre tract conveyed to Dorothy N. Santana by deed recorded in Volume 330, Page 712 of the Deed Records of Brazos County, Texas, being an easement Twenty Feet (20') in width lying 15' north of the existing 15' waterline easement to Wellborn Special Utility District described in Volume 3433, Page 265 of the Official Public Records of Brazos County, Texas, and being more particularly described as follows:

Beginning at a point in the southwest line of the Union Pacific Railroad right-of-way N 10° 54' 24" W – 119.00 feet from the northwest line of the said Wellborn Special Utility District easement 50' from the centerline of the railroad tract, at a point from where the City of College Station monument no. 134 bears N 8° 24' 34" W – 6363.3 feet;

Thence N 10° 54' 24" W – 20.00 feet along said railroad right-of-way;

Thence through the said Santana tract as follows:

S 79° 05' 36" W – 35.00 feet;  
 S 10° 54' 24" E – 105.50 feet;  
 S 76° 35' 04" W – 594.54 feet;  
 N 14° 53' 33" W – 703.39 feet;  
 S 75° 06' 27" W – 51.50 feet to the occupied southwest line of the said Santana tract;

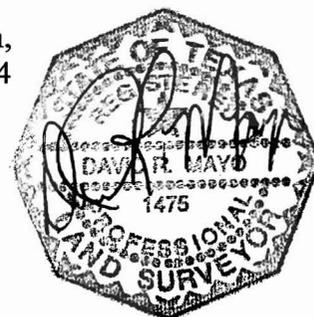
Thence S 14° 53' 33" E – 20.00 feet along an old fenceline to a southwest corner of this tract;

Thence through the said Santana tract as follows:

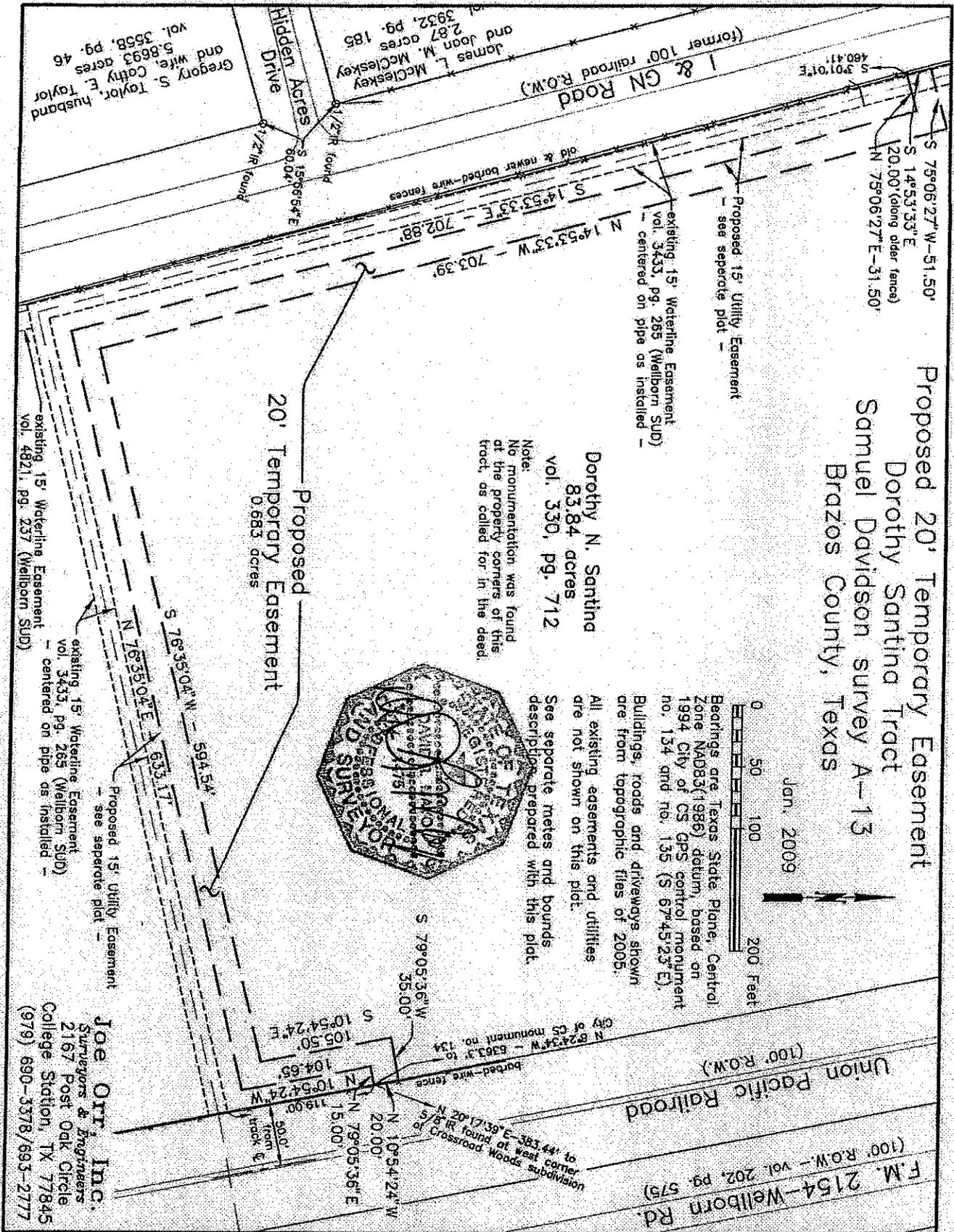
N 75° 06' 27" E – 31.50 feet;  
 S 14° 53' 33" E – 702.88 feet;  
 N 76° 35' 04" E – 633.17 feet;  
 N 10° 54' 24" W – 104.65 feet;  
 N 79° 05' 36" E – 15.00 feet to the Point of Beginning and containing 0.683 acres of land more or less.

Bearings are Texas State Plane, Central Zone NAD83(1986) datum, based on 1994 City of College Station GPS control monument no. 134 and no. 135 (S 67° 45' 23" E).

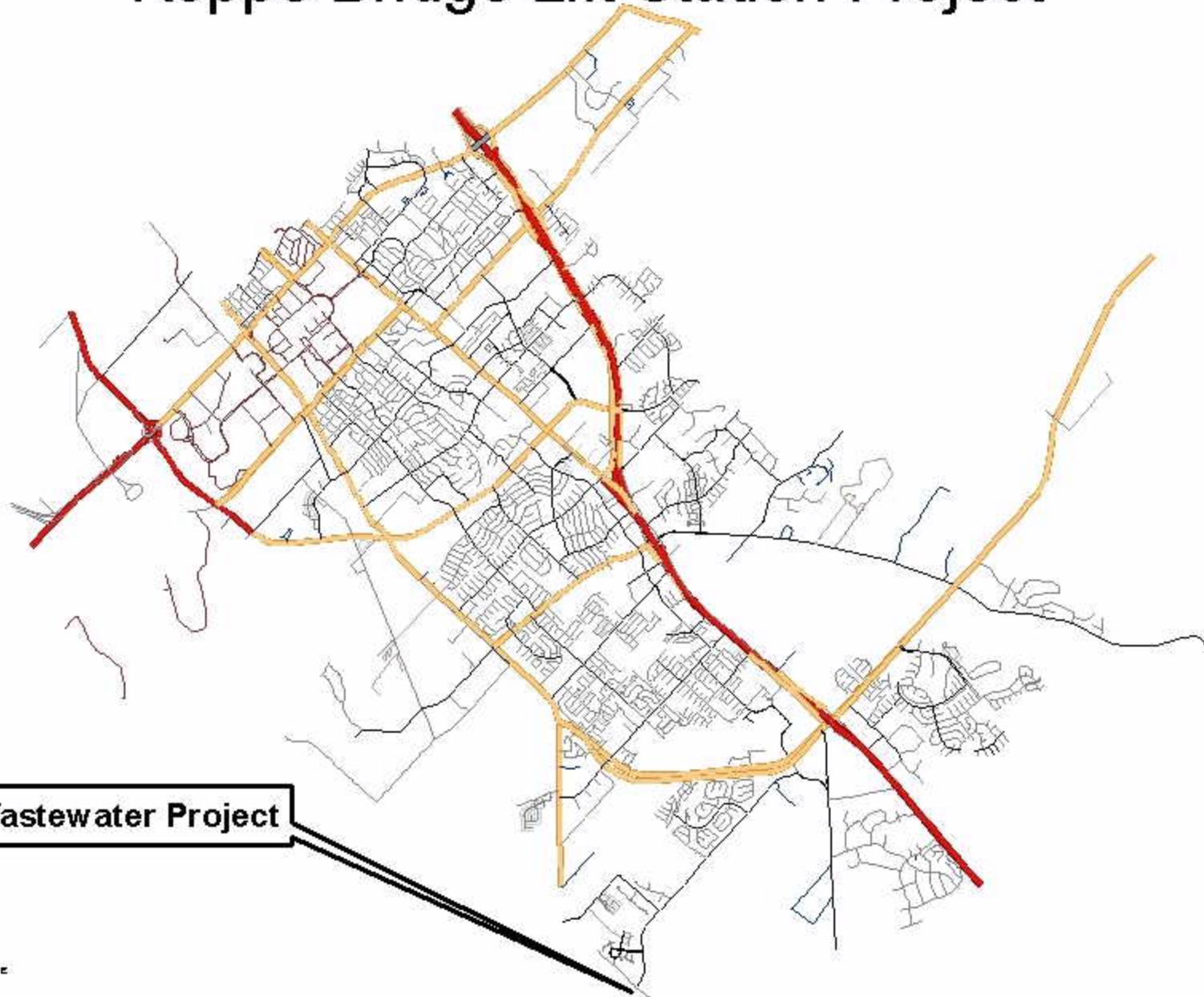
See survey plat dated January 2009.



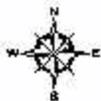
C:\Program Files\AutoCAD 2002\DWG\KoppeSwr08a.dwg, Santana\_Temp, 1/22/2009 10:53:16 AM



# Koppe Bridge Lift Station Project



**Wastewater Project**



**February 12, 2009  
Consent Agenda Item No. 2i  
Clean Green Brush Disposal  
Annual Exemption**

**To:** Glenn Brown, City Manager

**From:** Mark Smith, Director of Public Works

**Agenda Caption:** Presentation, possible action and discussion to approve an annual purchase order in the amount of \$58,000 for disposal of heavy brush at the City of Bryan Composting Facility. This item is exempt from competitive bidding as described in Texas Local Government Code, Chapter 252.022.

**Recommendation(s):** Staff recommends approval of the purchase request for the City of Bryan Composting Facility in the amount of \$58,000 for brush disposal.

**Summary:** The following purchases are available from one source and thereby exempt from competitive bidding in accordance with LGC 252.022 (a) (7) (c) gas, water, and other utility service. The Sanitation Division initiated clean green brush collection operations for residential customers in 1994. This operation diverts brush and yard waste from disposal at the landfill and transports it to the composting facility for recycling. The Sanitation Division has diverted over 31,000 tons of waste since program inception, and the tonnage disposed has increased annually with growth in the City's residential areas.

The Sanitation Division is currently being charged \$21.50 per ton for material disposed of at the facility, and will expend approximately \$58,000 for brush collected during FY09.

**Budget & Financial Summary:** Funds are budgeted and available in the sanitation solid waste fund, residential collection division.

**Attachments:** None



# Greens Prairie Road NO PARKING Zone



0 75 150 300  
Feet

February 12, 2009  
Consent Agenda Item No. 2j  
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.

**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 on the:

- 1) northbound approach of New Port at its intersection with Barron Road, and
- 2) intersection approaches of Congressional Drive with St. Andrews.

This ordinance also repeals the ordinance allowing stop signs on the St. Andrews intersection approaches with Congressional Drive. Recently, the middle section of St. Andrews between Congressional Drive and Jupiter Hill Court was constructed, completing the minor collector. Prior to the completion of the roadway, an ordinance had been passed allowing stop signs to be placed on the St. Andrews approaches to the intersection with Congressional because at the time, Congressional Drive was shown on the Thoroughfare Plan to extend from the Pebble Creek subdivision out to the SH 6 Frontage Road. Since that time the Thoroughfare Plan has been amended so that a new street, Birkdale, will eventually make the connection to SH 6 instead of Congressional Drive.

**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. Map of New Port at Barron Rd.
3. Map of St. Andrews and Congressional Drive

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.

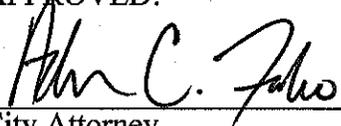
APPROVED:

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
City Secretary

APPROVED:

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

**EXHIBIT "A"**

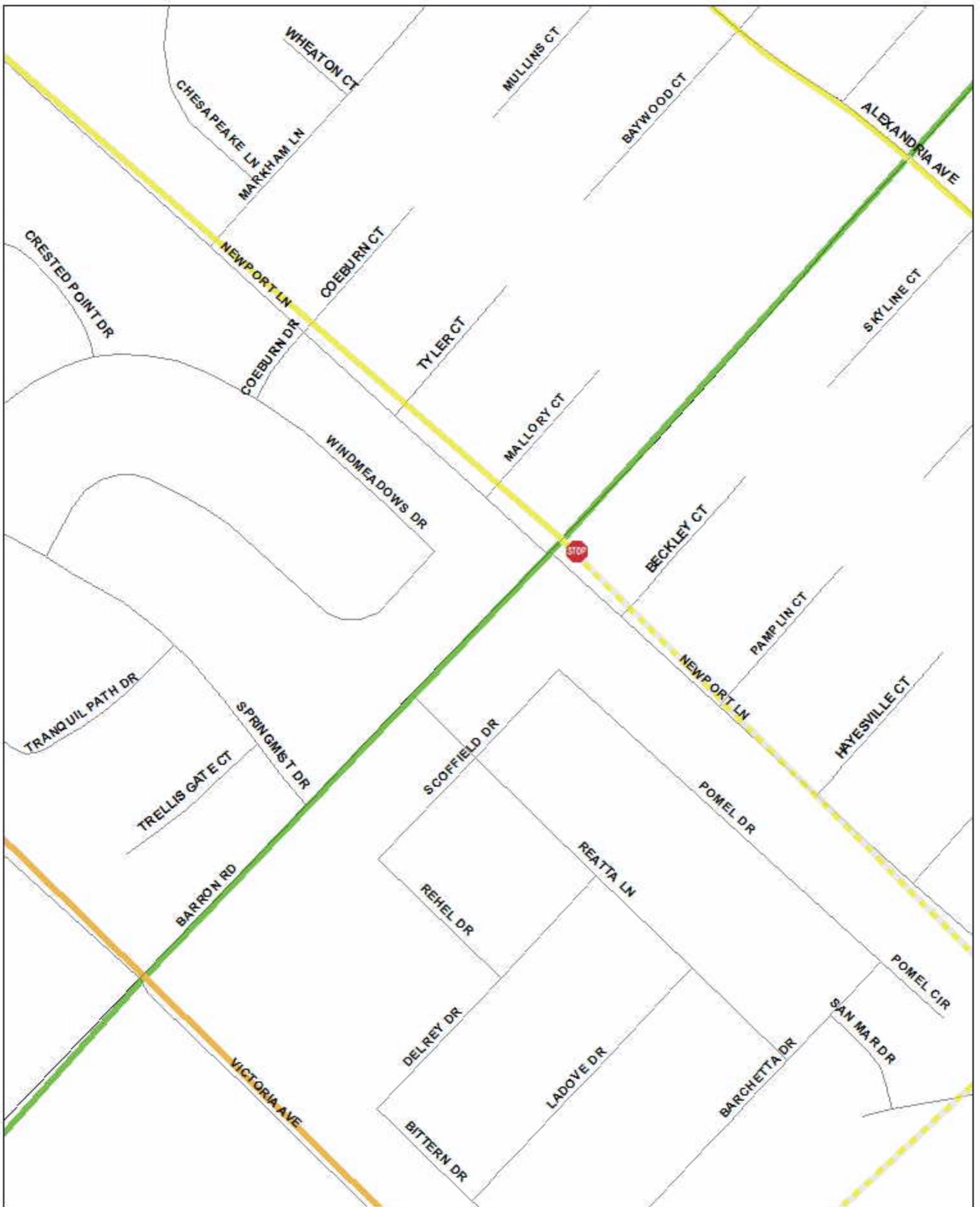
That Traffic Control Device Inventory - Schedule III as referenced in Chapter 10, "Traffic Code", Section 2 "Traffic Control Devices", sub-section D "Special Hazard Intersections Controlled by Stop Signs" is hereby amended to:

1) remove the following:

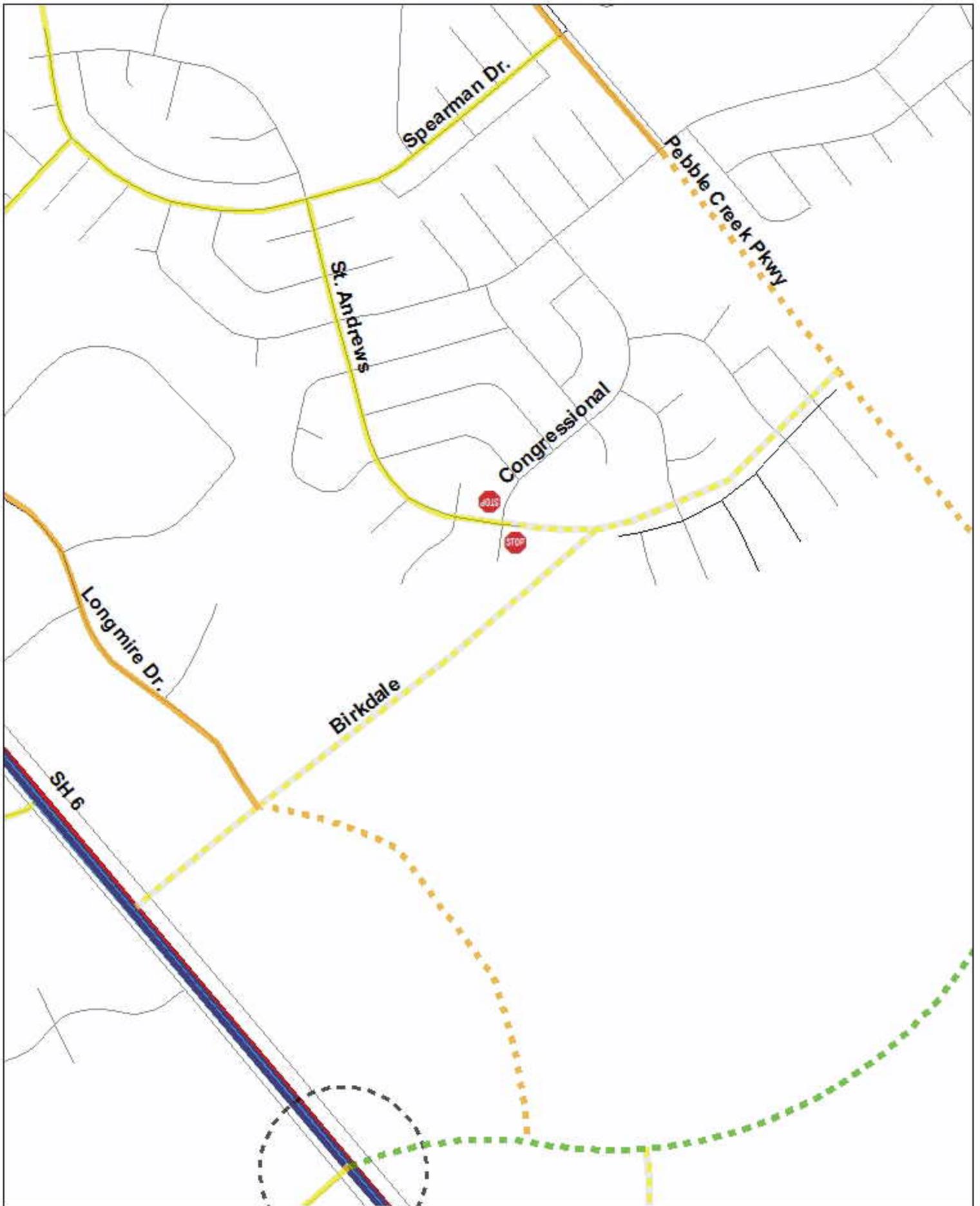
"St. Andrews at Congressional"

2) include the following:

"New Port at Barron Road  
Congressional at St. Andrews"



# Intersection of New Port Lane and Barron Road



Intersection of  
St. Andrews and Congressional

**February 12, 2009**  
**Consent Agenda Item No. 2k**  
**Intersections Controlled with Yield 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.E of the Code of Ordinances of the City of College Station by updating the Traffic Control Device Inventory – Schedule IV.

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

**Summary:** This item will modify Chapter 10, "Traffic Code," by updating schedule IV of the Traffic Control Device Inventory to add YIELD signs on the Arrington Road intersection approaches to the roundabout located in the northwest quadrant of the SH 6 and SH 40 interchange. Requiring traffic entering a roundabout to yield to vehicles already on the roundabout is standard practice and required according to the Texas Manual on Uniform Traffic Control Devices.

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

**Attachments:**

1. Ordinance
2. 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.

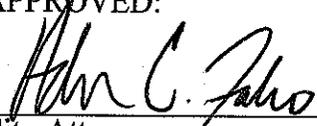
APPROVED:

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
City Secretary

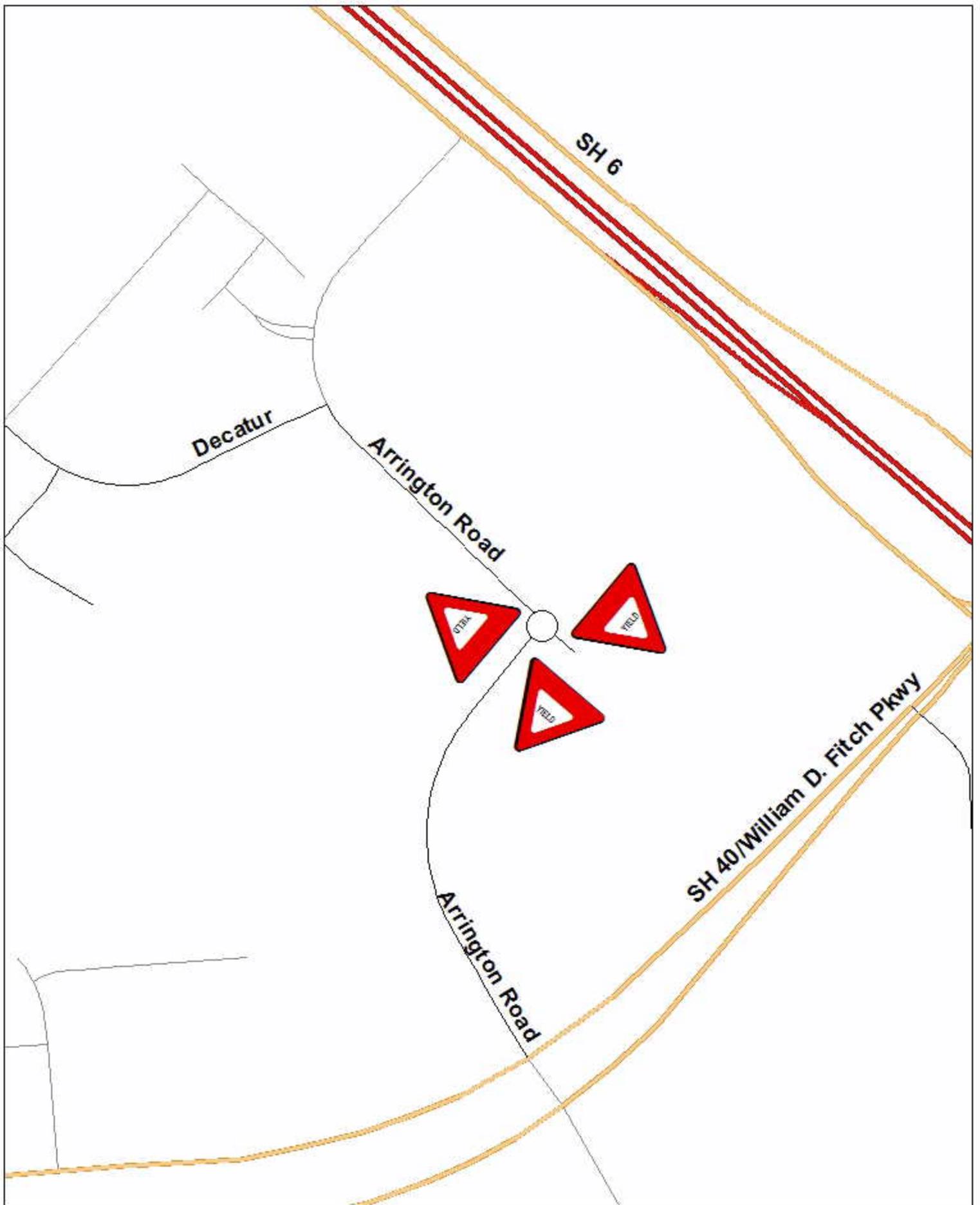
APPROVED:

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

**EXHIBIT "A"**

That Traffic Control Device Inventory - Schedule IV as referenced in Chapter 10, "Traffic Code", Section 2 "Traffic Control Devices", sub-section E "Special Hazard Intersections Controlled by Yield Signs" is hereby amended to include the following:

"Arrington Road at Arrington Road"



Roundabout Intersection of  
Arrington Road and Arrington Road

**February 12, 2009**  
**Consent Agenda Item No. 2L**  
**Agreement with the Brazos Valley Softball Umpires Association**  
**for Officiating Services for Athletic Leagues and Programs**

**To:** Glenn Brown, City Manager

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

**Agenda Caption:** Presentation, possible action, and discussion regarding an Agreement for Services with the Brazos Valley Softball Umpires Association to provide officiating services for City athletic leagues and programs (Contract Number 09-085) in an amount not to exceed \$128,980.00 per year.

**Recommendation(s):** Staff recommends approval of the Agreement for Services with the Brazos Valley Softball Umpires Association.

**Summary:** This contract replaces Contract Number 07-102, which has met the end of its available renewals. The contract is for the provision of all officiating services for all city-operated athletic leagues and programs, including Adult and Youth Softball, Adult and Youth Flag Football, Adult and Youth Volleyball, and Youth Basketball. This new contract will expire on December 31, 2009 and may be extended annually for an additional two years.

This Agreement for Services is exempt from competitive bidding in accordance with LGC 252.022(a)(7), a procurement that is available from only one source.

**Budget & Financial Summary:** Funds are budgeted and available in the City's General Fund Budget for the Parks and Recreation Department. These costs are partially offset by the registration fees adopted by the City Council on November 24, 2008. The affected programs all meet the current Fiscal Policy for cost recovery. The contract is for a total amount not to exceed \$128,980.00 per year for all leagues and programs.

**Attachments:**

1) Contract Number 09-085

**AGREEMENT FOR SERVICES  
BRAZOS VALLEY SOFTBALL UMPIRES ASSOCIATION**

STATE OF TEXAS           \*  
                                  \*  
COUNTY OF BRAZOS       \*

THIS AGREEMENT is entered into by and between the City of College Station, Texas, a Texas Home Rule Municipal corporation (hereinafter referred to as "CITY"), and the Brazos Valley Softball Umpires Association (hereinafter referred to as "ASSOCIATION").

1. ASSOCIATION shall provide qualified officiating services for each and every City league softball, flag football, volleyball and basketball game as scheduled by CITY'S Athletic Coordinator. ASSOCIATION further agrees to provide qualified softball umpires for all American Softball Association ("ASA") sanctioned and approved tournaments when such service is requested by CITY's Athletic Coordinator.

2. The term of this Agreement shall be for one (1) year, effective January 1, 2009, through December 31, 2009. Upon completion of the original contract, the contract may be extended annually upon mutual written agreement of both parties not to exceed an additional two (2) terms.

3. This Agreement may be terminated by either party for convenience upon thirty (30) days' written notice to the other party. Any funds received pursuant to this Agreement but not earned shall be returned to CITY within seven (7) days thereafter.

4. CITY agrees to pay to ASSOCIATION for their services provided in scheduling and administration of payroll to the umpires of ASSOCIATION. For each calendar year of this Agreement, CITY shall pay a scheduling fee of \$800.00 for the Spring season, \$800.00 for the Summer season and \$1,200.00 for the Fall season, which shall include flag football and basketball. The CITY agrees to pay the ASSOCIATION a fee for official training in the amount of \$300.00 for flag football and \$300.00 for basketball. In addition CITY shall pay for the officiating services of the ASSOCIATION, which services shall include *league tournaments, either pre/post season or in-season, weekend tournaments*, which tournaments shall be considered a part of the scheduled season. The amount of compensation to be paid shall be as follows:

- a. Adult Slow Pitch Games: \$16.00 per official per game
- b. Adult Fast Pitch Games: \$22.50 per official per game
- c. Youth Fast Pitch Games: \$22.50 per official per game
- d. Youth Basketball Games: \$11.00 per official per game
- e. Youth Flag Football Games \$11.00 per official per game
- f. Adult Flag Football Games \$22.00 per official per game
- g. Youth Volleyball Games \$11.00 per official per game
- h. Adult Volleyball Games \$14.00 per official per game

- i. Youth Basketball Games \$ 8.00 per scorekeeper per match

5. In all activities and services performed hereunder, the ASSOCIATION is an independent contractor and not an agent or employee of the CITY. The ASSOCIATION, as an independent contractor, shall be responsible for the services provided under this Agreement. The ASSOCIATION shall have ultimate control over the execution of the work performed under this Agreement and shall have the sole obligation to employ, direct, control, supervise, manage, discharge, and compensate the officials performing under this Agreement. The CITY shall have not control of or supervision over, the officials.

6. CITY shall issue a purchase order for the payment of officiating services. It is agreed that CITY shall make pre-payments to ASSOCIATION prior to and during the season according to the schedule below. It is further agreed that ASSOCIATION shall pay officials on a biweekly basis for services performed from these pre-paid funds. Actual payments shall be based upon the actual team registration. It is understood by and between the parties that these costs are estimated and will be adjusted based upon the actual team registration. In the event of an over or under payment, the parties shall adjust to address actual differences. For the term of this Agreement, CITY shall pay to ASSOCIATION:

- a. An estimated \$10,000.00 on or before the date of the first scheduled league game of the Fall season;
- b. An estimated \$24,000.00 after October 1<sup>st</sup> of the Fall season;
- c. An estimated \$40,000.00 on or before the date of the first scheduled league game of the Spring season; and
- d. An estimated \$40,000.00 on or before the date of the first scheduled league game of the Summer season.

The total amount of payment by the CITY to ASSOCIATION for all services to be performed under this Contract may not, under any circumstances, exceed ONE HUNDRED TWENTY EIGHT THOUSAND NINE HUNDRED EIGHTY and NO/100 DOLLARS (\$128,980.00). As a part of the services contemplated herein, ASSOCIATION covenants and agrees to print and distribute paychecks to individual officials on a biweekly basis.

7. CITY shall provide ASSOCIATION with the season schedules one week in advance of the date of the first scheduled game of the season. CITY shall also provide ASSOCIATION with one week's notice, if possible, of all rescheduled games. Both schedules shall be in writing.

8. ASSOCIATION shall establish, operate and maintain accounting system, which system shall be open to CITY for periodic inspection during regular business hours. The system shall be designed for and provide for the tracking of funds and the review of the financial status of the program on a monthly basis.

9. ASSOCIATION shall establish a separate account for the payment of officials for the services performed pursuant to this Agreement. ASSOCIATION shall put into operation and

utilize accounting and check issuing procedures approved by CITY. ASSOCIATION covenants and agrees that it shall not pay any funds out contrary to the terms of this Agreement or otherwise encumber CITY funds.

10. In the event that the CITY agrees to enter into a new agreement, any funds remaining with ASSOCIATION but not utilized to pay for services received shall be remitted to CITY not later than two weeks after the last game of the fiscal year. The balance of all money not spent or otherwise paid pursuant to the terms of this agreement shall be returned to CITY.

11. ASSOCIATION shall appoint an authorized representative who shall be available to meet with the Recreation Division Representative and other officials of CITY upon request.

12. In the event that an official fails to work any scheduled game due to absenteeism, ASSOCIATION shall reimburse CITY the amount of the base fee as established in Paragraph 4 herein.

13. ASSOCIATION shall provide two officials at each scheduled game, unless otherwise agreed upon by the parties, with at least one official having no less than one (1) year of experience.

14. In the event that ASSOCIATION fails to comply with or otherwise meet the terms and conditions of this agreement, CITY may withhold further payment to ASSOCIATION until the condition or term is remedied to the satisfaction of CITY. CITY may seek specific enforcement of this Agreement.

15. This Agreement shall be subject to all valid statutes, law, rules and regulations applicable thereto as promulgated by the United States of America, the State of Texas, or any other governmental body or agency having lawful jurisdiction.

**16. ASSOCIATION agrees to and shall indemnify and hold harmless CITY, its officers, agents and employees, from and against any and all claims, losses, damages, causes of action, suits and liability of every kind, including all expenses of litigation, court costs and attorney fees, for injury to or death of any person, or for damage to any property, arising out of or in connection with the work done by ASSOCIATION, its officers, agents and employees, under this contract.**

17. ASSOCIATION shall not allow any non-ASA certified persons to umpire any City softball game. ASSOCIATION hereby guarantees that they shall require all umpires to be certified with the ASA, which covers all certified umpires with ASA insurance. As a certified member each ASSOCIATION umpire hereby represents that they shall maintain ASA insurance for the duration of this Agreement, including insurance against claims for injuries to persons and damages to property which may arise from or in connection with the performance of the work hereunder by Association, its agents, representatives, volunteers and employees. The ASSOCIATION umpires ASA insurance shall be primary insurance. Said insurance shall list College Station, its employees and officials as additional named insureds. Further, said insurance

policy shall be endorsed to state that coverage shall not be suspended, voided, canceled or reduced in coverage or in limits except after thirty (30) calendar days prior written notice has been given to the City of College Station by certified mail, return receipt requested. Certificates of Insurance evidencing the required insurance coverages are attached hereto as Exhibit A. ASSOCIATION agrees to furnish CITY Certificates of Insurance evidencing continued coverage as required hereinabove through the term of the Agreement.

ASSOCIATION shall not allow any non-Texas Amateur Athletic Federation ("TAAF") certified persons to officiate any CITY flag football or basketball game. ASSOCIATION hereby guarantees that they shall require all flag football and basketball officials to be certified and registered with TAAF. As a certified member each ASSOCIATION official hereby represents that they shall maintain TAAF insurance for the duration of this Agreement, including insurance against claims for injuries to persons and damages to property which may arise from or in connection with the performance of the work hereunder by Association, its agents, representatives, volunteers and employees. The ASSOCIATION officials TAAF insurance shall be primary insurance. Said insurance shall list College Station, its employees and officials as additional named insureds. Further, said insurance policy shall be endorsed to state that coverage shall not be suspended, voided, canceled or reduced in coverage or in limits except after thirty (30) calendar days prior written notice has been given to the City of College Station by certified mail, return receipt requested. Certificates of Insurance evidencing the required insurance coverages are attached hereto as Exhibit B. ASSOCIATION agrees to furnish CITY Certificates of Insurance evidencing continued coverage as required hereinabove through the term of the Agreement.

18. Any gifts or other contributions received by ASSOCIATION or any of its members shall not be subject to the provisions of this agreement.

19. Notices to the parties shall be sent regular mail when addressed as follows:

CITY OF COLLEGE STATION  
PARKS AND RECREATION DEPARTMENT  
ATTN: *Marco A. Cisneros, Director*  
P.O. Box 9960  
College Station, TX 77842

BRAZOS VALLEY SOFTBALL UMPIRES ASSOCIATION  
P.O. Box 2875  
Bryan, TX 77805

The parties may change addresses by prior written notice sent to the other party pursuant to the terms of this agreement.

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

21. If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court of competent jurisdiction finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it may become valid and enforceable, then such provision shall be deemed to be written, construed and enforced as so limited.

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

SIGNED this the 6 day of Jan, 2009.

BRAZOS VALLEY SOFTBALL

CITY OF COLLEGE STATION

UMPIRES ASSOCIATION

BY: [Signature]  
Printed Name: GREG CUSTIGUANA  
Title: BVSBK President  
Date: 1/6/09

BY: \_\_\_\_\_  
Mayor  
Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
City Secretary

APPROVED:

\_\_\_\_\_  
City Manager

[Signature]  
City Attorney

\_\_\_\_\_  
Chief Financial Officer

February 12, 2009  
Consent Agenda Item No. 2m  
Weingarten Litigation Expenditures

**To:** Glenn Brown, City Manager

**From:** Jeff Kersten, Chief Financial Officer

**Agenda Caption:** Presentation, possible action, and discussion to authorize funds for professional legal services from Coats Rose Ryman and Lee for litigation concerning the Weingarten Realty suit. Legal costs and expert costs are estimated to be \$650,000.

**Recommendation(s):** Staff recommends approval of retaining Coats Rose Ryman and Lee to represent the City for litigation concerning the Weingarten Realty suit.

**Summary:** Weingarten Realty is suing the City of College Station and City Council members Dave Ruesink, Lynn McIlhaney, Mayor Ben White and former mayor Ron Silvia as a result of the City's denial of Weingarten's application to rezone an undeveloped parcel of land located at the corner of State Highway 6 and Rock Prairie Road.

**Budget & Financial Summary:** Funds are available in the Property Casualty Fund. A budget amendment may be needed later this fiscal year to provide additional appropriation for this expenditure.

**Attachments:**  
None

**February 12, 2009  
Consent Agenda Item No. 2n  
Signature Event Rejection of Proposals**

**To:** Glenn Brown, City Manager

**From:** David Gwin, Director of Economic and Community Development

**Agenda Caption:** Presentation, possible action, and discussion rejecting proposals received for RFP #08-99 for design, production and event management services related to a signature event for the City.

**Recommendation(s):** Staff recommends rejection of all currently held proposals for the design, production and event management services of the signature event. Further, staff is moving forward with the signature event task force as the City Council directed at their January 8, 2009 meeting.

**Summary:** On October 13, 2008 staff released a Request for Proposals for firms seeking to submit proposals related to the design, production, and event management services of a signature event for the City. Staff has evaluated all proposals submitted as of the November 24, 2008 deadline. None of the proposals submitted accomplished the principal goal of capturing what makes College Station a unique and exciting place to live, work, and visit. Nor did they rise to the level of what is believed to be an event appropriate for the stature and position of the community. Staff believes that both are critical for a successful signature event that seeks to enhance tourism, further diversify the local economy and continue to improve on the community's high quality of life.

**Budget & Financial Summary:** Not applicable

**Attachments:** N/A

**February 12, 2009**  
**Consent Agenda Item No. 2o**  
**Chimney Hill Shopping Center Property Management Rejection of Proposals**

**To:** Glenn Brown, City Manager

**From:** David Gwin, Director of Economic and Community Development

**Agenda Caption:** Presentation, possible action, and discussion rejecting proposals received from RFP #09-16 for property management services at the Chimney Hill Shopping Center.

**Recommendation(s):** Staff recommends rejection of proposals for the property management of the Chimney Hill Shopping Center. Further, staff recommends that all maintenance and management responsibilities at Chimney Hill be handled directly by the City.

**Summary:** On November 17, 2008 staff released a Request for property management services at the City's recently-acquired Chimney Hill Shopping Center, which was purchased for redevelopment as a convention center. By the submittal deadline of December 3, 2008, two responses were received. The lowest proposal received is significantly greater than what City staff considers being responsible or appropriate for the services needed. In reviewing the proposals, staff has determined that the project could be handled "in-house" for approximately half the cost.

There are several factors that enable staff to perform this function at a much lower cost than a private sector firm. First, staff has the existing expertise to perform the necessary operations in property management. Secondly, staff will utilize existing maintenance contracts held by Facilities for the Chimney Hill Shopping Center which have already been through the City's bid processes, when available. Staff will also work with Facilities in submitting bid documents as needed.

**Budget & Financial Summary:** The proposals received had a total annualized cost of between \$48,900 and \$67,750. These amounts included the common area maintenance costs that are recoverable from the tenants. Staff estimates keeping these operations in-house will cost approximately \$30,000 annually and thus save the City a significant amount of financial resources.

**Attachments:** N/A

**February 12, 2009**  
**Consent Agenda Item No. 2p**  
**Northgate Traffic Control Bollard Installation**

**To:** Glenn Brown, City Manager  
**From:** Chuck Gilman, Director of Capital Projects

**Agenda Caption:** Presentation, possible action, and discussion regarding a resolution awarding a construction contract to Jamail & Smith Construction, in the amount of \$96,538.89, for the purchase of twenty-seven (27) and installation of twenty-six (26) traffic control bollards in the Northgate District.

**Recommendation(s):** Staff recommends approval.

**Summary:** On June 26, 2007, the Council directed staff to initiate the planning, design and installation of a permanent traffic control system to enhance pedestrian safety and traffic control in Northgate.

The system to be installed is the Cal Pipe Model 04040 thirty-six inch retractable bollard that will be deployed by the Police Department between the hours of 10:00 P.M. to 3:00 A.M. on Thursday, Friday, and Saturday evenings at the following locations:

- University Drive and College Main
- College Main and Patricia Street
- College Main and Church Avenue (Half-closure except for special events)
- Patricia Street and Lodge Street (Set back approximately 20' from Lodge Street)

This Buy-Board contract is to provide for the purchase and installation of the aforementioned bollards and all associated hardware, and the purchase of a spare bollard for rapid deployment in the event that one becomes damaged. The installation of these bollards will help manage vehicular congestion and improve overall pedestrian safety in the district.

Implementation of this project is to be an inter-departmental effort between Economic & Community Development (ECD) and Public Works. ECD staff will execute the contract and process payments, while Public Works will provide direct project oversight and supervision in the field.

**Budget & Financial Summary:** The funding for this project will come from the Certificate(s) of Obligation (CO) originally issued for a water-feature project in the amount of \$321,161. The CO amount was released for other capital improvement projects, including the bollard system, at the June 26, 2008 City Council Workshop meeting. This purchase is being made off the Buy-Board contract which satisfies requirements for competitive bidding.

**Attachments:**

- 1) Resolution
- 2) Jamail & Smith proposal letter

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COLLEGE STATION, TEXAS, APPROVING A CONSTRUCTION CONTRACT FOR THE PURCHASE OF TWENTY-SEVEN AND INSTALLATION OF TWENTY-SIX TRAFFIC CONTROL BOLLARDS WITHIN THE NORTHGATE DISTRICT AND AUTHORIZING THE EXPENDITURE OF FUNDS.**

WHEREAS, the City of College Station, Texas, has an interlocal agreement with the Local Government Purchasing Cooperative (Buy-Board); and

WHEREAS, the Buy-Board has solicited proposals and awarded a Job Order contract with Jamail & Smith Construction; and

WHEREAS, Chapter 271 of the Local Government Code authorizes the City of College Station, Texas to utilize the contracts awarded by the Buy-Board to satisfy the competitive bidding requirements; and

WHEREAS, the selection of Jamail & Smith Construction through the Buy-Board contract, in satisfaction of competitive bidding requirements, is being recommended for award for the construction services related to the Construction and Installation of Traffic Control Bollards Project; now, therefore,

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

PART 1: That the City of College Station hereby finds that an award to Jamail & Smith Construction satisfies the requirements for competitive bidding through the Buy-Board interlocal agreement.

PART 2: That the City Council hereby approves the contract with Jamail & Smith Construction for \$96,538.89 for the labor, materials and equipment required for the improvements related to the Construction and Installation of Traffic Control Bollards Project.

PART 3: That the funding for this Contract shall be as budgeted from the Certificate(s) of Obligation issued in 2005 for capital improvements within the Northgate District, in the amount of \$96,538.89

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

RESOLUTION NO. \_\_\_\_\_

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, A.D. 2009.

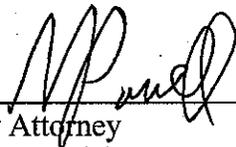
APPROVED:

\_\_\_\_\_  
Ben White, Mayor

ATTEST:

\_\_\_\_\_

APPROVED:

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



December 16, 2008

City Of College Station  
1101 Texas Ave.  
College Station, TX 77840  
Attn.: Larry Thedford

Subject: Buy Board Proposal, City of College Station; Pipe Bollard Installation.

Jamail & Smith Construction is pleased to offer the attached proposal for the referenced project pursuant to the Buy Board Standard Hours Contract Agreement.

This proposal includes the following scope of work:

1. Supply twenty seven (27) and install twenty six (26) Cal Pipe Bollards. Model # LBMR04040- One to be used as a spare.
2. Bollards are 4" Stainless Steel units with 36" retractable insert that is 36" above finished grade.
3. Bollards to be Stainless Steel Manually lifted units.
4. All Bollards to be keyed alike. Supply 50 keys.
5. Saw cut concrete roadway 12" wide by the length across the street, for the install.
6. Excavate the area for the new rebar and concrete to secure the bollards.
7. Place 3500 psi concrete in the opening and around the new bollards.
8. Finish smooth with the existing concrete surfaces.
9. During the excavation and the placing of the bollards provide barricades and trench covers around the work areas.
10. Provide supervision for the project.
11. Pipe bollards are 4-5 week lead time item.

Exclusions:

1. Sales Tax, Permits / Fees.

**The amount of our proposal is \$ 96,538.89 and is calculated as follows:**

**Subcontractor Pricing:**

Pipe Bollards	\$ 43,367.00
OH & P 10%	<u>\$ 4,336.70</u>
<b>NPP Subtotal</b>	<b>\$ 47,703.70</b>
RS Means pricing.	\$ 76,904.15
City Cost Index deduct 14.2%	\$ (6,890.61)
Buy Board Coefficient deduct 30%	<u>\$ (23,071.24)</u>
<b>Means Estimate Subtotal</b>	<b>\$ 46,942.29</b>
<b>Bond @ 2%</b>	<b>\$ 1,892.90</b>
<b>TOTAL</b>	<b>\$ 96,538.89</b>

We are prepared to respond immediately to coordinate the work. We look forward to working with you on this project. Should you have any questions please contact me at 512-288-1200.

Sincerely,



Michael Doucette  
Operations Manager  
Austin, Texas

Attachments: Supplier Proposal, R. S. Means Estimate.

# Cal Pipe Bollards

**Corporate Office**  
 9650 Washburn Rd  
 Downey, CA 90241  
 ph: (800)225-7473  
 ph: (562)803-4388  
 fax (562)803-9885  
 e-mail: sales@pipebollard.com  
 web: www.calpipebollards.com



## Sales Proposal

Proposal No: CalPipe07651  
 Sales Person: Joe Pederson  
 Date: 12/15/2008  
 Payment Terms:

<b>Client / Invoicing details</b>	
<b>Jamail Smith</b> 8868 Research Blvd. Suite 102  Austin, TX 78758	Name: Michael Doucette Title: Department: PH: 512-288-1200 FAX: 512-371-7949

**Delivery address (if different)**

SAME

**Special Instructions**

27 LBM04040 Stainless steel manually lifted retractable bollards. Keyed alike. Polished to #4 finish

Code	Description	Qty	Price	Disc.	Price P/U	Total
LBM04040	4 Manually lifted stainless steel bollard.	27	\$1,536.00	1	\$1,536.00	\$ 41,472.00
					<b>Total:</b>	\$ 41,472.00
					<b>sales tax</b>	
Freight	Freight & Handling				<b>Freight</b>	\$1,895.00
					<b>Total:</b>	\$43,367.00

This Sales Proposal is valid for 30 days from issue date. Cal Pipe Bollards' conditions of sale are attached.

All prices are excluding freight unless otherwise stated in writing.

Please Proceed as per this Sales Proposal:

Purchase order number:

Name:

Signature 1 of 2:

Date:

Credit card type: Visa / Mastercard / American Express

Credit card No. \_\_\_\_\_

Expiry date: \_\_\_/\_\_\_

Name on card: \_\_\_\_\_

Signature:

See terms and conditions for direct bank transfer details.

**Author :** Michael Doucette  
**Descr :** Pipe Bollards  
**Notes :**

**Division: 01000000                      General Requirements**

<b>Line #:</b> 01 31 13.20 0160 M	Field personnel, general purpose laborer, average						
<b>Qty:</b> 3.000	<b>Crew:</b>		<b>Unit:</b> Week			<b>D/O:</b> 0.000	
<b>Lab. Hr:</b> 0.000	<b>Mat.:</b> \$0.00		<b>Labor:</b> \$1,800.00	<b>Equip:</b> \$0.00		<b>Total:</b> \$1,800.00	
	0.000	\$0.00	\$5,400.00	\$0.00		\$5,400.00	

**% Mat:** 100.00    **% Labor:** 100.00    **% Equip.:** 100.00

**Notes:** For clean up during construction and helping with barricades and traffic control

<b>Line #:</b> 01 31 13.20 0220 M	Field personnel, project manager, maximum						
<b>Qty:</b> 1.000	<b>Crew:</b>		<b>Unit:</b> Week			<b>D/O:</b> 0.000	
<b>Lab. Hr:</b> 0.000	<b>Mat.:</b> \$0.00		<b>Labor:</b> \$3,150.00	<b>Equip:</b> \$0.00		<b>Total:</b> \$3,150.00	
	0.000	\$0.00	\$3,150.00	\$0.00		\$3,150.00	

**% Mat:** 100.00    **% Labor:** 100.00    **% Equip.:** 100.00

<b>Line #:</b> 01 31 13.20 0280 M	Field personnel, superintendent, maximum						
<b>Qty:</b> 3.000	<b>Crew:</b>		<b>Unit:</b> Week			<b>D/O:</b> 0.000	
<b>Lab. Hr:</b> 0.000	<b>Mat.:</b> \$0.00		<b>Labor:</b> \$2,925.00	<b>Equip:</b> \$0.00		<b>Total:</b> \$2,925.00	
	0.000	\$0.00	\$8,775.00	\$0.00		\$8,775.00	

**% Mat:** 100.00    **% Labor:** 100.00    **% Equip.:** 100.00

<b>Line #:</b> 01 54 33.20 0450 M	Rent backhoe-loader 45 to 60 HP 3/4 CY capacity						
<b>Qty:</b> 7.000	<b>Crew:</b>		<b>Unit:</b> Ea.			<b>D/O:</b> 0.000	
<b>Lab. Hr:</b> 0.000	<b>Mat.:</b> \$132.00 *		<b>Labor:</b> \$480.00 *	<b>Equip:</b> \$313.94		<b>Total:</b> \$925.94	
	0.000	\$924.00	\$3,360.00	\$2,197.58		\$6,481.58	

**% Mat:** 100.00    **% Labor:** 100.00    **% Equip.:** 100.00

<b>General Requirements</b>	<b>Labor Hrs:</b> 0.000
<b>Mat.:</b> \$924.00 <b>Labor:</b> \$20,685.00 <b>Equip:</b> \$2,197.58	<b>Division Total:</b> \$23,806.58

**Division: 02000000                      Existing Conditions**

<b>Line #:</b> 02 41 16.17 1000 M	Foot/found demo, footings, conc, 1' thick, 2' wide						
<b>Qty:</b> 100.000	<b>Crew:</b> B5	<b>Unit:</b> L.F.	<b>D/O:</b> 300.000				
<b>Lab. Hr:</b> 0.187	<b>Mat.:</b> \$0.00	<b>Labor:</b> \$12.15	<b>Equip:</b> \$4.77	<b>Total:</b> \$16.93			
18.700	\$0.00	\$1,215.41	\$477.40	\$1,692.81			

% Mat: 120.00 \* % Labor: 120.00 \* % Equip.: 120.00 \*

Notes: 20 % added for rebar

<b>Line #:</b> 02 41 16.17 9000 M	Foot/found demo, minimum labor & equipment, average						
<b>Qty:</b> 1.000	<b>Crew:</b> A1	<b>Unit:</b> Job	<b>D/O:</b> 2.000				
<b>Lab. Hr:</b> 4.000	<b>Mat.:</b> \$0.00	<b>Labor:</b> \$200.40	<b>Equip:</b> \$33.00	<b>Total:</b> \$233.40			
4.000	\$0.00	\$200.40	\$33.00	\$233.40			

% Mat: 100.00 % Labor: 100.00 % Equip.: 100.00

<b>Line #:</b> 02 41 19.23 0840 M	Rubbish handling, dumpster, 40 c.y cap.(13 Tons), rent/wk, 1 dump/wk						
<b>Qty:</b> 1.000	<b>Crew:</b>	<b>Unit:</b> Week	<b>D/O:</b> 0.000				
<b>Lab. Hr:</b> 0.000	<b>Mat.:</b> \$1,265.00	<b>Labor:</b> \$0.00	<b>Equip:</b> \$0.00	<b>Total:</b> \$1,265.00			
0.000	\$1,265.00	\$0.00	\$0.00	\$1,265.00			

% Mat: 100.00 % Labor: 100.00 % Equip.: 100.00

Notes: For concrete removal

<b>Line #:</b> 02 41 19.25 1220 M	Saw cutting, hyd saw, masonry walls, block walls, solid, per inch of d						
<b>Qty:</b> 2,400.000	<b>Crew:</b> B89B	<b>Unit:</b> L.F.	<b>D/O:</b> 250.000				
<b>Lab. Hr:</b> 0.064	<b>Mat.:</b> \$0.44	<b>Labor:</b> \$3.46	<b>Equip:</b> \$2.93	<b>Total:</b> \$6.82			
153.600	\$1,056.00	\$8,294.40	\$7,022.40	\$16,372.80			

% Mat: 100.00 % Labor: 100.00 % Equip.: 100.00

Notes: = 100' trench x 2(both sides) x 12 for depth of concrete road.

<b>Existing Conditions</b>			<b>Labor Hrs:</b> 176.300
<b>Mat.:</b> \$2,321.00	<b>Labor:</b> \$9,710.21	<b>Equip:</b> \$7,532.80	<b>Division Total:</b> \$19,564.01

<b>Division: 03000000</b>	<b>Concrete</b>
---------------------------	-----------------

<b>Line #:</b> 03 21 10.60 1000 M	Reinforcing, A615 Gr 60, typical in place, average, under 10 tons, #3						
<b>Qty:</b> 1.000	<b>Crew:</b> RODM	<b>Unit:</b> Ton	<b>D/O:</b> 1.800				
<b>Lab. Hr:</b> 17.778	<b>Mat.:</b> \$1,061.50	<b>Labor:</b> \$1,312.00	<b>Equip:</b> \$0.00	<b>Total:</b> \$2,373.50			
17.778	\$1,061.50	\$1,312.00	\$0.00	\$2,373.50			

% Mat: 100.00 % Labor: 100.00 % Equip.: 100.00

<b>Line #:</b> 03 21 10.60 2000 M	Reinforcing in place, unloading & sorting, add to above							
<b>Qty:</b> 10.000	<b>Crew:</b> C5	<b>Unit:</b> Ton	<b>D/O:</b> 100.000					
<b>Lab. Hr:</b> 0.560	<b>Mat.:</b> \$0.00	<b>Labor:</b> \$39.28	<b>Equip:</b> \$8.64	<b>Total:</b> \$47.92				
5.600	\$0.00	\$392.84	\$86.35	\$479.19				

% Mat: 100.00 % Labor: 100.00 % Equip.: 100.00

<b>Line #:</b> 03 30 53.40 3950 M	Concrete in place, footings, strip, 36" x 12", reinforced							
<b>Qty:</b> 28.000	<b>Crew:</b> C14C	<b>Unit:</b> C.Y.	<b>D/O:</b> 60.000					
<b>Lab. Hr:</b> 1.867	<b>Mat.:</b> \$140.80	<b>Labor:</b> \$113.40	<b>Equip:</b> \$0.45	<b>Total:</b> \$254.65				
52.276	\$3,942.40	\$3,175.26	\$12.63	\$7,130.28				

% Mat: 100.00 % Labor: 100.00 % Equip.: 100.00

<b>Line #:</b> 03 30 53.40 4000 M	Concrete in place, foundation mat, under 10 C.Y.							
<b>Qty:</b> 28.000	<b>Crew:</b> C14C	<b>Unit:</b> C.Y.	<b>D/O:</b> 38.670					
<b>Lab. Hr:</b> 2.896	<b>Mat.:</b> \$216.70	<b>Labor:</b> \$175.95	<b>Equip:</b> \$0.70	<b>Total:</b> \$393.35				
81.088	\$6,067.60	\$4,926.61	\$19.71	\$11,013.92				

% Mat: 100.00 % Labor: 100.00 % Equip.: 100.00

<b>Line #:</b> 03 30 53.40 9000 M	Concrete in place, minimum labor/equipment charge							
<b>Qty:</b> 4.000	<b>Crew:</b> CARP	<b>Unit:</b> Job	<b>D/O:</b> 1.000					
<b>Lab. Hr:</b> 16.000	<b>Mat.:</b> \$0.00	<b>Labor:</b> \$1,009.60	<b>Equip:</b> \$0.00	<b>Total:</b> \$1,009.60				
64.000	\$0.00	\$4,038.40	\$0.00	\$4,038.40				

% Mat: 100.00 % Labor: 100.00 % Equip.: 100.00

Notes: One for each location since we will do one location at a time

<b>Concrete</b>	<b>Labor Hrs:</b> 220.742
<b>Mat.:</b> \$11,071.50	<b>Labor:</b> \$13,845.10
<b>Equip:</b> \$118.69	<b>Division Total:</b> \$25,035.29

<b>Division: 05000000</b>	<b>Metals</b>
---------------------------	---------------

<b>Line #:</b> 05 54 13.20 0300 M	Checked floor plate, cover & frame, 1/4" plt, 2' to 3' wide							
<b>Qty:</b> 100.000	<b>Crew:</b> E4	<b>Unit:</b> S.F.	<b>D/O:</b> 100.000					
<b>Lab. Hr:</b> 0.320	<b>Mat.:</b> \$25.30	<b>Labor:</b> \$26.10	<b>Equip:</b> \$1.45	<b>Total:</b> \$52.85				
32.000	\$2,530.00	\$2,609.60	\$145.20	\$5,284.80				

% Mat: 100.00 % Labor: 100.00 % Equip.: 100.00

<b>Metals</b>	<b>Labor Hrs:</b> 32.000
<b>Mat.:</b> \$2,530.00	<b>Labor:</b> \$2,609.60
<b>Equip:</b> \$145.20	<b>Division Total:</b> \$5,284.80

**Division: 31000000**

**Earthwork**

<b>Line #:</b> 31 23 16.13 0090 M	Excavate trench, common earth, no sht/dewtrg, 4'-6' D, 1/2 CY excavato						
<b>Qty:</b> 50.000	<b>Crew:</b> B11M	<b>Unit:</b> B.C.Y.	<b>D/O:</b> 200.000				
<b>Lab. Hr:</b> 0.080	<b>Mat.:</b> \$0.00	<b>Labor:</b> \$4.52	<b>Equip:</b> \$1.87	<b>Total:</b> \$6.39			
4.000	\$0.00	\$226.00	\$93.50	\$319.50			

**% Mat:** 100.00 **% Labor:** 100.00 **% Equip.:** 100.00

<b>Line #:</b> 31 23 16.13 2100 M	Excavate trench, trim sides & bottom for conc pours, common earth						
<b>Qty:</b> 1,200.000	<b>Crew:</b> B18	<b>Unit:</b> S.F.	<b>D/O:</b> 1,500.000				
<b>Lab. Hr:</b> 0.016	<b>Mat.:</b> \$0.00	<b>Labor:</b> \$0.82	<b>Equip:</b> \$0.03	<b>Total:</b> \$0.85			
19.200	\$0.00	\$983.04	\$39.60	\$1,022.64			

**% Mat:** 100.00 **% Labor:** 100.00 **% Equip.:** 100.00

<b>Line #:</b> 31 23 16.13 9000 M	Excavate trench, minimum labor/equipment charge						
<b>Qty:</b> 4.000	<b>Crew:</b> CLAB	<b>Unit:</b> Job	<b>D/O:</b> 4.000				
<b>Lab. Hr:</b> 2.000	<b>Mat.:</b> \$0.00	<b>Labor:</b> \$100.00	<b>Equip:</b> \$0.00	<b>Total:</b> \$100.00			
8.000	\$0.00	\$400.00	\$0.00	\$400.00			

**% Mat:** 100.00 **% Labor:** 100.00 **% Equip.:** 100.00

**Earthwork**

**Mat.:** \$0.00 **Labor:** \$1,609.04 **Equip:** \$133.10 **Labor Hrs:** 31.200 **Division Total:** \$1,742.14

**Division: 34000000**

**Transportation**

<b>Line #:</b> 34 71 13.26 0400 M	Guide/guard rail, timber guide rail, 4" x 8" w/6" x 8" wood posts,trtd						
<b>Qty:</b> 50.000	<b>Crew:</b> B80	<b>Unit:</b> L.F.	<b>D/O:</b> 960.000				
<b>Lab. Hr:</b> 0.033	<b>Mat.:</b> \$26.95	<b>Labor:</b> \$1.76	<b>Equip:</b> \$0.72	<b>Total:</b> \$29.43			
1.650	\$1,347.50	\$88.08	\$35.75	\$1,471.33			

**% Mat:** 100.00 **% Labor:** 100.00 **% Equip.:** 100.00

**Transportation**

**Mat.:** \$1,347.50 **Labor:** \$88.08 **Equip:** \$35.75 **Labor Hrs:** 1.650 **Division Total:** \$1,471.33

**Burdened Subtotal :** \$76,904.15

<b>Job Totals:</b>	<b>ManHours</b>	<b>Material</b>	<b>Labor</b>	<b>Equipment</b>	<b>SubContr.</b>	<b>Total</b>
	461.890	\$18,194.00	\$48,547.03	\$10,163.12	\$0.00	\$76,904.15

<b>Sales Tax :</b>	0.00 %	\$0.00				
<b>Material Markup :</b>	0.00 %	\$0.00				
<b>Labor Markup :</b>	0.00 %		0.00			
<b>Equipment Markup :</b>	0.00 %			0.00		
<b>SubContract Markup :</b>	0.00 %				\$0.00	\$0.00

**Sub Total :** \$76,904.15

:	0.00 %					\$0.00
:	0.00 %					\$0.00

**Sub Total :** \$76,904.15

**Coefficient : 0.7000** \$23,071.24  
\$53,832.90

**City Cost Index : Austin Oct. 2008, UU** -\$6,890.61  
**Calculation Method : Average (87.20 %)**

<b>Job Totals:</b>	<b>Total Sq. Footage</b>	:	-	\$46,942.29
	<b>Cost Per Square Foot</b>	:	\$ 0.00	

**February 12, 2009**  
**Consent Agenda Item No. 2q**  
**Purchasing Card Follow-up Audit Report**

**To:** Mayor and Members of the City Council

**From:** Ty Elliott, City Internal Auditor

**Agenda Caption:** Presentation, possible action, and discussion concerning the City Internal Auditor's Purchasing Card Follow-up Audit Report.

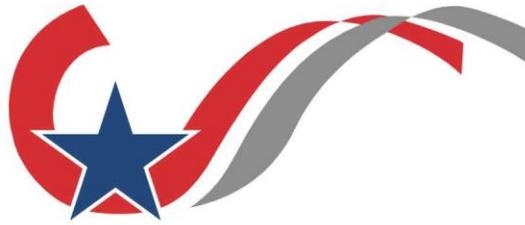
**Recommendation(s):** None

**Summary:**

The purpose of the purchasing card follow-up audit was to determine whether the City Manager and Chief Financial Officer had taken appropriate corrective measures in response to the ten audit recommendations put forth in the purchasing card audit report.

Seven out of the ten audit recommendations were found to be fully implemented. The remaining three audit recommendations were found to be partially implemented—although there was significant improvement. The City Manager and the Chief Financial Officer are currently taking measures to fully implement these three audit recommendations, and they are committed to continually look for ways to improve the purchasing card program.

**Attachments:** Purchasing Card Follow-up Audit Report



## CITY OF COLLEGE STATION

**TY ELLIOTT**  
City Internal Auditor  
telliott@csbx.gov

**CITY INTERNAL AUDITOR'S OFFICE**  
1101 TEXAS AVENUE  
COLLEGE STATION, TEXAS 77842  
TEL: (979) 764-6269  
FAX: (979) 764-6377

**AUDIT COMMITTEE**  
Councilmember Lawrence Stewart  
Councilmember Lynn McIlhane  
Councilmember James Massey

**TO:** Audit Committee Members  
**FROM:** Ty Elliott, City Internal Auditor  
**DATE:** January 29, 2009  
**SUBJECT:** **Purchasing Card Follow-up Audit Report**

The purchasing card follow-up audit was conducted in accordance with the fiscal year 2009 audit plan. This audit report summarizes the purchasing card audit recommendations, management's responses, and the audit follow-up findings (which describe how city management has implemented the auditor's recommendations). This audit was conducted in accordance with government auditing standards, which are promulgated by the Comptroller General of the United States.

1. **Audit Recommendation:** The City Manager should issue a directive that every city performance evaluation has a section dealing with compliance with city policy. In addition, employees who conduct performance evaluations should be instructed to (1) incorporate the proper use of the card as a factor in the evaluation and (2) hold approving officials accountable for performing adequate timely reviews as part of the evaluation.

**Management Response:** *The City Manager concurs with this recommendation. Employees should already understand that being in compliance with city policy is required of employment. But to ensure this is happening, staff will be directed to include compliance with city policies as part of annual employee evaluations.*

**Audit Follow-up Finding:** The City Manager gave verbal and written instruction to the Management Team on April 23, 2008. A reminder notice was sent to all city staff on November 15, 2008. The City Manager directed the city staff as follows:

"Employees who conduct performance evaluations should be instructed to (1) incorporate the proper use of the procurement card as a factor in the evaluation (if applicable); (2) hold employees who approve procurement card transactions accountable for performing adequate timely reviews as part of the evaluation; and (3) all other city policies and procedures must be adhered to."

In order to determine the effectiveness of the City Manager's directive, I reviewed at least one randomly selected performance evaluation from each department. I could not find any language within the performance evaluation relating to policies and procedures for the Department of Planning and Development Services. All other departments had evaluation criteria directly related or loosely related to compliance with city policies and procedures. There was also evidence that departments

were evaluating employees' compliance with purchasing card policies and procedures. This is a significant improvement over last year, when only Police and Parks and Recreation departments had criteria on their performance evaluations related to compliance with city policies and procedures.

2. **Audit Recommendation:** Purchasing card spending limits should be established that are commensurate with the needs of the cardholder. The City Manager should direct departments to adjust their cardholders' monthly and single transaction limits based on an evaluation of cardholders' needs. One way this could be accomplished is to use the automated reporting tools available in the PaymentNet system to perform a spending analysis. The spending analysis may reveal that cardholders' of similar position have comparable spending needs that require no more than a certain purchasing card threshold.

**Management Response:** *The City Manager concurs with this recommendation, and would like to review the spending analysis to be performed. If different spending limits were used, the goal would be to group similar categories of staff together. It would not be feasible for each employee to have a different limit.*

**Audit Follow-up Finding:** Each department director submitted to the Department of Fiscal Services recommended changes for each cardholder in their respective department based on the following categories: (1) maximum limit per transaction: \$3,000, \$1,500, \$1,000, and \$500 and (2) maximum limit per month \$10,000, \$5,000, \$3,000, and \$1,000. As a result, single transaction limits were reduced by \$517,929 or 36.2 percent and monthly transaction limits were reduced by \$2,067,300 or 41.5 percent. The tables below summarize the changes the city has made with cardholder transaction limits in order to fully implement the audit recommendation.

Current Monthly Transactions Limits				
Category	Cards	% of Total	Amount	% of Total
\$10,000	169	32.6%	\$1,690,000	57.9%
\$5,000	159	30.7%	\$795,000	27.2%
\$3,000	122	23.6%	\$366,000	12.5%
\$1,000	68	13.1%	\$68,000	2.3%
Totals:		518	\$2,919,000	

Current Single Transaction Limit				
Category	Cards	% of Total	Amount	% of Total
\$2,999	166	32.0%	\$497,834	55.7%
\$1,500	156	30.1%	\$234,000	26.2%
\$1,000	129	24.9%	\$129,000	14.4%
\$500	67	12.9%	\$33,500	3.7%
Totals:		518	\$894,334	

Previous Monthly Transactions Limits				
Category	Cards	% of Total	Amount	% of Total
\$25,000	2	0.4%	\$50,000	1.0%
\$10,000	478	92.3%	\$4,780,000	95.9%
\$5,000	22	4.2%	\$110,000	2.2%
\$4,000	7	1.4%	\$28,000	0.6%
\$3,000	5	1.0%	\$15,000	0.3%
\$1,000	3	0.6%	\$3,000	0.1%
\$300	1	0.2%	\$300	0.0%
Totals:		518	\$4,986,300	

Previous Single Transaction Limit				
Category	Cards	% of Total	Amount	% of Total
\$5,000	2	0.4%	\$10,000	0.7%
\$2,999	437	84.4%	\$1,310,563	92.8%
\$2,000	14	2.7%	\$28,000	2.0%
\$1,500	8	1.5%	\$12,000	0.8%
\$1,000	45	8.7%	\$45,000	3.2%
\$800	3	0.6%	\$2,400	0.2%
\$500	8	1.5%	\$4,000	0.3%
\$300	1	0.2%	\$300	0.0%
Totals:		518	\$1,412,263	

3. **Audit Recommendation:** The City Manager should direct department heads to evaluate whether or not all the employees who are issued a card, within their respective departments, need a purchasing card to better perform their essential job duties.

**Management Response:** *The City Manager concurs with this recommendation. Please provide a list of employee purchasing card usage which will be provided to department directors to determine if employees need a purchasing card to perform essential job duties.*

**Audit Follow-up Finding:** Each department director submitted to the Department of Fiscal Services recommended changes to each cardholder in their respective department. As a result, approximately 85 cards were recommended to be deleted. However, several cardholders were added during this period—resulting in a net decrease of 9 cardholders. Approximately 60 percent of the city workforce was issued a purchasing card when the purchasing card audit was conducted. Currently, approximately 57 percent of the city workforce has been issued a purchasing card.

There is evidence of cardholders who are issued purchasing cards that may not need them. For example, I identified 9 cardholders who were issued purchasing cards prior to fiscal year 2008 and did not make any transactions within the fiscal year. Two of these cardholders were issued purchasing cards prior to fiscal year 2007 and did not make any transaction during fiscal year 2007 and fiscal year 2008. Although it is clear that efforts have been made to implement the audit recommendation, there is still room for improvement in this area.

4. **Audit Recommendation:** The Chief Financial Officer should work with department directors to ensure that (1) there are no cardholders who are approving officials for their supervisors and (2) all approving officials are sufficiently independent and of a sufficient rank to question the cardholder when additional information is needed about specific transactions.

**Management Response:** *Management concurs and will establish internal controls that ensure that (1) there are no cardholders who are approving officials for their supervisors and (2) all approving officials are sufficiently independent and of a sufficient rank to question transactions.*

**Audit Follow-up Finding:** The Department of Fiscal Services has contacted several individuals and groups to establish better purchasing card transaction approval controls. Corrective measures have been taken in Economic Development, Fire, Fleet, and Communication departments. However, I identified 12 approving officials who were not sufficiently independent and of sufficient rank to question the transactions of cardholders. Several of these approving officials approved transactions of their supervisors within the last 6 months.

5. **Audit Recommendation:** The Chief Financial Officers should correct situations where the responsibilities of cardholders, approving officials, and program coordinators overlap.

**Management Response:** *Management concurs, and will review and establish internal controls that prevent a program administrator (coordinator) from also approving subordinate program administrator transactions. A program administrator is restricted from approving their own transactions. Management will review current internal controls and consider revisions to address the recommendation.*

**Audit Follow-up Finding:** The Department of Fiscal Services has taken the corrective action necessary to ensure that the responsibilities of cardholders, approving officials, and program coordinators do not overlap.

6. **Audit Recommendation:** The purchasing card currently preemptively blocks purchases from six vendor categories not reasonably related to city purchasing needs. The Chief Financial Officer should

consider additional vendor categories the purchasing card could block in order to further take advantage of preventive controls and minimize the city's risk exposure.

**Management Response:** *Management concurs and will investigate other Merchant Category Code restrictions that could be put on all cards in order to further take advantage of preventative controls and minimize the city's risk exposure. Management will consider whether restricting certain cards use solely for travel and training would help restrict the number of general procurement cards outstanding.*

**Audit Follow-up Finding:** The Department of Fiscal Services has revised the city's acceptable merchant category code list and has submitted this list JPMorgan Chase. As a result, several additional questionable merchant categories have been blocked from cardholder use.

7. **Audit Recommendation:** The Chief Financial Officer should implement procedures for purchasing card coordinators to prevent multiple purchasing cards from being issued to an employee who transfers from one department to another. For example, prior to issuing a card, the program coordinator could query the PaymentNet system for a card applicant to see if the employee has already been issued a card.

**Management Response:** *Management concurs. Issuing administrators will confirm there are no duplicate entries/cardholder prior to issuing a new card beginning immediately.*

**Audit Follow-up Finding:** The Department of Fiscal Services has implemented a procedure of checking each application for duplicate cardholders before a purchasing card is issued. I also reviewed PaymentNet records and verified that there are currently no active cardholders who have been issued multiple purchasing cards.

8. **Audit Recommendation:** Because transactions are not approved or declined instantaneously based on the number of transactions allowed per day or per month, the Chief Financial Officer should remove this statement from the purchasing card policies and procedures manual.

**Management Response:** *Management concurs that the policy should be revised. The procurement policy will be reviewed to determine what changes, if any, should be made to ensure appropriate controls are in place regarding purchasing card transactions. Any revised policy will then be communicated to the organization and implemented.*

**Audit Follow-up Finding:** The 2008 Purchasing Manual was revised and the statements noted above have been stricken from the manual as approved on May 15, 2008.

9. **Audit Recommendation:** The Chief Financial Officer should improve mandatory purchasing card training in the following ways: (1) instruct cardholders on how they should be properly and timely reconciling their purchasing card accounts, (2) stress the importance of keeping purchasing cards signed and in a secure place, (3) present examples of the proper types of documentation necessary to support the legitimate business purpose of purchasing card transactions, and (4) explain the rationale for the necessity of timely review and approval of transactions.

**Management Response:** *Management concurs and will develop and implement enhanced purchasing card training for cardholders covering all aspects of the purchasing card program including reconciliation and documentation, and ramifications of non compliance with established policy. These ramifications could include canceling individual cards for non-compliance, and/or securing personal repayment of purchases not in full compliance with policy.*

**Audit Follow-up Finding:** The Department of Fiscal Services has made significant enhancements to purchasing card training in order to fully implement the audit recommendation.

10. **Audit Recommendation:** The Chief Financial Officer should consider using additional automated monitoring tools available, such as the declined transaction report or the transaction audit report. The Chief Financial Officer should also consider instructing approving officials to use additional automated tools at various levels throughout the city.

**Management Response:** *Management concurs and will enhance staff training on the automated oversight tools available.*

**Audit Follow-up Finding:** The Department of Fiscal Services has developed a procedure wherein program administrators furnish the Chief Financial Officer and assistant finance directors with (1) monthly and quarterly usage reports and (2) declined transaction and transaction audit reports on a periodic basis. In addition, missing receipts and unapproved transaction reports are emailed to all directors on a monthly basis.

February 12, 2009  
Consent Agenda Item No. 2r  
Land Acquired by Condemnation for Twin Oaks Landfill

**To:** Glenn Brown, City Manager

**From:** Mark Smith, Director of Public Works

**Agenda Caption:** Presentation, possible action, and discussion concerning a resolution approving special warranty deeds conveying one-half undivided interest to the City of Bryan in land acquired by condemnation for Twin Oaks Landfill.

**Recommendation(s):** Staff recommends approval of the special warranty deeds.

**Summary:** In July 2008 the City of College Station condemned ten tracts of land in Grimes County for the Twin Oaks Landfill. Pursuant to the 2003 First Supplemental BVSWMA Joint Solid Waste Interlocal Agreement between the City of Bryan and the City of College Station, all real property acquired for the use of the landfills is to be owned as tenants in common with each City having a one-half undivided interest.

With the exception of one tract in which one of the property owners has filed objections to the special commissioners' award, one-half undivided interest in the remaining nine tracts can now be conveyed to the City of Bryan. Upon the Council's approval of the attached Special Warranty Deeds conveying the interest, the signed deeds will be recorded in the Official Records of Grimes County.

**Budget & Financial Summary:** N/A

**Attachments:**

1. A resolution will be delivered to the Council at the meeting.

**February 12, 2009**  
**Regular Agenda Item No. 1**  
**Public Hearing and Consideration of Budget Amendment # 2**

**To:** Glenn Brown, City Manager

**From:** Jeff Kersten, Chief Financial Officer

**Agenda Caption:** Public Hearing, possible action, and discussion on an ordinance Budget Amendment #2 amending ordinance number 3114 which will amend the budget for the 2008-2009 Fiscal Year and authorizing amended expenditures in the amount of \$614,535 and increase the number of regular full-time positions in the budget by nine; and presentation, possible action and discussion on several contingency transfers.

**Recommendation(s):** Staff recommends the City Council hold the public hearing on Budget Amendment #2, and approve the budget amendment ordinance. Staff recommends the City Council approve the budget transfers.

**Summary:** The proposed budget amendment is to increase the appropriations for the items listed below by \$614,535 and to increase the number of regular full-time positions in the budget by nine. The charter of the City of College Station provides for the City Council to amend the annual budget in the event there are revenues available to cover increased expenditures and after holding a public hearing on such budget amendment. A number of items have been identified that need to be considered in a budget amendment. In addition, several contingency transfer items are included below. Contingency transfers do not increase or decrease the overall budget. Rather, the contingency transfers shift resources within a fund. Contingency transfers greater than \$15,000 require Council approval and are therefore included as part of this Budget Amendment documentation. Attached is a list of the items in the proposed budget amendment as well as those in the proposed budget transfer. The nine additional positions being added are in the Police Department and are part of the implementation of the Police Department reorganization as discussed at the December 11, 2008 City Council Meeting. Funds for these positions were included in the approved FY 2009 Police Department Budget.

**Budget & Financial Summary:** The City has resources or can reasonably expect resources to cover each of the appropriations in this budget amendment. Budget transfers do not affect the overall budget within a fund; they shift resources within the fund.

**Attachments:**

1. Budget Amendment #2 Detail List, Budget transfer detail list
2. Ordinance

## Fiscal Year 2008-2009 Budget Amendment #2 Detail Listing

The proposed budget amendment is to increase the appropriations for the items listed below by \$614,535. In addition, several General Fund contingency transfer items are included below. Contingency transfers do not increase or decrease the overall budget. Rather, the contingency transfers shift resources within a fund. Contingency transfers greater than \$15,000 require Council approval and are therefore included as part of this Budget Amendment documentation. Increases to personnel also require Council approval.

1. **Scheduling System - Police Department: \$71,300 (CO's)**  
This item will appropriate funds in the General Fund for the implementation of the Telestaff Scheduling System by the Police Department. This will provide the Police Department the same type of scheduling used in the Fire Department, and will expedite the creation of work schedules, rosters, back-fill for absentees, and entry of work hours in the payroll system. The expenditure and debt issue to fund this project was projected to be completed in FY10. However, the Police Department and Information Technology have agreed to move this project forward to FY09. This appropriation will be funded by Certificates of Obligation that will be issued in FY09.
2. **Police Department Full-Time Equivalent (FTE) Employee Additions: 9 FTE employees**  
This item increases the FTE personnel count by 9 FTE employees in the General Fund. These FTE employees will be added to the Police Department budget as a result of the Management Review of the Police Department by Buraker and Associates, combined with Chief Ikner's new Community Policing philosophy. The FTE positions created by this item are: 3 Additional Patrol Officers, 1 Civilian Accreditation Manager, 1 Jail Supervisor, 1 Patrol Lieutenant, 1 Police Assistant, 1 Clerical Assistant, and 1 Secretary/Receptionist. The funding for these positions is included in the FY09 budget as part of the \$600,000 Service Level Adjustment (SLA) that was approved for phasing in the implementation of the Management Review recommendations.
3. **Mobile Video Camera Replacement - Police Department - \$260,000 (Budget Amendment)**  
This item will appropriate funds in the Equipment Replacement fund to upgrade the existing in-vehicle video systems used in Police Department patrol cars to fully digital systems and add mobile video capabilities to the Department's motorcycle patrol fleet. The funds to replace these systems will come from SLAs that were approved to transfer funds from the Police Department to the Equipment Replacement Fund in the FY 08 (\$98,550) and FY09 (\$98,550) budgets. The remaining funds (\$62,900) will be transferred to the Equipment Replacement fund from the Police Department as part of the \$600,000 FY 09 SLA for the implementation of the findings from the Management Review conducted by Buraker and Associates. Once these transfers are complete, the funds for this appropriation will be available in the Fund Balance of the Equipment Replacement Fund.
4. **Legal Fees: \$182,000 (Budget Amendment)**  
This item is for the appropriation of funds in the amount of \$182,000 for the estimated legal expenses associated with the litigation with the City of Bryan pertaining to BVSWMA. These funds will be budgeted in the General Fund and are available in the General Fund balance.
5. **Roadway Impact Fee Study - \$57,000 (Budget Amendment); \$30,000 (General Fund Contingency Transfer)**  
This item will appropriate funds for a roadway impact fee study as directed by Council. The goal of the study is for the consultant to lead in the development and implementation of a Roadway Impact Fee policy for the City of College Station. Funding was approved as part of budget amendment #3 in FY08, but was not able to be spent in FY08. Funds for this item were not included in the FY09 Approved Budget. This item will appropriate funds in the amount of \$87,000 for the study. \$30,000 of this appropriation will come from General Fund contingency and will be appropriated to the Public Works Engineering budget. As contingency transfers greater than \$15,000 must be approved by Council, this item will provide for approval of the contingency transfer. The additional \$57,000 will be appropriated in the Streets Capital Improvement Projects budget and is available in the Streets Capital Improvement Projects fund balance.
6. **Emergency Management Maintenance: \$16,268 (General Fund Contingency)**  
These funds are needed to pay for the annual maintenance fee for the maintenance of the UPS battery system, up keep of our portable radio cache of emergency radios, electricity for the AM radio station. WEB EOC security software, communications maintenance and emergency management training at the Community Emergency

Operations Center. This amount represents our share of the costs for the CEOC operational equipment. Contingency transfers greater than \$15,000 must be approved by Council. Therefore this item will provide for approval of the contingency transfer from the General Fund.

7. **KBTX Advertising: \$18,200 (General / Utility Fund Contingency)**  
This was an opportunity that presented itself after the budget had been approved. Through a City Manager directive, the Public Communications Department has purchased programming time on KBTX. The city's news show "College Station Now" airs every Sunday, at 7:30am. Plus, the city received ad time to promote other programs and services. For example, the current ad that is running is one that promotes the city's party patrol hotline with Neighborhood Relations. Contingency transfers greater than \$15,000 must be approved by Council. Therefore this item will provide for approval of the contingency transfer from the General Fund.
8. **Images Magazine: \$22,575(General / Utility Fund Contingency)**  
This was an opportunity that presented itself after the budget had been approved. Through a City Manager directive, the Public Communications Department created an 8-page insert on College Station that appeared in business magazine. The magazine is distributed throughout the Bravos valley, and includes an insert from the City of Bryan. This ad purchase allowed the city to maintain its presence in the business community. Contingency transfers greater than \$15,000 must be approved by Council. Therefore this item will provide for approval of the contingency transfer from the General Fund.
9. **TAMU Athletics Sponsorship/Signage, \$30,000 (General / Utility Fund Contingency)**  
This opportunity has recently been offered to the city. TAMU presented the city the option of prime advertising in Reed Arena at the scoreboard and at Olsen Field below the scoreboard. Both are highly sought after ad locations. The city will be able to change out the messages of the ads. For example, one month it could focus on the city's brand of "home of Texas A&M University", and the following month it could promote "Wind Watts". In addition, the city would get to public relations venues. One at the family zone outside of Kyle Field for all home football games and the other outside of Olsen Field for Saturday Big 12 baseball games. These would allow city departments (police, parks, recycling, etc.) more face to face communication with residents. Contingency transfers greater than \$15,000 must be approved by Council. Therefore this item will provide for approval of the contingency transfer from the General Fund.
10. **Vehicle for new Construction Inspector: \$25,000 (Water Fund Contingency Transfer, Budget Amendment)**  
The recent addition of a construction inspector position did not include money for the purchase of a fleet vehicle for this position. This request is to transfer money from Water Fund contingency funds and appropriate the purchase of the vehicle in the Equipment Replacement Fund. This vehicle will be added to the fleet inventory and amends the FY09 Approved New Fleet Purchases portion of the FY09 Approved Annual Budget. All other miscellaneous supplies for this position will be absorbed by the Public Works budget for the remainder of FY09. Funds are available in the Water Fund contingency account for this purchase. Contingency transfers greater than \$15,000 must be approved by Council. Therefore this item will provide for approval of the contingency transfer from the General Fund.
11. **Office of Assistant Secretary of Preparedness and Response (OASPR) Grant: \$7,000**  
This 100% federal grant (CFDA #93.889) provided for equipment purchases by the Emergency Management Division of the Fire Department to enhance the response capabilities to terrorist threats or catastrophic events. The disbursement of these funds and the approval of grant participation went to Council January 22, 2009 as Consent item #2q. This \$7,000 budget amendment increases the Fire Department's budget for the purchase of the equipment and recognizes the federal grant revenue in the General Fund budget.
12. **Governor's Division of Emergency Management (GDEM) FY07 Homeland Security Grant: \$12,235:** This item is for the re-appropriation of resources for the grant the City of College Station has been awarded through the GDEM. The funds will be used by the Emergency Management division to purchase equipment that will enhance the City's response capabilities to terrorist threats or incidents. The Federal Grant Award Number is 2007-GE-T7-0024. The City will be reimbursed 100% of expenses. \$5,505 will be appropriated to the Law Enforcement Terror project (GG0805) and \$6,730 will be appropriated to the Homeland Security Grant (GG0803). The grant funds will be available in the General Fund balance.

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE (BUDGET AMENDMENT 2) AMENDING ORDINANCE NUMBER 3114 WHICH WILL AMEND THE BUDGET FOR THE 2008-2009 FISCAL YEAR AND AUTHORIZING AMENDED EXPENDITURES AS THEREIN PROVIDED.**

**WHEREAS**, the City Council of the City of College Station, Texas, approved its Budget Ordinance for the 2008-2009 Fiscal Year on September 25, 2008; and

**WHEREAS**, the City Council of the City of College Station, Texas, desires to amend the approved Budget Ordinance; and

**WHEREAS**, this amendment was prepared and presented to the City Council and a public hearing held thereon as prescribed by law and the Charter of the City of College Station, Texas, after notice of said hearing having been first duly given; now, therefore,

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

**Part 1:** That Part 1 of the Budget Ordinance for the 2008-2009 Fiscal Year is amended to read as follows:

**"PART 1:** That the proposed budget as amended by the City Council of the City of College Station, which is made a part hereof to the same extent as if set forth at length herein, is hereby adopted and approved, a copy of which is on file in the Office of the City Secretary in College Station Texas. Amended appropriations for fiscal year 2008-2009 for the General Fund are \$61,786,437; for the General Government Capital Improvements Fund are \$7,490,704; for the Streets Capital Improvements Fund are \$2,399,564; and for the Equipment Replacement Fund are \$4,492,593. Amended regular full and part-time positions is 867.5. All other appropriations as originally adopted and amended by the City Council remain in full force and effect."

**Part 2:** That this ordinance shall become effective immediately after passage and approval.

**PASSED and APPROVED** this \_\_\_\_\_ day of \_\_\_\_\_ 2009.

**ATTEST:**

**APPROVED:**

\_\_\_\_\_  
City Secretary

\_\_\_\_\_  
Mayor

**APPROVED:**

*[Signature]*  
City Attorney

February 12, 2009  
Regular Agenda Item No. 2  
2849 Barron Road Rezoning

**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 ordinance rezoning 3.67 acres from C-3, Light Commercial to PDD, Planned Development for the property located at 2849 Barron Road generally located at the southeast corner of William D. Fitch Parkway and Barron Road.

**Recommendation(s):** The Planning and Zoning Commission voted 5-1 at their January 15<sup>th</sup> meeting to recommend approval of the rezoning as presented with the condition that no restaurant drive-thrus are allowed. Staff recommended approval of the request.

**Summary:**

**REVIEW CRITERIA**

1. **Consistency with the Comprehensive Plan:** The Comprehensive Plan in this area calls for Retail Neighborhood. This designation is intended to permit "neighborhood-scale development of tax-generating developments such as small retail centers, service commercial, restaurants, etc. these uses are generally dependent on good access to local arterials." The Plan references examples such as small scale commercial located in Northgate and Southside as examples of Retail-Neighborhood.

The current zoning of the property is C-3, Light Commercial which is a typical zoning district used for areas planned for Retail-Neighborhood. This district must be less than 5 acres and the permitted uses are moderately low traffic generators that have little impact on adjacent areas or on adjacent thoroughfares. This district specifically prohibits drive-thrus, which are only allowed in C-1 and NG-2 by right as auto-oriented business that utilize drive-thrus will typically draw from a larger surrounding area than would be appropriate for neighborhood-oriented retail.

A Planned Development District, PDD, is intended to promote and encourage innovative development that is sensitive to surrounding land uses and to the natural environment. According to the applicant, the intent of the proposed PDD is to create a zoning district that will integrate light commercial uses and drive-thrus in such a way as to be compatible with developing lower density residential uses. The attached concept plan has two structures. The first is a large 15,000 square foot building with a drive-thru in the center of the site. The second is a 2,500 to 5,000 square foot building that with no drive thru which will help buffer the building with the proposed drive-thru from adjacent residential.

Staff supports the provision of drive-thrus, which would otherwise only be allowed in a C-1 district, for a neighborhood retail area for uses such as small banks, dry cleaners, restaurants and pharmacies with a neighborhood focus. In keeping with the intent of the Comprehensive Plan and Unified Development Ordinance, such a request should provide for an innovative or sensitive design given its close proximity to single-family homes. In

its current configuration, the request is consistent with the intent of the Comprehensive Plan.

2. **Compatibility with the present zoning and conforming uses of nearby property and with the character of the neighborhood:** The uses requested for the PDD are those allowed in C-3, with the addition of drive-thrus that are presently excluded in C-3 districts. The proposed uses should be compatible with the surrounding R-1.
3. **Suitability of the property affected by the amendment for uses permitted by the district that would be made applicable by the proposed amendment:** The 3.7 acre property is located at the intersection of a future minor arterial and a highway. This is a suitable location for a small scale commercial development that could serve the existing Sonoma and Southern Trace residential subdivisions, other existing larger lot residential in the area, as well as future residential planned for in the area. Being bounded by the Sonoma subdivision on two sides, there should be special consideration for the location of the drive-thrus in relation to those shared property lines due to the traffic noise and lighting that can impact those residences.
4. **Suitability of the property affected by the amendment for uses permitted by the district applicable to the property at the time of the proposed amendment:** The proposed change only includes a change that would allow drive-thrus with the existing C-3 uses. The size and location of the property is suitable for light commercial uses. With its proximity to single-family lots, the uses allowed in C-3 are suitable for this property.
5. **Marketability of the property affected by the amendment for uses permitted by the district applicable to the property at the time of the proposed amendment:** The property is marketable for small scale commercial uses.
6. **Availability of water, wastewater, storm water, and transportation facilities generally suitable and adequate for the proposed use:** The subject tract is located adjacent to an 18 inch water main along Barron and a 24-inch water main along State Highway 40. The subject tract is located adjacent to an 8 inch sanitary sewer main which is located near the northeast property corner. The subject tract is located adjacent to and may take access to either Barron Road (Minor Arterial) and/or State Highway 40 (Freeway); however, access to State Highway 40 would require TxDOT approval and permitting. TxDOT has indicated in their comments that a deceleration lane would be required for a driveway in the proposed location off of State Highway 40.

Barron Road is currently built to a local road standard which can safely carry up to 1,000 vehicle trips per day. Widening for this section of Barron Road to a minor arterial standard was approved with the 2008 Bond Election, and design is underway for construction to begin in 2010 or 2011. A minor arterial is anticipated to carry up to 30,000 daily trips.

The subject tract is located in the Spring Creek Drainage Basin. There is no FEMA regulated Special Flood Hazard Area located on this tract. Development of this tract will be required to meet the City's Storm Water Design Guidelines. The subject tract is located in the Spring Creek Sanitary Sewer Impact Fee Area.

#### **CONCEPT PLAN REVIEW CRITERIA**

1. **The proposal will constitute an environment of sustained stability and will be in harmony with the character of the surrounding area:** The current character is largely rural, but with significant development pressure. Southern Trace Subdivision was

recently completed, and Phase 1 of the Sonoma subdivision is complete and Westfield Village further east on Barron Road. The City has also had requests for Comprehensive Plan amendments for commercial on the west side of State Highway 40 and a rezoning for another 70 acres of medium density residential on the southwest side of State Highway 40. The proposed concept plan would provide suburban commercial uses for the existing and proposed residential in the area, but is largely out of character with the rural character that primarily exists right now.

2. **The proposal is in conformity with the policies, goals, and objectives of the Comprehensive Plan, and any subsequently adopted Plans, and will be consistent with the intent and purpose of this Section:** The proposed uses are in conformance with the Comprehensive Plan goals and policies to provide neighborhood-focused retail in proximity to residential areas.
3. **The proposal is compatible with existing or permitted uses on abutting sites and will not adversely affect adjacent development:** The proposed layout meets the minimum buffer standards between commercial and residential uses. Additionally, changes were made to the Concept Plan to remove a drive-thru directly adjacent to the developing homes and replace it with a building that will help to buffer between the remaining drive-thru. The applicant will also be required to construct a 6-foot masonry wall along the shared boundaries with the single-family homes. This will help to reduce the impact of light and noise from the commercial site, and a detention area provides further distance from the businesses to the single-family homes. The development of the site will be required to meet all other minimum development standards for commercial uses, as the developer is not requesting any meritorious modifications to the City's development standards.
4. **Every dwelling unit need not front on a public street but shall have access to a public street directly or via a court, walkway, public area, or area owned by a homeowners association:** All structures in the concept plan front on a public street.
5. **The development includes provision of adequate public improvements, including, but not limited to, parks, schools, and other public facilities:** No public open space is being dedicated with this proposal. The concept plan does incorporate a detention area for stormwater management on the east side of the property. No parkland dedication is required for commercial projects, and no voluntary dedications are proposed.
6. **The development will not be detrimental to the public health, safety, welfare, or materially injurious to properties or improvements in the vicinity:** Staff does not believe that the improvements will be materially injurious to properties in the vicinity. Although, it may have an impact on the resale value of homes directly adjacent to the commercial site, and cause inconvenience to those residents due to visibility of lit signs, as well as noise from order boxes and cars.
7. **The development will not adversely affect the safety and convenience of vehicular bicycle, or pedestrian circulation in the vicinity, including traffic reasonably expected to be generated by the proposed use and other uses reasonably anticipated in the area considering existing zoning and land uses in the area:** The proposed zoning is not anticipated to exceed the traffic generation of the existing C-3 zoning - just under 150 peak hour trips and 1,730 vehicle trips per day. Currently, this end of Barron Road is constructed as a local road that has a capacity of 1,000 trips per day. In 2006, Barron Road carried 2,080 trips per day between Longmire

and Victoria and no counts are available west of Victoria. At its current standard, this development would exceed the capacity on Barron Road.

Conversely, State Highway 40 is a four lane divided highway that is estimated to carry around 12,000 trips per day. Upon widening, scheduled in 2011, Barron Road should be able to safely handle the increased traffic. The widening of Barron Road will also incorporate sidewalks and a bicycle lane. Pedestrian movement is not depicted on the plan; however, a note states that sidewalks will be provided along Barron Road either with this project or with the Barron Road widening. Bicycle movements were not addressed; however, bicycle parking is required with all Non-Residential development.

**Budget & Financial Summary: N/A**

**Attachments:**

1. Background Information
2. Zoning District Fact Sheet, C-3, Light Commercial
3. Draft Planning and Zoning Commission Meeting Minutes, January 15, 2009
4. Ordinance

## BACKGROUND INFORMATION

### NOTIFICATIONS

Advertised Commission Hearing Date: January 15, 2008

Advertised Council Hearing Dates: February 12, 2008

The following neighborhood organizations that are registered with the City of College Station's Neighborhood Services have received a courtesy letter of notification of this public hearing:

None

Property owner notices mailed: 14

Contacts in support: None at the time of Staff Report

Contacts in opposition: None at the time of Staff Report

Inquiry contacts: None at the time of Staff Report

### ADJACENT LAND USES

Direction	Comprehensive Plan	Zoning	Land Use
North	Minor Arterial	None	Barron Road
South	Single Family Residential, Medium Density	R-1, Single Family	Sonoma Subdivision
East	Single Family Residential, Medium Density	R-1, Single Family	Sonoma Subdivision
West	Highway	None	William D. Fitch Parkway

### DEVELOPMENT HISTORY

**Annexation:** 1995

**Zoning:** A-O, Agricultural Open to C-3, Light Commercial, 2006

**Final Plat:** Unplatted

**Site development:** Vacant

# UNIFIED DEVELOPMENT ORDINANCE FACT SHEET

## C-3 Light Commercial

This district is designed to provide locations for commercial sites that are too small for many permitted uses in the C-1, General Commercial District. These are moderately low traffic generators that have little impact on adjacent areas or on adjacent thoroughfares.

The following supplemental standard shall apply to this district: No C-3 zoning district, including adjacent C-3 zoning districts, shall exceed a combined total of five acres in area.

### Permitted Uses:

- Educational Facility, Indoor Instruction
- Educational Facility, Primary & Secondary
- Government Facilities
- Health Care Facility, Medical Clinics
- Parks
- Places of Worship
- Animal Care Facility, Indoor
- Art Studio, Gallery
- Day Care, Commercial
- Health Club/Sports Facility, Indoor
- Offices
- Parking as a Primary Use
- Printing / Copy Shop
- Radio/TV Station/Studios
- Retail Sales and Services
- Wireless Telecommunication Facilities -Unregulated

### Permitted with Specific Use Standards:

- Dry Cleaners & Laundry
- Fuel Sales
- Restaurants
- Sexually Oriented Business
- Storage, Self Service
- Utilities
- Wireless Telecommunication Facilities -Intermediate

### Permitted with a Conditional Use Permit:

- Wireless Telecommunication Facilities -Major



**DRAFT MINUTES**  
**PLANNING AND ZONING COMMISSION**  
**Regular Meeting**  
**Thursday, January 15, 2009,**  
**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, Winnie Garner and Hugh Stearns

**COMMISSIONERS ABSENT:** Thomas Woodfin

**CITY COUNCIL MEMBERS PRESENT:** Larry Stewart

**CITY STAFF PRESENT:** Senior Planner Lindsay Kramer, Staff Planner Jason Schubert, Assistant City Engineer Josh Norton, 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 Carrie McHugh and Staff Assistant Brittany Caldwell

7. Public hearing, presentation, possible action, and discussion on a Rezoning from C-3, Light Commercial to PDD, Planned Development for 3.7 acres located at 2849 Barron Road generally located at the eastern corner of the intersection of Barron Road and William D. Fitch Parkway. **Case #08-00500313 (LK)**

Lindsay Kramer, Senior Planner, presented the Rezoning and recommended approval. She stated that the applicant had revised the original proposal to remove the drive-thru at the south end of the property.

There was general discussion regarding the Rezoning.

Chairman Nichols opened the public hearing.

Natalie Ruiz, IPS Group, stated that the development would blend in with the neighborhood. She also said that traditional uses now have drive-thrus.

Chairman Nichols asked if the owner would be willing to allow a condition on the Rezoning stating that the drive-thru could not be used for a restaurant.

Dave Lawrence, owner, stated that the condition would be fine.

Chairman Nichols closed the public hearing.

Commissioner Stearns stated that drive-thrus make communities unwalkable and that the neighborhood abutting the development should be able to have a say, but will not because the houses are mostly unoccupied.

Chairman Nichols said that he was supportive of the proposal because it is a Planned Development.

**Commissioner Garner motioned to approve the Rezoning as presented with the condition that the building could not be a drive-thru restaurant. Commissioner Bauman seconded the motion, motion passed (5-1). Commissioner Stearns was in opposition.**

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE AMENDING CHAPTER 12, "UNIFIED DEVELOPMENT ORDINANCE," SECTION 4.2, "OFFICIAL ZONING MAP," OF THE CODE OF ORDINANCES OF THE CITY OF COLLEGE STATION, TEXAS, BY CHANGING THE ZONING DISTRICT BOUNDARIES AFFECTING CERTAIN PROPERTIES AS DESCRIBED BELOW; 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 12, "Unified Development Ordinance," Section 4.2, "Official Zoning Map," of the Code of Ordinances of the City of College Station, Texas, be amended as set out in Exhibit "A", attached hereto and made a part of this ordinance for all purposes.

PART 2: 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 \_\_\_\_\_ day of \_\_\_\_\_, 2009.

APPROVED:

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
City Secretary

APPROVED:

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

**EXHIBIT "A"**

That Chapter 12, "Unified Development Ordinance," Section 4.2, "Official Zoning Map," of the Code of Ordinances of the City of College Station, Texas, is hereby amended as follows:

The following property is rezoned from C-3, General Commercial to PDD, Planned Development:

ALL THAT CERTAIN 3.67 ACRES TRACT OR PARCEL OF LAND, LYING AND BEING SITUATED IN THE ROBERT STEVENSON SURVEY, ABSTRACT NO. 54, COLLEGE STATION, BRAZOS COUNTY, TEXAS AND BEING PART OF THE CALLED 154 ACRE (NET) TRACT DESCRIBED IN THE DEED FROM FLORENCE A. BROWN TO BEVERLY J. FURRER, PATRICIA J. VOGEL AND THOMAS L. BROWN, JR., AS RECORDED IN VOLUME 854, PAGE 57, OF THE OFFICIAL RECORDS OF BRAZOS COUNTY, TEXAS, AND BEING ALSO DESCRIBED AS 158 ACRES IN THE DEED FROM D. BROOKS COFER, JR. AND DON DILLON TO WAYNE A DUNLAP AND THOMAS L. BROWN AS RECORDED IN VOLUME 283, PAGE 382, OF THE DEED RECORDS OF BRAZOS COUNTY, TEXAS AND SAID 3.67 ACRE TRACT BEING MORE PARTICULAR DESCRIBED BY METES AND BOUNDS IN THE ATTACHED EXHIBIT "B" AND SHOWN GRAPHICALLY IN THE ATTACHED EXHIBIT "C"

Purpose Statement:                    The purpose of this PDD district is to create a zoning district that will integrate commercial uses and drive-thru's in such a way as to be compatible with developing lower density residential uses.

Uses Allowed:                        Educational Facility, Indoor Instruction  
Educational Facility, Primary & Secondary  
Governmental Facilities  
Health Care, Medical Clinics  
Parks  
Places of Worship  
Animal Care Facility, Indoor  
Art Studio/Gallery  
Day Care, Commercial  
Dry Cleaners & Laundry \*  
Drive-in/Drive thru window  
Fuel Sales\*  
Health Club/Sports Facility, Indoor  
Offices  
Personal Service Shop

- Printing/Copy Shop
- Radio/TV Station/Studio
- Restaurant\*
- Retail Sales & Service
- Sexually Oriented Business\*
- Storage, Self Service\*
- Utility\*
- Wireless Telecommunication Facilities – Intermediate\*
- Wireless Telecommunication Facilities – Major (CUP required)
- Wireless Telecommunication Facilities – Unregulated

\*Uses have specific use standards per Unified Development Ordinance, Article 6.3, Specific Use Standards

Conditions: Drive-in/thru not allowed in conjunction with restaurant use

Modifications Possible: None

**EXHIBIT "B"**

**EXHIBIT "B"**

Wayne A. Dunlap  
Beverly J. Furrer  
Patricia J. Vogel  
Thomas L. Brown, Jr.  
3.67 Acre Tract Three  
Robert Stevenson Survey, A-54  
College Station, Brazos County, Texas

Field notes of a 3.67 acre tract or parcel of land, lying and being situated in the Robert Stevenson Survey, Abstract No. 54, College Station, Brazos County, Texas, and being part of the called 154 acre (net) tract described in the deed from Florence A. Brown to Beverly J. Furrer, Patricia J. Vogel and Thomas L. Brown, Jr., as recorded in Volume 854, Page 57, of the Official Records of Brazos County, Texas, and being also described as 158 acres in the deed from D. Brooks Cofer, Jr. and Don Dillon to Wayne A. Dunlap and Thomas L. Brown as recorded in Volume 283, Page 382, of the Deed Records of Brazos County, Texas, and said 3.67 acre tract being more particularly described as follows:

**COMMENCING** at the north corner of the beforementioned 158 acre tract in the center of Barron Road (County Road now in College Station - formerly known as Wellborn - Rock Prairie Public Road), from which a cross-tie fence corner at the intersection of the northeast line of the 158 acre tract with the southeast line of Barron Road bears S 46° 02' 08" E - 26.21 feet, and a cross-tie fence corner marking the east corner of the 158 acre tract bears S 46° 02' 08" E - 3422.41 feet;

**THENCE** S 44° 02' 45" E along the northwest line of the beforementioned 158 acre tract, same being along the centerline of the existing pavement of Barron Road for a distance of 733.33 feet to the **PLACE OF BEGINNING** of this description;

**THENCE** through the interior of the beforementioned 158 acre tract, as follows:

- S 45° 57' 15" E      at a distance of 25.45 feet, pass a 1/2" iron rod set in the apparent southeast line of Barron Road, continue on for a total distance of 400.00 feet to a 1/2" iron rod set,
- S 44° 02' 45" W      for a distance of 381.68 feet to a 1/2" iron rod set in the northeast right of way line of State Highway No. 40, from which a concrete monument with brass disc found bears S 55° 16' 58" E - 532.93 feet;

**THENCE** along the northeast right of way line of the beforementioned State Highway No. 40 (as described in the deed to the State of Texas as recorded in Volume \_\_\_\_\_, Page \_\_\_\_\_, of the Official Records of Brazos County, Texas), as follows:

- N 55° 16' 58" W      for a distance of 58.96 feet to a concrete monument with brass disc found,
- N 49° 04' 54" W      for a distance of 124.28 feet to a concrete monument with a brass disc found,
- N 50° 01' 33" W      for a distance of 131.40 feet to a concrete monument with a brass disc found,
- N 50° 58' 39" W      at a distance of 61.87 feet, pass a 1/2" iron rod set in the southeast line of Barron Road, continue on for a total distance of 86.99 feet to the northwest line of the 158 acre tract in the existing centerline of the pavement of Barron Road;

Wayne A. Dunlap  
Beverly J. Furrer  
Patricia J. Vogel  
Thomas L. Brown, Jr.  
3.67 Acre Tract Three  
Robert Stevenson Survey, A-54  
College Station, Brazos County, Texas  
Continued - Page 2

THENCE N 44° 02' 45" E along the northwest line of the beforementioned 158 acre tract and along the centerline of the existing pavement of Barron Road for a distance of 414.97 feet to the PLACE OF BEGINNING, containing 3.67 acres of land, more or less



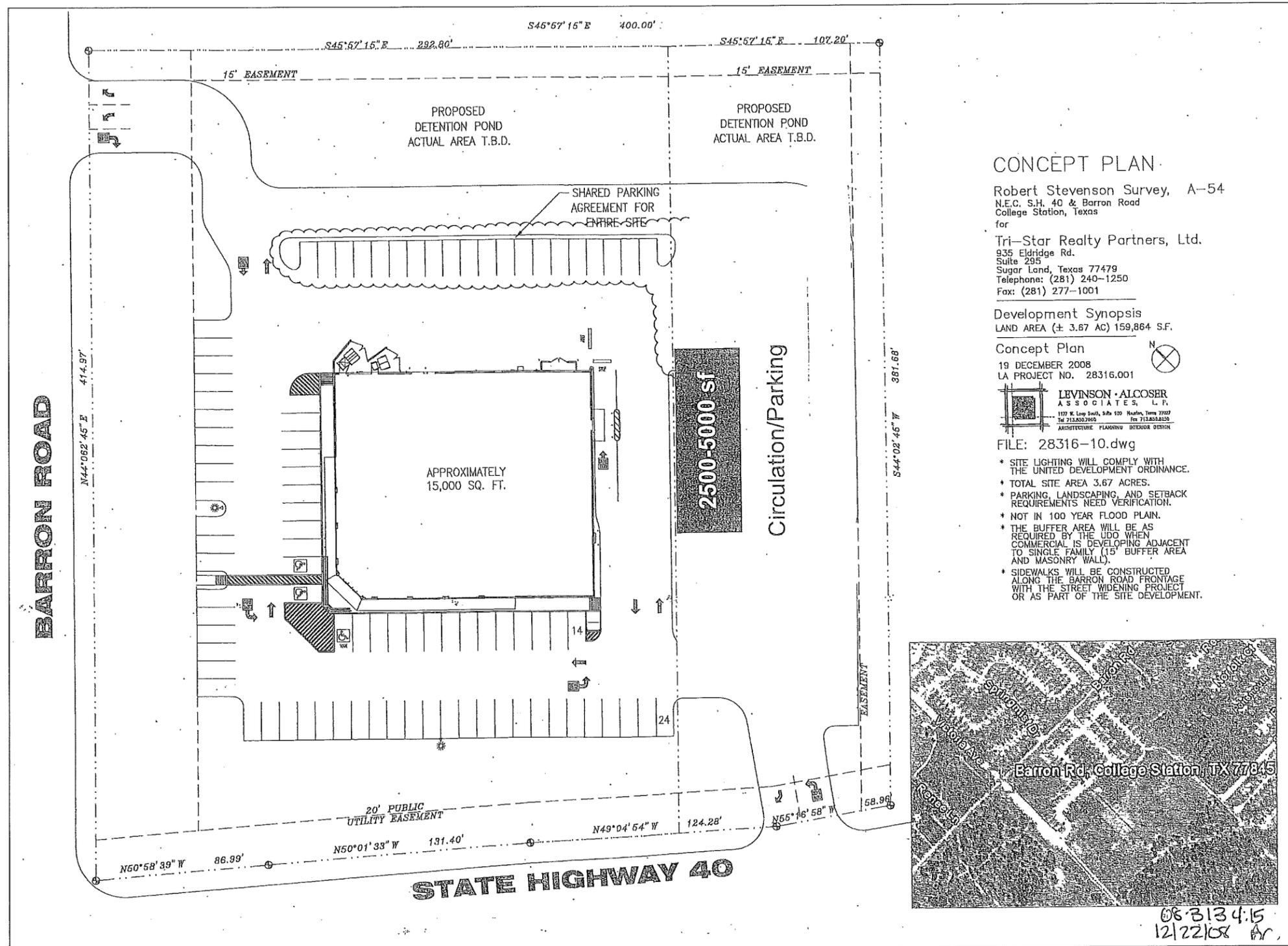
Surveyed June 2003

By:   
S. M. Kling  
R.P.L.S. No. 2008

Prepared 06/11/03  
kes03-03a\kdunlap3.67ac wpd



EXHIBIT "D"



CONCEPT PLAN

Robert Stevenson Survey, A-54  
N.E.C. S.H. 40 & Barron Road  
College Station, Texas

for  
Tri-Star Realty Partners, Ltd.  
935 Eldridge Rd.  
Suite 295  
Sugar Land, Texas 77479  
Telephone: (281) 240-1250  
Fax: (281) 277-1001

Development Synopsis  
LAND AREA (± 3.87 AC) 159,864 S.F.

Concept Plan

19 DECEMBER 2008  
LA PROJECT NO. 28316.001



FILE: 28316-10.dwg

- \* SITE LIGHTING WILL COMPLY WITH THE UNITED DEVELOPMENT ORDINANCE.
- \* TOTAL SITE AREA 3.67 ACRES.
- \* PARKING, LANDSCAPING, AND SETBACK REQUIREMENTS NEED VERIFICATION.
- \* NOT IN 100 YEAR FLOOD PLAIN.
- \* THE BUFFER AREA WILL BE AS REQUIRED BY THE UDO WHEN COMMERCIAL IS DEVELOPING ADJACENT TO SINGLE FAMILY (15' BUFFER AREA AND MASONRY WALL).
- \* SIDEWALKS WILL BE CONSTRUCTED ALONG THE BARRON ROAD FRONTAGE WITH THE STREET WIDENING PROJECT OR AS PART OF THE SITE DEVELOPMENT.



08-3134.15  
12/22/08 Ar.

**February 12, 2009  
Regular Agenda Item No. 3  
4270 State Highway 6 - Rezoning**

**To:** Glenn Brown, City Manager

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

**Agenda Caption:** Public hearing, presentation, possible action, and discussion on a request to rezone 10.44 acres from A-O, Agricultural Open, to R-1, Single Family Residential, at 4270 State Highway 6, abutting Decatur Road next to Spring Creek Townhomes.

**Recommendation(s):** The Planning and Zoning Commission recommended approval of the amendment by a vote of 7 to 0 at their September 18<sup>th</sup> meeting. Staff also recommended approval.

**Summary:** During the October 9, 2008 City Council meeting, staff presented this case requesting to rezone 10.44 acres from A-O, Agricultural Open to R-1, Single Family Residential and 3.7 acres from A-O, Agricultural Open to C-1, General Commercial. The C-1 portion of the rezoning was approved; however, Council was uncomfortable with a residential use abutting the M-1 property which is currently undeveloped. Staff was instructed to research the possibility of a rezoning on the two adjacent M-1 properties to allow for development to be consistent with the surrounding residential uses.

With these instructions, staff began contacting the abutting property owners in order to assess their reaction to a City initiated rezoning. The owner of the property with frontage along Decatur was in objection with the rezoning of their property without consideration to their current prospects. Though the owner was reluctant to provide detail regarding the nature of these prospects, there was an objection to a rezoning of the property in accordance with the Comprehensive Plan. Staff also mentioned the possibility of rezoning to the property to R-1, as to be consistent with the surrounding area. The owner was also not completely receptive to this option. Staff has not continued with a rezoning on this property due to the owner's objection.

The second property owner which was contacted has indicated that they, too, would be opposed to a City initiated rezoning.

Therefore, staff is bringing this case back to City Council for a rehearing in light on this information.

**Budget & Financial Summary:** N/A

**Attachments:**

1. Planning and Zoning Commission Meeting Minutes, September 18, 2008
2. City Council Meeting Minutes, October 9, 2008
3. Background Information
4. Ordinance



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

---

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

**COMMISSIONERS ABSENT:** None

**CITY COUNCIL MEMBERS PRESENT:** None

**CITY STAFF PRESENT:** Planning Administrator Molly Hitchcock, Senior Planners Lindsay Boyer and Jennifer Prochazka, Staff Planners Jason Schubert, Lauren Hovde, Matt Robinson, Graduate Civil Engineer Erika Bridges, Assistant City Engineer Josh Norton, Senior Assistant City Engineer Carol Cotter, Transportation Planning Coordinator Joe Guerra, Planning Administrator Molly Hitchcock, City Engineer Alan Gibbs, Director Bob Cowell, Assistant Directors Lance Simms and Gabriel Elliott, First Assistant City Attorney Carla Robinson, Action Center Representative Kerry Mullins and Staff Assistants Nicole Padilla and Amber Carter

7. Public hearing, presentation, possible action, and discussion regarding a rezoning of 14.19 acres from A-O, Agricultural-Open, to approximately 3.76 acres of C-1 General Commercial and 10.44 acres of R-1 Single Family Residential located at 4270 State Highway 6 South, generally located north of the Spring Creek Gardens Subdivision.  
**Case #08-500152 (LH)**

Lauren Hovde, Staff Planner, presented the rezoning from Agricultural-Open to C-1 General Commercial and R-1 Single Family Residential and recommended approval. She answered questions in general from Commissioners.

Carol Cotter, Senior Assistant City Engineer, explained that an additional driveway will be allowed by TXDOT but will be shared with Tower Point Subdivision and the commercial lot will have another access through the Korean Mission Church.

Chairman Nichols opened the public hearing

Jeremiah Kellam, 22803 Timberlake Creek Road, made himself available for questions by the Commissioners. The Commissioners had no questions for the Applicant.

Chairman Nichols closed the public hearing.

**Commissioner Davis motioned to approve the item as submitted. Commissioner Bauman seconded the motion, motion passed (7-0).**

**Minutes**  
**City Council Workshop & Regular Meeting**  
**Thursday, October 09, 2008 at 3:00 PM & 7:00 PM**  
**City Hall Council Chamber, 1101 Texas Avenue**  
**College Station, Texas**

**COUNCIL PRESENT:** Mayor White, Mayor ProTem McIlhaney, Council members Maloney Crompton, Massey, Ruesink and Stewart

**STAFF PRESENT:** City Manager Brown, Assistant City Manager Merrill, City Attorney Cargill Jr., City Secretary Hooks, Deputy City Secretary McNutt, Management Team  
Mayor White called meeting to order at 3:00 p.m.

**Regular Agenda Item No. 2 -- Public hearing, presentation, possible action, and discussion regarding a rezoning of 14.19 acres from A-O, Agricultural-Open, to approximately 3.76 acres of C-1 General Commercial and 10.44 acres of R-1 Single Family Residential located at 4270 State Highway 6 South, generally located north of the Spring Creek Gardens Subdivision. Case #08-500152 (LH).**

Lauren Hovde, Staff Planner presented staff report describing rezoning request of 14.19 acres from A-O, Agricultural-Open, to approximately 3.76 acres of C-1 General Commercial and 10.44 acres of R-1 Single Family Residential located at 4270 State Highway 6 South. Staff and P&Z Commission recommended approval.

Council inquired on the size of the buffer, the distance between the properties and the different zones.

Bill Davis, P&Z Commissioner stated that the Planning and Zoning Commission felt the buffering was large enough that the adjacent properties would not be affected by this rezoning.

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

Mayor Pro Tem McIlhaney moved to approve the rezoning of 14.19 acres from A-O, Agricultural-Open, to approximately 3.76 acres of C-1 General Commercial and 10.44 acres of R-1 Single Family Residential located at 4270 State Highway 6 South. Motion died from lack of second.

Council member Massey moved to approve **Ordinance No. 3120** rezoning 14.19 acres located at 4270 State Highway 6 South from A-O, Agricultural-Open, to approximately 3.76 acres of C-1 General Commercial. Council member Maloney seconded the motion, which carried 7-0.

Council tabled the rezoning request for 10.44 acres of A-O Agricultural-Open to R-1 Single Family Residential.

Council instructed staff to review the status of the M-1 zone on the Comprehensive Land Use Plan.

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

**NOTIFICATIONS**

Advertised Commission Hearing Date: September 18, 2008  
 Advertised Council Hearing Dates: October 9, 2008  
 February 12, 2009

The following neighborhood organizations that are registered with the City of College Station's Neighborhood Services have received a courtesy letter of notification of this public hearing:  
 Springcreek Gardens Homeowner Association

Property owner notices mailed: 52  
 Contacts in support: 0  
 Contacts in opposition: 0  
 Inquiry contacts: 3

**ADJACENT LAND USES**

Direction	Comprehensive Plan	Zoning	Land Use
<b>North</b>	Retail Commercial, Single Family Residential Medium Density, Retail Neighborhood	C-1, Commercial and M-1, Light Industrial	Vision Mission Church Vacant Vacant
<b>South</b>	Retail Regional, Single Family Residential High Density	C-1, Commercial and PDD, Planned Development District	Vacant, Spring Creek Garden (Townhomes)
<b>East</b>	Retail Regional Freeway/Expressway Thoroughfare	C-1 N/A	Vacant, State Highway 6
<b>West</b>	Major Collector Thoroughfare, Single Family Residential Medium Density	N/A, R-1, Single Family Residential	Decatur Drive, Shenandoah Subdivision

**DEVELOPMENT HISTORY**

**Annexation:** October 13, 1983  
**Zoning:** A-O, Agricultural Open since annexation  
**Final Plat:** Unplatted  
**Site development:** Undeveloped

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE AMENDING CHAPTER 12, "UNIFIED DEVELOPMENT ORDINANCE", SECTION 4.2, "OFFICIAL ZONING MAP", OF THE CODE OF ORDINANCES OF THE CITY OF COLLEGE STATION, TEXAS, BY CHANGING THE ZONING DISTRICT BOUNDARIES AFFECTING CERTAIN PROPERTIES AS DESCRIBED BELOW; 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 12, "Unified Development Ordinance", Section 4.2, "Official Zoning Map", of the Code of Ordinances of the City of College Station, Texas, be amended as set out in Exhibit "A", attached hereto and made a part of this ordinance for all purposes.

PART 2: 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 12th day of February, 2009.

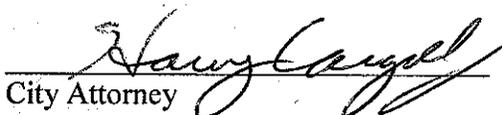
APPROVED:

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
City Secretary

APPROVED:

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

**EXHIBIT "A"**

That Chapter 12, "Unified Development Ordinance", Section 4.2, "Official Zoning Map", of the Code of Ordinances of the City of College Station, Texas, is hereby amended as follows:

I.

The following property is rezoned from A-O, Agricultural Open to R-1, Single-Family Residential:

BEING A 10.44 ACRE TRACT OR PARCEL OF LAND, LYING AND BEING SITUATED IN THE ROBERT STEVENSON SURVEY — ABSTRACT NO. 54, COLLEGE STATION, BRAZOS COUNTY, TEXAS, AND BEING A PORTION OF THAT CERTAIN 14.28 ACRE TRACT DESCRIBED IN THE DEED FROM FIRST FEDERAL SAVINGS BANK, BRYAN, TEXAS, TO K.S. MOSS CAPITAL CORP, RECORDED IN VOLUME 2763, PAGES 147 OF THE OFFICIAL RECORDS OF BRAZOS COUNTY, TEXAS, AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS SHOWN IN EXHIBIT "A", AND GRAPHICALLY SHOWN IN EXHIBIT "B".

## EXHIBIT A:

K. S. Moss Capital Corp.  
 10.44 Acre Tract - Rezoning Request to R-1  
 Robert Stevenson Survey, A-54  
 College Station, Brazos County, Texas

Field notes of a 10.44 acre tract or parcel of land, lying and being situated in the Robert Stevenson Survey, Abstract No. 54, College Station, Brazos County, Texas, and being part of a 14.28 acre tract described in the deed from First Federal Savings Bank, Bryan, Texas, to K. S. Moss Capital Corp, recorded in Volume 2763, Page 147, of the Official Records of Brazos County, Texas, and said 10.44 acre tract, being more particularly described as follows:

**COMMENCING** at a ½" iron rod set at the common corner between the beforementioned 14.28 acre tract and the 3.838 acre - Tract No. 3 described in the deed to College Station Market Place, recorded in Volume 6647, Page 207, of the Official Records of Brazos County, Texas, same being in the southwest right-of-way line of State Highway No. 6 (320' right-of-way);

**THENCE** S 43° 45' 31" W along the common line between the beforementioned 14.28 acre tract and the following two tracts: the beforementioned 3.838 acre tract, and the remainder of a 14.0679 acre tract described in the deed to Spring Creek CS Development, Ltd., recorded in Volume 5583, Page 120, of the Official Records of Brazos County, Texas, at a distance of 13.6 feet pass a ½" iron rod found at a 2" iron pipe fence post, continue on, for a total distance of 620.76 feet to a ½" iron rod set; at the **PLACE OF BEGINNING** of this description:

**THENCE** S 43° 45' 31" W along the common line between the beforementioned 14.28 acre tract and the following three tracts: the remainder of a 14.0679 acre tract described in the deed to Spring Creek College Station Development Ltd. recorded in Volume 5583, Page 120, of the Official Records of Brazos County, Texas; Spring Creek Gardens Subdivision - Phase 2, according to the plat recorded in Volume 7402, Page 119, of the Official Records of Brazos County, Texas, and Spring Creek Gardens Subdivision - Phase 1, according to the plat recorded in Volume 6663, Page 31, of the Official Records of Brazos County, Texas, at a distance of 12.72 feet, pass the north corner of Common Area "E" - 0.080 acre, Spring Creek Gardens - Phase 2, continue on, at a distance of 513.74 feet pass the north corner of Common Area "C" - 0.159 acre, Spring Creek Gardens - Phase 1, continue on, for a total distance of 1393.28 feet and corner in the northeast line of a proposed 5' right of way dedication Decatur Drive, a ½" iron rod found marking the south corner of the said 14.28 acre tract, and in the present northeast right of way line of Decatur Drive 70' right of way;

**THENCE** N 45° 52' 42" W along the northeast line of a proposed 5' right-of-way dedication - Decatur Drive for a distance of 307.60 feet to a ½" iron rod set in the common line between the beforementioned 14.28 acre tract and an 18.848 acre tract described in the deed to K.T.H. Investments, recorded in Volume 3899, Page 309, of the Official Records of Brazos County, Texas;

**THENCE** N 43° 45' 50" E along the common line between the beforementioned 14.28 acre tract and the following two tracts: the remainder of the beforementioned 18.848 acre tract, and Lot 1, Block 1 - K.T.H. Commercial Addition, according to the plat recorded in Volume 4377, Page 206, of the Official Records of Brazos County, Texas, at a distance of 850.71 feet, pass the south corner of Lot 1, Block 1 - 3.936 acres - K.T.H. Commercial Addition, continue on, for a total distance of 1562.82 feet to a ½" iron rod set on the east bank of a tributary to Spring Creek (current tributary now a pond 10-15' deep), as follows:

S 45° 52' 05" E	for a distance of 20.26 feet,
S 07° 13' 22" E	for a distance of 27.99 feet,
S 02° 58' 15" W	for a distance of 27.67 feet,
S 31° 52' 31" W	for a distance of 38.27 feet,
S 14° 40' 45" E	for a distance of 20.89 feet.

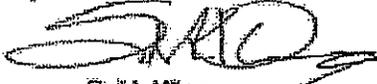
EXHIBIT A CONTINUED:

K. S. Moss Capital Corp.  
10.44 Acre Tract - Rezoning Request to R-1  
Robert Stevenson Survey, A-84  
College Station, Brazos County, Texas  
Continued - Page 2

S 55° 12' 48" E	for a distance of 98.87 feet,
S 14° 16' 14" E	for a distance of 30.58 feet,
S 06° 33' 25" E	for a distance of 40.48 feet,
S 10° 35' 46" W	for a distance of 25.45 feet,
S 20° 21' 43" W	for a distance of 28.99 feet,
S 27° 44' 44" W	for a distance of 19.27 feet,
S 07° 48' 39" E	for a distance of 13.28 feet,
N 86° 08' 53" E	for a distance of 17.34 feet,
S 55° 19' 33" E	for a distance of 14.70 feet to a 3/4" iron rod set at

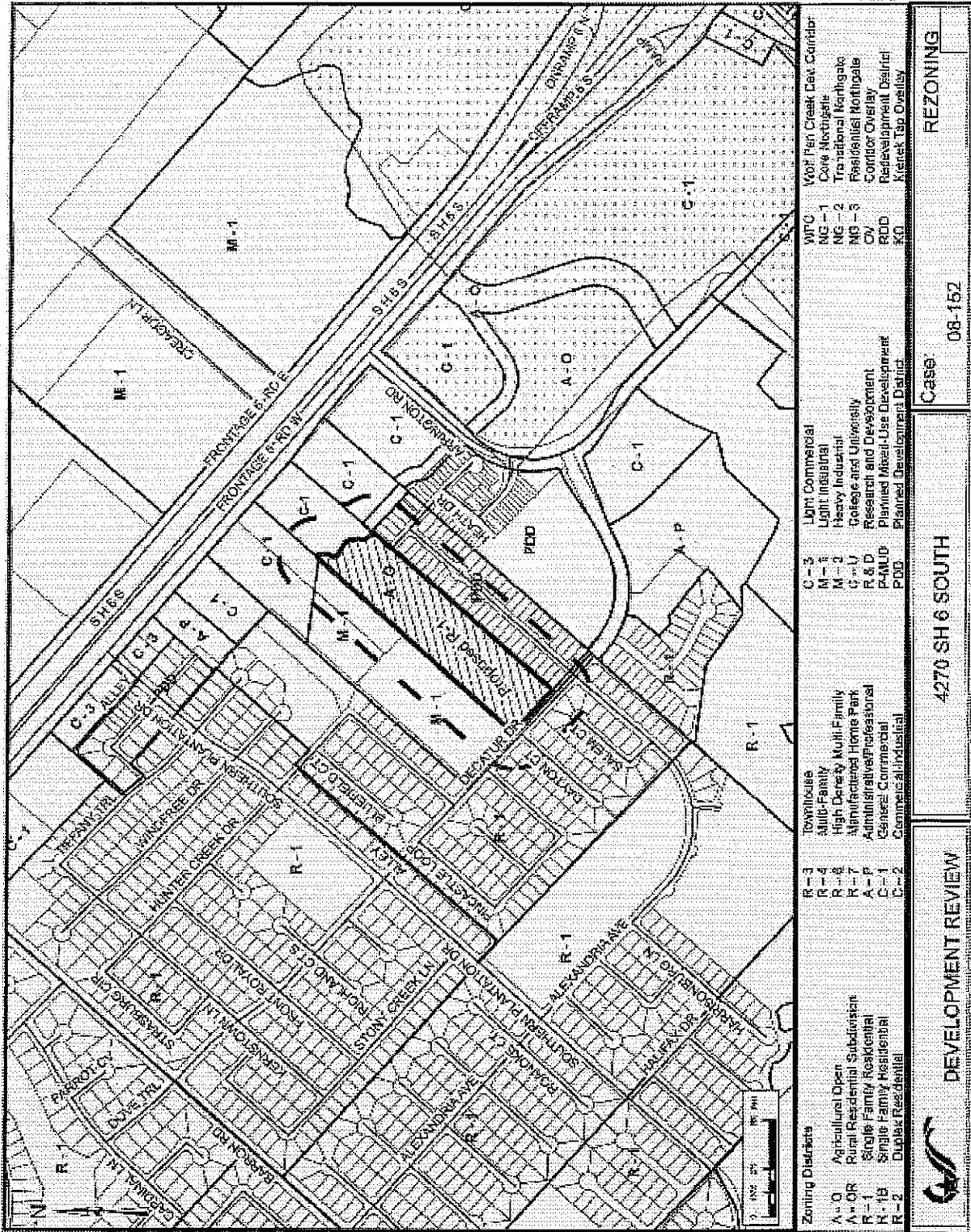
the **POINT OF BEGINNING** containing 10.44 acres of land more or less.



Surveyed April 2008  
By:   
S. M. Kling  
R.P.L.S. No. 2003

Prepared: 07/03/08  
Kling Engineering and Surveying

EXHIBIT B:



Zoning Districts	Development Review	Case	Rezoning
A-O Agricultural Open	4270 SH 6 SOUTH	08-152	REZONING
A-OR Rural Residential Suburban			
R-1 Single Family Residential			
R-1B Single Family Residential			
R-2 Duplex Residential			
R-3 Townhouse			
R-4 Multi-Family			
R-5 High Density Multi-Family			
R-6 Manufactured Home Park			
R-7 Administrative/Professional			
A-P General Commercial	REZONING	08-152	REZONING
C-1 General Commercial			
C-2 Commercial/Industrial			
C-3 Light Commercial			
M-1 Light Industrial			
M-2 Heavy Industrial			
M-3 College and University			
C-1-U Research and Development			
R-1-D Planned Mixed-Use Development			
P-AMUD Planned Development District			
PDD Planned Development District	REZONING	08-152	REZONING
A-O Wolf Pen Creek Dev. Corridor			
WPC Core Neighboring			
NG-1 Transitional Neighboring			
NG-2 Residential Neighboring			
NG-3 Corridor Overlay			
CV Redevelopment District			
RDD Kiersek Tap Overlay			
KO Kiersek Tap Overlay			

**February 12, 2009  
Regular Agenda Item No. 4  
Comprehensive Plan Amendment for 4074 SH 6**

**To:** Glenn Brown, City Manager

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

**Agenda Caption:** Public hearing, presentation, possible action, and discussion regarding a Comprehensive Plan Amendment from Single-Family Residential Medium Density to Retail Regional for 5.79 acres for the property located at 4074 State Highway 6 South (Secure Care Storage Facility).

**Recommendation(s):** The Planning and Zoning Commission recommended approval of the amendment by a vote of 6 to 0 at their January 15, 2009 meeting. Staff recommended approval of this request.

**Summary:** The 5.79 acre property was annexed into the City in 1983 as a storage facility with an A-O zoning designation and a single-family residential medium density Comprehensive Plan designation. In 1994, a 3.25 acre portion of the property fronting SH 6 was rezoned from A-O to C-1, and contains the office portion of the storage facility. The actual storage containers are located along side and behind the office property forming an "L" shaped parcel. The proposed Comprehensive Plan Amendment was triggered by a request from the applicant to replace the gravel surface on the portion of the property where the storage containers are located. Staff informed the applicant that because of the inconsistencies with Comprehensive Plan land use designation and zoning, a Comprehensive Plan Amendment is required along with a zone change application, plotting and site plan review.

**Project Findings**

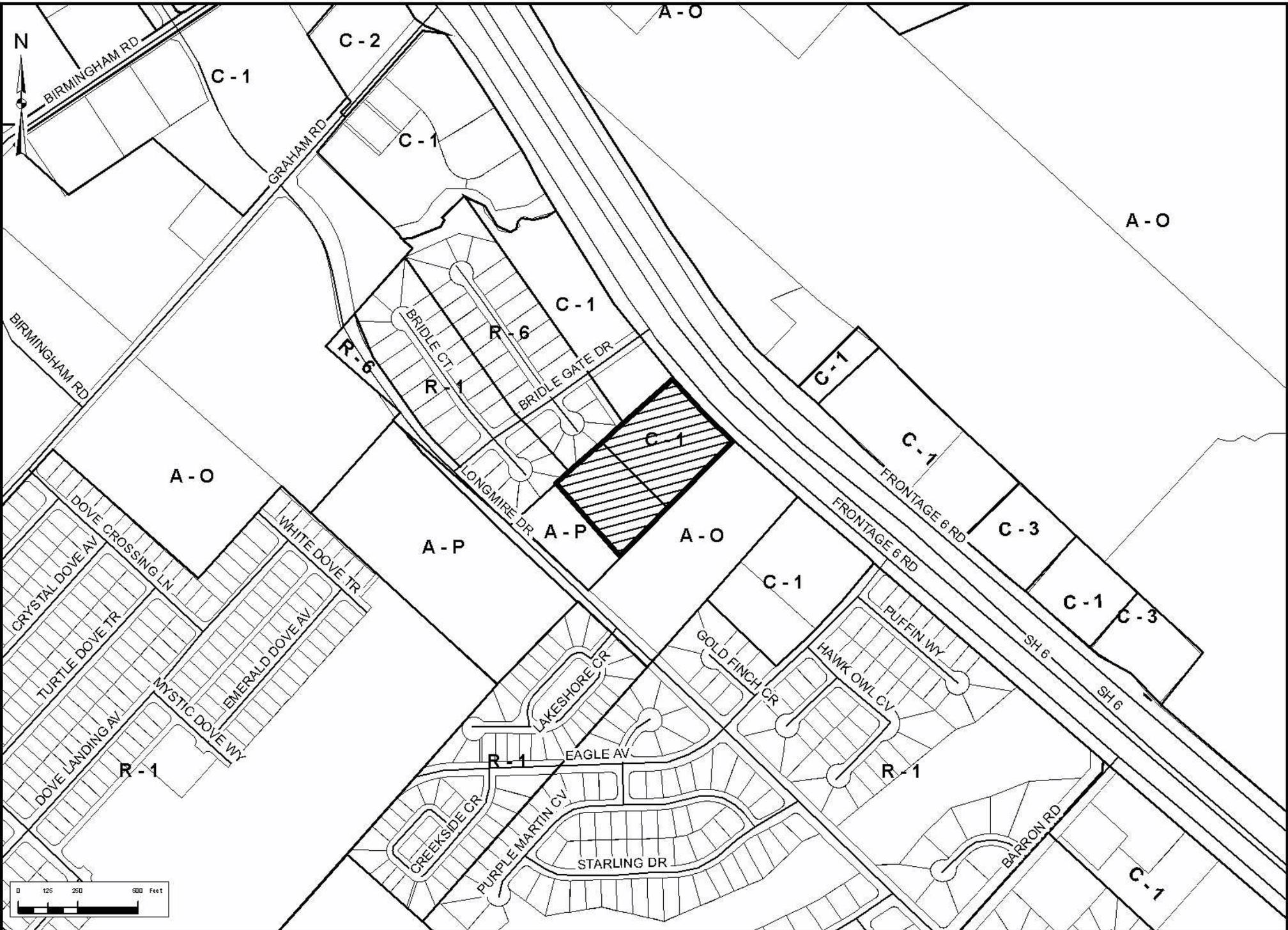
Since annexation in 1983, the project's vicinity has experienced changes such as the extension of Longmire Drive from Barron Road to Graham Road, and the development of new residential subdivisions such as Bridle Gate and Springbrook. Also, the area has developed with non-residential uses along Highway 6 frontage while office uses have sprung up on either side of Longmire Drive west of the subject properties.

A self-storage facility is not allowed under the residential or agricultural open space designations. If approved, the proposed Comprehensive Plan Amendment will remove the inconsistency between land use and zoning and there is a level of comfort in the knowledge that the proposed request is not speculative in nature, but one that tries to correct an inconsistency.

**Budget & Financial Summary:** N/A

**Attachments:**

1. Draft Planning and Zoning Commission Meeting Minutes, January 15, 2009.
2. Staff Report for the Planning & Zoning Commission meeting of January 15, 2009.





**MINUTES**  
**PLANNING AND ZONING COMMISSION**  
**Regular Meeting**  
**Thursday, January 15, 2009,**  
**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, Winnie Garner and Hugh Stearns

**COMMISSIONERS ABSENT:** Thomas Woodfin

**CITY COUNCIL MEMBERS PRESENT:** Larry Stewart

**CITY STAFF PRESENT:** Senior Planner Lindsay Kramer, Staff Planner Jason Schubert, Assistant City Engineer Josh Norton, 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 Carrie McHugh and Staff Assistant Brittany Caldwell

8. Public hearing, presentation, possible action and discussion regarding a Comprehensive Land Use Plan Amendment from Single-Family Residential Medium Density to Retail Regional for 5.79 acres for the property at 4074 State Highway 6 South (SecureCare Storage Facility). **Case # 08-00500303 (GE)**

Gabriel Elliott, Assistant Director, presented the Comprehensive Land Use Plan Amendment and recommended approval.

There was general discussion regarding the Comprehensive Land Use Plan Amendment.

Chairman Nichols opened the public hearing.

Jeff Robertson, McClure & Browne, said that he was available for questions.

Chairman Nichols closed the public hearing.

**Commissioner Greer motioned to approve the Comprehensive Land Use Plan Amendment. Commissioner Stearns seconded the motion, motion passed (6-0).**

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE AMENDING THE COMPREHENSIVE PLAN OF THE CITY OF COLLEGE STATION, TEXAS, BY AMENDING THE LAND USE PLAN, FOR THE AREA LOCATED AT 4074 STATE HIGHWAY 6 SOUTH, 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 the "Comprehensive Plan of the City of College Station" be amended by amending the "**Land Use Plan**" as set out in Exhibits "A" and "B", for the identified area 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 (\$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 12<sup>th</sup> day of February, 2009.

ATTEST:

APPROVED:

\_\_\_\_\_  
City Secretary

\_\_\_\_\_  
MAYOR

APPROVED:

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

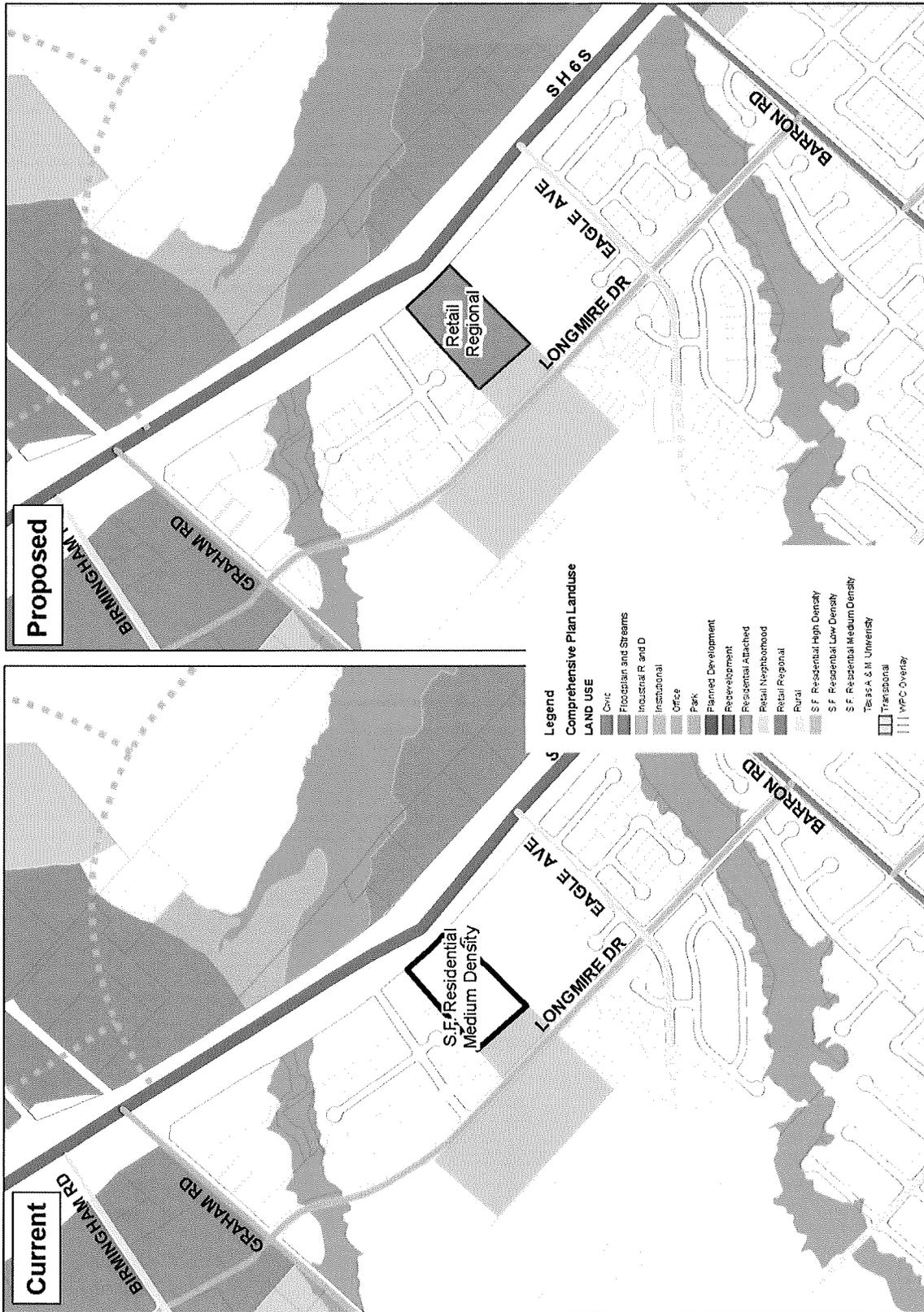
**EXHIBIT "A"**

**AMENDED AREA OF  
COLLEGE STATION LAND USE MAP**

*That the "Comprehensive Plan" of the City of College Station, Texas, is hereby amended by amending the College Station Land Use Plan Map as follows:*

*The 5.79 acres, located at 4074 State Highway 6 South, is amended from Single-Family Residential, Medium Density, to Retail Regional as shown on the attached Exhibit "B".*

EXHIBIT "B"



Case #09-00500303

SECURECARE SELF STORAGE  
 LAND USE PLAN AMENDMENT

**February 12, 2009**  
**Regular Agenda Item No. 5**  
**Comprehensive Plan Amendment for 300 Holleman Drive**

**To:** Glenn Brown, City Manager

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

**Agenda Caption:** Public hearing, presentation, possible action, and discussion on a Comprehensive Land Use Plan amendment from Industrial R&D to Residential Attached for 1.32 acres located at 300 Holleman Drive, next to the Verizon building near Lassie Lane.

**Recommendation(s):** The Planning & Zoning Commission considered this request at their regular meeting on February 5, 2009, and sent forward a negative recommendation by a 2-5 failed motion to approve. Staff recommended denial of the request.

**Summary:**

**BACKGROUND**

This request was previously considered by P&Z and Council last November. The Commission was unable to reach consensus on their recommendation. The City Council sent the item back to the P&Z with the direction to study appropriate uses for this property and area. In December, the P&Z members commented that an area study would be appropriate after the adoption of an updated Comprehensive Plan. The applicant has submitted a new application so that a final decision might be made to the requested land use amendment prior to additional study.

**REVIEW CRITERIA**

**1. Changed or changing conditions in the subject area or the City:** The subject property is on the periphery of the Wolf Pen Creek (WPC) corridor. Development in WPC has become more residential in nature than the corridor plan anticipated, and in 2008, after concerns were discussed about public investments in the area being made largely to the benefit of private residential developments, the City Council directed staff to pursue mixed use development that would increase commercial presence in the district.

The planned land uses for the property on this block face of Holleman have changed over the years as a result of public input, development, City Council decisions, and planning study that have resulted in some eventual discrepancies between planned and developed land uses. The uses along the block face are in compliance or have developed in accordance with their respective C-1 General Commercial or Wolf Pen Creek zoning. It was not until the latter half of last year that Verizon subdivided their property to create a new, developable lot on this block face.

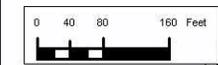
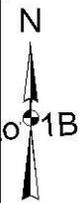
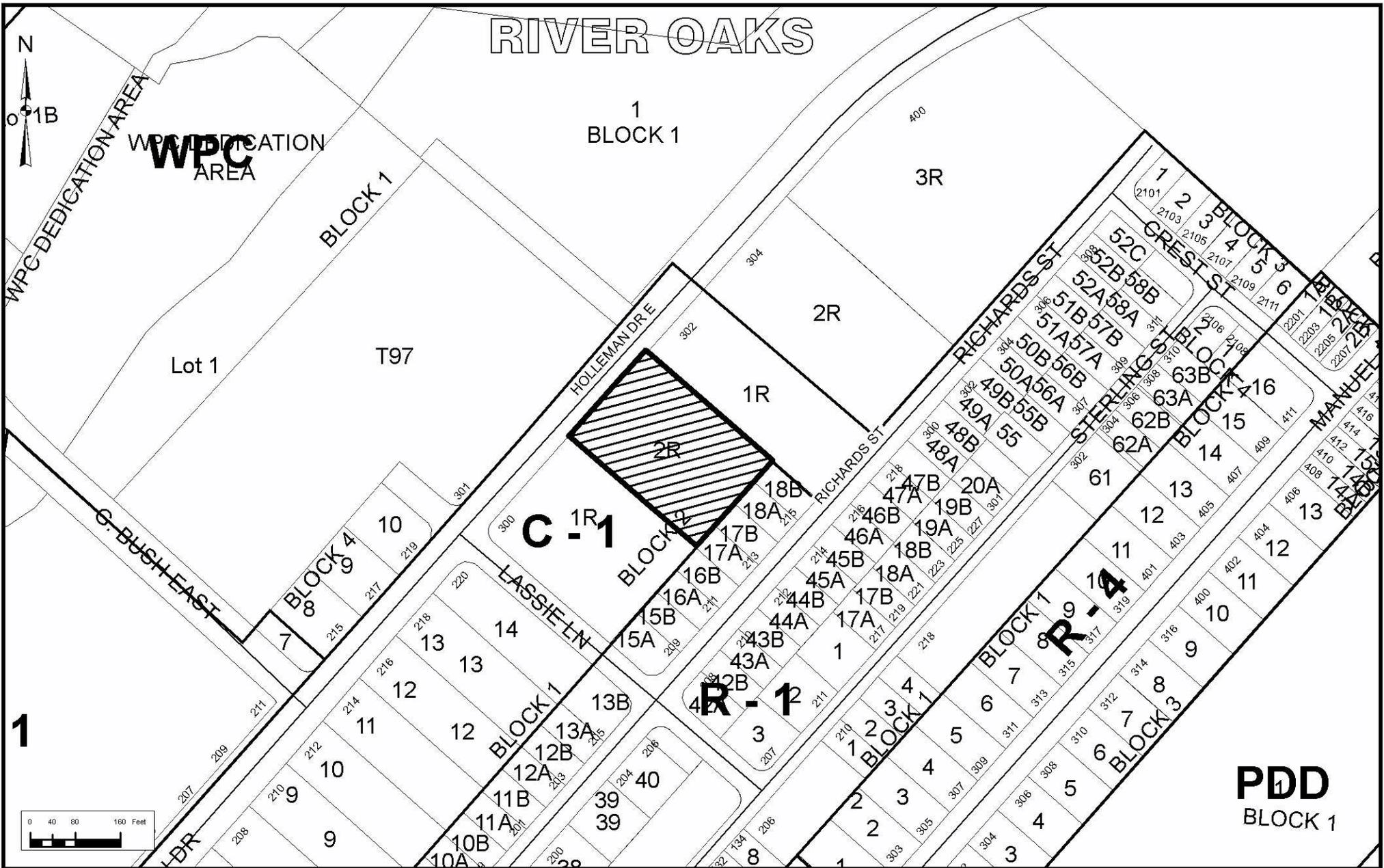
**2. Compatibility with the remainder of the Comprehensive Plan:** Residential Attached is compatible with the abutting Residential Attached on paper, but it most likely may only be compatible in the distant future since the property to the east has recently developed as an office use in compliance with its C-1 zoning classification. In the near future, it could result in an undesirable development pattern.

**Budget & Financial Summary:** N/A

**Attachments:**

1. Small Area Map
2. Ordinance

# RIVER OAKS



Zoning Districts	
A - O	Agricultural Open
A - OR	Rural Residential Subdivision
R - 1	Single Family Residential
R - 1B	Single Family Residential
R - 2	Duplex Residential
R - 3	Townhouse
R - 4	Multi-Family
R - 6	High Density Multi-Family
R - 7	Manufactured Home Park
A - P	Administrative/Professional
C - 1	General Commercial
C - 2	Commercial-Industrial
C - 3	Light Commercial
M - 1	Light Industrial
M - 2	Heavy Industrial
C - U	College and University
R & D	Research and Development
P-MUD	Planned Mixed-Use Development
PDD	Planned Development District
WPC	Wolf Pen Creek Dev. Corridor
NG - 1	Core Northgate
NG - 2	Transitional Northgate
NG - 3	Residential Northgate
OV	Corridor Overlay
RDD	Redevelopment District
KO	Krenek Tap Overlay

 DEVELOPMENT REVIEW

HOLLEMAN PLACE CONDOS  
181

Case: 08-260  
COMP PLAN

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE AMENDING THE COMPREHENSIVE PLAN OF THE CITY OF COLLEGE STATION, TEXAS, BY AMENDING THE LAND USE PLAN, FOR THE AREA LOCATED NEAR THE CORNER OF LASSIE LANE AND HOLLEMAN DRIVE, 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 the "Comprehensive Plan of the City of College Station" be amended by amending the "**Land Use Plan**" as set out in Exhibits "A" and "B", for the identified area 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 (\$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 12<sup>th</sup> day of February, 2009.

ATTEST:

APPROVED:

\_\_\_\_\_  
City Secretary

\_\_\_\_\_  
MAYOR

APPROVED:

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

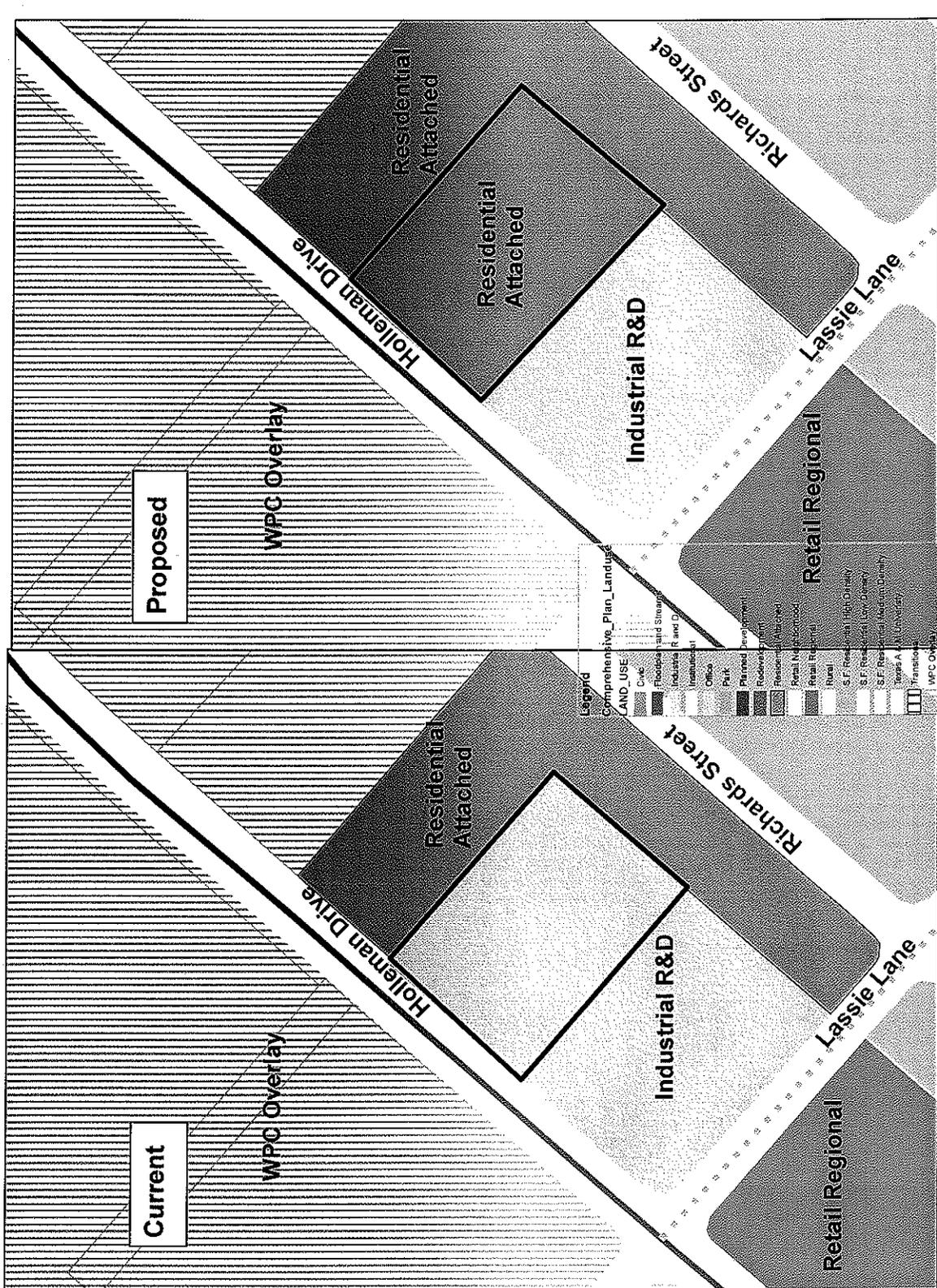
**EXHIBIT "A"**

**AMENDED AREA OF  
COLLEGE STATION LAND USE MAP**

*That the "Comprehensive Plan" of the City of College Station, Texas, is hereby amended by amending the College Station Land Use Plan Map as follows:*

*The 1.32 acres, located near the corner of Lassie Lane and Holleman Drive, is amended from Industrial to Residential Attached, as shown on the attached Exhibit "B".*

EXHIBIT "B"



Case #08-00500260

300 Holloman Drive-  
Land Use Plan Amendment



February 12, 2009  
Regular Agenda Item No. 6  
Greens Prairie Road Parking Restrictions

**To:** Glenn Brown, City Manager

**From:** Mark Smith, Director of Public Works

**Agenda Caption:** Public hearing, presentation, possible action, and discussion on consideration of an ordinance amending Chapter 10, "Traffic Code," to restrict parking on the north side of Greens Prairie Road adjacent to Forest Ridge Elementary School.

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

**Summary:** A representative from Forest Ridge Elementary School contacted the City requesting that parking be removed along the north side of Greens Prairie Road adjacent to the school to improve safety for motorists exiting the school. Due to the large number of vehicles in the queue to drop-off or pick-up children, some drivers choose to park on the north side of Greens Prairie Road instead of waiting in line. Vehicles that park in this area block the line of sight that motorists exiting the school need in order safely turn onto Greens Prairie Road.

Greens Prairie Road is 43-foot wide minor arterial street with an open ditch on the north side. Last year for pedestrian safety improvements, city crews installed curb and gutter and a sidewalk on the south side of the street. Since then, some drivers have been parking on the north side.

The city's Traffic Management Team (TMT), which is made up of representatives from the Fire Department, Police Department, Planning and Development Services Department, Legal Department, Public Communications Department, and Public Works Department, met and evaluated the issue. The TMT recommends that parking be removed from the north side to restore and provide the sight distance needed for traffic exiting the school to safely turn onto Greens Prairie Road. This recommendation is supported by CSISD and the adjacent property owners.

The Castlegate subdivision is located adjacent to Forest Ridge Elementary School and the homeowner's association (HOA) was notified on January 15, 2009, about the ordinance removing parking on Greens Prairie Road. The residents were sent the notification the following day. To date, city staff nor the Castlegate HOA have received any complaints about the proposed ordinance to remove parking on Greens Prairie Road.

**Budget & Financial Summary:** The "No Parking" signs are planned operation and maintenance expenses accounted for in the Public Works Traffic Operation budget.

**Attachments:**

1. Ordinance
2. Location Map
3. CSISD Request Letter

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE AMENDING CHAPTER 10, "TRAFFIC CODE", OF THE CODE OF ORDINANCES OF THE CITY OF COLLEGE STATION, TEXAS, BY AMENDING SECTION 4E "NO PARKING" TO INCLUDE PROHIBITING ON-STREET PARKING ALONG THE SPECIFIED SECTION OF GREENS PRAIRE ROAD; 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 liable for a civil offense and/or guilty of a Class C misdemeanor, and, upon a finding of liability thereof, shall be punished by a civil penalty of not less than One Dollar (\$1.00) nor more than Two Thousand Dollars (\$2,000.00), or upon conviction thereof, shall be punished by a fine of not less than Twenty-five Dollars (\$25.00) nor more than Five Hundred Dollars (\$500.00). Said Ordinance becomes effective ten (10) days after 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.

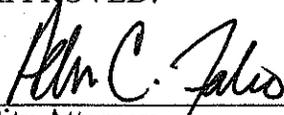
APPROVED:

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
City Secretary

APPROVED:

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

**EXHIBIT "A"**

That the Traffic Control Device Inventory - Schedule XII (dated February 22, 2007) as referenced in Chapter 10, "Traffic Code", Section 4, "Administrative Adjudication of Parking Violations," Sub-section E is hereby amended to include the following:

"Greens Prairie Road – NO PARKING on the north side of Greens Prairie Road beginning 1,340 feet west of its intersection with Arrington Road and extending 460 feet to the west."

**Forest Ridge Elementary School**  
College Station Independent School District



*Success....each life....each day....each hour*

February 4, 2009

Mr. Troy Rother  
City of College Station  
P O Box 9960  
College Station, TX 77842

Dear Mr. Rother

I would like to thank you for your continuing support in increasing the safety of our arrival and dismissal procedures at Forest Ridge Elementary. The environment is becoming increasingly dangerous for our students as some individuals are parking on Greens Prairie Road and walking their children to the school. This has caused congestion in the area and has led to several accidents being narrowly averted. Limited visibility between the school and Greens Prairie Road and the high volume of traffic on this route compound our safety concerns.

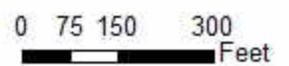
I would like to ask for your assistance in solving this problem. Anything that you could do would be greatly appreciated. We would however like to request that the Greens Prairie Road frontage adjacent to Forest Ridge be designated a "No Parking" zone. This action would reduce congestion around the school and ensure that our students have the safest possible access to our building- which can be monitored by school personnel. I appreciate your assistance and willingness to make our school a safer place. Please let me know if there is anything else I can do to help facilitate this process.



Terresa Katt  
Principal  
Forest Ridge Elementary



# Greens Prairie Road NO PARKING Zone



February 12, 2009

Regular Agenda Item No. 7

Exception to Policy for Sewer Service to Grey Wolf Trail

To: Glenn Brown, City Manager

From: Dave Coleman, Director, Water Services

**Agenda Caption:** Presentation, possible action, and discussion regarding an exception to Policy to allow the Grey Wolf Trail development to connect to the City sewer system.

**Recommendation:** Staff recommends Council deny this request, because the proposed development is inconsistent with the City's Land Use Plan.

**Summary:** Mr. Charles Ellison, representing Brazos Wyldewood II, Inc., has requested the City provide sewer service to the Grey Wolf Trail development. His letter is attached. As shown on the attached map, this property is located in the ETJ, off North Dowling Road, south of Easterwood airport and is designated as "Low Density- Single Family" in the adopted Comprehensive Plan. The proposed development is for 24 duplex buildings (48 duplex units). The tracts total 13.88 acres, which are not contiguous with current City limits, and are thus not currently eligible for annexation without the inclusion of additional land. The tracts are outside the City's current certificated area for sewer, but are in an area that is presently un-certificated, so the City could legally provide sewer service.

Adopted Council Policy states that the City will not provide sewer service outside the City limits (or the City's sewer certificated area) in the absence of a petition for annexation. But it does allow that exceptions may be granted in three cases: For other Government agencies under ILA, for economic development, or for health and safety reasons. (See attached Policy document.) Since Grey Wolf is outside the City's certificated area, and not currently eligible for annexation, an exception to Policy is required for City sewer service.

But because the proposed development is inconsistent with the City's Land Use Plan, staff recommends City Council deny the request for an exception to policy. Please see attached staff memo for more details.

**Budget & Financial Summary:** NA

**Attachments:** Letter  
Map  
Policy  
Staff Memo

# THE ELLISON FIRM

ATTORNEYS AT LAW  
302 HOLLEMAN DRIVE EAST  
SUITE 76  
COLLEGE STATION, TEXAS 77840-7000

CHARLES A. ELLISON  
AMY L. CLOUGH  
BRADLEY T. SHARPE  
JEFFREY C. HARRIS\*  
\*Board Certified - Estate Planning and Probate Law  
SARAH S. BRIEDEN

MAILING ADDRESS  
P.O. BOX 10103  
COLLEGE STATION, TEXAS 77842-0103

TELEPHONE: (979) 696-9889  
FACSIMILE: (979) 693-8819

November 25, 2008

Mr. David Coleman, PE  
Director, Water Services  
City of College Station  
P. O. Box 9960  
College Station, TX 77842-9960

Re: Grey Wolf Development Agreement

Dear Dave:

I represent Brazos Wyldewood II, Inc. regarding a development in the ETJ named "Grey Wolf." Enclosed for your easy reference is an unsigned copy of a letter dated November 5, 2007 from Dale Browne to you. Following the date of that letter, my client worked extensively with Development Services to draft a Development Agreement proposed by them that would require any new development be accomplished in accordance with city standards. I enclose the last version of the agreement circulated to my client, which accomplished this requirement. All of this was done to obtain staff's support of my client's request for an exception to the policy. As you probably know, my client cannot request voluntary annexation because this project is, among other things, not adjacent to the current city limit and does not qualify for a voluntary petition for annexation. That said, my client would welcome annexation and is happy to comply with city standards, as demonstrated by their long effort to reach agreement to do so.

I have also enclosed an e-mail from Lance Simms, setting out their final decision not to recommend approval of my client's request.

My client intends to construct their project in the ETJ using either a package treatment plant or pursuing a municipal utility district. As set forth in the Browne letter, they had hoped, for health and safety purposes, to tie into a sewer line on the adjoining Aggie Acres project, which would provide the City the ability to better treat the effluent. Given the recent testimony before Council regarding public health issues related to on site aerobic spray fields, I, on behalf of my client renew their request for an exception to the policy set out in Resolution No. 2-9-2006-13.04

Before beginning this pursuit of a connection with the sewer line extension to Aggie Acres, my client was very close to completing its work on a permit for a package treatment plant and intends to pursue that, or a municipal utility district. I submit that it is in the interest of all concerned to make this exception to the policy. If you have any questions, concerns or comments, please feel free to contact me. In any event, I look forward to hearing from you regarding our hearing before the City Council.

Sincerely,



Charles A. Ellison

*November 25, 2008*

*Page 2*

CAE:bg

Enclosures

cc: Beth Whatley w/o enclosures

{00026236 3}



**McCLURE & BROWNE ENGINEERING/SURVEYING, INC.**

---

1008 Woodcreek Drive, Suite 103 • College Station, Texas 77845  
(979) 693-3838 • Fax: (979) 693-2554 • Email: McClureBrowne@Verizon.net

November 5, 2007

David Coleman, P.E.  
Director of Water Services Department  
City of College Station  
P.O. Box 9960  
College Station, Texas 77842

Re.: Request of Sanitary Sewer Service for Lots 17, 18 & 19 of Holt Hills  
MBESI No. 10000102

Dear David:

Brazos Wyldewood II, Inc. currently owns lots 17, 18 and 19 of Holt Hills consists of approximately 13.88 acres. The tract is located adjacent and south of North Dowling Road and Hickory Road is to the west. The three tracts are currently developed with a private drive (i.e. Gray Wolf Trail), eight duplexes (48 bedrooms) and one four-plex (12 bedrooms.) Wastewater from these residential units is currently being treated by individual aerobic units and disposed of on-site via spray fields located throughout the development. The owner of the property was made aware of the City's approval to provide sewer service to Aggie Acres which is adjacent to this development. It is our understanding that Aggie Acres will be served by a gravity sewer collection system and lift station. Brazos Wyldewood II, Inc. would like to work with the developer/owner of Aggie Acres to locate the proposed lift station at a location that would be able to serve both developments. We believe that the health and safety of the public would be greatly improved if sewer service was also extended into this development. Therefore, Brazos Wyldewood II, Inc. respectfully request from the City Council an exception from the City's Utility Extension Policy into the ETJ and allow this development to be served by the City of College Station sewer facilities.

With the removal of the onsite sewer facilities, approximately 24 additional duplexes could be constructed within the existing development. With the additional duplexes, there could be a maximum total of 204 bedrooms within this development. The attached drawing that shows how the Brazos Wyldewood II, Inc. property could be served by a gravity sewer collection system in conjunction with the Aggie Acres development.

If you have any questions or need any additional information, please do not hesitate to call.

Sincerely,

J. Dale Browne, Jr, P.E.

Enclosures

xc: Beth Whatley & Dan Bensimon, Brazos Wyldewood II, Inc.

**CHAPTER 212 TEXAS LOCAL GOVERNMENT CODE  
DEVELOPMENT AGREEMENT**

This Agreement is entered into pursuant to Section 212.172 of the Texas Local Government Code by and between the City of College Station, Texas (the "City") and the undersigned property owner(s) (the "Owner"). The term "Owner" includes all owners of the Property.

**WHEREAS**, the Owner owns a parcel of real property (the "Property") within the extraterritorial jurisdiction (ETJ) of the City of College Station, Texas, more particularly described in the attached **Exhibit "A"**; and

**WHEREAS**, the Owner desires to have the City provide wastewater service for existing and proposed residential development in the area described in **Exhibit "A"**, located outside the City's corporate limits, in consideration for which the Owner agrees to enter into this Agreement; and

**WHEREAS**, this Agreement is entered into pursuant to Section 212.172 of the Texas Local Government Code, in order to address the desires of the Owner and the procedures of the City; and

**WHEREAS**, the Owner and the City acknowledge that this Agreement is binding upon the City and the Owner and their respective successors and assigns for the term (defined below) of this Agreement; and

**WHEREAS**, this Development Agreement is to be recorded in the Real Property Records of Brazos County.

**NOW, THEREFORE**, in consideration of the mutual agreements, covenants, and conditions contained herein, and other good and valuable consideration, the City and the Owner hereto agree as follows:

**Section 1.** The City will grant an exception to the sewer extension policy, providing sewer service to the Property based on health and safety reasons.

**Section 2.** The Owner covenants that all private improvements on the Property shall be governed by and be in accordance with the construction standards and development regulations of the City set forth and attached hereto as **Exhibit "B"** and made a part hereof for all purposes except that no building permits shall be required. However, the Owner covenants that private improvements will be constructed only after Owner obtains site plan approval for such improvements, including construction drawings and including dedication of all required utility easements. The owner will pay the City an inspection fee of \$250.00 for each new dwelling unit constructed on the Property as shown on the approved site plan. ~~All development fees~~ Each inspection fee required by this Agreement shall be due and payable prior to construction of said dwelling units.

Notwithstanding the foregoing, the Owner shall not be required to comply with standards or regulations set out in Exhibit "B" which are necessary due to wastewater uses on other properties which are not in compliance with such regulations, unless the City has agreed to pay for oversize participation.

**Section 3.** The City will assess a monthly wastewater fee per dwelling unit at the rate established in Chapter 11 of the College Station Code of Ordinances.

**Section 4.** The term of this Agreement (the "Term") is fifteen (15) years from the date that the Mayor's signature to this Agreement is acknowledged by a public notary. Thereafter, the City shall continue to provide sewer services directly to consumers who are in good standing as customers of City or its utility provider.

**Section 5.** The Owner will, at his sole cost and expense acquire, construct, maintain and operate a wastewater collection system appropriate for collecting wastewater. For purposes of this Agreement, wastewater collection system refers to any lift stations, sanitary sewage force main or other facilities necessary to transport wastewater from service lines between dwelling units to sewer mains. The wastewater collection system shall be designed and constructed in accordance with sound engineering principles and in compliance with all regulatory requirements, including the requirements as set forth in **Exhibit "B"**, the City Standard Design Guidelines, and regulations of the TCEQ. The City will accept the<sup>6</sup>

Upon proper completion of construction, the City shall accept Owner's public dedication of its wastewater collection system for public maintenance in accordance with City's usual criteria and procedure for accepting same and as further set forth in Exhibit "B" attached hereto and made a part hereof. This includes Owner maintaining such wastewater system for a one year warranty period from the date of acceptance by the City.<sup>7</sup>

It is currently anticipated that the adjacent property proposed to be developed as Aggie Acres will construct a<sup>8</sup> lift station and sewer mains as a public dedication and<sup>9</sup> to be subsequently publicly dedicated to the City which will<sup>10</sup> accept maintenance responsibilities for the<sup>11</sup> same following conveyance in accordance with City's rules and regulations set forth in **Exhibit "B"**.

The owner<sup>12</sup>**Owner**<sup>13</sup> will submit a sewer study report that provides the anticipated wastewater demand based on the proposed development. The sewer report must be stamped by a registered professional engineer. With the exception of<sup>14</sup> Except for its currently anticipated tie in with<sup>15</sup> the Aggie Acres development, as proposed and approved by the College Station City Council on 11 October 2007, the Owner will not extend, or permit the extension of, any of its wastewater collection system to serve any land or premises beyond the boundaries of the Owner's property without first obtaining written approval for such extension or service from the City. The Owner shall further operate and maintain its wastewater collection system<sup>16</sup> service lines<sup>17</sup> in good condition and shall promptly repair any leaks or breaks therein and shall undertake such action as

may be required to control the infiltration of ground and storm water into its ~~Sanitary Sewage Collection System~~.<sup>18</sup> wastewater collection system<sup>19</sup> 20 If a break or leak occurs which allows abnormal infiltration or discharge of solid matter or water into the City's wastewater collection system, and such break or leak is not repaired within thirty (30) days after notice by the City, then the City may, at its option, repair the same and charge the Owner for which the repair is made the actual cost of repairing the same.

**Section 6.** Owner, Owner's contractors, agents, and employees, and Owner's successors, assigns and legal representatives to all or part of the Property shall not discharge wastewater from the Property for transportation and treatment by the City which is not amenable to biological treatment and conforms to the City's Wastewater discharge Standards established in Chapter 11 of the College Station Code of Ordinances. This requirement shall constitute a covenant running with the land through the adoption of deed restrictions that are approved by the City in writing. This Agreement shall not go into effect until such deed restrictions have been approved by the City and duly recorded in the real property records of the county in which the property is located.

**Section 7.** The parties acknowledge that they have read, understand and intend to be bound by the terms and conditions of this Agreement.

**Section 8.** Each party represents that it has the full power and authority to enter into and perform this Agreement. The Owner ~~acknowledges~~<sup>21</sup> is responsible for ensuring<sup>22</sup> that each and every owner of the Property ~~must sign~~<sup>23</sup> signs<sup>24</sup> this Agreement in order for the Agreement to take full effect. This Agreement may not be assigned assignable in whole or in part by any party without the Owner to a purchaser express written consent of the others, nor may any owner of the Property, provided sell all or any portion of the Property, other than to an ultimate consumer, without the express written consent of the City. As a condition for such consent, such subsequent owner must agree to be bound to the terms and conditions of this Agreement.<sup>25</sup>

**Section 9.** This Agreement shall ~~run~~<sup>26</sup> constitute a covenant running<sup>27</sup> with the Property and be recorded in the real property records of Brazos County, Texas.

**Section 10.** In the event of a breach of this Agreement by the Owner, the City may terminate this agreement and exercise any and all legal remedies available to it. Before the City pursues legal remedies, the City shall first notify the Owner in writing, specifying the breach of Agreement with reasonable particularity, and give the Owner thirty (30) days to cure such breach.

**Section 11.** If a court of competent jurisdiction determines that any covenant of this Agreement is void or unenforceable, then the remainder of this Agreement shall remain in full force and effect.

**Section 12.** Venue for this Agreement shall be in Brazos County, Texas.

**Section 13.** This Agreement may be separately executed in individual counterparts and,



**CITY OF COLLEGE STATION**

\_\_\_\_\_  
Ben White, Mayor

\_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_  
City Secretary

\_\_\_\_\_  
Date

APPROVED:

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

\_\_\_\_\_  
Date

\_\_\_\_\_  
Chief Financial Officer

\_\_\_\_\_  
Date

STATE OF TEXAS        )  
                                  )  
COUNTY OF BRAZOS    )

ACKNOWLEDGMENT

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2008, by Ben White, in the 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

## Chuck Ellison

---

**From:** Lance Simms [Lsimms@cstx.gov]  
**Sent:** Monday, November 10, 2008 5:02 PM  
**To:** Chuck Ellison  
**Subject:** Grey Wolf Sewer Service

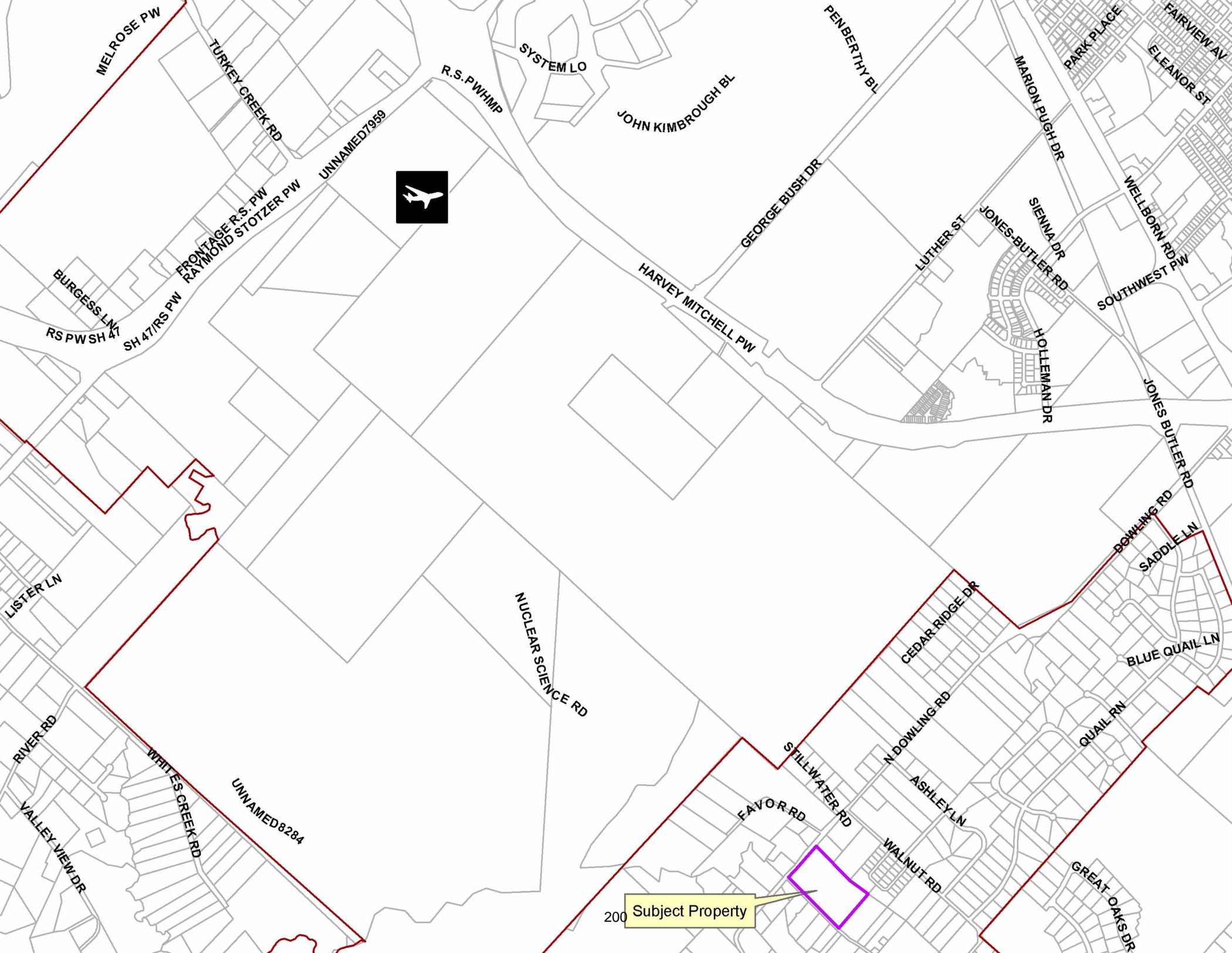
Chuck:

I've given more thought to our conversation last week regarding an exception to the sewer extension policy for Grey Wolf. As we discussed, Staff was prepared to recommend approval of the sewer service request if the owner was willing to enter into a development agreement with the City. However, its been a few months since we've had any contact from the property owner or his representative. Since that time, there has been a lot of discussion regarding the type of growth in our ETJ and the City's response to such growth. In fact, as recently as last week, the City Council adopted development standards specifically targeting the ETJ. Therefore, we no longer feel it is appropriate to recommend approval of an exception to the sewer service extension policy - even if the owner signs a development agreement.

I hope you understand our position. Please let me know if you have questions.

Lance Simms, CBO  
Assistant Director of Planning & Development Services  
City of College Station, TX  
Phone: 979.764.3741

College Station. Heart of the Research Valley.



200 Subject Property

RESOLUTION NO. 2-9-2006-13.04

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COLLEGE STATION, TEXAS, APPROVING AN OFFICIAL POLICY REGARDING THE EXTENSION OF WATER AND SEWER UTILITY SERVICES TO PROPERTIES WITHIN THE EXTRATERRITORIAL JURISDICTION OF THE CITY OF COLLEGE STATION, TEXAS.

WHEREAS, The City Council of the City of College Station adopted its current Comprehensive Plan in 1997, that includes *Section 2.09 Utility Goals and Objectives*; and

WHEREAS, The City Council of the City of College Station adopted, as part of the Comprehensive Plan, *Utility Objective 2.1* that states "Water service should be extended to undeveloped areas outside the city limits only as a condition of annexation"; and

WHEREAS, The City Council of the City of College Station adopted, as part of the Comprehensive Plan, *Utility Objective 3.1* that states "Sewer service should be extended to undeveloped areas outside the city limits only as a condition of annexation"; and

WHEREAS, the City of College Station has a Certificate of Convenience and Necessity for water and a Certificate of Convenience and Necessity wastewater is pending in certain parts of the City's Extraterritorial Jurisdiction in order to facilitate orderly development in that area; and

WHEREAS, under State law a certificated entity has the duty to serve in the area of convenience and necessity; and

WHEREAS, under State law cities have no land use control authority beyond the City Limits; now, therefore,

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

PART 1: That the City Council hereby approves this resolution adopting a policy stating that water and sewer utility services will not be available to properties outside the City's corporate limits without a petition for annexation from said properties meeting the legal requirements of such petitions or areas not certificated to the City of College Station for that service.

PART 2: That the City Council hereby requires that if the extension of service to a property is requested that is outside the City Limits of College Station, the Developer will extend utility service to the property under the supervision of City Staff and based on construction plans approved by the City Engineer. All construction will be in accordance with the fire code, TCEQ, and the City Subdivision Ordinance, whichever is more restrictive. The cost of the extension

of utility service will be borne solely by the Developer. Any upgrades in infrastructure required to meet fire, pressure, and/or TCEQ rules will be completed by the Developer at their expense. In the event of future connections to the utility service by other Subdivisions or Developers the original Developer will be reimbursed a prorated share based on calculations and methodology established within Chapter 11, Section 3: Water and Sewer Main Extension Policies. The cost shall be determined based on the point of connection of the new development.

If a developer determines that circumstances require that a package sewage treatment plant facility is appropriate, the cost and construction of such shall be borne by the developer and dedicated to the City for operation and maintenance. At such time that sewer lines can be extended by the City (or other new developments in the vicinity) to serve an area being served by a package plant, the facility shall be abandoned and removed at the City's discretion.

PART 3: That the City Council hereby agrees that it may grant exceptions as it deems necessary to the best interests of the City of College Station in the following cases:

- for other governmental agencies through an inter-local agreement,
- for the purpose of economic development; or
- for health and safety reasons

PART 4: That the City Council hereby establishes an annexation policy and program to incorporate affected areas in a manner that sufficiently addresses planning and development issues for these utility systems.

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

ADOPTED this 9th day of February, 2006.

ATTEST:

  
CONNIE HOOKS, City Secretary

APPROVED:

  
RON SILVIA, Mayor

APPROVED:

  
City Attorney



*Planning & Development Services  
PO Box 9960  
1101 Texas Avenue  
College Station, TX 77842*

February 4, 2009

TO: City Council

FROM: Bob Cowell, Director  
Planning & Development Services

RE: Staff Recommendation on Sewer Service Extension Request for Grey Wolf

City staff has recommended that the Council deny the request for sewer service extension for the project known as "Grey Wolf" located on North Dowling Road. This memo is provided to further clarify Planning & Development Services position on this request.

As the Council knows growth management, and in particular growth in the ETJ has been the topic of a great deal of attention and discussion over the past few years. Significant urban development activities have been occurring in the ETJ and in many instances have resulted in increased traffic concerns, stormwater management issues, neighborhood and rural resident opposition, etc.

The Council may recall that recommendations have been provided by both an outside consultant and city staff as to the most effective way to manage growth in the ETJ, to minimize concerns with health and safety and to minimize a development pattern that is detrimental to the City of College Station. The steps that have been recommended by staff and endorsed on numerous occasions by Council include the following strategies:

- § Adhere to the city's adopted comprehensive land use plan to guide decisions regarding land use, service provision, and capital expenditures
- § Prepare and implement a strategic and limited annexation plan (including areas classified as "exempt" and three year areas)
- § Amend and implement subdivision regulations in the ETJ to better protect the health and safety of current and future residents (including larger lot sizes, larger frontages, park land dedication, etc)
- § Limit the city's sewer service area (CCN) to the current city limits with expansion generally following annexation

- § Strictly adhere to the city's current sewer service extension policy (prohibit service extension into the ETJ unless accompanied by annexation or meeting one of the stated exceptions)
- § Amend and expand the city's thoroughfare plan in the ETJ to ensure reservation of ROW for future transportation needs as the city boundaries expand

Each of these strategies is integral to the successful management of the ETJ. Some strategies address health and safety concerns, some address fiscal aspects; others directly confront the challenges with urban densities. Failure to utilize any one of the strategies directly impacts the success of the other strategies and the overall goal of managing development in the ETJ.

In this particular case, staff's recommendation is based primarily on the adopted land use plan and on the current city policy regarding sewer extension. The area is planned for low density residential uses – meaning the surrounding roads, development pattern, public services, etc. are intended (and generally limited) to serving a low density residential development pattern. In staff's opinion it would be inappropriate to extend sewer service to an area that would enable development that is inconsistent with the planned development pattern for the area.

Current city policy regarding sewer extension prohibits extension of services into the ETJ unless it is the result of an annexation. The current property cannot alone be annexed into the city and the city is not intending on annexing the subject property within the near-term (within the next 3-5 years). Further, the policy provides a series of exceptions to the policy which the Planning & Development Services Department believes are not applicable to this request. The use of on-site treatment systems (septic or package treatment) while perhaps not preferred are regulated by the County and TCEQ and if operated and maintained properly represent an appropriate and safe form of wastewater treatment in rural areas. Previous exceptions to this policy have been granted based on this health and safety argument and have resulted in projects that are incompatible with adjacent land uses (Kyleview/Aspen Heights) or that have insufficient public services or are incompatible with city ordinances (Creek Meadows).

It is understood that the city cannot regulate land use in the ETJ, therefore it should be recognized that if the applicant succeeds in getting approval for a package treatment plant, development could occur that is in conflict with the adopted land use plan. However, it is the Department's position that the city should not be taking actions that actually enable or promote development that is inconsistent with the adopted land use plan and that is in apparent conflict with adopted city policies.

The applicant has indicated that the P&DS Department was previously negotiating with the applicant that would result in both a recommendation of approval for the sewer

extension and the development's adherence to "all city standards". The applicant is correct that staff was negotiating a development agreement, though terms were never finalized. A reason the terms were never finalized is because it became apparent that not "all city standards" could be imposed even under the terms of a development agreement and further the applicant was not willing to submit to certain items the staff was requesting. Further, since that time projects have received sewer service and begun development (Kyleview and Creek Meadows for example) that have illustrated the problems associated with promoting urban- density development in the ETJ. Additionally, since that time the Council has engaged in more direct conversations and taken formal actions (amending the park land dedication requirements, amending the annexation approach, amending the subdivision regulations, etc.) that have clarified the afore-mentioned strategy regarding managing the ETJ.

Again, the Planning & Development Services Department recommends denial of the request due to inconsistency with the adopted land use plan, conflict with the adopted city policy regarding sewer extension and due to the conflict with the described strategy regarding management of the ETJ.

February 12, 2009  
Regular Agenda Item No. 8  
City of College Station / College Station ISD Interlocal Agreement  
For the Purchase and Installation of Fencing  
At Pebble Creek Park and Jack and Dorothy Miller Park

**To:** Glenn Brown, City Manager

**From:** David Schmitz, Assistant Director, Parks and Recreation

**Agenda Caption:** Presentation, possible action, and discussion regarding an Interlocal Agreement between the City of College Station and the College Station ISD (CSISD) for the purchase and installation of fencing for the joint City/School Parks at Pebble Creek and Jack and Dorothy Miller Parks.

**Recommendation(s):** Staff recommends approval of the Interlocal Agreement with CSISD.

**Summary:** CSISD has recognized the need to add fencing to the current joint park properties / school playgrounds that are located at the Pebble Creek Elementary and Rock Prairie Elementary Schools. A safety issue has been identified with protection of students during the times that school is in session. These two sites currently are not fenced as are all of the other elementary school campuses. Under the current Joint Use Agreement, the adjacent park properties are used during the times the schools are in session as the playgrounds for the students. Public use of the fenced parks during normal school hours will not be permitted without the public first processing through the schools' admittance offices.

The fencing at the Pebble Creek site will be located on CSISD property, and the fencing at the Rock Prairie site will be located on City of College Station property. In both cases, the amount of fencing is virtually the same, with the same design and construction specifications to be used for both sites.

CSISD will be doing the specifications and bid package, have the fences installed, pay for the project, and the City of College Station will pay 50% of the final costs.

**Budget & Financial Summary:** The estimated cost of the project is \$60,000. Funds for the City of College Station's 50% share of the costs (approximately \$30,000) will come from the 2008 Bond Program for Neighborhood Park Improvements.

**Attachments:**

- 1) Interlocal Agreement with CSISD for Fencing at Two Parks

**INTERLOCAL AGREEMENT BETWEEN  
THE CITY OF COLLEGE STATION AND  
COLLEGE STATION INDEPENDENT SCHOOL DISTRICT  
FOR THE CONSTRUCTION OF AN ORNAMENTAL FENCE AT  
PEBBLE CREEK AND ROCK PRAIRIE SCHOOLS**

This agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2009, by and between the CITY OF COLLEGE STATION, TEXAS (hereinafter referred to as "City"), a Texas Home Rule Municipal Corporation, and COLLEGE STATION INDEPENDENT SCHOOL DISTRICT, a Texas local government (hereinafter referred to as "CSISD"), acting through its Board of Trustees.

WHEREAS, Chapter 791 of the TEXAS GOVERNMENT CODE, also known as the INTERLOCAL COOPERATION ACT, authorizes all local governments to contract with each other to provide a governmental function or service that each party to the contract is authorized to perform individually and in which the contracting parties are mutually interested, such as administrative functions, planning, and engineering;

WHEREAS, the City is a Home Rule Municipal Corporation organized under the laws of Texas and is authorized to enter into this Agreement pursuant to Article II, Section 5 of its City Charter;

WHEREAS, CSISD is a Texas local government and is authorized by the authority of its Board of Trustees to enter into this Agreement;

WHEREAS, CSISD and the City each own property, with such property known collectively as the Pebble Creek Park, located adjacent to Pebble Creek Elementary School and the Jack & Dorothy Miller Park, located adjacent to the Rock Prairie Elementary School in Brazos County, College Station, Texas;

WHEREAS, CSISD and the City have identified a safety concern at the Parks;

WHEREAS, CSISD and the City desire construction of a four foot high ornamental fence at both parks to address the safety concern;

WHEREAS, the City agrees to cooperate with CSISD in the construction of fencing improvements to Pebble Creek and Jack & Dorothy Miller Parks for the mutual benefit of both parties;

WHEREAS, CSISD will provide and pay for construction of the fencing improvements;

WHEREAS, the City and CSISD agree that the City will reimburse half of the cost of construction of the fencing improvements to CSISD, in a total amount not to exceed **Thirty Thousand and No/100 Dollars (\$30,000.00)**, for the expenses incurred in the construction of the fencing improvements and that any and all additional funds necessary for the construction of the fencing improvements will be expended by CSISD;

WHEREAS, the City agrees to maintain the fencing improvements;

WHEREAS, the City and CSISD desire to enter into an Interlocal Agreement for the purpose of constructing the fencing improvements at Pebble Creek and Jack & Dorothy Miller Parks;

NOW THEREFORE, for and in consideration of the representations and recitations hereinabove and the promises and covenants that follow hereinbelow, the parties enter into this Agreement pursuant to the above-named act to authorize CSISD to contract for construction of the fencing improvements on behalf of itself and the City under the following terms and conditions.

The following establishes the obligations of each party for the Fencing Improvements to be constructed in Pebble Creek and Jack & Dorothy Miller Parks, on both the portion owned by CSISD and the portion owned by the City.

1. **Scope of Services**

CSISD will advertise the project to the public for bids or proposals and upon receipt of a bid or proposal response that is acceptable to the Board of Trustees, CSISD will contract with an independent contractor for the construction of fencing improvements at Pebble Creek and Rock Prairie Parks (hereinafter "Project").

CSISD may not modify the scope of services for the Project without the express written authorization of the City. Notwithstanding the foregoing, if there are no bids or proposals reasonably acceptable to CSISD, or if the total cost of the Project is reasonably expected to exceed \$60,000.00, then CSISD may terminate this Agreement by giving written notice to the City setting forth the basis for such termination.

2. **Insurance**

CSISD shall require that the Contractor's insurance coverage be primary with respect to CSISD and the City, their officials, employees, and volunteers, and that the City is included as an "Additional Insured" on the policies required in the contract between CSISD and the Contractor. Any insurance or self-insurance maintained by the City, its officials, employees, or volunteers, shall be considered in excess of the CSISD's and Contractor's insurance and shall not contribute to it. **All Certificates of Insurance and endorsements shall be furnished to both the City's and CSISD Representative and approved by the City and CSISD before work commences on the Project.**

3. **Project Cost and Payment Provision**

Upon final completion of the Project, CSISD will submit a request for reimbursement to the City accompanied by a detailed, written invoice. The City will reimburse one-half of the actual cost of the Project to CSISD; subject to the limitation that the City's reimbursement to CSISD shall not exceed \$30,000.00. CSISD agrees to pay all costs of the Project that exceed the City's

reimbursement. The City shall pay CSISD within ten (10) days of the City's receipt of the invoice.

4. **Term of Work**

All work on this Project must be completed by September 1, 2009; subject to weather delays, force Majeure, and other construction delays not reasonably within the control of CSISD. CSISD shall notify the City, in accordance with Paragraph 10, in the event that any extensions to the completion date are anticipated of this Agreement.

5. **Time is of the Essence of this Agreement**

Time is of the essence in this Agreement.

6. **The City and CSISD Further Agree That:**

- a. Payments for this service will be taken from the available current revenues of each party.
- b. The terms and conditions of the Agreement may be modified as provided in Paragraph 14 hereinbelow, and upon the mutual consent of both parties. Mutual consent will be demonstrated approval of each governing body of each party hereto.
- c. From and after the completion of the Project, the City shall maintain the Project and the fencing improvements.

7. **Termination**

This Agreement may be terminated by either party at any time before the contracts for construction are entered into by CSISD, by providing thirty (30) days advance notice to the non-cancelling party. Notice of termination shall be in writing and provided in accordance with Paragraph 12 herein.

8. **Indemnification**

**Subject to the limitations as to damages and liability under the Texas Tort Claims Act or the Texas Recreational Use Statute, and without waiving its governmental immunity, each party to this Agreement agrees to hold harmless each other, its governing board, officers, agents and employees for any liability, loss, damages, claims or causes of action caused, or asserted to be caused, directly or indirectly by any other party to this Agreement, or any of its officers, agents or employees as a result of its performance under this Agreement.**

9. **Consent to Suit**

**Nothing in this Agreement will be construed as a waiver or relinquishment by CSISD or the City of its right to claim such exemptions, privileges and immunities as may be provided by law. Neither the City nor CSISD, by entering into this Agreement, gives its consent to suit.**

10. **Municipality Privileges and Immunities**

Nothing in this Agreement will act as a waiver or relinquishment by either party of any right, exemption, privileges and/or immunities that may be provided by law.

11. **Invalidity**

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

12. **Written Notice**

Unless otherwise specified, written notice shall be deemed to have been duly served if delivered in person or sent by certified mail to the last business address as listed herein.

**College Station Independent School District**  
ATTN: Dr. Eddie Coulson, Superintendent  
1812 Welsh  
College Station, Texas 77840

**City of College Station**  
Parks and Recreation Department  
ATTN: Marco A. Cisneros, Director  
1000 Krenek Tap Road  
College Station, Texas 77840

13. **Entire Agreement**

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

14. **Amendment**

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

15. **Texas Law**

This Agreement has been made under and shall be governed by the laws of the State of Texas.

16. **Place of Performance**

Performance and all matters related thereto shall be in Brazos County, Texas, United States of America.

17. **Authority to Enter Contract**

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

18. **Waiver**

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

19. **Agreement Read**

The parties acknowledge that they have read, understand, and intend to be bound by the terms and conditions of this Agreement.

20. **Assignment**

This Agreement and the rights and obligations contained herein may not be assigned by either party without the prior written approval of the other party.

21. **Multiple Originals**

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

22. **Effective Date**

This Agreement will be effective when signed by the last party whose signing makes the Agreement fully executed.

**COLLEGE STATION INDEPENDENT  
SCHOOL DISTRICT**

**CITY OF COLLEGE STATION**

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

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

**Printed Name:** \_\_\_\_\_

**Mayor**

**Title:** \_\_\_\_\_

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

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

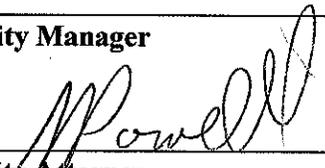
**ATTEST:**

\_\_\_\_\_  
**City Secretary**

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

**APPROVED:**

\_\_\_\_\_  
**City Manager**

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

\_\_\_\_\_  
**Chief Financial Officer**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Date**