



**Mayor**  
Ben White  
**Mayor Pro Tem**

**City Manager**  
Glenn Brown

**Council members**  
John Crompton  
James Massey  
Dennis Maloney  
Katy-Marie Lyles  
Lawrence Stewart  
David Ruesink

**Agenda**  
**College Station City Council**  
**Regular Meeting**  
**Thursday, June 25, 2009 at 7:00 PM**  
**City Hall Council Chamber, 1101 Texas Avenue**  
**College Station, Texas**

1. Pledge of Allegiance, Invocation, Consider absence request.  
**Presentation to 2009 National Champions, TAMU Men's Golf Team.**

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 Council meeting held on Thursday, June 11, 2009.

b. Presentation, possible action and discussion regarding a request for additional funding to the Arts Council of Brazos Valley for the cost of a forensic auditor.

c. Presentation, possible action, and discussion regarding approval of renewal one for estimated annual expenditures related to copying and printing services as follows: Copy Corner (\$50,000); Office Max (\$50,000); Tops Printing (\$50,000); and Newman Printing (\$50,000). Renewal period is May 1, 2009 thru April 30, 2010.

- d. Presentation, possible action and discussion on renewing the annual price agreement for the purchase of oils, lubricants and antifreeze with Kolkhorst Petroleum Co., Inc. for an annual expenditure of \$63,794.00. This is the first of two renewal options that is to begin on June 30, 2009 and expires on June 29, 2010. (Contract #08-121/Bid #08-61)
- e. Presentation, possible action, and discussion regarding approval of a purchase order to DXI Industries for the purchase of liquid chlorine for use in our public water supply. The amount of the purchase order is \$61,536.
- f. Presentation, possible action, and discussion regarding the award of an annual purchasing agreement for anhydrous citric acid with Discount Industrial Supply, not to exceed \$51,800 annually.
- g. Presentation, possible action, and discussion regarding a resolution to approve a settlement agreement with Dr. Cliff Skiles regarding water permit applications with the Brazos Valley Groundwater Conservation District.
- h. Presentation, possible action, and discussion on an inter-local agreement (ILA) with Brazos County and the City of Bryan for the purpose of application and acceptance of a second allocation of the U.S. Department of Justice, 2009 Justice Assistance Grant (JAG).
- i. Presentation, possible action, and discussion to a change order to Contract #08-277 to Brazos Valley Services in the amount of \$428,938.50 for additional milling and overlaying services related to the College Park/Breezy Heights Rehabilitation Project.
- j. Presentation, possible action, and discussion regarding a change order to Contract #08-273 in the amount of \$80,624.19 to Siemens for construction work associated with Police Department Renovations Project.
- k. Presentation, possible action, and discussion regarding Change Order No. 3 to the construction contract with JCF Bridge & Concrete, Inc. (Contract No. 09-041) in the amount of \$34,541.50 for the 2005 Bike Loop Phase I – Longmire Improvements project.
- l. Presentation, possible action, and discussion to grant a change order for Professional Services Contract #04-176 in the amount of \$161,569.20 to Edwards and Kelcey for additional design services related to Phase II of the Barron Road Capacity Improvements Project.
- m. Presentation, possible action, and discussion concerning a resolution to approve an Advance Funding Agreement (AFA) with the Texas Department of Transportation (TxDOT) to construct the third and final phase of the College Station Bike Loop under the Statewide Transportation Enhancement Program. The estimated cost of the City's participation is \$312,552.

### **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.

*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*

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

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

1. Public hearing, presentation, possible action, and discussion regarding 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 changing the zoning district boundaries of an area consisting of 8.76 acres generally located along State Highway 6, southeast of the intersection of Rock Prairie Road and State Highway 6, from A-O Agricultural-Open to C-1 General Commercial.
2. Public hearing, presentation, possible action, and discussion regarding 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 changing the zoning district boundaries of an area consisting of 35.7 acres generally located along Rock Prairie Road, southeast of the intersection of Rock Prairie Road and State Highway 6, from A-O Agricultural-Open, C-2 Commercial Industrial, and R-4 Multi-Family to C-1 General Commercial.
3. Public hearing, presentation, possible action, and discussion an ordinance amending City of College Station Code of Ordinances Chapter 13: Flood Hazard Protection.
4. Presentation, possible action, and discussion regarding a Resolution approving a contract with Schenck Builders, L.L.C. in an amount not to exceed \$87,700.00 for the construction of a new, affordable, single-family residence at 1022 Crested Point Drive using federal HOME Investment Partnership Grant (HOME) funds.
5. Adjourn.

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

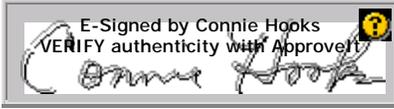
APPROVED:

---

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, June 25, 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 19th day of June, 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 June 19, 2009 at 2:00 p.m. and remained so posted continuously for at least 72 hours proceeding the scheduled time of said meeting.

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

Dated this \_\_\_\_ day of \_\_\_\_\_, 2009 By \_\_\_\_\_

Subscribed and sworn to before me on this the \_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Notary Public – Brazos County, Texas      My commission expires: \_\_\_\_\_

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

**June 25, 2009**  
**Consent Agenda Item No. 2b**  
**Arts Council Request for Additional Funding**

**To:** Glenn Brown, City Manager

**From:** City Manager's Office

**Agenda Caption:** Presentation, possible action and discussion regarding a request for additional funding to the Arts Council of Brazos Valley for the costs of a forensic auditor.

**Recommendation(s):** Staff recommends denying the request for additional funds.

**Summary:** The Arts Council of Brazos Valley incurred an expense of \$26,832.00 in hiring a forensic auditor in regards to the legal issues surrounding Dr. P. David Romei. Although the outcome of the proceedings against Dr. Romei indicates that the City of College Station will receive a portion of the funds it had directed towards the ACBV back as restitution, no money is predicted to come to the City for at least 2-3 years since an appeal has been made.

The Arts Council has sent a letter requesting the city participate in the payment of the Consulting firm used to perform this service. Staff recommends denying this request. The Arts Council of Brazos Valley is a valuable asset to the community; however, staff believes limited funds would be better used for other projects. The City values its partnership with the Arts Council and appreciates their efforts within our community, but staff does not recommend funding this request with other projects pending.

**Budget & Financial Summary:** For the current fiscal year, the City of College Station has \$440,000 budgeted for the Arts Council of Brazos Valley. The City is developing a financing plan to cover the cost and expenses of a proposed convention center and funding from the Hotel Tax Fund makes up a significant portion of the funding model. Staff does not recommend allocating any additional money from the Hotel Tax Fund to the Arts Council for this request.

**Attachments:**

1. Letter from Arts Council requesting additional funding

12 March 2009

HAND

MAR 16 2009

DELIVERED

Mayor Ben White  
City Manager Glenn Brown  
City Council Members  
City of College Station  
College Station, TX 77841

CAROL A. WAGNER  
PRESIDENT

BECKY RUSSELL  
IMMEDIATE PAST PRESIDENT

MITCHELL MOREHEAD  
PRESIDENT-ELECT

SUE LEE  
TREASURER

TOM WILKINSON  
SECRETARY

THOM LEMMONS  
VICE-PRESIDENT OF AFFILIATE RELATIONS

PETER CANNEY

SHERYLON CARROLL

KAY CONLEE

WARREN FINCH

JOHN HAPP

PENELOPE KOSZTOLNYIK

LYNN McILHANEY

PADRAIC L. FISHER  
EXECUTIVE DIRECTOR

Dear Mayor White, City Manager Brown, and Council Members:

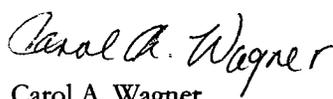
As part of the recent legal issues relating to Dr. P. David Romei, our attorney, Mr. Gaines West, at the urging of the Brazos County District Attorney's Office, hired a forensic auditor, Mr. Greg Shulke (Rimkus Consulting Group) on behalf of the Arts Council of the Brazos Valley. The ACBV was responsible for all costs and charges resulting from Mr. Shulke's investigation of the Council's financial records. The billing for his services amounted to \$26,832.00.

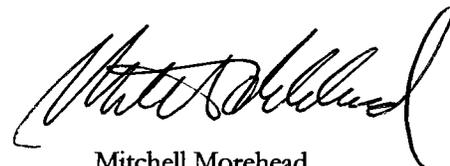
The primary reason that Mr. Shulke's services were needed was the intricate manipulation of ACBV financial records that occurred during Dr. Romei's tenure as Executive Director of the Council. While it was apparent that there were discrepancies in the records, how they occurred and what they involved was not readily apparent. Also important in the decision to hire Mr. Shulke was the Council's belief that it was necessary to determine what had happened to a large amount of City funds that had been designated for specific projects and activities of the Arts Council. The ACBV recognized its responsibility to reveal as much as possible about the use of the City funding. This could not have been done without the assistance of the forensic auditor.

The outcome of the criminal proceedings against Dr. Romei indicates that the City of College Station will receive a considerable portion of the funds it had directed towards the ACBV back as restitution from him. In light of this, we are requesting that the City of College Station participate in the payment for Mr. Shulke's services. At this time Rimkus Consulting has been fully paid by the West, Webb, Allbritton & Gentry law firm and this payment has been incorporated into the amount the ACBV currently owes the firm. Any assistance that the City can provide with the Rimkus Consulting bill will be greatly appreciated, and more importantly allow the ACBV to once again be more fully what an Arts Council should be and to once again provide service in the realm of arts and culture to the City of College Station and its citizens.

We appreciate your consideration of this request and will be happy to meet with you and/or provide any additional information you require. We look forward to hearing from you.

Sincerely,

  
Carol A. Wagner  
President

  
Mitchell Morehead  
President-Elect

2275 Dartmouth Street  
College Station • Texas • 77810

OFFICE: 979.696.2787  
FAX: 979.686.1072

info@acbv.org  
WWW.ACBV.ORG



# RIMKUS

Consulting Group, Inc.

P.O. BOX 4673  
HOUSTON, TEXAS 77210  
(713)621-3550

FEDERAL ID: 76-0163936

---

WEST, WEBB, ALLBRITTON & GENTRY, P.C.  
1515 EMERALD PLAZA  
COLLEGE STATION, TX 77845  
CONTACT: GAINES WEST

File Number: 0108574

Re: ARTS COUNCIL - COLLEGE STATION

---

## ACCOUNT STATEMENT

### Invoice

<i>Date</i>	<i>Invoice</i>	<i>Invoice Amount</i>
05/07/07	6170345	\$1,900.00
06/06/07	6172387	\$2,660.00
07/06/07	6174456	\$1,615.00
08/06/07	6176987	\$4,975.00
09/10/07	6179356	\$292.00
10/17/07	6182663	\$2,470.00
11/07/07	6183994	\$12,540.00
12/10/07	6186113	\$380.00

**Total Amount Billed:**

**\$ 26,832.00**

**BILLS ARE DUE AND PAYABLE UPON RECEIPT**

**PLEASE REFERENCE OUR FILE NUMBER AND INVOICE NUMBER ON CHECK  
AND MAKE PAYABLE TO:**

**RIMKUS CONSULTING GROUP**

**June 25, 2009**  
**Consent Agenda Item No. 2c**  
**Copying and Printing Services**

**To:** Glenn Brown, City Manager

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

**Agenda Caption:** Presentation, possible action, and discussion regarding approval of renewal one for estimated annual expenditures related to copying and printing services as follows: Copy Corner (\$50,000); Office Max (\$50,000); Tops Printing (\$50,000); and Newman Printing (\$50,000). Renewal period is May 1, 2009 thru April 30, 2010.

**Recommendation(s):** Staff recommends approval of expenditures to Copy Corner (\$50,000); Office Max (\$50,000); Tops Printing (\$50,000); and Newman Printing (\$50,000).

**Summary:** Staff issued a Request for Information, followed by Request for Proposals in 2008. Specifications established three different categories which summarized the types of printing and copying services the City typically uses. These categories with the recommended vendors for award follow:

**I. Category I - Digital Print and Copy**

This category includes standard black/white copies/prints; standard color copies/prints; some oversize black/white/color copies/prints; blueprints and finishing services. A multiple award is recommended so departments may choose based on pricing and convenience:

Copy Corner - \$50,000

Office Max - \$50,000

Tops Printing - \$50,000

**II. Category II - Offset Printing and High Volume Color Printing**

This category includes City letterhead, pre-printed envelopes and business cards

Newman Printing - \$50,000

**III. Category III – Specialty Printing**

This category includes a wide range of services including graphic design, maps, calendars, annual reports, and multi-faceted informational packages. The City will request quotes from pre-qualified firms for these type specialty services. Pre-qualified firms are:

Insite Publishing

Newman Printing

Tops Printing

**Budget & Financial Summary:** Funds are available and budgeted in each Department for copying and printing services.

**Attachments:**

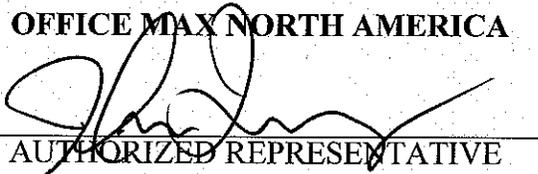
Renewals (4)

-----  
**RENEWAL ACCEPTANCE**

By signing herewith, I acknowledge and agree to renew RFI No. 08-22 for copying and printing services in accordance with all pricing, terms and conditions previously agreed to and accepted.

I understand this renewal term will be for the period beginning May 1, 2009 through April 30, 2010.

**OFFICE MAX NORTH AMERICA**

  
\_\_\_\_\_  
AUTHORIZED REPRESENTATIVE

5/7/09  
\_\_\_\_\_  
DATE

**CITY OF COLLEGE STATION**

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
DATE

**ATTEST:**

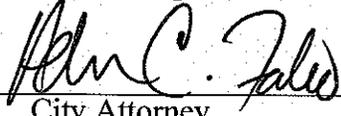
\_\_\_\_\_  
City Secretary

\_\_\_\_\_  
DATE

**APPROVED:**

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

\_\_\_\_\_  
DATE

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

\_\_\_\_\_  
DATE

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

\_\_\_\_\_  
DATE

STATE OF TEXAS

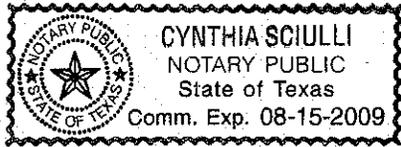
CORPORATE ACKNOWLEDGMENT

COUNTY OF Brazos

This instrument was acknowledged on the 7<sup>th</sup> day of May, 2009,

by John Turner in his/her capacity as Manager of OfficeMax North America, a TEXAS Corporation, on behalf of said corporation.

Cynthia Sciulli  
Notary Public in and for the  
State of Texas



STATE OF TEXAS

ACKNOWLEDGMENT

COUNTY OF BRAZOS

This instrument was acknowledged on the \_\_\_\_\_ day of \_\_\_\_\_, 2009,

by \_\_\_\_\_, in his capacity as Mayor of the City of College Station, a Texas home-rule municipality, on behalf of said municipality.

\_\_\_\_\_  
Notary Public in and for the  
State of Texas

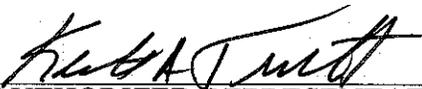
\*\*\*\*\*

-----  
**RENEWAL ACCEPTANCE**

By signing herewith, I acknowledge and agree to renew RFI No. 08-22 for copying and printing services in accordance with all pricing, terms and conditions previously agreed to and accepted.

I understand this renewal term will be for the period beginning May 1, 2009 through April 30, 2010.

**COPY CORNER**

  
\_\_\_\_\_  
AUTHORIZED REPRESENTATIVE

5/6/09  
\_\_\_\_\_  
DATE

**CITY OF COLLEGE STATION**

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
DATE

**ATTEST:**

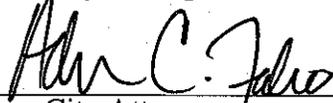
\_\_\_\_\_  
City Secretary

\_\_\_\_\_  
DATE

**APPROVED:**

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

\_\_\_\_\_  
DATE

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

\_\_\_\_\_  
DATE

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

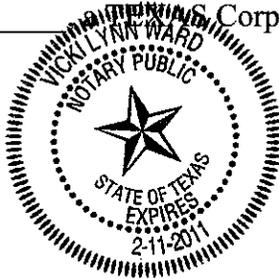
\_\_\_\_\_  
DATE

STATE OF TEXAS

CORPORATE ACKNOWLEDGMENT

COUNTY OF Brazos

This instrument was acknowledged on the 6<sup>th</sup> day of May, 2009,  
by Keith Truett in his/her capacity as authorized representative of  
Copy Corner Corporation, on behalf of said corporation.



Vicki Lynn Ward  
Notary Public in and for the  
State of Texas

STATE OF TEXAS

ACKNOWLEDGMENT

COUNTY OF BRAZOS

This instrument was acknowledged on the \_\_\_\_\_ day of \_\_\_\_\_, 2009,  
by \_\_\_\_\_, in his capacity as Mayor of the City of College Station, a Texas  
home-rule municipality, on behalf of said municipality.

\_\_\_\_\_  
Notary Public in and for the  
State of Texas

\*\*\*\*\*

-----  
**RENEWAL ACCEPTANCE**

By signing herewith, I acknowledge and agree to renew RFI No. 08-22 for copying and printing services in accordance with all pricing, terms and conditions previously agreed to and accepted.

I understand this renewal term will be for the period beginning May 1, 2009 through April 30, 2010.

**TOPS PRINTING INC.**

  
\_\_\_\_\_  
AUTHORIZED REPRESENTATIVE

5/4/09  
\_\_\_\_\_  
DATE

**CITY OF COLLEGE STATION**

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
DATE

**ATTEST:**

1  
\_\_\_\_\_  
City Secretary

\_\_\_\_\_  
DATE

**APPROVED:**

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

\_\_\_\_\_  
DATE

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

\_\_\_\_\_  
DATE

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

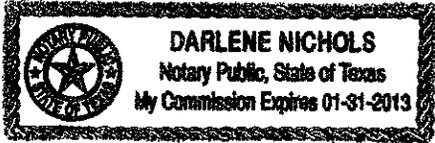
\_\_\_\_\_  
DATE

STATE OF TEXAS

CORPORATE ACKNOWLEDGMENT

COUNTY OF BRAZOS

This instrument was acknowledged on the 4 day of MAY, 2009,  
by STEVEN P. BRITTON in his/her capacity as PRESIDENT of  
TOPS PRINTING, a TEXAS Corporation, on behalf of said corporation.



Darlene Nichols  
Notary Public in and for the  
State of Texas

STATE OF TEXAS

ACKNOWLEDGMENT

COUNTY OF BRAZOS

This instrument was acknowledged on the \_\_\_\_\_ day of \_\_\_\_\_, 2009,  
by \_\_\_\_\_, in his capacity as Mayor of the City of College Station, a Texas  
home-rule municipality, on behalf of said municipality.

\_\_\_\_\_  
Notary Public in and for the  
State of Texas

\*\*\*\*\*

-----  
**RENEWAL ACCEPTANCE**

By signing herewith, I acknowledge and agree to renew RFI No. 08-22 for copying and printing services in accordance with all pricing, terms and conditions previously agreed to and accepted.

I understand this renewal term will be for the period beginning May 1, 2009 through April 30, 2010.

**NEWMAN PRINTING**

  
\_\_\_\_\_  
AUTHORIZED REPRESENTATIVE

5/7/09  
\_\_\_\_\_  
DATE

**CITY OF COLLEGE STATION**

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
DATE

**ATTEST:**

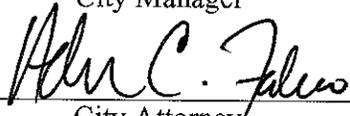
\_\_\_\_\_  
City Secretary

\_\_\_\_\_  
DATE

**APPROVED:**

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

\_\_\_\_\_  
DATE

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

\_\_\_\_\_  
DATE

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

\_\_\_\_\_  
DATE

STATE OF TEXAS

CORPORATE ACKNOWLEDGMENT

COUNTY OF BRAZOS

This instrument was acknowledged on the 7 day of May, 2009,  
by Bob Billberry in his/her capacity as Vice President of  
Newman Printing Co, a TEXAS Corporation, on behalf of said corporation.

Jack L Lombardo  
Notary Public in and for the  
State of



STATE OF TEXAS

ACKNOWLEDGMENT

COUNTY OF BRAZOS

This instrument was acknowledged on the \_\_\_\_\_ day of \_\_\_\_\_, 2009,  
by \_\_\_\_\_, in his capacity as Mayor of the City of College Station, a Texas  
home-rule municipality, on behalf of said municipality.

\_\_\_\_\_  
Notary Public in and for the  
State of Texas

\*\*\*\*\*



May 1, 2009

ATTN: Bill Bilberry

Newman Printing  
1300 E. 29<sup>th</sup> Street  
Bryan, TX 77802

**RE: Renewal No. 1—RFI 08-22  
Annual Contract – Copying and Printing Services**

Dear Mr. Bilberry:

The City of College Station appreciates the services provided by Newman Printing this past year. We would like to exercise our option to renew the above referenced agreement for the term of May 1, 2009 through April 30, 2010.

If this meets with your company's approval, please complete this renewal agreement (including notarization), and return it no later than Friday, May 8, 2008. We will then issue your company a new purchase order effective May 1, 2009 through April 30, 2010.

Should you have any questions, please call me at (979) 764-3437.

Sincerely,

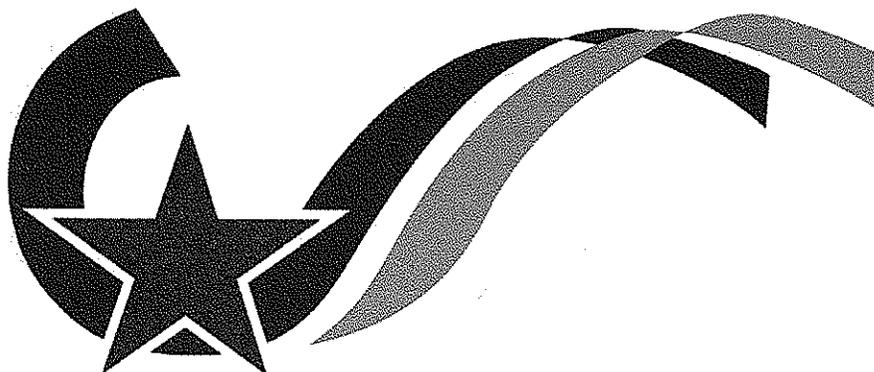
Cynthia Sciulli, C.P.M.  
Buyer

Attachment

PO Box 9960  
1101 Texas Avenue  
College Station, TX 77842

[www.cstx.gov](http://www.cstx.gov)

**REQUEST FOR PROPOSAL**  
**COPYING AND PRINTING SERVICES**



**CITY OF COLLEGE STATION**

---

**RFP #08-22**  
**DUE DATE: Friday, January 18, 2008**  
**@ 5:00 P.M. C.S.T.**

**CITY OF COLLEGE STATION, TEXAS**  
**1101 Texas Ave.**  
**College Station, TX 77842**  
**(979) 764-3555**  
**[www.cstx.gov](http://www.cstx.gov)**

This Request for Proposal is categorized in three (3) sections. The City may select one or more qualified printers to provide services for each category. City departments may obtain "quotes" from qualified printers in order to insure best value and pricing.

#### General Requirements

The following requirements apply to all categories of work described below:

- a) Orders will be placed by various City departments on an "as needed" basis. The City will not be obligated to any minimum or maximum quantities.
- b) The vendor will be responsible for providing all labor, equipment, material and consumables necessary for the production of printed material by copying and/or offset printing.
- c) The contract will be for one (1) year with the possibility of two (2) additional one (1) year renewal periods.
- d) Document quality is to meet the highest industry standards in terms of readability and overall appearance. Acceptable quality is solely determined by the individual City department.
- e) Proofs may be required and are subject to City approval before completion of the project.
- f) Any designs, drawings, pictures, blueprints, etc. provided by the City department for use in production of printed material involve property rights of the City and shall be held

**June 25, 2009**  
**Consent Agenda Item No. 2d**  
**Annual Price Agreement for Oils, Lubricants and Antifreeze**

**To:** Glenn Brown, City Manager

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

**Agenda Caption:** Presentation, possible action and discussion on renewing the annual price agreement for the purchase of oils, lubricants and antifreeze with Kolkhorst Petroleum Co., Inc. for an annual expenditure of \$63,794.00. This is the first of two renewal options that is to begin on June 30, 2009 and expires on June 29, 2010. (Contract #08-121/Bid #08-61)

**Recommendation(s):** Staff recommends approval of the renewal agreement with Kolkhorst Petroleum Co., Inc. for an annual estimated expenditure totaling \$63,794.00.

**Summary:** The initial agreement term was approved by City Council on June 12, 2008, Item No. 7. This renewal does not include any price increases. Purchases will be made as needed during the term of the agreement. The Fleet purchases are maintained in inventory and expensed to departments as needed.

**Budget & Financial Summary:** Funds are budgeted and available in the Fleet Maintenance and BVSWMA Funds.

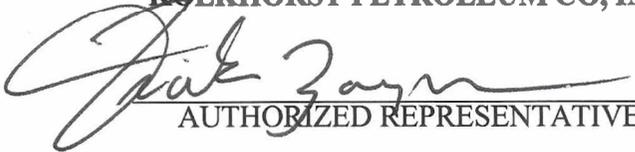
**Attachments:** Signed renewal agreement letter.

-----  
**RENEWAL ACCEPTANCE**

By signing herewith, I acknowledge and agree to renew contract #08-121, for oils, lubricants and antifreeze, in accordance with all terms and conditions previously agreed to and accepted.

I understand this renewal term will be for the period beginning June 30, 2009 through June 29, 2010.

**KOLKHORST PETROLEUM CO, INC.**

  
\_\_\_\_\_  
AUTHORIZED REPRESENTATIVE

4/7/09  
\_\_\_\_\_  
DATE

**CITY OF COLLEGE STATION**

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
DATE

**ATTEST:**

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

\_\_\_\_\_  
DATE

**APPROVED:**

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

\_\_\_\_\_  
DATE

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

\_\_\_\_\_  
DATE

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

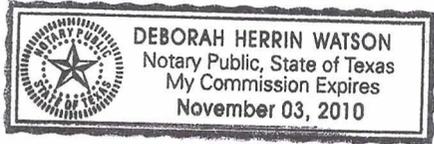
\_\_\_\_\_  
DATE

STATE OF TEXAS

CORPORATE ACKNOWLEDGMENT

COUNTY OF Grimes

This instrument was acknowledged on the 9<sup>th</sup> day of April, 2009,  
by Frank Zaragoza in his/her capacity as VP Distribution of  
Wolkhorst Petroleum Co., Inc., a TEXAS Corporation, on behalf of said corporation.



Deborah Herrin Watson  
Notary Public in and for the  
State of Texas

STATE OF TEXAS

ACKNOWLEDGMENT

COUNTY OF BRAZOS

This instrument was acknowledged on the \_\_\_\_\_ day of \_\_\_\_\_, 2009,  
by \_\_\_\_\_, in his capacity as Mayor of the City of College Station, a Texas  
home-rule municipality, on behalf of said municipality.

\_\_\_\_\_  
Notary Public in and for the  
State of Texas

\*\*\*\*\*

**Lisa Davis - RE: Price Agreement - Oils, Lubricants & Antifreeze**

---

**From:** "Joe Acosta"  
**To:** "Lisa Davis"  
**Date:** 6/5/2009 4:47 PM  
**Subject:** RE: Price Agreement - Oils, Lubricants & Antifreeze

I spoke with Lisa about the bid I explained that most products that the city used were still priced fair and that I would change the price of the antifreeze to 319.00 per drum. The price of crude per barrel is on the rise again and we will see price of oil go back up this year as also with fuel prices.

**From:** Lisa Davis [mailto:L.davis@cstx.gov]

**Sent:** Thursday, June 04, 2009 1:54 PM  
**To:** joe@kolkhorst.com  
**Subject:** Price Agreement - Oils, Lubricants & Antifreeze

Thank you for speaking with me this afternoon regarding the renewal of the price agreement for oils, lubricants & antifreeze. Please send a reply regarding the antifreeze and additional information that I can provide to our City Council. Thanks again.

Lisa D. Davis, C.P.M.

Buyer

City of College Station - Purchasing Dept.  
1101 Texas Ave. ~ College Station, TX ~ 77840  
Phone: 979-764-3558 ~ Fax: 979-764-3899

College Station- Home of Texas A&M University.

file://C:\Documents and Settings\ldavis\Local Settings\Temp\XPgrpwise\4A294C15City of ... 6/9/2009

June 25, 2009

Consent Agenda Item No. 2e

Chlorine Purchase

To: Glenn Brown, City Manager

From: David Coleman, Director, Water Services Department

**Agenda Caption:** Presentation, possible action, and discussion regarding approval of a purchase order to DXI Industries for the purchase of liquid chlorine for use in our public water supply. The amount of the purchase order is \$61,536.

**Recommendation:** Staff recommends approval of this purchase order.

**Summary:** Chlorine is added to our public water supply to ensure disinfection and meet Texas Commission on Environmental Quality (TCEQ) requirements. Due to our inter-local purchasing agreement with the City of Bryan, we were able to piggyback on their bid 08-105. Staff considers the low bid of \$512.80 per one ton cylinder to be very favorable to the City of College Station.

**Budget & Financial Summary:** Water operating funds are budgeted and available.

**Attachment:**

Bid Tab

Renewal Acceptance



**City of Bryan  
Purchasing Department  
Bid Tabulation for #08-105  
Annual Contract for Liquid Chlorine**

*All bids submitted are reflected on this bid tab sheet. However, the listing of a bid should not be construed as any indication that the City accepts such bid as responsive. The City will notify the successful bidder upon award of contract.*

	<b>Ativia Corporation (Saint Gabriel, LA)</b>	<b>DXI Industries inc. (Houston, Tx)</b>
# of Copies (1 required)	Y	Y
Prompt Payment Discount:	N	N
References (Y/N)	Y	Y
Deviations (Y/N)	Y	Y
Certification from bid package (Y/N)	Y	Y
Felony Conviction Notification	Y	Y
Emergency Response Services	Y-No additional information submitted	N
Addendum #1 Acknowledged	Y	Y

**City of Bryan**

ITEM	QTY	UNIT	DESCRIPTION	Unit	Extended	Unit	Extended
1	175	ea	One (1) ton cylinders of chlorine	\$578.00	\$101,150.00	\$512.80	\$89,740.00
2	115	ea	150 pound cylinders of chlorine	\$95.00	\$10,925.00	\$70.50	\$8,107.50
<b>Total Base Bid</b>				\$112,075.00		\$97,847.50	

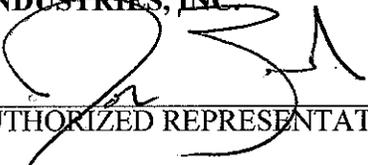
**City of College Station**

ITEM	QTY	UNIT	DESCRIPTION	Unit	Extended	Unit	Extended
1	120	Cylinders	One (1) ton cylinders of chlorine	\$578.00	\$69,360.00	\$512.80	\$61,536.00
<b>Total Base Bid</b>				\$69,360.00		\$61,536.00	

-----  
**RENEWAL ACCEPTANCE**

By signing herewith, I acknowledge and agree to renew City of Bryan's Bid No. 8-105, for Liquid Chlorine, in accordance with all terms and conditions previously agreed to and accepted pursuant to our Interlocal Agreement with the City of Bryan for an annual estimated amount of Sixty-One Thousand Five Hundred Thirty-Six and no/100 dollars (\$61,536.00). This is the City of College Station's first renewal of the agreement.

**DXI INDUSTRIES, INC.**

  
\_\_\_\_\_  
AUTHORIZED REPRESENTATIVE

6-5-09  
\_\_\_\_\_  
DATE

**CITY OF COLLEGE STATION**

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
DATE

**ATTEST:**

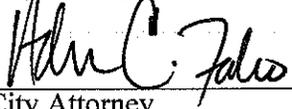
\_\_\_\_\_  
City Secretary

\_\_\_\_\_  
DATE

**APPROVED:**

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

\_\_\_\_\_  
DATE

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

\_\_\_\_\_  
DATE

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

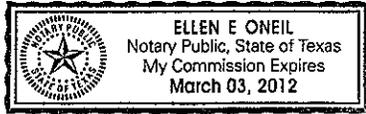
\_\_\_\_\_  
DATE

STATE OF TEXAS

CORPORATE ACKNOWLEDGMENT

COUNTY OF Harris

This instrument was acknowledged on the 5 day of June, 2009,  
by John Sanders in his/her capacity as Field Sales Rep. of  
DXI Industries Inc. a TEXAS Corporation, on behalf of said corporation.



Ellen E. O'Neil  
Notary Public in and for the  
State of Texas

STATE OF TEXAS

ACKNOWLEDGMENT

COUNTY OF BRAZOS

This instrument was acknowledged on the \_\_\_\_\_ day of \_\_\_\_\_, 2009,  
by \_\_\_\_\_, in his capacity as Mayor of the City of College Station, a Texas  
home-rule municipality, on behalf of said municipality.

\_\_\_\_\_  
Notary Public in and for the  
State of Texas

\*\*\*\*\*



May 21, 2009

DXI Industries, Inc.  
Attn: John Sanders, Field Sales Representative  
PO Box 24600  
Houston, TX 77229

**RE: City of College Station Renewal of City of Bryan's Bid No. 08-105, Annual Price Agreement for Liquid Chlorine, 1<sup>st</sup> Renewal**

Dear Mr. Sanders:

We appreciate you extending the same pricing, terms and conditions for liquid chlorine to the City of College Station pursuant to our Interlocal Agreement with the City of Bryan. We would like to exercise our option to renew the above referenced agreement for the term of June 30, 2009 through June 29, 2010 with the same pricing, terms and conditions as agreed to in City of Bryan's Bid No. 08-105. Annual agreement amount: \$61,536.00.

If this meets with your company's approval, please complete this renewal agreement (including notarization), and return it no later than Friday, June 5, 2009.

Should you have any questions, please contact me via e-mail at [ldavis@cstx.gov](mailto:ldavis@cstx.gov) or via phone at (979) 764-3558.

Sincerely,

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

Attachment

PO Box 9960  
1101 Texas Avenue  
College Station, TX 77842

[www.cstx.gov](http://www.cstx.gov)

or an employee or representative thereof, will cause to void all proposals of that particular bid solicitation or request.

### **Irregular Bid Proposals**

Bids will be considered irregular and may be rejected by the Cities if they show any omissions, alterations of form, additions, or conditions not called for, unauthorized alternate bids, or irregularities of any kind. However, the Cities reserve the right to waive any irregularities and to make the award providing the best value to the Cities.

### **Award of Contract**

The bid award may be based on, but not necessarily limited to, the following factors:

- a. Conformity to specifications;
- b. the purchase price, including payment discount terms;
- c. the reputation of the bidder and of the bidder's goods or services;
- d. the quality of the bidder's goods or services;
- e. the extent to which the goods or services meet the City's needs;
- f. the bidder's past relationship with the City;
- g. delivery terms;
- h. payment terms;
- i. availability of repair and maintenance parts;
- j. financial condition;
- k. the total long-term cost to the City to acquire the bidder's goods or services; and
- l. any relevant criteria specifically listed in this request for bid.
- m. vendor's safety record

The Cities prefers to award the entire contract to a single Contractor; although, the City reserves the right to award a primary contract and a secondary contract in an effort to secure a back-up contractor to be used in emergency situations in the event the primary contractor is unable to respond as needed.

### **Financial Condition**

Contractor must provide audited financial statements, if requested, to the Cities.

### **Term of Contract**

This contract shall become effective from date of acceptance and approval by the Cities. It shall remain in full force and effect with firm fixed bid prices for a period of twelve (12) months.

### **Extension of Contract - City of Bryan Terms**

The City of Bryan shall have the option of extending this contract, subject to approval of funding and review of the service provided by the Contractor, for four (4) additional one (1) year terms to be extended one (1) year at a time. This action does not require specific City Council approval, provided the City Council has appropriated sufficient funds to satisfy the City's obligation during the renewal term. Contracts are extended upon mutual agreement of both Vendor and the City. The City of Bryan will not consider Contract extensions which include any increase in unit bid prices.

In the event a new contract cannot be executed at the anniversary date of the original term or any renewal term, the contract may be renewed month-to-month until a new contract is executed.

### **Extension of Contract - City of College Station Terms**

Upon completion of the term of the original contract and mutual agreement of both parties, the contract may be extended for up to two (2) additional one (1) year terms [three (3) years total]. The renewal will be under the same terms and conditions as the original contract; provided, however, that the unit prices bid under the original contract may, by mutual agreement, be increased by no more than five percent (5%) of the original contract price. In the event a new contract cannot be executed at the anniversary date of the original term or any renewal term, the contract may be renewed month-to-month until a new contract is executed.

#### **Assignment of Contract**

This contract cannot be transferred or assigned to another party without the written consent of the City's Purchasing Agent and may be subject to cancellation if such consent is requested.

#### **Contract Termination**

The Cities may terminate this Contract at any time upon **thirty (30)-calendar** days written notice. Upon the Service Provider's receipt of such notice, the Service Provider shall cease work immediately. The Service Provider shall be compensated for the services satisfactorily performed prior to the termination date.

If, through any cause, the Service Provider fails to fulfill its obligations under this Contract, or if the Service Provider violates any of the agreements of this Contract, the Cities has the right to terminate this Contract by giving the Service Provider **five (5)** calendar days written notice. The Service Provider will be compensated for the services satisfactorily performed before the termination date. Termination of the contract for cause shall be deemed as sufficient evidence and cause to remove the Vendor's name from the bidder's list for receiving future bids.

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

#### **Reimbursements**

There is no expressed or implied obligation for the Cities to reimburse responding firms for any expenses incurred in preparing bids in response to this Request for Bids and Cities will not reimburse responding firms for these expenses, nor will the Cities pay any subsequent costs associated with the provision of any additional information or presentation, or to procure a contract for these services.

#### **Minority Owned Businesses**

Minority business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race color, creed, sex, or national origin in consideration for an award.

#### **City Ordinances**

The Cities also reserves the right to reject the bid of any bidder who is currently in violation of any City ordinance. The Cities may, at its option, choose to negotiate a settlement of the ordinance violation as a condition of the bid award.

#### **Error-Quantity**

**June 25, 2009**  
**Consent Agenda Item No. 2f**  
**Annual Purchasing Agreement for Citric Acid**

**To:** Glenn Brown, City Manager

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

**Agenda Caption:** Presentation, possible action, and discussion regarding the award of an annual purchasing agreement for anhydrous citric acid with Discount Industrial Supply, not to exceed \$51,800 annually.

**Recommendation:** Staff recommends award of this annual purchasing agreement.

**Summary:** Anhydrous citric acid is a chemical used to clean the outer sleeves on the ultraviolet disinfection systems at the Carters Creek and Lick Creek wastewater treatment plants. Mixed with water and agitated with air, it safely cleans built up solids off of the outside of the sleeves to maintain the efficiency and effectiveness of the disinfection systems.

Invitation to bid #09-68 received a bid from one vendor. This invitation to bid was advertised in the Eagle, and notices were e-mailed to vendors registered with the Brazos Valley Online Bidding System. At least ten vendors downloaded the bid information, but ultimately only Discount Industrial Supply submitted a bid. The City has purchased anhydrous citric acid from Discount Industrial Supply in the past, and we have been pleased with their product and service. The last several invoices show that we have been paying \$3.49 per pound for the citric acid, and this latest bid is at \$2.59 per pound, so the City will save money under the proposed purchase agreement. For these reasons, staff recommends approval.

**Budget & Financial Summary:** Wastewater Operating funds are budgeted and available for the anticipated amount of citric acid usage.

**Attachment:**  
Bid Tab



**City of College Station - Purchasing Department**  
**Bid Tabulation for #09-68**  
**"Annual Purchase of Citric Acid, Anhydrous"**  
**Open Date: Wednesday, June 3, 2009 @ 2:00 p.m.**

				<b>Discount Industrial Supply (Bryan, TX)</b>	
<b>ITEM</b>	<b>QTY</b>	<b>UNIT</b>	<b>DESCRIPTION</b>	<b>UNIT BID AMOUNT</b>	<b>TOTAL BID AMOUNT</b>
1	20000	Lbs.	Citric Acid, Anhydrous (Food Grade)	\$2.59	\$51,800.00
<b>Certification from bid package</b>				✓	
<b>Prompt Payment Discount</b>				<b>0%</b>	
<b>Procurement Card Payment Discount</b>				<b>0%</b>	

**June 25, 2009**  
**Consent Agenda Item No. 2g**  
**Settlement Agreement with Dr. Cliff Skiles**

**To:** Glenn Brown, City Manager

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

**Agenda Caption:** Presentation, possible action, and discussion regarding a resolution to approve a settlement agreement with Dr. Cliff Skiles regarding water permit applications with the Brazos Valley Groundwater Conservation District.

**Recommendation:** Staff recommends Council adopt the resolution.

**Summary:** The City of College Station recently joined the City of Bryan and the Twin Oaks power plant in protesting an application to the Brazos Valley Groundwater Conservation District by Dr. Cliff Skiles, in which he requested 8,300 acre-feet per year of water from the Simsboro aquifer. The issue was ordered into mediation by the Hearing Examiner, and the mediation was held in Austin on Friday, June 5, 2009.

A mediated settlement agreement was reached on that Friday night, and the document is provided as an Exhibit to the attached Resolution. Under the terms of this agreement, Skiles Family Partnership will dismiss its pending application for an operating permit for 8,300 ac-ft of new Simsboro water. Skiles will get none of the new water requested. The General Manager of the District will dismiss his request that the Family Partnership's historic use permit be amended or revoked and Skiles will retain the right to use 20,481 ac-ft of Simsboro water. Dr. Skiles will, however, get additional flexibility because this use will be calculated on a four year rolling average basis, not to exceed 30,000 acre-feet in any given year. Also, Dr. Skiles will withdraw his request for reconsideration of the City of Bryan's historic use permits and will thereafter take no action seeking review or consideration of historic use permits issued to Bryan, College Station, or Optim Energy (Twin Oaks). Additionally, Dr. Skiles will take no action opposing College Station's pending application for 8,200 ac-ft of Simsboro water.

This agreement has been approved by the Brazos Valley Groundwater Conservation District Board of Directors, contingent on approval by the city councils of Bryan and College Station.

This settlement agreement is very good for all parties, including the City of College Station. We will save the legal costs that would have been expended to continue the case, and the agreed water permit amounts are fair and reasonable. Therefore, staff requests City Council adopt the resolution to approve this settlement agreement with Dr. Skiles.

**Budget & Financial Summary:** No additional cost. This will end the cost of legal representation with Mathews and Freeland in this matter.

**Attachment:**  
Resolution

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

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COLLEGE STATION, TEXAS, APPROVING AND RATIFYING A MEDIATED SETTLEMENT AGREEMENT AND A JOINT UNDERSTANDING OF MEDIATED SETTLEMENT AGREEMENT REGARDING C.A. SKILES FAMILY PARTNERSHIP LTD. AND CLIFF SKILES, JR., D.V.M. CONTESTED PERMITS BEFORE THE BRAZOS VALLEY GROUNDWATER CONSERVATION DISTRICT.**

WHEREAS, the City of College Station, City of Bryan and Optim Energy jointly contested two existing and one new application for groundwater permits submitted by Dr. Cliff A. Skiles, Jr. D.V.M. and C.A. Skiles Family Partnership, Ltd. considered before the Brazos Valley Groundwater Conservation District; and

WHEREAS, all parties in the above-described matters entered into mediations on or about June 5, 2009; and

WHEREAS, a proposed mediated settlement agreement was reached subject to approval by the governing bodies of the parties involved, including the City of College Station; and

WHEREAS, the City Council of the City of College Station has determined it to be in the best interests of the citizens of the City of College Station to enter into and approve such mediated settlement agreement; now therefore

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

PART 1: That the facts and recitations set forth in the preamble of this resolution are hereby declared true and correct.

PART 2: That the City Council of the City of College Station hereby approves and ratifies a Mediated Settlement Agreement and the Joint Understanding Mediated Settlement Agreement for the following matter: In re: Applications and Permits of Dr. Cliff A. Skiles, Jr. D.V.M. and C.A. Skiles Family Partnership, Ltd. for Groundwater Withdrawal in Robertson County, Texas before the Brazos Valley Groundwater District. A copy of such Mediated Settlement Agreement and such Joint Understanding of Mediated Settlement Agreement are attached hereto and made a part hereof as **Exhibit "A."**

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

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

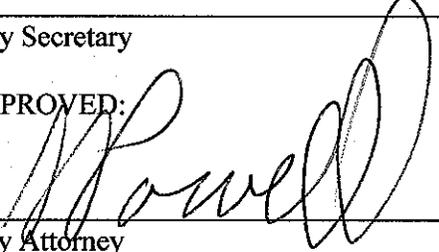
ATTEST:

APPROVED:

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

\_\_\_\_\_  
MAYOR

APPROVED:

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

## EXHIBIT A-1

### Mediated Settlement Agreement

The parties to the Skiles interests' contested case have reached agreement as follows:

1. The Skiles Family Partnership's historic use permit shall be for 20,481 acre-feet of water per year from the Simsboro Formation, calculated on a four-year rolling average.
2. The General Manager will dismissed with prejudice his request that the Family Partnership's historic use permit should be amended or revoked; provided, however, an aquifer-wide change may apply to Skiles interests' historic use permits.
3. The Protestant Parties shall withdraw their intervention in the contested case on the General Manager's request that the Family Partnership's historic use permit be amended or revoked.
4. The Skiles Family Partnership will dismiss its request for an operating permit.
5. Dr. Skiles' historic use permit for Brazos River Alluvium water shall be amended to authorize withdrawal of no more than 10,000 acre-feet of water per year.
6. The four new wells on the Brazos River Farms, which are in the Simsboro Formation, may be used for production of water under the Skiles Family Partnership's historic use permit, as set forth in paragraph 1.
7. The annual amount of groundwater that the may be withdrawn from the Simsboro aquifer under the Family Partnership's historic use permit referenced in paragraph 1 shall not exceed 30,000 acre-feet in any given calendar year.
8. The provisions in paragraphs 1-7 above are contingent on approval by the District Board and the city councils of Bryan and College Station. Such approvals by the cities shall occur before action by the Board and no later than July 8, 2009.
9. The provisions in paragraphs 1-7, above, are contingent on dismissal with prejudice of the defamation action in Deaf Smith County and the Open Meetings Act action in Robertson County, as well as on the Relators formal withdrawal from the quo warranto action in Robertson County, coupled with a letter delivered to the Robertson County Attorney, which letter shall be in the form and words of the attached draft letter. The actions described herein shall be filed no later than five days after the last of the approvals identified in paragraph 8.
10. In the interim between now and the actions described in paragraph 8, above, all proceedings, including discovery and other deadlines, are abated, and the

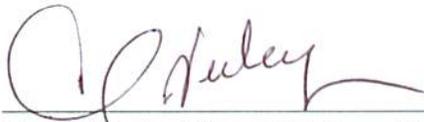
## EXHIBIT A-1

parties agree that, in the event the approvals in paragraph 8 do not occur, the parties will jointly participate in developing a new scheduling order to propose to the Hearing Examiner.

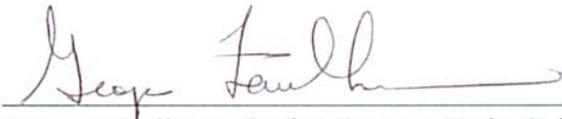
11. Also, in the interim between now and the actions described in paragraph 8, above, the parties agree that any and all discovery deadlines in any litigation described in paragraph 9, above, are tolled, and any settings and depositions are withdrawn.
12. In any year in which pumping under the Family Partnership's historic use permit exceeds 20,481 acre-feet, the District may require the Skiles Family Partnership to pay the mitigation costs, at an amount not exceeding 50% of such costs, for the adverse effects on currently permitted wells within a five-mile radius from any permitted well on the Brazos River Farm, which effects must be primarily due to the Family Partnership's pumping. Any determination of whether the adverse effects which are to be mitigated are primarily due to the Family Partnership's pumping shall be based on data and information from independent third-parties. Any mitigation under the provisions of this paragraph shall be enforceable only through formal Board action, from which the Family Partnership shall have the right to a contested case appeal before a SOAH Administrative Law Judge.
13. The District agrees that, if the provisions in paragraphs 1-11, above, are satisfied, it will not attempt to amend the Family Partnership's historic use permit on the grounds set out in District Rule 8.3(g).
14. The District further agrees that, if the provisions in paragraphs 1-11, above, are satisfied, the Family Partnership's historic use permit may not be applied to prohibit the Family Partnership from applying water produced under such permit to any other land owned by the Skiles interests in Robertson County; provided, however, that the Family Partnership shall submit in advance of use a supplement to its application indicating the location of this other land.
15. The Skiles interests agrees to take no action opposing the City of College Station's pending application for 8,200 acre-feet of Simsboro groundwater.
16. The Skiles interests agrees to withdraw with prejudice their pending motion for leave to file a counterclaim against the City of Bryan, and to take no action seeking review or reconsideration of historic use permits issued by the District to the City of Bryan, City of College Station, or Optim Energy.
17. The City of Bryan, the City of College Station, and Optim Energy agree to take no action opposing Skiles Family Partnership's application for Simsboro rights on the Cobb Farm.

**EXHIBIT A-1**

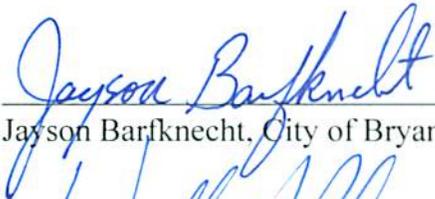
18. Subject to the approvals in paragraph 8, above, the signatories below agree on behalf of the parties to be bound by this agreement.



David Neely, City of College Station



George Faulkner, Optim Energy, Twin Oaks Plant



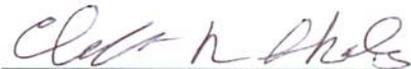
Jayson Barfknecht, City of Bryan



William Riley, Brazos Valley Groundwater Conservation District



C.A. Skiles, Individually



C.A. Skiles, President of Skiles Operating Inc., General Partner, Skiles Family Partnership, LTD

## EXHIBIT A-1

### Quo Warranto

Mr. John C. Paschall  
County and District Attorney  
Robertson County, Texas  
P. O. Box 409  
Franklin, Texas 77856

The C. A. Skiles Family Partnership, Ltd. and Dr. Cliff Skiles has reached a settlement in the contested case with the general manager of the Brazos Valley Groundwater Conservation District and the representatives of the two cities and the power plant. If the settlement is approved by the District Board and the two cities, the C. A. Skiles Family Partnership, L.P. can no longer justify the cost of continued litigation including the discovery matters and hearings that will occur.

Under these circumstances, and of course recognizing that the decision is within your sole discretion, C. A. Skiles Family Partnership, Ltd. asks that the proceeding be dismissed. In any event, if the settlement is approved C. A. Family Partnership, Ltd will no longer be able to fund participation by its lawyers in the quo warranto proceedings and will withdraw as relator.

I have been requested to inquire as to your plans regarding the quo warranto proceeding and report to all of the parties. Please let me know so that I can inform the parties.

## EXHIBIT A-2

### Joint Understanding of Mediated Settlement Agreement

The parties to the Skiles interests' contested case state their mutual understanding of the Mediated Settlement Agreement in the following particulars:

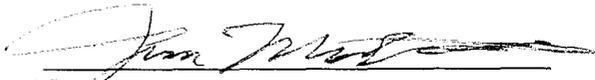
1. The Mediated Settlement Agreement was signed June 5, 2009, and is referred to here as the June 5<sup>th</sup> Agreement.
2. The rolling average in paragraph 1 begins January 1, 2009.
3. The operating permit in paragraph 4 is to be dismissed with prejudice, but without prejudice to filing subsequent operating permit applications based on changed circumstances.
4. The action by the Board in paragraph 8 means final, effective approval by the Board.
5. All parties are to bear their own attorney fees and costs in the contested case and other litigation subject to the June 5<sup>th</sup> Agreement.
6. The June 5<sup>th</sup> Agreement binds all the parties, their successors, and assigns.



Renea Hicks  
For the General Manager



Doug Caroom  
For the Skiles interests



Jimmie Mathews  
For the Protestant Parties

June 17, 2009

**June 25, 2009**  
**Consent Agenda Item No. 2h**  
**Justice Assistance Grant (JAG) - Second Allocation Inter-local Agreement**

**To:** Glenn Brown, City Manager

**From:** Michael Ikner, Chief of Police

**Agenda Caption:** Presentation, possible action, and discussion on an inter-local agreement (ILA) with Brazos County and the City of Bryan for the purpose of application and acceptance of a second allocation of the U.S. Department of Justice, 2009 Justice Assistance Grant (JAG).

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

**Summary:**

This Edward Byrne Memorial Justice Assistance Grant (JAG) Program is the primary provider of federal criminal justice funding to state and local jurisdictions and fund all components of the criminal justice system. JAG funded projects may address crime through the provision of services directly to individuals and /or communities by improving the effectiveness and efficiency of criminal justice systems, processes and procedures. The grant is authorized by the American Recovery and Reinvestment Act of 2009.

College Station Police Department intends to utilize this funding for the purpose of supporting local initiatives, technical assistance, training, equipment, supplies and information technology projects in support of our community-oriented mission.

**Budget & Financial Summary:**

This is a second allocation of funding and again requires agencies to enter into an inter-local agreement as a requirement of the grant application.

This 2009 JAG allocation for Brazos County is \$97,706. This amount is based upon a statutory, JAG formula that considers the jurisdiction's share of the State's population and share of total reported part 1 violent crime statistics. College Station has lower part 1 violent crime reporting and therefore garners less of the total amount of funding.

Individual recommended allocations based on this formula and designated by the Department of Justice are: Brazos County- \$0; Bryan- \$71,311; College Station- \$26,395 for a total of \$97,706. However, Brazos County has been certified as a disparate jurisdiction. As such, all jurisdictions must enter into an Inter-Local Agreement to specify an award distribution to each unit of local government in a manner that will address disparity and must apply for funding jointly.

College Station and Bryan Police Departments have agreed to provide 15% of their recommended funding to Brazos County Sheriff's office in an effort to address disparity. As such, the resulting allocation is as follows: Bryan- \$60,615; College Station- \$22,436 and Brazos County- \$14,655.

Bryan Police Department will again serve as the administering agency.

**Attachments:**

- 1.) Inter-local agreement

**INTERLOCAL AGREEMENT BETWEEN BRAZOS COUNTY, THE CITY OF  
COLLEGE STATION AND THE CITY OF BRYAN FOR 2009 BYRNE JUSTICE  
ASSISTANCE GRANT (JAG) PROGRAM AWARD**

This Agreement is made and entered into by and between Brazos County, Texas (hereinafter referred to as the "County"), acting through its Commissioners' Court, the City of College Station (hereinafter referred to as "College Station"), a Texas Home Rule Municipal Corporation, acting through its City Council; and the City of Bryan, Texas (hereinafter referred to as "Bryan"), a Texas Home Rule Municipal Corporation, acting through its City Council.

**WHEREAS**, the County, College Station, and Bryan wish to submit a joint application for grant funds under the U.S. Department of Justice's 2009 Edward Byrne Memorial Justice Assistance Grant (JAG) Program; and

**WHEREAS**, as a condition precedent to receiving a JAG award, the County, College Station, and Bryan are required to enter into an interlocal agreement designating one joint applicant to serve as the applicant/fiscal agent for the joint funds; and

**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 perform governmental functions or services; and

**WHEREAS**, the parties represent that each is independently authorized to perform the functions or services contemplated by this Agreement; and

**WHEREAS**, each governing body, in performing governmental functions or in paying for the performance of governmental functions hereunder, shall make that performance or those payments from current revenues legally available to that party; and

**WHEREAS**, each governing body finds that the performance of this Agreement is in the best interests of all parties, that the undertaking will benefit the public, and that the division of costs fairly compensates the performing party for the services or functions under this Agreement; and

**WHEREAS**, Bryan also agrees to provide the County \$14,655.00 from the JAG award for the purpose of supporting local initiatives, technical assistance, training, personnel, equipment, supplies, contractual support, information technology, research and evaluation activities that will improve or enhance law enforcement programs; and

**WHEREAS**, Bryan agrees to provide College Station \$22,436.00 from the JAG award for the purpose of supporting local initiatives, technical assistance, training, personnel, equipment, supplies, contractual support, information technology, research and evaluation activities that will improve or enhance law enforcement programs; and

**WHEREAS**, Bryan shall use their \$60,615.00 from the JAG award for the purpose of supporting local initiatives, technical assistance, training, personnel, equipment, supplies,

contractual support, information technology, research and evaluation activities that will improve or enhance law enforcement programs; and

**WHEREAS**, College Station, Bryan and the County believe it to be in their best interest to reallocate the JAG funds as described above,

**NOW, THEREFORE**, the parties hereto, in consideration of the mutual covenants and conditions contained herein, promise and agree as follows:

1. Bryan agrees to pay the County a total of \$14,655.00 of JAG funds.
2. The County agrees to use the \$14,655.00 for the purpose of supporting local initiatives, technical assistance, training, personnel, equipment, supplies, contractual support, information technology, research and evaluation activities that will improve or enhance law enforcement programs.
3. Bryan agrees to pay College Station a total of \$22,436.00 of JAG funds.
4. College Station agrees to use \$22,436.00 for the purpose of supporting local initiatives, technical assistance, training, personnel, equipment, supplies, contractual support, information technology, research and evaluation activities that will improve or enhance law enforcement programs.
5. Bryan agrees to retain a total of \$60,615.00 of the JAG funds.
6. Bryan agrees to use \$60,615.00 for the purpose of supporting local initiatives, technical assistance, training, personnel, equipment, supplies, contractual support, information technology, research and evaluation activities that will improve or enhance law enforcement programs.
7. The parties to this Agreement do not intend for any third party to obtain a right by virtue of this Agreement.
8. By entering into this Agreement, the parties do not intend to create any obligations express or implied other than those set out herein; further, this Agreement shall not create any rights in any party not a signatory hereto.
9. No party shall have the right to direct or control the conduct of the other parties with respect to the duties and obligations of each party under the terms of this Agreement.
10. Each entity shall ensure that all applicable laws and ordinances have been satisfied.
11. **Effective Date and Term**. This Agreement shall be effective when signed by the last party who's signing makes the Agreement fully executed and will remain in full force and effect until September 30, 2010.

12. **INDEMNIFICATION.** Subject to the limitations as to damages and liability under the Texas Tort Claims Act, 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.

13. **CONSENT TO SUIT.** Nothing in this Agreement will be construed as a waiver or relinquishment by any party of its right to claim such exemptions, privileges and immunities as may be provided by law.

14. **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.

15. **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 business address as listed herein.

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

City of Bryan  
City Manager  
City of Bryan  
300 South Texas Avenue  
Bryan, Texas 77803

Brazos County  
County Judge  
Brazos County  
300 East 29<sup>th</sup> Street, Suite 114  
Bryan, Texas 77803

14. **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. Nor oral understandings, statements, promises, or inducements contrary to the terms of this Agreement exist. This Agreement cannot be changed or terminated orally. No verbal agreement or conversation with any officer, agent, or employee of any party before or after the execution of this Agreement shall affect or modify any of the terms or obligations hereunder.

15. **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.

16. **Texas Law.** This Agreement has been made under and shall be governed by the laws of the State of Texas.

17. **Place of Performance.** Performance and all matters related thereto shall be in Brazos County, Texas, United States of America.

18. **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.
19. **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 anyway affect the validity of this Agreement, any part hereof, or the right of either party thereafter to enforce each and every provision hereof. No term of this Agreement shall be deemed waived or breach excused unless the waiver shall be in writing and signed by the party claimed to have waived. Furthermore, any consent to or waiver of a breach will not constitute consent to or waiver of or excuse any other different or subsequent breach.
20. **Agreement Read.** The parties acknowledge that they have read, understand and intend to be bound by the terms and conditions of this Agreement.
21. **Assignment.** This Agreement and the rights and obligations contained herein may not be assigned by any party without the prior written approval of the other parties to this Agreement.
22. **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.

EXECUTED this the \_\_\_\_\_ day of \_\_\_\_\_, 2009 by CITY OF BRYAN.

**CITY OF BRYAN**

By: \_\_\_\_\_  
**D. MARK CONLEE**  
Mayor

**ATTEST:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
**Mary Lynn Stratta**  
City Secretary

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

**STATE OF TEXAS**

§  
§  
§

**ACKNOWLEDGMENT**

**COUNTY OF BRAZOS**

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

GIVEN UNDER MY HAND AND SEAL OF OFFICE this \_\_\_\_\_ day of \_\_\_\_\_,  
A.D. 2009.

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

EXECUTED this the \_\_\_\_\_ day of \_\_\_\_\_, 2009 by CITY OF COLLEGE STATION.

CITY OF COLLEGE STATION

By:

\_\_\_\_\_  
BEN WHITE

Mayor

ATTEST:

APPROVED:

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

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

*Adm C. Falso*  
\_\_\_\_\_  
City Attorney

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

STATE OF TEXAS

§  
§  
§

ACKNOWLEDGMENT

COUNTY OF BRAZOS

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

GIVEN UNDER MY HAND AND SEAL OF OFFICE this \_\_\_\_\_ day of \_\_\_\_\_, A.D. 2009.

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

EXECUTED this the \_\_\_\_\_ day of \_\_\_\_\_, 2009 by **BRAZOS COUNTY.**

**COUNTY OF BRAZOS**

By:

\_\_\_\_\_  
**RANDY SIMS**  
County Judge

**ATTEST:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Karen McQueen  
County Clerk

\_\_\_\_\_  
Counsel for Brazos County

**STATE OF TEXAS**

§  
§  
§

**ACKNOWLEDGMENT**

**COUNTY OF BRAZOS**

**BEFORE ME**, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared **RANDY SIMS**, County Judge of Brazos County, Texas, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed it for the purpose and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this \_\_\_\_\_ day of \_\_\_\_\_, A.D. 2009.

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

June 25, 2009  
Consent Agenda Item No. 2i  
Change Order No. 1 for College Park-Breezy Heights Rehabilitation Project

To: Glenn Brown, City Manager

From: Chuck Gilman, Director of Capital Projects

**Agenda Caption:** Presentation, possible action, and discussion to a change order to Contract #08-277 to Brazos Valley Services in the amount of \$428,938.50 for additional milling and overlaying services related to the College Park/Breezy Heights Rehabilitation Project.

**Recommendation(s):** Staff recommends approval of this change order to expand the milling and overlaying program within the project boundaries and parts of the surrounding area.

**Summary:** When the College Park/Breezy Heights Project was bid for construction, the scope of work for the street improvements portion of the project was reduced for two reasons - the neighborhood eliminated some streets from the scope, and staff eliminated other streets due to concerns over rising construction costs. However, the mill and overlay of some of the streets in the neighborhood is included in the current scope of work.

Between the beginning of the design phase and the bidding phase, the construction bidding climate changed. As a result of this reduced scope of work, there is excess budget remaining in the streets portion of the project funding. On April 9, 2009 staff delivered a presentation to Council proposing to use a portion of these excess Street Funds to mill and overlay other streets within the project boundaries and immediately adjacent to the project boundaries that are in need of repair. The streets discussed during that presentation include:

Luther: Fairview to Wellborn  
Park Place: Fairview to Dexter  
Bell: Hereford to Welsh  
West Dexter: Ayrshire to Hereford  
Montclair: Luther to cul-de-sac  
Old Jersey: Fairview to terminus  
Fairview: George Bush to Holleman  
Hereford: Luther to Holleman  
Guernsey: Fairview to West Dexter  
Angus: Fairview to W. Dexter

Since the quantities for mill and overlay increased by more than 25% staff was able to renegotiate the unit price for this work. Staff was able to negotiate a reduction from \$15.50/SY to \$11.50/SY resulting in a savings of over \$120,000. The additional design drawings are now complete and the Construction Contractor is prepared to begin this additional work.

**Budget & Financial Summary:** The original contract for construction services was \$4,116,581.28. This change order will increase the contract by 10.4% to a total of \$4,545,519.78. The current budget for the College Park-Breezy Heights Rehabilitation project is \$5,843,045. Funds in the amount of \$4,776,558 have been expended or committed to date, leaving a balance of \$1,066,487 for this change order and future expenses. The funding sources for this project include the Streets, Drainage, Water and

Wastewater Capital Improvement Projects Funds. This change order will be applied to the portion of the project funded by the Streets Capital Fund, which has a balance of \$568,389.

**Attachments:**

1. Change Order
2. Location Map of the College Park Breezy Heights Rehabilitation Project with original scope of road construction.
3. Location Map of the College Park-Breezy Heights Rehabilitation Project with milling and overlaying expansion.

CHANGE ORDER NO. 1

Contract No. 08-277

DATE: 4 June 2009

P.O.# 081170 PROJECT: College Park/Breezy Heights Rehabilitation

**OWNER:**

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

**CONTRACTOR:**

Brazos Valley Services  
PO Box 985  
Bryan, TX 77805

Ph: (979) 255-3977  
Fax: (936) 399-7012

**PURPOSE OF THIS CHANGE ORDER:**

**A. Milling and Overlaying Expansion:** This change order expands the milling and overlaying program for the College Park/Breezy Heights Rehabilitation Project. In total, the milling and overlaying program is being increased by 37,299 square yards. The street section being added to the programming are: Luther Street from Fairview to Wellborn, Park Place from Fairview to Dexter, Bell Street from Welsh to Hereford, West Dexter Drive, Montclair from Luther St to the end of the cul-de-sac, Old Jersey from Fairview to Bryson Park, Fairview from George Bush to Holleman, Guernsey from Fairview to West Dexter, portions of Kerry to complete the street between Fairview and West Dexter, additional portions of Ayrshire to complete the street between Old Jersey and Bell, additional section of Eleanor to complete the street between Holleman and Montclair, Angus between Fairview and Ayrshire, and portions of Hereford to complete the street between Holleman and West Dexter.

**B. Time Extension:** To complete the additional milling and overlaying the contract is to be extended by 60 days. Additionally since the beginning of the project the contractor has claim to a total of 2 rain days. These 62 days bring the substantial completion date of the project to October 12, 2009.

ITEM NO	UNIT	DESCRIPTION	UNIT PRICE	ORIGINAL QUANTITY	REVISED QUANTITY	ADDED COST
123A	SY	RC-15 Asphalt tack coat (0.15 gal/sy) including related items & appurtenances, complete in place	\$2.00	10803	48102	\$74,598.00
122B	SY	Mill & Dispose of 2" of existing asphalt concrete (Tx DOT specification item 354) including related items & appurtenances, complete in place	\$2.00	0	37299	\$74,598.00
124A	SY	2" Type D HMAC Asphalt pavement including related items & appurtenances, complete in place	\$7.50	0	37299	\$279,742.50
					<b>TOTAL</b>	<b>\$428,938.50</b>

THE NET AFFECT OF THIS CHANGE ORDER IS 10.42% INCREASE.

ORIGINAL CONTRACT AMOUNT	\$4,116,581.28		
Change Order No. 1	\$428,938.50	10.42%	CHANGE
REVISED CONTRACT AMOUNT	\$4,545,519.78	10.42%	TOTAL CHANGE
ORIGINAL CONTRACT TIME	275	Days	
Time Extension No. 1	62	Days	
Revised Contract Time	337		
Completion Date	10/12/09		

APPROVED

6/8/09  
Date

\_\_\_\_\_  
CITY ATTORNEY Date

6/8/09  
Date

\_\_\_\_\_  
DIRECTOR OF FISCAL SERVICES Date

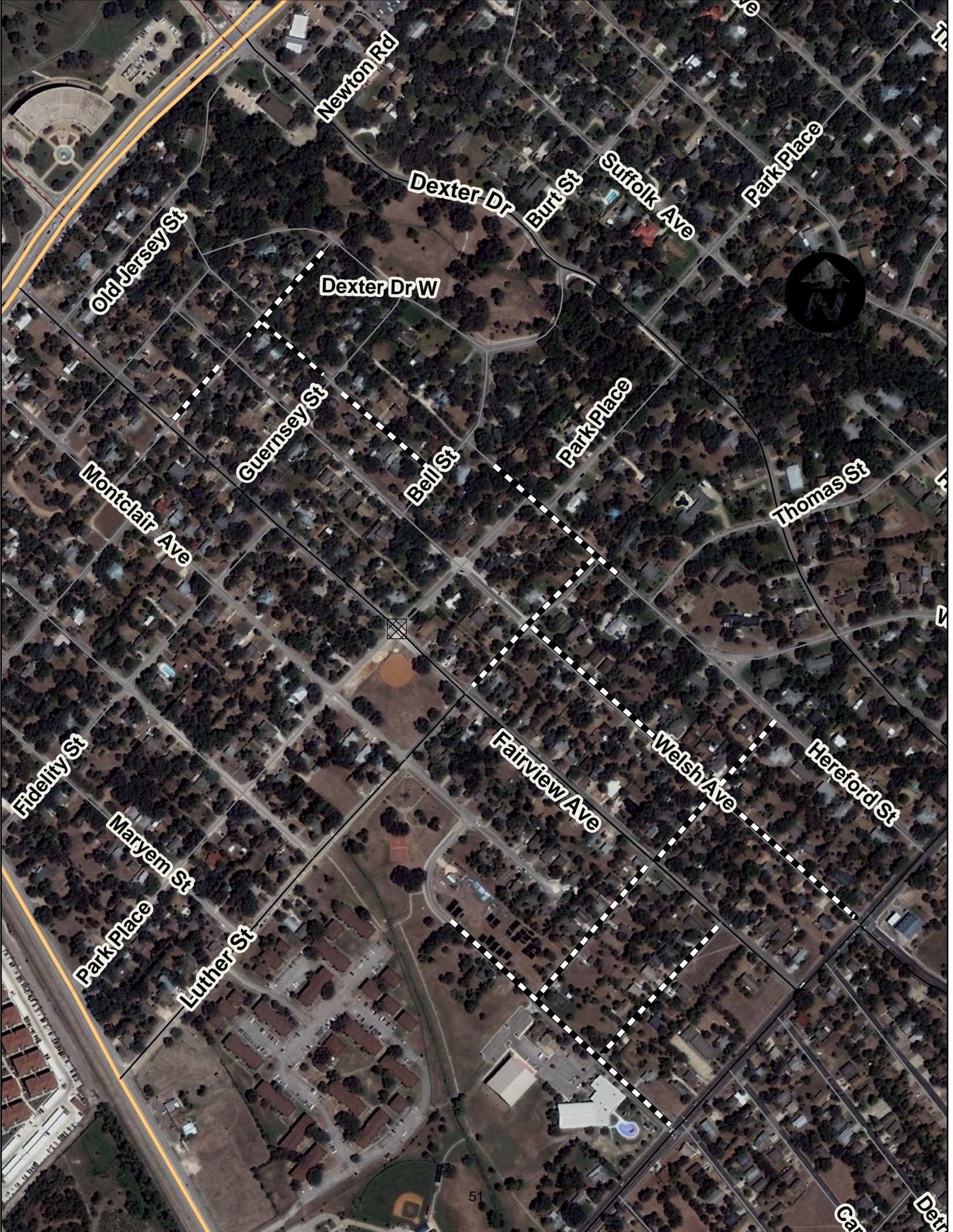
6/8/09  
Date

\_\_\_\_\_  
MAYOR Date

8 June 09  
Date

\_\_\_\_\_  
CITY SECRETARY Date

\_\_\_\_\_  
CITY MANAGER Date



Newton Rd

Dexter Dr

Burt St

Suffolk Ave

Park Place

Old Jersey St

Dexter Dr W

Guernsey St

Bell St

Park Place

Thomas St

Montclair Ave



Fairview Ave

Welsh Ave

Hereford St

Fidelity St

Maryem St

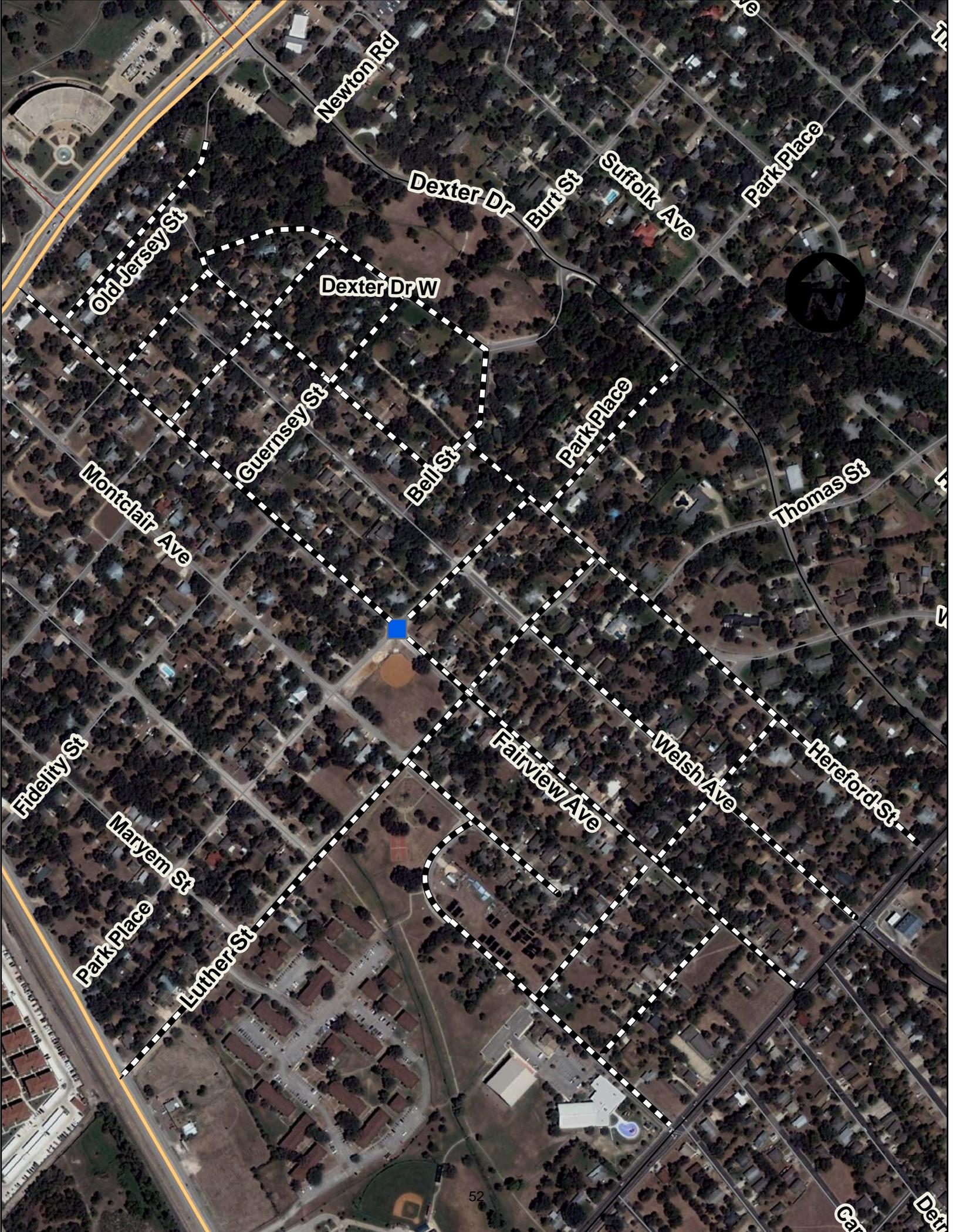
Park Place

Luther St

51

Car

Det



Newton Rd

Dexter Dr

Burt St

Suffolk Ave

Park Place

Old Jersey St

Dexter Dr W

Guernsey St

Bell St

Park Place

Thomas St

Montclair Ave

Fidelity St

Fairview Ave

Welsh Ave

Hereford St

Maryem St

Park Place

Luther St

June 25, 2009  
Consent Agenda Item No. 2j  
Project Number GG0402  
Change Order No. 1 for the Police Department Renovations

**To:** Glenn Brown, City Manager

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

**Agenda Caption:** Presentation, possible action, and discussion regarding a change order to Contract #08-273 in the amount of \$80,624.19 to Siemens for construction work associated with Police Department Renovations Project.

**Recommendation(s):** Staff recommends approval of this item.

**Summary:** This change order expands the security programming for the PD Renovations Project. The change order includes the placement of audio microphones in the front lobby and the jail facility area near booking. The change order also allows for replacement of the old intercom system. The intercom system was originally planned for replacement but was removed from the original project scope due to budget concerns. During construction the intercom system was found to be unsalvageable. The expansion of cameras in the jail area is also part of this change order. A recent audit of the facilities by the Department of Justice recommended this expansion. An alarm and camera system is also proposed for the evidence room to increase security in this area. This change order also proposes to change the jail door configuration to coincide with the new camera system to improve security in this area, particularly for staff working with prisoner transfers. Finally, the change order adds a camera power and servicing to the contract. This shall allow cameras that are being reused to be more compatible with the new system and that all cameras will be powered off the Siemens system and not off individual power sources as the prior system was set up.

**Budget & Financial Summary:** Funds are budgeted in the amount of \$3,686,000 are budgeted for this project in the General Government Capital Improvement Projects Fund. Funds in the amount of \$3,158,751.10 have been expended or committed to date, leaving a balance on \$527,248.90 for this change order and future expenses.

**Attachments:**

1. Change Order No. 1

CHANGE ORDER NO. 1 Contract No. 08-273 DATE: 20 May 2009  
 P.O.# 080210 PROJECT: Police Department Renovations, Project No. GG040:

**OWNER:**  
 City of College Station  
 P.O. Box 9960  
 College Station, Texas 77841

**CONTRACTOR:**  
 Siemens  
 8850 Fallbrook  
 Houston TX 77064

Ph: (281) 949-3040  
 Fax: (281) 949-3100

**PURPOSE OF THIS CHANGE ORDER:**

**A. Audio Microphones in Front Lobby Area:** Two of these mics will be placed in the front lobby area and one will be placed in the jail facility above the booking area. These mics replace our old mics that have been determined to be unusable and now presents a security risk in the Lobby area.

**B. Intercom System Replacement:** During construction, the current intercom system was found to be beyond salvage and unable to be reused. In order to restore effective internal communications within the Police Station, a new system must be installed. This item not only will restore internal communications, but also enhances security within the building.

**C. Jail Facility Camera Expansion:** This is to expand our current camera coverage in the jail to include another DVR (we are at our limit on our current DVR), the addition of 11 vandal proof cameras and installation through concrete walls. A recent Department of Justice Audit of the Police Station noted the deficiency and short comings of the current jail area security system. Installation of these new cameras will address the findings of this audit.

**D. Alarm and Camera for Evidence Room:** The recent review of P.D. by Carroll Buracker & Associates recommended that security in and around the evidence holding room be increased and upgraded through the use of an alarm system and cameras.

**E. Camera Power and Servicing:** Currently each camera has a separate power source at the camera location. It is suggested that power to each camera be a function of the Siemens system in order to better manage camera issues. It is further suggested that each old camera that is being reused be cleaned and calibrated to be used with the new system.

**F. Jail Door Reconfiguration:** P.D. requests a reconfiguration of the Jail door to coincide with the proposed camera expansion in order to prove security of staff working in the jail area and partially transferring prisoners through the jail door area. This includes both items 6 and 7 below.

ITEM NO.	UNIT	DESCRIPTION	UNIT PRICE	ORIGINAL QUANTITY	REVISED QUANTITY	ADDED COST
1	LS	Audio Microphones in Front Lobby Area	\$3,176.00	0	1	\$3,176.00
2	LS	Intercom System Replacement	\$21,928.74	0	1	\$21,928.74
3	LS	Jail Facility Camera Expansior	\$39,044.75	0	1	\$39,044.75
4	LS	Alarm and Cameras for Evidence	\$3,226.98	0	1	\$3,226.98
5	LS	Camera Power and Servicing	\$4,805.59	0	1	\$4,805.59
6	LS	Keyp Pad Installation for Jail Door Reconfiguratio	\$2,164.07	0	1	\$2,164.07
7	LS	Strikes, Faceplates and Push Button for Jail Door Reconfiguratio	\$6,278.06	0	1	\$6,278.06
<b>TOTAL</b>						<b>\$80,624.19</b>

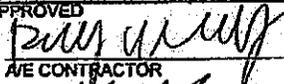
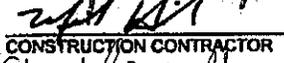
**THE NET AFFECT OF THIS CHANGE ORDER IS A 77.17% INCREASE.**

ORIGINAL CONTRACT AMOUNT	\$104,471.45	
Change Order No. 1	\$80,624.19	77.17% CHANGE
REVISED CONTRACT AMOUNT	\$185,095.64	77.17% TOTAL CHANGE

ORIGINAL CONTRACT TIME	120 Days
Time Extension No. 1	80 Days
Revised Contract Time	210 Days

SUBSTANTIAL COMPLETION DATE	7-Apr-08
Revised Substantial Completion Date	6-Jul-09

**APPROVED**

 _____ CITY ATTORNEY	 _____ CITY ATTORNEY
 _____ CONSTRUCTION CONTRACTOR	_____ DIRECTOR OF FISCAL SERVICES
 _____ PROJECT MANAGER	_____ MAYOR
 _____ DEPARTMENT DIRECTOR	_____ CITY SECRETARY
	_____ CITY MANAGER

Dates: 5/24/09, 5/20/09, 6/3/09, 8-June-09

**June 25, 2009**  
**Consent Agenda Item No. 2k**  
**Change Order No. 3 to JCF Bridge & Concrete, Inc.**  
**Construction Contract**

**To:** Glenn Brown, City Manager

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

**Agenda Caption:** Presentation, possible action, and discussion regarding Change Order No. 3 to the construction contract with JCF Bridge & Concrete, Inc. (Contract No. 09-041) in the amount of \$34,541.50 for the 2005 Bike Loop Phase I – Longmire Improvements project.

**Recommendation(s):** Staff recommends approval of Change Order #3 to the JCF Bridge & Concrete, Inc. contract in the amount of \$34,541.50.

**Summary:** This change order includes reducing the grade of a driveway entrance. The slope on the north side of the driveway increased from 5% to 20% after the curb line was raised to accommodate an inlet box. To resolve this issue, the asphalt transition was extended an additional 16' to reduce the slope on the north side down to 7%.

This change order also includes a Lime-Fly Ash mixture to chemically treat the existing select fill and in-situ materials on FM 2818. Unforeseen site conditions, specifically, moisture conditions in the subgrade beneath the proposed roadway, are preventing the contractor from completing the subgrade preparation and placing the flexible base material. A 2% lime 8% fly ash mix was recommended based on a Geotechnical investigation.

**Budget & Financial Summary:** Change order #3 will result in a net increase of 5.43% of the original contract amount. Funds in the amount of \$1,033,624 have been budgeted for this project from the Streets Capital Improvement Projects Fund. Funds in the amount of \$742,672.48 have been expended or committed to date, leaving a balance of \$290,951.52 for this change order and future expenses.

**Attachments:**

- 1.) Change Order #3
- 2.) JCF proposal
- 3.) Project Map





1 inch equals 500 feet

# 2005 Bike Loop Phase I -- Longmire Improvements

June 25, 2009  
Consent Agenda Item No. 2L  
Phase II Barron Road Capacity Improvements Project

To: Glenn Brown, City Manager

From: Chuck Gilman, Director of Capital Projects

**Agenda Caption:** Presentation, possible action, and discussion to grant a change order for Professional Services Contract #04-176 in the amount of \$161,569.20 to Edwards and Kelcey for additional design services related to Phase II of the Barron Road Capacity Improvements Project.

**Recommendation(s):** Staff recommends approval of this Change Order.

**Summary:** This change order covers additional engineering design services for the Barron Road Capacity Improvements Project. The phase limits of the project need to be revised and re-annotated on the project sheets that will ultimately be used for the construction plans. These changes are due to the change in construction phasing that resulted from prolonged easement negotiations with other entities along portions of Barron Road. The topographic and utility survey for the project needs to be updated due to several changes along the project corridor including the construction of Fire Station 3, the completion of State Highway 40, and the opening of new subdivisions. The analysis of drainage associated with the Westfield subdivision and the detention pond for the subdivision needs to be reanalyzed with updated flow data. Additionally, College Station Utilities has requested infrastructure to be included in the project scope. The original contract did not include bid assistance, construction administration or material testing for Phase II of the project.

**Budget & Financial Summary:** The original contract amount for Professional Services was \$678,313.00. This change order increases the contract by \$161,569.20 to a new total of \$839,882.20. Funds in the amount of \$3,000,000 are budgeted in the Streets Capital Improvement Projects Fund for the Barron Road Design and Capacity Improvements. These funds are part of the 2003 General Obligation Bond funds. In addition, funds in the amount of \$100,000 are budgeted in the Water Capital Improvement Projects Fund and funds in the amount of \$100,000 are budgeted in the Wastewater Capital Improvement Projects Fund for the water and wastewater components of this project. Funds in the amount of \$2,620,034.22 have been expended or committed to date, leaving a balance of \$579,965.78, which will cover this change order and any future expenses.

**Attachments:**

1. Change Order
2. Location Map of the Barron Road Capacity Improvements Project

**CHANGE ORDER NO. 1** Contract No. 04-176 DATE: 6/01/2009  
P.O.# 050184 PROJECT: Barron Road Capacity Improvement, Phase I; Project Number: ST0409

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

**CONTRACTOR:** Edwards and Kelcey  
526 E University Drive, Suite 201A  
College Station, Texas 77840  
Ph: (979) 764-9119 Fax: (979) 764-9229

**PURPOSE OF THIS CHANGE ORDER:**

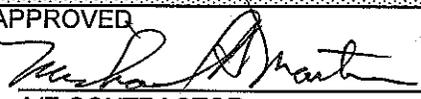
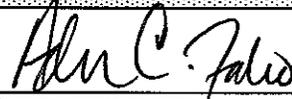
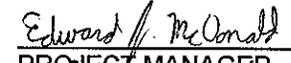
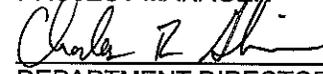
A. Design consultant fee increase due to change in scope.

ITEM NO	UNIT	DESCRIPTION	UNIT PRICE	ORIGINAL QUANTITY	REVISED QUANTITY	ADDED COST
1	LS	Final Design (Additional design necessary for increased storm sewer capacity, additional surveying, phasing and additional intersections, and addition of underground electrical and street lighting.)	\$68,330.40	0	1	\$68,330.40
2	LS	Bid Preparation and Evaluation for Phase II of the project	\$7,187.60	0	1	\$7,187.60
2	LS	Construction Assistance for Phase II of the project.	\$45,875.20	0	1	\$45,875.20
3	T&M	Construction Materials Testing not to exceed	\$40,176.00	0	1	\$40,176.00
					TOTAL	\$161,569.20

THE NET AFFECT OF THIS CHANGE ORDER IS A 23.82% INCREASE.

ORIGINAL CONTRACT AMOUNT	\$678,313.00	
Change Order No. 1	\$161,569.20	23.82% CHANGE
REVISED CONTRACT AMOUNT	\$839,882.20	23.82% TOTAL CHANGE

APPROVED

 A/E CONTRACTOR	6/3/09	 CITY ATTORNEY
 PROJECT MANAGER	6/3/09	_____ CHIEF FINANCIAL OFFICER
 DEPARTMENT DIRECTOR	8-June-09	_____ CITY MANAGER
		_____ MAYOR
		_____ CITY SECRETARY



State Hwy 6

Phase 2

Phase 1

Barron Road

CSISD  
Property

Phase 3

Wellborn Road

**June 25, 2009**  
**Consent Agenda Item No. 2m**  
**2005 Bike Loop Phase II – CS Bike Loop Completion**  
**Advanced Funding Agreement**

**To:** Glenn Brown, City Manager

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

**Agenda Caption:** Presentation, possible action, and discussion concerning a resolution to approve an Advance Funding Agreement (AFA) with the Texas Department of Transportation (TxDOT) to construct the third and final phase of the College Station Bike Loop under the Statewide Transportation Enhancement Program. The estimated cost of the City's participation is \$312,552.

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

**Summary:** This AFA is required by TxDOT to complete the final portion of the College Station Bike Loop project (Phase III), granted under the Statewide Transportation Enhancement Program (STEP) because a portion of the improvements will be constructed in the TxDOT right-of-way.

The total cost for this phase of the bike loop is estimated at \$591,552. The overall project was an 80/20 State/Local match, with a remaining balance of \$279,000 in the STEP grant after Phase I and Phase II. The estimated cost to the City is \$312,552.

Phase I included on-street facilities (Bike Routes and Lanes), as well as providing sufficient signs and markings to retrofit certain park paths to bring them up to the requirements of the loop. Phase II included construction of 7,664 L.F. (1.45 miles) of off-street bike paths through Central Park, Lemon Tree Park, and Bee Creek Park.

Phase III of the project will add 4,500 L.F. (0.85 miles) of a 10-ft wide concrete bike path. It will connect with the terminus of Phase II in Bee Creek Park, continuing along the creek maintenance shelf, and loop around the Arboretum area to connect to the existing bike path in Bee Creek Park.

**Budget & Financial Summary:** Funds in the amount of \$1,529,826 are budgeted for the completion of the College Station Bike Loop project as part of the ST0530 (\$327,202 – Bike Loop project), ST9803 (\$169,000 – Miscellaneous Bike Trails), and ST0521 (\$1,033,624 – Hike and Bike Trails project). Including the pending change order presented to Council 6/25/09, funds in the amount of \$814,061.30 have been expended or committed to date, leaving a balance of \$715,764.70 for Phase III and future expenses.

**Attachments:**

- 1.) Advance Funding Agreement
- 2.) Resolution
- 3.) Project Map

STATE OF TEXAS           §  
COUNTY OF TRAVIS       §

**ADVANCE FUNDING AGREEMENT  
For A TRANSPORTATION ENHANCEMENT PROJECT**

**This Advance Funding Agreement for a transportation enhancement project (the Agreement)** is made by and between the State of Texas, acting by and through the Texas Department of Transportation, hereinafter called the "State", and the City of College Station, acting by and through its duly authorized officials hereinafter called the "Local Government."

**WITNESSETH**

**WHEREAS**, the Local Government prepared and submitted to the State a nomination form for consideration under the Statewide Transportation Enhancement Program for the project which is briefly described as the College Station Bike Loop, hereinafter called the Project; and

**WHEREAS**, federal law establishes federally funded programs for transportation improvements to implement its public purposes; and

**WHEREAS**, Title 23 U.S.C. Section 134 requires that Metropolitan Planning Organizations and the States' Transportation Agencies to develop transportation plans and programs for urbanized areas of the State; and

**WHEREAS**, the Texas Transportation Code, Sections 201.103 and 222.052 establish that the State shall design, construct and operate a system of highways in cooperation with local governments; and

**WHEREAS**, federal and state laws require local governments to meet certain contract standards relating to the management and administration of State and federal funds; and

**WHEREAS**, the Texas Transportation Commission passed Minute Order 103709 awarding funding for projects in the 2001 Program Call of the Statewide Transportation Enhancement Program, including the Project; and

**WHEREAS**, the rules and procedures for the selection and administration of the Statewide Transportation Enhancement Program are established in 43 TAC Sections 11.200 et seq.; and

**WHEREAS**, the governing body of the Local Government has approved entering into this Agreement by resolution or ordinance dated June 25, 2009, which is attached hereto and made a part hereof as Attachment A;

**NOW, THEREFORE**, in consideration of the premises and of the mutual covenants and agreements of the parties hereto, to be by them respectively kept and performed as hereinafter set forth, it is agreed as follows:

## AGREEMENT

### 1. Period of the Agreement

This Agreement becomes effective when signed by the last party whose signing makes the Agreement fully executed. This Agreement shall remain in effect until terminated as provided in Article 2.

### 2. Termination of this Agreement

This agreement may be terminated by any of the following conditions:

- by mutual written consent and agreement of all parties.
- by any party with 90 days written notice.
- by either party, upon the failure of the other party to fulfill the obligations as set forth in this Agreement. Any cost incurred due to such breach of contract shall be paid by the breaching party.

- A. The termination of this Agreement shall extinguish all rights, duties, obligations and liabilities of the State under this Agreement. If the potential termination of the Agreement is due to the failure of the Local Government to fulfill its contractual obligations, the State will notify the Local Government that possible breach of contract has occurred. The Local Government should make every effort to remedy the breach within a period mutually agreed upon by both parties.
- B. If the Local Government withdraws from the Project after this Agreement is executed, it shall be responsible for all direct and indirect Project costs as identified by the State's cost accounting system.
- C. A Project may be eliminated from the program as outlined below. If the Project is eliminated for any of these reasons, this Agreement will be appropriately terminated. A Project may be eliminated from the program, and this Agreement terminated, if:
  - i. The Local Government fails to satisfy any requirements of the program rules cited as 43 TAC §11.200 et seq.
  - ii. The implementation of the Project would involve significant deviation from the activities as proposed in the nomination form.
  - iii. The Local Government withdraws from participation in the Project.
  - iv. The Project is not implemented within a reasonable time, as determined by the State in consultation with the Local Government. In absence of information suggesting that a shorter or longer period is appropriate, three years or less from the date of inclusion in the Statewide Transportation Improvement Plan (STIP) will be presumed to be a reasonable time.
  - v. The State determines that federal funding may be lost due to the Project not being implemented and completed.

### 3. Amendments

This Agreement may be amended due to changes in the work or amount of funding required to complete the Project or other material, required changes in the responsibilities of the parties. Such amendment must be made through a mutually agreed upon, written amendment that is executed by the parties.

#### 4. Scope of Work

The scope of work for the Project which is at the location shown in Attachment B, Project Location Map, as described in the nomination form, and as approved by the Texas Transportation Commission, consists of Phase III of the College Station Bike Loop project to construct a bike/pedestrian path through Bee Creek Park in College Station, Texas.

#### 5. Right of Way and Real Property Acquisition

Right-of-way and real property acquisition shall be the responsibility of the Local Government. Title to right of way and other related real property must be acceptable to the State before funds may be expended for the improvement of the right of way or real property. If the Local Government is the owner of any part of the project site under this Agreement, the Local Government shall permit the State or its authorized representative access to occupy the site to perform all activities required to execute the work.

All parties to this agreement will comply with and assume the costs for compliance with all the requirements of Title II and Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Title 42 U.S.C.A. Section 4601 et seq., including those provisions relating to incidental expenses incurred by the property owners in conveying the real property to the Local Government, and benefits applicable to the relocation of any displaced person as defined in 49 CFR Section 24.2(g). Documentation to support such compliance must be maintained and made available to the State and its representatives for review and inspection.

- A. The Local Government shall assume all costs and perform necessary requirements to provide any necessary evidence of title or right of use in the name of the Local Government to the real property required for development of the Project. The evidence of title or rights shall be acceptable to the State, and be free and clear of all encroachments. The Local Government shall secure and provide easements and any needed rights of entry over any other land needed to develop the Project according to the approved Project plans. The Local Government shall be responsible for securing any additional real property required for completion of the Project.
- B. In the event real property is donated to the Local Government after the date of the State's authorization, the Local Government will provide all documentation to the State regarding fair market value of the acquired property. The State will review the Local Government's appraisal, determine the fair market value and credit that amount towards the Local Government's financial share. If donated property is to be used as a funding match, it may not be provided by the Local Government. The State will not reimburse the Local Government for any real property acquired before execution of this agreement and the State's issuance of a letter of funding authority.
- C. The Local Government shall prepare real property maps, property descriptions, and other data as needed to properly describe the real property and submit them to the State for approval prior to the Local Government acquiring the real property. Tracings of the maps shall be retained by the Local Government for a permanent record.
- D. The Local Government agrees to make a determination of property values for each real property parcel by methods acceptable to the State and to submit to the State a tabulation of the values so determined, signed by the appropriate Local Government representative. The tabulations shall list the parcel numbers, ownership, acreage and recommended compensation.

Compensation shall be shown in the component parts of land acquired, itemization of improvements acquired, damages (if any) and the amounts by which the total compensation will be reduced if the owner retains improvements. This tabulation shall be accompanied by an explanation to support the determined values, together with a copy of information or reports used in calculating all determined values. Expenses incurred by the Local Government in performing this work may be eligible for reimbursement after the Local Government has received written authorization by the State to proceed with determination of real property values. The State will review the data submitted and may base its reimbursement for parcel acquisitions on these values.

- E. Condemnation shall not be used to acquire real property for this enhancement Project.
- F. Reimbursement for real property costs will be made to the Local Government for real property purchased in an amount not to exceed eighty percent (80%) of the cost of the real property purchased in accordance with the terms and provisions of this agreement. Reimbursement will be in an amount not to exceed eighty percent (80%) of the State's predetermined value of each parcel, or the net cost thereof, whichever is less. In addition, reimbursement will be made to the Local Government for necessary payments to appraisers, expenses incurred in order to assure good title, and costs associated with the relocation of displaced persons and personal property as well as incidental expenses.
- G. If the Project requires the use of real property to which the Local Government will not hold title, a separate agreement between the owners of the real property and the Local Government must be executed prior to execution of this Agreement. The separate agreement must establish that the Project will be dedicated for public use for a period of not less than 10 (ten) years after completion. The separate agreement must define the responsibilities of the parties as to the use of the real property and operation and maintenance of the Project after completion. This agreement must be approved by the State prior to its execution. A copy of the executed agreement shall be provided to the State.

## 6. Utilities

The Local Government shall be responsible for the adjustment, removal, or relocation of utility facilities in accordance with applicable State laws, regulations, rules, policies, and procedures, including any cost to the State of a delay resulting from the Local Government's failure to ensure that utility facilities are adjusted, removed, or relocated before the scheduled beginning of construction. The Local Government will not be reimbursed with federal or state funds for the cost of required utility work. The Local Government must obtain advance approval for any variance from established procedures. Before a construction contract is let, the Local Government shall provide, at the State's request, a certification stating that the Local Government has completed the adjustment of all utilities that must be adjusted before construction is completed.

## 7. Environmental Assessment and Mitigation

Development of the Project must comply with the National Environmental Policy Act and the National Historic Preservation Act of 1966, which require environmental clearance of federal-aid projects.

- A. The Local Government is responsible for the identification and assessment of any environmental problems associated with the development of the Project.
- B. The Local Government is responsible for the cost of any environmental problem's mitigation and remediation.

- C. The Local Government is responsible for providing any public meetings or public hearings required for development of the environmental assessment.
- D. The Local Government shall provide the State with written certification from appropriate regulatory agency(ies) that identified environmental problems have been remediated.

These costs will not be reimbursed or credited towards the Local Government's financial share of the Project unless specified in the nominating form and approved by the State.

Forty five (45) days prior to any construction contract let date, the Local Government shall provide a certification to the State that all real property has been acquired, all environmental problems have been remediated, and all conflicting utilities have been adjusted.

**8. Compliance with Texas Accessibility Standards and ADA**

All parties to this agreement shall ensure that the plans for and the construction of the project subject to this Agreement are in compliance with the Texas Accessibility Standards (TAS) issued by the Texas Department of Licensing and Regulation, under the Architectural Barriers Act, Article 9102, Texas Civil Statutes. The TAS establishes minimum accessibility requirements to be consistent with minimum accessibility requirements of the Americans with Disabilities Act (P.L. 101-336) (ADA).

**9. Architectural and Engineering Services.**

Architectural and engineering services will be provided by a qualified firm(s) selected by the City of College Station. In procuring professional services, the parties to this agreement must comply with federal requirements cited in 23 CFR Part 172 if the project is federally funded and with Texas Government Code 2254, Subchapter A, in all cases. Professional services contracts for federally funded projects must conform to federal requirements.

- A. The architectural contract documents shall be developed in accordance with the standards of the American Institute of Architects, the U.S. Secretary of the Interior's *Standards for Historic Preservation Projects, Standards and Guidelines for Archeology and Historic Preservation, the National Register Bulletin Number 36: Guidelines for Evaluating and Registering Historical Archeological Sites* and in consultation with the State Historic Preservation Officer, as applicable. The engineering plans shall be developed in accordance with the State's applicable *Standard Specifications for Construction and Maintenance of Highways, Streets and Bridges* and the two AASHTO publications, "A Policy on Geometric Design of Highways and Streets" and "Guide for the Development of Bicycle Facilities," as applicable. All contract procurement procedures and documents must adhere to the applicable requirements established in the *Standard Specifications for Construction and Maintenance of Highways, Streets and Bridges*. The use of other systems of specifications shall be approved by the State in writing in advance.
- B. The Local Government shall submit any plans it has completed to the State for review and approval. The Local Government may also submit the plans to the State for review anytime prior to completion. The Local Government shall make the necessary revisions determined by the State. The Local Government will not let the construction contract until all required plans have received State approval.
- C. The Local Government shall submit to the State all documentation relating to authorized costs incurred for providing architectural and engineering services. Reasonable, allowable, and allocable costs incurred by the Local Government, after the Local Government has obtained

written authorization from the State to incur costs, will be eligible for reimbursement at an amount not to exceed eighty percent (80%) of the eligible authorized costs.

#### **10. Construction Responsibilities**

- a. The City of College Station shall advertise for construction bids, issue bid proposals, receive and tabulate the bids and award and administer the contract for construction of the Project. Administration of the contract includes the responsibility for construction engineering and for issuance of any change orders, supplemental agreements, amendments, or additional work orders, which may become necessary subsequent to the award of the construction contract. In order to ensure federal funding eligibility, projects must be authorized by the State prior to advertising for construction.
- b. All contract letting and award procedures must be approved by the State prior to letting and award of the construction contract, whether the construction contract is awarded by the State or by the Local Government.
- c. All contract change order review and approval procedures must be approved by the State prior to start of construction.
- d. Upon completion of the Project in accordance with all applicable rules and regulations, the party constructing the project will issue and sign a "Notification of Completion" acknowledging the Project's construction completion.

For federally funded contracts, the parties to this agreement will comply with federal construction requirements cited in 23 CFR Part 635 and with requirements cited in 23 CFR Part 633, and shall include the latest version of Form "FHWA-1273" in the contract bidding documents. If force account work will be performed, a finding of cost effectiveness shall be made in compliance with 23 CFR Part 635, Subpart B.

Any field changes, supplemental agreements or revisions to the design plans that may occur after the construction contract is awarded will be mutually agreed to by the State and the Local Government prior to authorizing the contractor to perform the work. Prior to completion of the Project, the party responsible for construction will notify the other party to this Agreement of the anticipated completion date. All parties will be afforded the opportunity to assist in the final review of the construction services performed by the contractor.

#### **11. Project Maintenance.**

Upon completion of the Project, the Local Government will be responsible for maintaining the completed facility for public use for a period of at least ten (10) years. Any manufacturer warranties extended to the Local Government as a result of the Project shall remain in the name of the Local Government. The State shall not be responsible for honoring any warranties under this agreement.

#### **12. Local Project Sources and Uses of Funds**

- A. Project Cost Estimate: A Project Cost Estimate and Payment Schedule is provided in Attachment C, showing the total estimated development cost of the Project. This estimate shows the itemized cost of real property, utilities, environmental assessments and remediation, architectural and engineering activities, construction, and any other substantial items of cost. To be eligible for reimbursement, costs must have been included in the itemized budget section of the nomination form approved by the Texas Transportation Commission. The State and the Federal Government will not reimburse the Local Government for any work

performed before the issuance of a formal Letter of Authority by the Federal Highway Administration. The Local Government is responsible for 100% of the cost of any work performed under its direction or control before the federal Letter of Authority is formally issued.

- B.** A Source of Funds estimate is also provided in Attachment C. Attachment C shows the percentage and absolute dollar amounts to be contributed to the Project by federal, state, and local sources.
- C.** The Local Government will be responsible for all non-federal participation costs associated with the Project, including any overruns in excess of the Project cost estimate and any operating or maintenance expenses. Donations of real property, cash, materials, and services required for the development of the Project may be eligible to count towards the local funding share of a project as in-kind contributions. In order to be considered as an eligible in-kind contribution, donations must be made by public, non-profit, governmental or non-governmental organizations. The value of the donated contributions of real property, materials, or services will be based on fair market value. In-kind donations of services are limited to preparation of plans, specifications and estimates, and may account for no more than ten percent (10%) of the allowable Project's cost. The remaining balance of the local contribution shall be in cash, donated real property or materials. The Local Government may also provide services or materials to reduce the overall cost of a Project, but it will not be considered as an in-kind contribution. Donations of real property must be from sources other than the Local Government.
- D.** The State will be responsible for securing the federal share of funding required for the development and construction of the Project, in an amount not to exceed eighty percent (80%) of the actual cost of the work up to the amount of funds approved for the Project by the Texas Transportation Commission. Federal funds will be reimbursed on a cost basis. Project costs incurred prior to Project selection by the Texas Transportation Commission and approval by the State to proceed are not eligible for reimbursement.
- E.** Following execution of this Agreement, but prior to the performance of any review work by the State, the Local Government will pay an amount sufficient to cover the estimated cost for the State's review of the preliminary plans, specification, and engineering (PS&E) work. The Local Government shall advance to the State an amount equal to four percent (4%) of the value of the project. The estimated amount of this advance for this Project is \$ 22,752.
- F.** In the event the State determines that additional funding is required by the Local Government at any time during the Project, the State will notify the Local Government in writing. The Local Government is responsible for 20% of the authorized project cost and any overruns. The Local Government will make payment to the State within thirty (30) days from receipt of the State's written notification.
- G.** Whenever funds are paid by the Local Government to the State under this agreement, the Local Government will remit a warrant made payable to the "Texas Department of Transportation Trust Fund." The warrant will be deposited by the State in an escrow account to be managed by the State. Until the final project accounting, funds in the escrow account may only be applied by the State to the Project.
- H.** Upon completion of the Project, the State will perform an audit of the Project costs. Any funds due by the Local Government, the State, or the Federal Government will be promptly paid by the owing party. If, after final Project accounting, excess funds remain in the escrow account, those funds may be applied by the State to the Local Government's contractual obligations to the State under another advance funding agreement.

- I. In the event the Project is not completed, the State may seek reimbursement from the Local Government of the expended federal funds. The Local Government will remit the required funds to the State within sixty (60) days from receipt of the State's notification.
- J. The State will not pay interest on any funds provided by the Local Government.
- K. The State will not execute the contract for the construction of the Project until the required funding has been made available by the Local Government in accordance with this Agreement.
- L. If any existing or future local ordinances, commissioners court orders, rules, policies, or other directives, including but not limited to outdoor advertising billboards and storm water drainage facility requirements, are more restrictive than State or Federal Regulations, or if any other locally proposed changes, including but not limited to plats or replats, result in increased costs, then any increased costs associated with the ordinances or changes will be paid by the local government. The cost of providing right of way acquired by the State shall mean the total expenses in acquiring the property interests either through negotiations or eminent domain proceedings, including but not limited to expenses related to relocation, removal, and adjustment of eligible utilities.
- M. The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the contract or indirectly through a subcontract under the contract. Acceptance of funds directly under the contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

**13. Notices**

All notices to either party by the other required under this agreement shall be delivered personally or sent by certified or U.S. mail, postage prepaid or sent by electronic mail, (electronic notice being permitted to the extent permitted by law but only after a separate written consent of the parties), addressed to such party at the following addresses:

<b>Local Government:</b>	<b>State:</b>
City of College Station 2613 Texas Avenue College Station, Texas 77842	Robert A. Appleton, P.E. Bryan Director of TP&D 1300 N. Texas Avenue Bryan, Texas 77803

All notices shall be deemed given on the date so delivered or so deposited in the mail, unless otherwise provided herein. Either party may change the above address by sending written notice of the change to the other party.

Either party may request in writing that such notices shall delivered personally or by certified U.S. mail and such request shall be honored and carried out by the other party.

**14. Legal Construction**

In case one or more of the provisions contained in this agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions and this agreement shall be construed as if it did not contain the invalid, illegal or unenforceable provision.

**15. Responsibilities of the Parties**

The State and the Local Government agree that neither party is an agent, servant, or employee of the other party and each party agrees it is responsible for its individual acts and deeds as well as the acts and deeds of its contractors, employees, representatives, and agents.

**16. Ownership of Documents**

Upon completion or termination of this agreement, all documents prepared by the State shall remain the property of the State. All data prepared under this agreement shall be made available to the State without restriction or limitation on their further use. All documents produced or approved or otherwise created by the Local Government shall be transmitted to the State in the form of photocopy reproduction on a monthly basis as required by the State. The originals shall remain the property of the Local Government.

**17. Document and Information Exchange**

The Local Government agrees to electronically deliver to the State all general notes, specifications, contract provision requirements and related documentation in a Microsoft® Word or similar document. If requested by the State, the Local Government will use the State's document template. The Local Government shall also provide a detailed construction time estimate including types of activities and month in the format required by the State. This requirement applies whether the Local Government creates the documents with its own forces or by hiring a consultant or professional provider. At the request of the State, the Local Government shall submit any information required by the State in the format directed by the State.

**18. Compliance with Laws**

The parties shall comply with all Federal, State, and Local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of this agreement. When required, the Local Government shall furnish the State with satisfactory proof of this compliance.

**19. Sole Agreement**

This Agreement constitutes the sole and only agreement between the parties and supersedes any prior understandings or written or oral agreements respecting the agreement's subject matter.

**20. Cost Principles**

In order to be reimbursed with federal funds, the parties shall comply with the Cost Principles established in OMB Circular A-87 that specify that all reimbursed costs are allowable, reasonable and allocable to the Project.

**21. Procurement and Property Management Standards**

The parties shall adhere to the procurement standards established in Title 49 CFR §18.36 and with the property management standard established in Title 49 CFR §18.32.

**22. Inspection of Books and Records**

The parties to this Agreement shall maintain all books, documents, papers, accounting records and other documentation relating to costs incurred under this Agreement and shall make such materials available to the State, the Local Government, and, if federally funded, the Federal Highway Administration (FHWA), and the U.S. Office of the Inspector General, or their duly authorized representatives for review and inspection at its office during the contract period and for four (4) years from the date of completion of work defined under this contract or until any impending litigation, or claims are resolved.

Additionally, the State, the Local Government, and the FHWA and their duly authorized representatives shall have access to all the governmental records that are directly applicable to this Agreement for the purpose of making audits, examinations, excerpts, and transcriptions.

**23. Office of Management and Budget (OMB) Audit Requirements**

The parties shall comply with the requirements of the Single Audit Act of 1984, P.L. 98-502, ensuring that the single audit report includes the coverage stipulated in OMB Circular A-133.

**24. Civil Rights Compliance**

The Local Government shall comply with the regulations of the Department of Transportation as they relate to nondiscrimination (49 CFR Chapter 21 and 23 CFR §710.405(B)), and Executive Order 11246 titled "Equal Employment Opportunity," as amended by Executive Order 11375 and supplemented in the Department of Labor Regulations (41 CFR Part 60).

**25. Disadvantaged Business Enterprise Program Requirements**

The parties shall comply with the Disadvantaged/Minority Business Enterprise Program requirements established in 49 CFR Part 26.

**26. Debarment Certifications**

The parties are prohibited from making any award at any tier to any party that is debarred or suspended or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549, "Debarment and Suspension." By executing this agreement, the [Contractor, Local Government, Engineer, or whatever] certifies that it is not currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549. The parties to this contract shall require any party to a subcontract or purchase order awarded under this contract to certify its eligibility to receive Federal funds and, when requested by the State, to furnish a copy of the certification.

**27. Lobbying Certification**

In executing this Agreement, the signatories certify to the best of his or her knowledge and belief, that:

- a. No federal appropriated funds have been paid or will be paid by or on behalf of the parties to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

- b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with federal contracts, grants, loans, or cooperative agreements, the signatory for the Local Government shall complete and submit the federal Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c. The parties shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. Submission of this certification is a prerequisite imposed by Title 31 U.S.C. §1352 for making or entering into this transaction. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**28. Insurance**

If this agreement authorizes the Local Government or its contractor to perform any work on State right of way, before beginning work the entity performing the work shall provide the State with a fully executed copy of the State's Form 1560 Certificate of Insurance verifying the existence of coverage in the amounts and types specified on the Certificate of Insurance for all persons and entities working on State right of way. This coverage shall be maintained until all work on the State right of way is complete. If coverage is not maintained, all work on State right of way shall cease immediately, and the State may recover damages and all costs of completing the work.

**29. Signatory Warranty.**

The signatories to this Agreement warrant that each has the authority to enter into this Agreement on behalf of the party represented.

**IN TESTIMONY HEREOF**, the parties hereto have caused these presents to be executed in duplicate counterparts.

**THE LOCAL GOVERNMENT**

By: \_\_\_\_\_  
(Signature) MAYOR

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

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

**ATTEST:**

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

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

**THE STATE OF TEXAS**

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

By: \_\_\_\_\_  
Janice Mullenix  
Director of Contract Services  
Texas Department of Transportation

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

**APPROVED:**

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

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

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

City Attorney

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

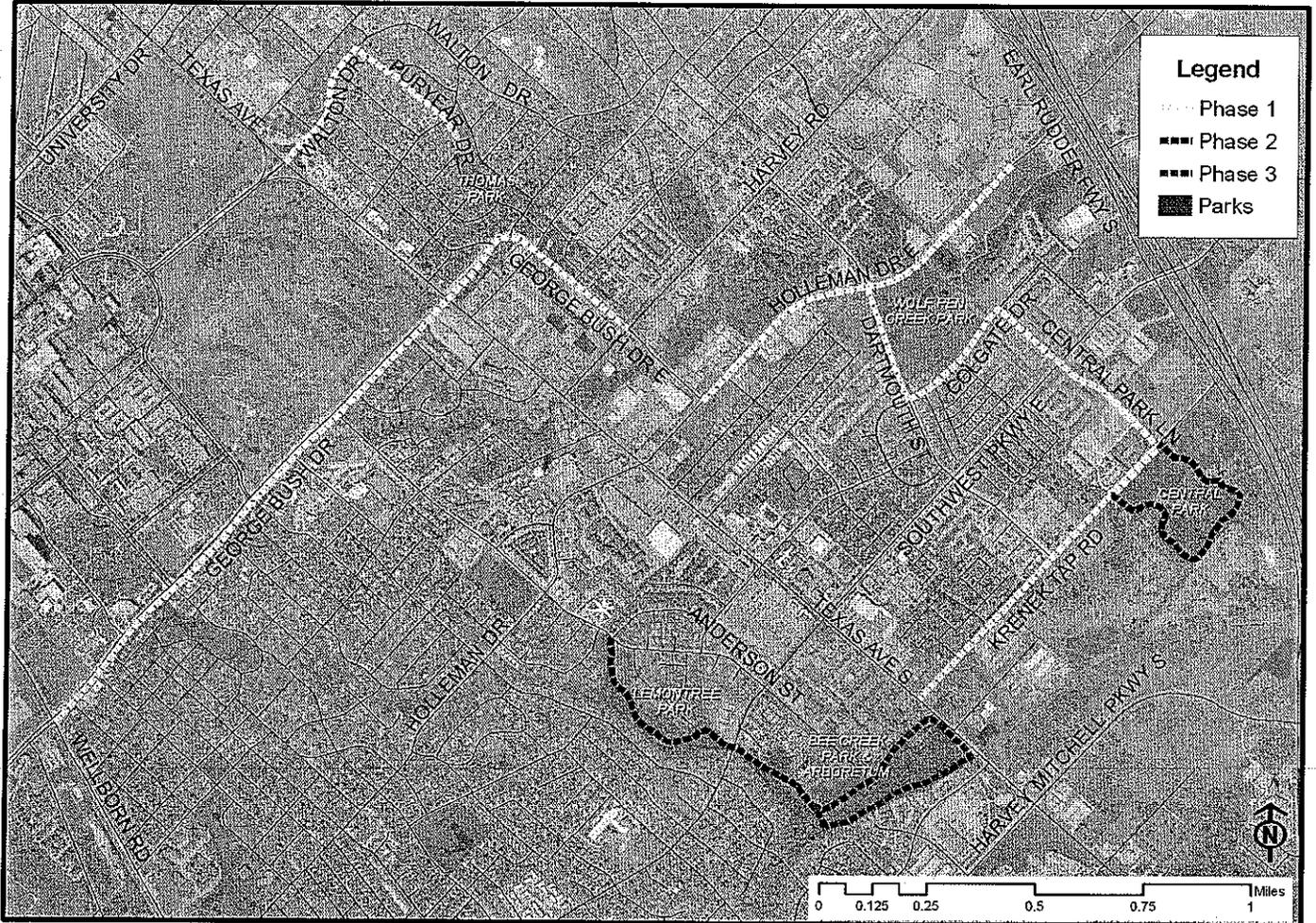
\_\_\_\_\_  
Chief Financial Officer

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

**ATTACHMENT A**  
**RESOLUTION OF LOCAL GOVERNMENT**

# ATTACHMENT B

## PROJECT LOCATION MAP



# ATTACHMENT C

## PROJECT ESTIMATE AND SOURCE OF FUNDS

### CONSTRUCTION ESTIMATE

CNTY #	Project Name	Project Number	ESTIMATOR	DATE			
BRAZOS	BIKEWAY PHASE II		D. Besly	7/8/2008			
ITEM	CODE	DESCRIPTION	UNIT	QUANTITY	BID PRICE	TOTAL	SUBTOTAL
100	2002	PREPARING ROW	STA	46.00	\$400.00	\$18,400.00	
496	0	REMOVE CONC DITCH INTERCEPTOR STRUCTOR (24" RCP)	EA	1.00	\$1,000.00	\$1,000.00	
496	2007	REMOV STR (PIPE)	LF	9.00	\$20.00	\$180.00	
							\$19,580.00
0	350	CONC PAVEMENT 6" (COLORED)	SY	24.50	\$60.00	\$1,470.00	
110	2001	EXCAVATION (ROADWAY)	CY	813.90	\$5.00	\$4,069.50	
132	2005	EMBANKMENT (FINAL) (ORD COMP) (TY C)	CY	2,729.50	\$6.00	\$16,377.00	
260	2006	LIME TRT (EXST MATL) (6")	SY	6,070.00	\$10.00	\$60,700.00	
360	0	FIBER REINFORCED CONC PAVEMENT (6")	SY	879.00	\$50.00	\$43,950.00	
360	2023	CONC PAV (JOINT REINF) (6")	SY	4,177.10	\$45.00	\$187,969.50	
618	2018	COND (PVC) (SCHD 40) (2")	LF	3,733.00	\$7.00	\$26,131.00	
							\$340,667.00
160	2003	FURNISHING AND PLACING TOPSOIL (4")	SY	10,310.00	\$2.00	\$20,620.00	
162	2002	BLOCK SODDING	SY	10,310.00	\$3.00	\$30,930.00	
166	2001	FERTILIZER	AC	2.14	\$2,000.00	\$4,280.00	
168	2001	VEGETATIVE WATERING	MG	256.00	\$10.00	\$2,560.00	
506	2013	BALED HAY	EA	10.00	\$10.00	\$100.00	
506	2034	TEMPORARY SEDIMENT CONTROL FENCE	LF	6,800.00	\$3.00	\$17,400.00	
							\$75,890.00
666	2176	REF PAV MRK TY II (Y) 4" (BRK)	LF	1,137.00	\$0.50	\$568.50	
							\$568.50
400	2005	CEM STABIL BKFL	CY	36.40	\$130.00	\$4,732.00	
432	2002	RIPRAP (CONC) (5 IN)	CY	19.55	\$450.00	\$8,797.50	
462	2003	CONC BOX CLUV (4 FT X 2 FT)	LF	32.00	\$180.00	\$5,760.00	
464	2003	RC PIPE (CL III)(18 IN)	LF	109.00	\$50.00	\$5,450.00	
464	2005	RC PIPE (CL III)(24 IN)	LF	27.00	\$90.00	\$2,430.00	
466	0	CONC APRON WITH SLOPING HEADWALL (24" DIA)	EA	1.00	\$2,500.00	\$2,500.00	
466	2020	WINGWALL (FW-0) (HW=4 FT)	EA	2.00	\$5,000.00	\$10,000.00	
466	2063	HEADWALL (CH-FW-30) (DIA=18 IN)	EA	2.00	\$2,700.00	\$5,400.00	
466	2108	HEADWALL (CH-FW-45) (DIA=18 IN)	EA	2.00	\$3,500.00	\$7,000.00	
481	2013	PVC PIPE (SCH 40) (8 IN)	LF	96.00	\$40.00	\$3,840.00	
							\$55,639.50
5 % MOBILIZATION							
TOTAL OF CONSTR. ITEMS						\$492,345.00	
MOBILIZATION						\$24,700.00	
SUBTOTAL						\$517,045.00	
CONTINGENCY (10%)						\$51,755.00	
TOTAL						\$568,800.00	

**ATTACHMENT C  
PROJECT ESTIMATE AND SOURCE OF FUNDS**

**SOURCE OF FUNDS REQUESTED**

Construction Estimate	\$ 568,800
Engineering / Project Development (City of College Station)	100% Local Funds
<b>Subtotal Value of Project</b>	<b>\$ 568,800</b>
TxDOT Expenses (Plan Review / Processing) Estimated @ 4% Project Value	\$ 22,752
<b>Total Value of Project</b>	<b>\$ 591,552</b>
Local Match / Contribution (City of College Station)	\$ 312,552
<b>Federal Funds Requested</b> (Remaining STEP funds after Phases I & II)	<b>\$ 279,000 *</b>

\* Estimated current remaining funds after TxDOT review/processing expenses applied.

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COLLEGE STATION, TEXAS, ALLOWING THE MAYOR TO SIGN AN ADVANCE FUNDING AGREEMENT BETWEEN THE TEXAS DEPARTMENT OF TRANSPORTATION AND THE CITY OF COLLEGE STATION FOR CONSTRUCTION OF PHASE III OF THE COLLEGE BIKE LOOP.

WHEREAS, the City Council of the City of College Station, Texas, supports the City plan to construct Phase III of the College Station Bike Loop; and

WHEREAS, the City Council of the City of College Station, Texas, agrees to fund the College Station Bike Loop Phase III Project 100% of the value of the project less the remaining Statewide Transportation Enhancement Program (STEP) funds of \$279,000; 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 Advance Funding Agreement.
- PART 2: That the City Council hereby approves of the Mayor signing the agreement.
- PART 3: That the City Council hereby agrees to fully fund the College Station Bike Loop Phase III construction costs less the remaining STEP funds.
- PART 4: That this resolution shall take effect immediately from and after its passage.

ADOPTED this 25th day of June, A.D. 2009.

ATTEST:

APPROVED:

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

\_\_\_\_\_  
MAYOR

APPROVED:

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

STATE OF TEXAS           §  
COUNTY OF TRAVIS       §

**ADVANCE FUNDING AGREEMENT  
For A TRANSPORTATION ENHANCEMENT PROJECT**

**This Advance Funding Agreement for a transportation enhancement project (the Agreement) is made by and between the State of Texas, acting by and through the Texas Department of Transportation, hereinafter called the "State", and the City of College Station, acting by and through its duly authorized officials hereinafter called the "Local Government."**

**WITNESSETH**

**WHEREAS**, the Local Government prepared and submitted to the State a nomination form for consideration under the Statewide Transportation Enhancement Program for the project which is briefly described as the College Station Bike Loop, hereinafter called the Project; and

**WHEREAS**, federal law establishes federally funded programs for transportation improvements to implement its public purposes; and

**WHEREAS**, Title 23 U.S.C. Section 134 requires that Metropolitan Planning Organizations and the States' Transportation Agencies to develop transportation plans and programs for urbanized areas of the State; and

**WHEREAS**, the Texas Transportation Code, Sections 201.103 and 222.052 establish that the State shall design, construct and operate a system of highways in cooperation with local governments; and

**WHEREAS**, federal and state laws require local governments to meet certain contract standards relating to the management and administration of State and federal funds; and

**WHEREAS**, the Texas Transportation Commission passed Minute Order 103709 awarding funding for projects in the 2001 Program Call of the Statewide Transportation Enhancement Program, including the Project; and

**WHEREAS**, the rules and procedures for the selection and administration of the Statewide Transportation Enhancement Program are established in 43 TAC Sections 11.200 et seq.; and

**WHEREAS**, the governing body of the Local Government has approved entering into this Agreement by resolution or ordinance dated June 25, 2009, which is attached hereto and made a part hereof as Attachment A;

**NOW, THEREFORE**, in consideration of the premises and of the mutual covenants and agreements of the parties hereto, to be by them respectively kept and performed as hereinafter set forth, it is agreed as follows:

## AGREEMENT

### 1. Period of the Agreement

This Agreement becomes effective when signed by the last party whose signing makes the Agreement fully executed. This Agreement shall remain in effect until terminated as provided in Article 2.

### 2. Termination of this Agreement

This agreement may be terminated by any of the following conditions:

- by mutual written consent and agreement of all parties.
- by any party with 90 days written notice.
- by either party, upon the failure of the other party to fulfill the obligations as set forth in this Agreement. Any cost incurred due to such breach of contract shall be paid by the breaching party.

- A. The termination of this Agreement shall extinguish all rights, duties, obligations and liabilities of the State under this Agreement. If the potential termination of the Agreement is due to the failure of the Local Government to fulfill its contractual obligations, the State will notify the Local Government that possible breach of contract has occurred. The Local Government should make every effort to remedy the breach within a period mutually agreed upon by both parties.
- B. If the Local Government withdraws from the Project after this Agreement is executed, it shall be responsible for all direct and indirect Project costs as identified by the State's cost accounting system.
- C. A Project may be eliminated from the program as outlined below. If the Project is eliminated for any of these reasons, this Agreement will be appropriately terminated. A Project may be eliminated from the program, and this Agreement terminated, if:
  - i. The Local Government fails to satisfy any requirements of the program rules cited as 43 TAC §11.200 et seq.
  - ii. The implementation of the Project would involve significant deviation from the activities as proposed in the nomination form.
  - iii. The Local Government withdraws from participation in the Project.
  - iv. The Project is not implemented within a reasonable time, as determined by the State in consultation with the Local Government. In absence of information suggesting that a shorter or longer period is appropriate, three years or less from the date of inclusion in the Statewide Transportation Improvement Plan (STIP) will be presumed to be a reasonable time.
  - v. The State determines that federal funding may be lost due to the Project not being implemented and completed.

### 3. Amendments

This Agreement may be amended due to changes in the work or amount of funding required to complete the Project or other material, required changes in the responsibilities of the parties. Such amendment must be made through a mutually agreed upon, written amendment that is executed by the parties.

#### 4. Scope of Work

The scope of work for the Project which is at the location shown in Attachment B, Project Location Map, as described in the nomination form, and as approved by the Texas Transportation Commission, consists of Phase III of the College Station Bike Loop project to construct a bike/pedestrian path through Bee Creek Park in College Station, Texas.

#### 5. Right of Way and Real Property Acquisition

Right-of-way and real property acquisition shall be the responsibility of the Local Government. Title to right of way and other related real property must be acceptable to the State before funds may be expended for the improvement of the right of way or real property. If the Local Government is the owner of any part of the project site under this Agreement, the Local Government shall permit the State or its authorized representative access to occupy the site to perform all activities required to execute the work.

All parties to this agreement will comply with and assume the costs for compliance with all the requirements of Title II and Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Title 42 U.S.C.A. Section 4601 et seq., including those provisions relating to incidental expenses incurred by the property owners in conveying the real property to the Local Government, and benefits applicable to the relocation of any displaced person as defined in 49 CFR Section 24.2(g). Documentation to support such compliance must be maintained and made available to the State and its representatives for review and inspection.

- A. The Local Government shall assume all costs and perform necessary requirements to provide any necessary evidence of title or right of use in the name of the Local Government to the real property required for development of the Project. The evidence of title or rights shall be acceptable to the State, and be free and clear of all encroachments. The Local Government shall secure and provide easements and any needed rights of entry over any other land needed to develop the Project according to the approved Project plans. The Local Government shall be responsible for securing any additional real property required for completion of the Project.
- B. In the event real property is donated to the Local Government after the date of the State's authorization, the Local Government will provide all documentation to the State regarding fair market value of the acquired property. The State will review the Local Government's appraisal, determine the fair market value and credit that amount towards the Local Government's financial share. If donated property is to be used as a funding match, it may not be provided by the Local Government. The State will not reimburse the Local Government for any real property acquired before execution of this agreement and the State's issuance of a letter of funding authority.
- C. The Local Government shall prepare real property maps, property descriptions, and other data as needed to properly describe the real property and submit them to the State for approval prior to the Local Government acquiring the real property. Tracings of the maps shall be retained by the Local Government for a permanent record.
- D. The Local Government agrees to make a determination of property values for each real property parcel by methods acceptable to the State and to submit to the State a tabulation of the values so determined, signed by the appropriate Local Government representative. The tabulations shall list the parcel numbers, ownership, acreage and recommended compensation.

Compensation shall be shown in the component parts of land acquired, itemization of improvements acquired, damages (if any) and the amounts by which the total compensation will be reduced if the owner retains improvements. This tabulation shall be accompanied by an explanation to support the determined values, together with a copy of information or reports used in calculating all determined values. Expenses incurred by the Local Government in performing this work may be eligible for reimbursement after the Local Government has received written authorization by the State to proceed with determination of real property values. The State will review the data submitted and may base its reimbursement for parcel acquisitions on these values.

- E. Condemnation shall not be used to acquire real property for this enhancement Project.
- F. Reimbursement for real property costs will be made to the Local Government for real property purchased in an amount not to exceed eighty percent (80%) of the cost of the real property purchased in accordance with the terms and provisions of this agreement. Reimbursement will be in an amount not to exceed eighty percent (80%) of the State's predetermined value of each parcel, or the net cost thereof, whichever is less. In addition, reimbursement will be made to the Local Government for necessary payments to appraisers, expenses incurred in order to assure good title, and costs associated with the relocation of displaced persons and personal property as well as incidental expenses.
- G. If the Project requires the use of real property to which the Local Government will not hold title, a separate agreement between the owners of the real property and the Local Government must be executed prior to execution of this Agreement. The separate agreement must establish that the Project will be dedicated for public use for a period of not less than 10 (ten) years after completion. The separate agreement must define the responsibilities of the parties as to the use of the real property and operation and maintenance of the Project after completion. This agreement must be approved by the State prior to its execution. A copy of the executed agreement shall be provided to the State.

## 6. Utilities

The Local Government shall be responsible for the adjustment, removal, or relocation of utility facilities in accordance with applicable State laws, regulations, rules, policies, and procedures, including any cost to the State of a delay resulting from the Local Government's failure to ensure that utility facilities are adjusted, removed, or relocated before the scheduled beginning of construction. The Local Government will not be reimbursed with federal or state funds for the cost of required utility work. The Local Government must obtain advance approval for any variance from established procedures. Before a construction contract is let, the Local Government shall provide, at the State's request, a certification stating that the Local Government has completed the adjustment of all utilities that must be adjusted before construction is completed.

## 7. Environmental Assessment and Mitigation

Development of the Project must comply with the National Environmental Policy Act and the National Historic Preservation Act of 1966, which require environmental clearance of federal-aid projects.

- A. The Local Government is responsible for the identification and assessment of any environmental problems associated with the development of the Project.
- B. The Local Government is responsible for the cost of any environmental problem's mitigation and remediation.

- C. The Local Government is responsible for providing any public meetings or public hearings required for development of the environmental assessment.
- D. The Local Government shall provide the State with written certification from appropriate regulatory agency(ies) that identified environmental problems have been remediated.

These costs will not be reimbursed or credited towards the Local Government's financial share of the Project unless specified in the nominating form and approved by the State.

Forty five (45) days prior to any construction contract let date, the Local Government shall provide a certification to the State that all real property has been acquired, all environmental problems have been remediated, and all conflicting utilities have been adjusted.

**8. Compliance with Texas Accessibility Standards and ADA**

All parties to this agreement shall ensure that the plans for and the construction of the project subject to this Agreement are in compliance with the Texas Accessibility Standards (TAS) issued by the Texas Department of Licensing and Regulation, under the Architectural Barriers Act, Article 9102, Texas Civil Statutes. The TAS establishes minimum accessibility requirements to be consistent with minimum accessibility requirements of the Americans with Disabilities Act (P.L. 101-336) (ADA).

**9. Architectural and Engineering Services.**

Architectural and engineering services will be provided by a qualified firm(s) selected by the City of College Station. In procuring professional services, the parties to this agreement must comply with federal requirements cited in 23 CFR Part 172 if the project is federally funded and with Texas Government Code 2254, Subchapter A, in all cases. Professional services contracts for federally funded projects must conform to federal requirements.

- A. The architectural contract documents shall be developed in accordance with the standards of the American Institute of Architects, the U.S. Secretary of the Interior's *Standards for Historic Preservation Projects, Standards and Guidelines for Archeology and Historic Preservation, the National Register Bulletin Number 36: Guidelines for Evaluating and Registering Historical Archeological Sites* and in consultation with the State Historic Preservation Officer, as applicable. The engineering plans shall be developed in accordance with the State's applicable *Standard Specifications for Construction and Maintenance of Highways, Streets and Bridges* and the two AASHTO publications, "A Policy on Geometric Design of Highways and Streets" and "Guide for the Development of Bicycle Facilities," as applicable. All contract procurement procedures and documents must adhere to the applicable requirements established in the *Standard Specifications for Construction and Maintenance of Highways, Streets and Bridges*. The use of other systems of specifications shall be approved by the State in writing in advance.
- B. The Local Government shall submit any plans it has completed to the State for review and approval. The Local Government may also submit the plans to the State for review anytime prior to completion. The Local Government shall make the necessary revisions determined by the State. The Local Government will not let the construction contract until all required plans have received State approval.
- C. The Local Government shall submit to the State all documentation relating to authorized costs incurred for providing architectural and engineering services. Reasonable, allowable, and allocable costs incurred by the Local Government, after the Local Government has obtained

written authorization from the State to incur costs, will be eligible for reimbursement at an amount not to exceed eighty percent (80%) of the eligible authorized costs.

#### **10. Construction Responsibilities**

- a. The City of College Station shall advertise for construction bids, issue bid proposals, receive and tabulate the bids and award and administer the contract for construction of the Project. Administration of the contract includes the responsibility for construction engineering and for issuance of any change orders, supplemental agreements, amendments, or additional work orders, which may become necessary subsequent to the award of the construction contract. In order to ensure federal funding eligibility, projects must be authorized by the State prior to advertising for construction.
- b. All contract letting and award procedures must be approved by the State prior to letting and award of the construction contract, whether the construction contract is awarded by the State or by the Local Government.
- c. All contract change order review and approval procedures must be approved by the State prior to start of construction.
- d. Upon completion of the Project in accordance with all applicable rules and regulations, the party constructing the project will issue and sign a "Notification of Completion" acknowledging the Project's construction completion.

For federally funded contracts, the parties to this agreement will comply with federal construction requirements cited in 23 CFR Part 635 and with requirements cited in 23 CFR Part 633, and shall include the latest version of Form "FHWA-1273" in the contract bidding documents. If force account work will be performed, a finding of cost effectiveness shall be made in compliance with 23 CFR Part 635, Subpart B.

Any field changes, supplemental agreements or revisions to the design plans that may occur after the construction contract is awarded will be mutually agreed to by the State and the Local Government prior to authorizing the contractor to perform the work. Prior to completion of the Project, the party responsible for construction will notify the other party to this Agreement of the anticipated completion date. All parties will be afforded the opportunity to assist in the final review of the construction services performed by the contractor.

#### **11. Project Maintenance.**

Upon completion of the Project, the Local Government will be responsible for maintaining the completed facility for public use for a period of at least ten (10) years. Any manufacturer warranties extended to the Local Government as a result of the Project shall remain in the name of the Local Government. The State shall not be responsible for honoring any warranties under this agreement.

#### **12. Local Project Sources and Uses of Funds**

- A. Project Cost Estimate: A Project Cost Estimate and Payment Schedule is provided in Attachment C, showing the total estimated development cost of the Project. This estimate shows the itemized cost of real property, utilities, environmental assessments and remediation, architectural and engineering activities, construction, and any other substantial items of cost. To be eligible for reimbursement, costs must have been included in the itemized budget section of the nomination form approved by the Texas Transportation Commission. The State and the Federal Government will not reimburse the Local Government for any work

performed before the issuance of a formal Letter of Authority by the Federal Highway Administration. The Local Government is responsible for 100% of the cost of any work performed under its direction or control before the federal Letter of Authority is formally issued.

- B.** A Source of Funds estimate is also provided in Attachment C. Attachment C shows the percentage and absolute dollar amounts to be contributed to the Project by federal, state, and local sources.
- C.** The Local Government will be responsible for all non-federal participation costs associated with the Project, including any overruns in excess of the Project cost estimate and any operating or maintenance expenses. Donations of real property, cash, materials, and services required for the development of the Project may be eligible to count towards the local funding share of a project as in-kind contributions. In order to be considered as an eligible in-kind contribution, donations must be made by public, non-profit, governmental or non-governmental organizations. The value of the donated contributions of real property, materials, or services will be based on fair market value. In-kind donations of services are limited to preparation of plans, specifications and estimates, and may account for no more than ten percent (10%) of the allowable Project's cost. The remaining balance of the local contribution shall be in cash, donated real property or materials. The Local Government may also provide services or materials to reduce the overall cost of a Project, but it will not be considered as an in-kind contribution. Donations of real property must be from sources other than the Local Government.
- D.** The State will be responsible for securing the federal share of funding required for the development and construction of the Project, in an amount not to exceed eighty percent (80%) of the actual cost of the work up to the amount of funds approved for the Project by the Texas Transportation Commission. Federal funds will be reimbursed on a cost basis. Project costs incurred prior to Project selection by the Texas Transportation Commission and approval by the State to proceed are not eligible for reimbursement.
- E.** Following execution of this Agreement, but prior to the performance of any review work by the State, the Local Government will pay an amount sufficient to cover the estimated cost for the State's review of the preliminary plans, specification, and engineering (PS&E) work. The Local Government shall advance to the State an amount equal to four percent (4%) of the value of the project. The estimated amount of this advance for this Project is \$ 22,752.
- F.** In the event the State determines that additional funding is required by the Local Government at any time during the Project, the State will notify the Local Government in writing. The Local Government is responsible for 20% of the authorized project cost and any overruns. The Local Government will make payment to the State within thirty (30) days from receipt of the State's written notification.
- G.** Whenever funds are paid by the Local Government to the State under this agreement, the Local Government will remit a warrant made payable to the "Texas Department of Transportation Trust Fund." The warrant will be deposited by the State in an escrow account to be managed by the State. Until the final project accounting, funds in the escrow account may only be applied by the State to the Project.
- H.** Upon completion of the Project, the State will perform an audit of the Project costs. Any funds due by the Local Government, the State, or the Federal Government will be promptly paid by the owing party. If, after final Project accounting, excess funds remain in the escrow account, those funds may be applied by the State to the Local Government's contractual obligations to the State under another advance funding agreement.

- I. In the event the Project is not completed, the State may seek reimbursement from the Local Government of the expended federal funds. The Local Government will remit the required funds to the State within sixty (60) days from receipt of the State's notification.
- J. The State will not pay interest on any funds provided by the Local Government.
- K. The State will not execute the contract for the construction of the Project until the required funding has been made available by the Local Government in accordance with this Agreement.
- L. If any existing or future local ordinances, commissioners court orders, rules, policies, or other directives, including but not limited to outdoor advertising billboards and storm water drainage facility requirements, are more restrictive than State or Federal Regulations, or if any other locally proposed changes, including but not limited to plats or replats, result in increased costs, then any increased costs associated with the ordinances or changes will be paid by the local government. The cost of providing right of way acquired by the State shall mean the total expenses in acquiring the property interests either through negotiations or eminent domain proceedings, including but not limited to expenses related to relocation, removal, and adjustment of eligible utilities.
- M. The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the contract or indirectly through a subcontract under the contract. Acceptance of funds directly under the contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

**13. Notices**

All notices to either party by the other required under this agreement shall be delivered personally or sent by certified or U.S. mail, postage prepaid or sent by electronic mail, (electronic notice being permitted to the extent permitted by law but only after a separate written consent of the parties), addressed to such party at the following addresses:

<b>Local Government:</b>	<b>State:</b>
City of College Station 2613 Texas Avenue College Station, Texas 77842	Robert A. Appleton, P.E. Bryan Director of TP&D 1300 N. Texas Avenue Bryan, Texas 77803

All notices shall be deemed given on the date so delivered or so deposited in the mail, unless otherwise provided herein. Either party may change the above address by sending written notice of the change to the other party.

Either party may request in writing that such notices shall delivered personally or by certified U.S. mail and such request shall be honored and carried out by the other party.

**14. Legal Construction**

In case one or more of the provisions contained in this agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions and this agreement shall be construed as if it did not contain the invalid, illegal or unenforceable provision.

**15. Responsibilities of the Parties**

The State and the Local Government agree that neither party is an agent, servant, or employee of the other party and each party agrees it is responsible for its individual acts and deeds as well as the acts and deeds of its contractors, employees, representatives, and agents.

**16. Ownership of Documents**

Upon completion or termination of this agreement, all documents prepared by the State shall remain the property of the State. All data prepared under this agreement shall be made available to the State without restriction or limitation on their further use. All documents produced or approved or otherwise created by the Local Government shall be transmitted to the State in the form of photocopy reproduction on a monthly basis as required by the State. The originals shall remain the property of the Local Government.

**17. Document and Information Exchange**

The Local Government agrees to electronically deliver to the State all general notes, specifications, contract provision requirements and related documentation in a Microsoft® Word or similar document. If requested by the State, the Local Government will use the State's document template. The Local Government shall also provide a detailed construction time estimate including types of activities and month in the format required by the State. This requirement applies whether the Local Government creates the documents with its own forces or by hiring a consultant or professional provider. At the request of the State, the Local Government shall submit any information required by the State in the format directed by the State.

**18. Compliance with Laws**

The parties shall comply with all Federal, State, and Local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of this agreement. When required, the Local Government shall furnish the State with satisfactory proof of this compliance.

**19. Sole Agreement**

This Agreement constitutes the sole and only agreement between the parties and supersedes any prior understandings or written or oral agreements respecting the agreement's subject matter.

**20. Cost Principles**

In order to be reimbursed with federal funds, the parties shall comply with the Cost Principles established in OMB Circular A-87 that specify that all reimbursed costs are allowable, reasonable and allocable to the Project.

**21. Procurement and Property Management Standards**

The parties shall adhere to the procurement standards established in Title 49 CFR §18.36 and with the property management standard established in Title 49 CFR §18.32.

**22. Inspection of Books and Records**

The parties to this Agreement shall maintain all books, documents, papers, accounting records and other documentation relating to costs incurred under this Agreement and shall make such materials available to the State, the Local Government, and, if federally funded, the Federal Highway Administration (FHWA), and the U.S. Office of the Inspector General, or their duly authorized representatives for review and inspection at its office during the contract period and for four (4) years from the date of completion of work defined under this contract or until any impending litigation, or claims are resolved.

Additionally, the State, the Local Government, and the FHWA and their duly authorized representatives shall have access to all the governmental records that are directly applicable to this Agreement for the purpose of making audits, examinations, excerpts, and transcriptions.

**23. Office of Management and Budget (OMB) Audit Requirements**

The parties shall comply with the requirements of the Single Audit Act of 1984, P.L. 98-502, ensuring that the single audit report includes the coverage stipulated in OMB Circular A-133.

**24. Civil Rights Compliance**

The Local Government shall comply with the regulations of the Department of Transportation as they relate to nondiscrimination (49 CFR Chapter 21 and 23 CFR §710.405(B)), and Executive Order 11246 titled "Equal Employment Opportunity," as amended by Executive Order 11375 and supplemented in the Department of Labor Regulations (41 CFR Part 60).

**25. Disadvantaged Business Enterprise Program Requirements**

The parties shall comply with the Disadvantaged/Minority Business Enterprise Program requirements established in 49 CFR Part 26.

**26. Debarment Certifications**

The parties are prohibited from making any award at any tier to any party that is debarred or suspended or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549, "Debarment and Suspension." By executing this agreement, the [Contractor, Local Government, Engineer, or whatever] certifies that it is not currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549. The parties to this contract shall require any party to a subcontract or purchase order awarded under this contract to certify its eligibility to receive Federal funds and, when requested by the State, to furnish a copy of the certification.

**27. Lobbying Certification**

In executing this Agreement, the signatories certify to the best of his or her knowledge and belief, that:

- a. No federal appropriated funds have been paid or will be paid by or on behalf of the parties to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

- b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with federal contracts, grants, loans, or cooperative agreements, the signatory for the Local Government shall complete and submit the federal Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c. The parties shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. Submission of this certification is a prerequisite imposed by Title 31 U.S.C. §1352 for making or entering into this transaction. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**28. Insurance**

If this agreement authorizes the Local Government or its contractor to perform any work on State right of way, before beginning work the entity performing the work shall provide the State with a fully executed copy of the State's Form 1560 Certificate of Insurance verifying the existence of coverage in the amounts and types specified on the Certificate of Insurance for all persons and entities working on State right of way. This coverage shall be maintained until all work on the State right of way is complete. If coverage is not maintained, all work on State right of way shall cease immediately, and the State may recover damages and all costs of completing the work.

**29. Signatory Warranty.**

The signatories to this Agreement warrant that each has the authority to enter into this Agreement on behalf of the party represented.

**IN TESTIMONY HEREOF**, the parties hereto have caused these presents to be executed in duplicate counterparts.

**THE LOCAL GOVERNMENT**

By: \_\_\_\_\_  
(Signature) MAYOR

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

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

**ATTEST:**

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

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

**THE STATE OF TEXAS**

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

By: \_\_\_\_\_  
Janice Mullenix  
Director of Contract Services  
Texas Department of Transportation

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

**APPROVED:**

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

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

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

City Attorney

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

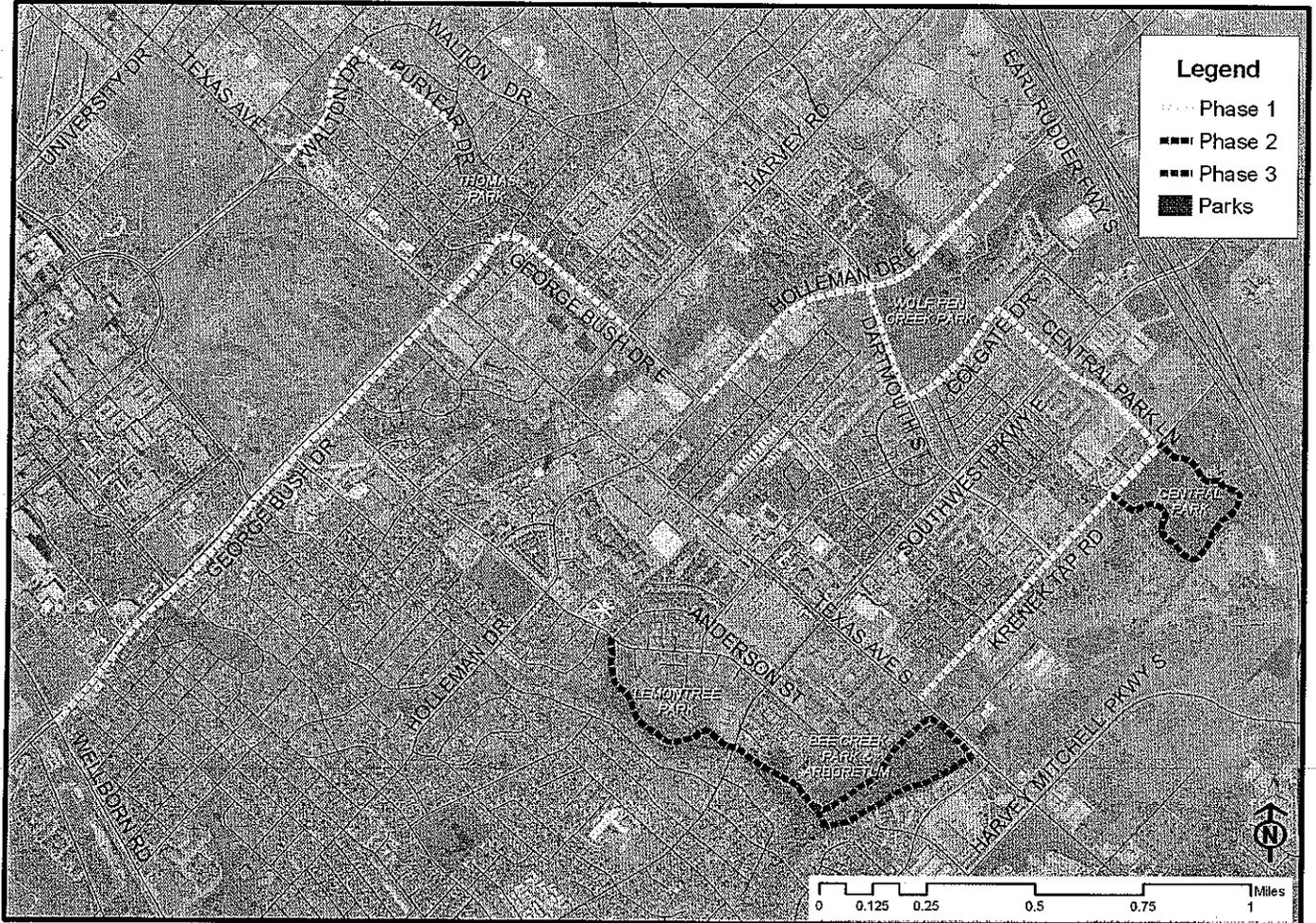
\_\_\_\_\_  
Chief Financial Officer

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

**ATTACHMENT A**  
**RESOLUTION OF LOCAL GOVERNMENT**

# ATTACHMENT B

## PROJECT LOCATION MAP



# ATTACHMENT C

## PROJECT ESTIMATE AND SOURCE OF FUNDS

### CONSTRUCTION ESTIMATE

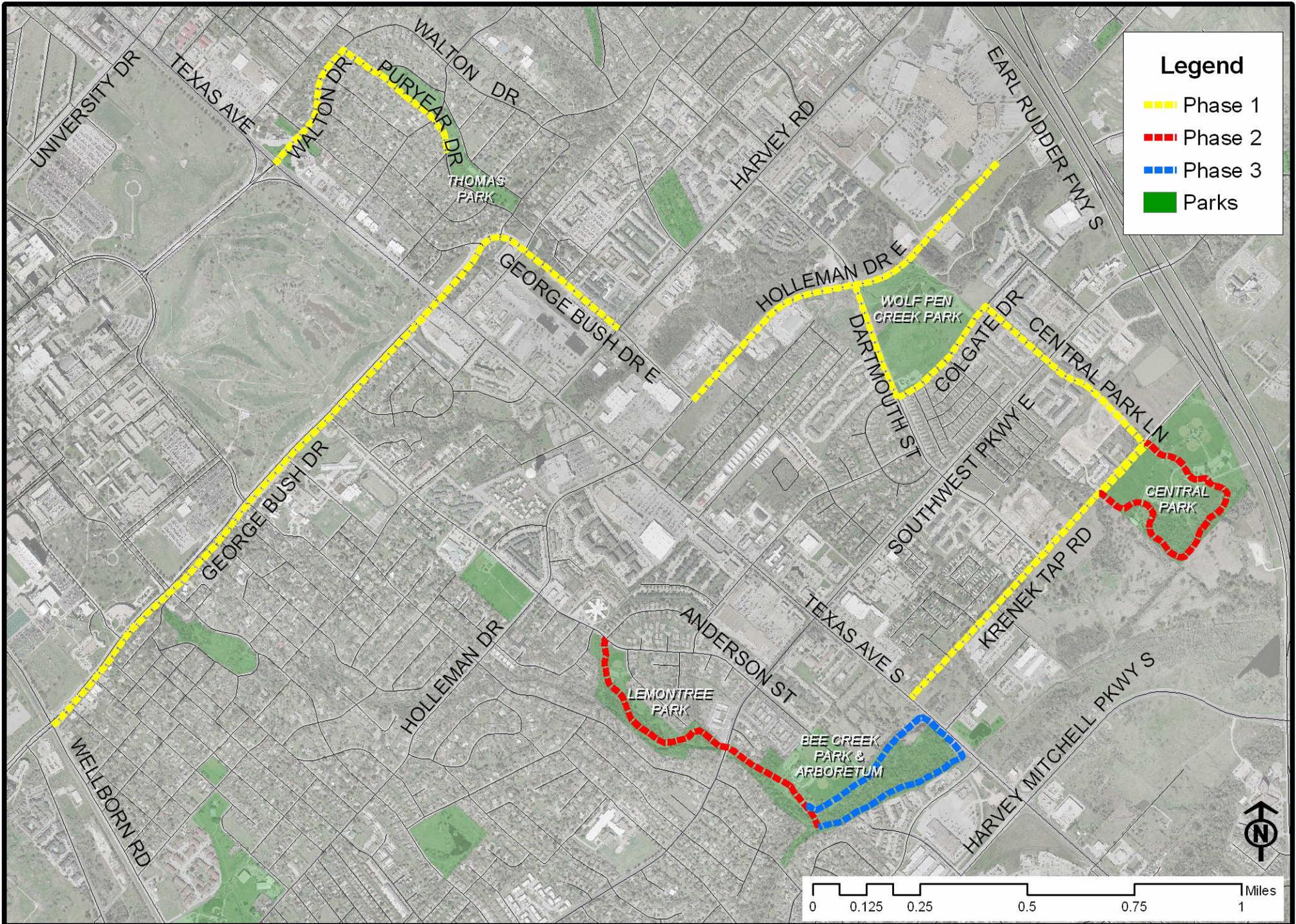
CNTY #	Project Name	Project Number	ESTIMATOR	DATE			
BRAZOS	BIKEWAY PHASE II		D. Besly	7/8/2008			
ITEM	CODE	DESCRIPTION	UNIT	QUANTITY	BID PRICE	TOTAL	SUBTOTAL
100	2002	PREPARING ROW	STA	46.00	\$400.00	\$18,400.00	
496	0	REMOVE CONC DITCH INTERCEPTOR STRUCTOR (24" RCP)	EA	1.00	\$1,000.00	\$1,000.00	
496	2007	REMOV STR (PIPE)	LF	9.00	\$20.00	\$180.00	
							\$19,580.00
0	350	CONC PAVEMENT 6" (COLORED)	SY	24.50	\$60.00	\$1,470.00	
110	2001	EXCAVATION (ROADWAY)	CY	813.90	\$5.00	\$4,069.50	
132	2005	EMBANKMENT (FINAL) (ORD COMP) (TY C)	CY	2,729.50	\$6.00	\$16,377.00	
260	2006	LIME TRT (EXST MATL) (6")	SY	6,070.00	\$10.00	\$60,700.00	
360	0	FIBER REINFORCED CONC PAVEMENT (6")	SY	879.00	\$50.00	\$43,950.00	
360	2023	CONC PAV (JOINT REINF) (6")	SY	4,177.10	\$45.00	\$187,969.50	
618	2018	CONDT (PVC) (SCHD 40) (2")	LF	3,733.00	\$7.00	\$26,131.00	
							\$340,667.00
160	2003	FURNISHING AND PLACING TOPSOIL (4")	SY	10,310.00	\$2.00	\$20,620.00	
162	2002	BLOCK SODDING	SY	10,310.00	\$3.00	\$30,930.00	
166	2001	FERTILIZER	AC	2.14	\$2,000.00	\$4,280.00	
168	2001	VEGETATIVE WATERING	MG	256.00	\$10.00	\$2,560.00	
506	2013	BALED HAY	EA	10.00	\$10.00	\$100.00	
506	2034	TEMPORARY SEDIMENT CONTROL FENCE	LF	6,800.00	\$3.00	\$17,400.00	
							\$75,890.00
666	2176	REF PAV MRK TY II (Y) 4" (BRK)	LF	1,137.00	\$0.50	\$568.50	
							\$568.50
400	2005	CEM STABIL BKFL	CY	36.40	\$130.00	\$4,732.00	
432	2002	RIPRAP (CONC) (5 IN)	CY	19.55	\$450.00	\$8,797.50	
462	2003	CONC BOX CLUV (4 FT X 2 FT)	LF	32.00	\$180.00	\$5,760.00	
464	2003	RC PIPE (CL III)(18 IN)	LF	109.00	\$50.00	\$5,450.00	
464	2005	RC PIPE (CL III)(24 IN)	LF	27.00	\$80.00	\$2,160.00	
466	0	CONC APRON WITH SLOPING HEADWALL (24" DIA)	EA	1.00	\$2,500.00	\$2,500.00	
466	2020	WINGWALL (FW-0) (HW=4 FT)	EA	2.00	\$5,000.00	\$10,000.00	
466	2063	HEADWALL (CH-FW-30) (DIA=18 IN)	EA	2.00	\$2,700.00	\$5,400.00	
466	2108	HEADWALL (CH-FW-45) (DIA=18 IN)	EA	2.00	\$3,500.00	\$7,000.00	
481	2013	PVC PIPE (SCH 40) (8 IN)	LF	96.00	\$40.00	\$3,840.00	
							\$55,639.50
5 % MOBILIZATION							
TOTAL OF CONSTR. ITEMS						\$492,345.00	
MOBILIZATION						\$24,700.00	
SUBTOTAL						\$517,045.00	
CONTINGENCY (10%)						\$51,755.00	
TOTAL						\$568,800.00	

**ATTACHMENT C  
PROJECT ESTIMATE AND SOURCE OF FUNDS**

**SOURCE OF FUNDS REQUESTED**

Construction Estimate	\$ 568,800
Engineering / Project Development (City of College Station)	100% Local Funds
<b>Subtotal Value of Project</b>	<b>\$ 568,800</b>
TxDOT Expenses (Plan Review / Processing) Estimated @ 4% Project Value	\$ 22,752
<b>Total Value of Project</b>	<b>\$ 591,552</b>
Local Match / Contribution (City of College Station)	\$ 312,552
<b>Federal Funds Requested</b> (Remaining STEP funds after Phases I & II)	<b>\$ 279,000 *</b>

\* Estimated current remaining funds after TxDOT review/processing expenses applied.



**June 25, 2009**  
**Regular Agenda Item No. 1**  
**Weingarten Rezoning (8.76 acre tract on State Highway 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 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 changing the zoning district boundaries of an area consisting of 8.76 acres generally located along State Highway 6, southeast of the intersection of Rock Prairie Road and State Highway 6, from A-O Agricultural-Open to C-1 General Commercial.

**Recommendation(s):** The Planning and Zoning Commission unanimously recommended denial of the amendment (6-0) at their May 21st meeting. Staff also recommends denial.

**Summary:**

**REVIEW CRITERIA**

1. **Consistency with the Comprehensive Plan:** The 2009 Comprehensive Plan primarily designates the subject property as General Commercial on the Future Land Use and Character Map. The stated purpose of the General Commercial designation is to provide locations for concentrations of commercial activities that cater to both nearby residents and to the larger community or region. Generally, these areas tend to be large in size and located near the intersection of two regionally significant roads (arterials and freeways). It is preferred that in such areas development be concentrated in nodes rather than spread out in strips. Based on this description, the C-1 General Commercial district, which is intended to allow general commercial uses such as retail sales and services for the regional community, would be an appropriate zoning district to implement the current Land Use Plan. C-3 Light Commercial, A-P Administrative Professional, and PDD Planned Development District are also appropriate districts to implement the Comprehensive Plan's General Commercial designation

The 2009 Thoroughfare Plan designates this portion of Rock Prairie as a 4-Lane General Suburban Boulevard. State Highway 6, a Freeway on the Thoroughfare Plan, is located adjacent to the property to the west.

2. **Compatibility with the present zoning and conforming uses of nearby property and with the character of the neighborhood:** Generally, the C-1 General Commercial zoning district allows for the development of retail sales and service uses that function to serve the entire community and its visitors. As such, the proposed zoning is generally compatible with the C-1 zoned property located adjacent to the subject property along State Highway 6 that is currently undeveloped. Adjacent properties to the south are largely zoned A-O Agriculture-Open, a holding zone placed on the properties at the time of annexation. Adjacent property to the west was recently rezoned C-1 General Commercial along the State Highway 6 Frontage Road.

Previously, representatives of nearby neighborhoods have voiced concerns about proposed commercial developments in close proximity to existing residential neighborhoods. The primary concerns have focused on a potential lack of compatibility

of the land uses and an increase in traffic congestion in the area. While the subject property is not located adjacent to an existing neighborhood, it is part of a larger development tract that is in the area of influence of a number of neighborhoods.

- 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 property is located along the State Highway 6 Frontage Road, south of the grade-separated intersection with Rock Prairie Road, a 4-Lane General Suburban Boulevard on the City's Thoroughfare Plan. Rezoning the subject property to C-1 General Commercial could allow it to be developed in conjunction with the approximately 26-acre C-1 property located at the corner of the intersection (and extending south along the Frontage Road). In total, the development could include approximately 35 acres of land. Additionally, C-1 zoning for another 35 acres has also been requested by the applicant. If approved, the potential size of the general commercial development in this area could exceed 70 acres in size.

This has been identified by the Fire Department as an area that is located within the 2.5 mile ladder truck response area, but is not located in a 1.5 mile engine response area. In general, fire service facilities are lacking on the east side of the Bypass, resulting in increased response times.

Utility and transportation infrastructure do not currently exist to serve a development of this intensity. The general suitability of the land for development, including a discussion of the availability of water, wastewater and transportation infrastructure is included in Review Criteria #6. No FEMA floodplain exists on the property.

- 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:** A portion of the property is currently zoned A-O Agricultural Open. In this area, the A-O district is used as a holding zone for property that is projected in the Comprehensive Plan for conversion to more intensive urban uses at such time as the need for the uses is present and when it is possible to adequately serve development with necessary infrastructure and public services. While the permitted uses in A-O, including low density residential, agricultural or open space uses, are generally compatible with residential development, not all agricultural uses may be appropriate on the property due its location and the level of development that has occurred in the area. Generally, the uses permitted in the A-O district are less intense, generate less traffic, and have lower utility demands than C-1 uses. A-O uses generally have fewer service, infrastructure and facility needs. The property is generally suitable for A-O uses.

This has been identified by the Fire Department as an area that is located within the 2.5 mile ladder truck response area, but is not located in a 1.5 mile engine response area. In general, fire service facilities are lacking on the east side of the Bypass, resulting in increased response times.

Utility and transportation infrastructure do not currently exist to serve a development of this intensity. The general suitability of the land for development, including a discussion of the availability of water, wastewater and transportation infrastructure is included in Review Criteria #6. No FEMA floodplain exists on the 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 existing zoning allows the property to be marketed for residential and agricultural

uses. The proposed rezoning would generally allow for the property, in conjunction with the adjacent 26-acre tract, to be marketed for large-scale retail development.

A market analysis of the subject property has not been provided to the City; however, the existing A-O district permits agricultural, residential, and institutional uses, which are consistent with other existing uses found along the east side of the Bypass.

6. **Availability of water, wastewater, stormwater, and transportation facilities generally suitable and adequate for the proposed use:** There are existing water lines along State Highway 6 and Rock Prairie Road that can adequately provide water to this area. Required Water Master Plan lines also affect this property and will need to be designed and constructed in conjunction with the development of the property.

There are existing 8" and 12" sanitary sewer lines near the State Highway 6 and Rock Prairie Road intersection. Required Sewer Master Plan lines also affect this property, and will need to be designed and constructed in conjunction with the development of the property. Comprehensive Plan policies state that the City should approve development only in areas that can be reliably and economically served within the City's capabilities. In addition, the Comprehensive Plan promotes utility improvements and extensions to promote infill and redevelopment versus expansion of the urbanized area.

The City is currently in the process of updating its utility master plans. This property is currently planned to gravity flow to the Lick Creek Wastewater Treatment Plant to the south; however, the infrastructure, including sewer collection lines, is not yet in place to support this. While the existing sanitary sewer lines in this area were not designed to include capacity for this property, it may be possible for the property to be served by the existing 8" line that sewers to the north (Carter Creek Wastewater Treatment Plant). In order to sewer to the sewershed to the north, an interim lift station would be required to be constructed and maintained. A City owned and operated lift station would not be a best value to City ratepayers because of future operation and maintenance concerns and the inability to serve additional customers via gravity flows to the lift station. The most preferred option for the development of the property is to be served by a gravity sanitary sewer line, and not a lift station.

The property is surrounded by State Highway 6 and Rock Prairie Road. State Highway 6 is classified on the City's Thoroughfare Plan as Freeway/Expressway and Rock Prairie Road is classified as a 4-lane General Suburban Boulevard, although it is currently constructed to a rural street standard. Access to the property will be from Rock Prairie Road.

College Station's Unified Development Ordinance (UDO) requires the development and submittal of a Traffic Impact Analysis (TIA) to help inform the Planning & Zoning Commission and City Council on the question of Rezoning. In accordance with this requirement, the applicant submitted a TIA that complies with the requirements outlined in Section 7.12.D.3 of the UDO (Zoning TIA Content) for the combined 44.6 acres currently under consideration for rezoning to C-1 General Commercial.

The TIA concludes that the current system cannot operate at the minimum Level of Service -LOS D- once the subject property is developed. In compliance with the requirements of the UDO, the applicant has proposed to mitigate the impacts through roadway improvements. However, some of the proposed mitigation techniques may not be acceptable to the City, including a four-way signalized intersection at Stonebrook Drive and Rock Prairie Road – a primary entrance to a single-family neighborhood. A

four-way intersection at this location was recently and intentionally removed from the Thoroughfare Plan with the adoption of the East College Station Transportation Study. Additionally, the proposed mitigation fails to address all of the service impacts associated with the development. Further discussion of proposed mitigation can be found at the end of this section.

Below is a summary of the findings of the TIA, including a comparison of the existing Levels of Service in the area and the LOS after proposed mitigation measures are constructed.

**Intersection Level of Service**

INTERSECTION	EXISTING LOS	MITIGATED LOS
Rock Prairie at Stonebrook	A	C
Rock Prairie at SH 6 Northbound FR	C	D
Rock Prairie at SH 6 Southbound FR	B	D
Rock Prairie at Longmire	C	D
Rock Prairie at Rio Grande	B	B
Rock Prairie at Welsh	A	B
Rock Prairie at New Prvt Collector		C
New Prvt Collector at SH 6 Northbound FR		C

LOS is ranked from A to F, with A being the highest service level and F being the lowest. In general, LOS D is considered the minimum LOS that is acceptable. The above chart demonstrates that while meeting the minimum LOS (average of the intersection), most of the intersections in the area experience a degradation in service (post-mitigation).

LOS of an intersection is determined by the movements contributing to that intersection. Each traffic movement was analyzed and, in accordance with standard practices, an average was taken for the intersection as a whole, regardless of whether one of the traffic movements was below the acceptable LOS D. For example, if the through movement was rated as an F and the right-turn movements and left-turn movements were rated as an A and B, then the average LOS would be a B. Even though the through lane was failing, the intersection as a whole appears to exceed the minimum LOS required.

As one example, even after mitigation, the intersection of Rock Prairie Road at Longmire Drive has several movements that will significantly degrade in service after mitigation. Queue lengths (the length of autos waiting to enter the intersection) for the individual traffic movements that were identified at unacceptable LOS were extensive. The eastbound through movement queue length was 517 feet (21 vehicles) with a LOS E for that traffic individual movement. However, the average LOS for the intersection as a whole is shown to be a D.

**Intersection: Rock Prairie Road at Longmire Drive**

MOVEMENT	EXISTING LOS	MITIGATED LOS
Eastbound Left	C	C
Eastbound Through	B	E
Westbound Left	C	F
Westbound Through	B	C
Northbound Left	D	F
Northbound Through	C	D
Northbound Right	A	A
Southbound Left	C	E
Southbound Through	D	E
Southbound Right	A	A

There are several other similar issues noted elsewhere in the TIA.

The proposed mitigation based on the findings of the TIA includes the following:

- § Construct a 4-lane collector road (backage road)
- § Construct a new eastbound lane on Rock Prairie Road from State Highway 6 Northbound Frontage Road to Stonebrook Drive (widening of Rock Prairie Road by adding a lane)
- § Right-in and right-out only movements at intersection of new four-lane private collector and Rock Prairie Road
- § Construct a four-way intersection at Rock Prairie Road and Stonebrook Drive (proposed signalized access point to the development)
- § Construct a 150-foot right-turn lane at the eastbound lane to State Highway 6 southbound Frontage Road (at Rock Prairie and State Highway 6 southbound Frontage Road). Modify pavement markings
- § Construct a 150-foot right-turn lane on State Highway 6 southbound Frontage Road on to westbound Rock Prairie Road. Modify pavement markings on Rock Prairie Road eastbound to provide one left-turn lane and two through lanes.

**Budget & Financial Summary:** N/A

**Attachments:**

1. Background Information
2. Aerial and Small Area Map (SAM)
3. Draft Planning and Zoning Commission Meeting Minutes, May 21, 2009
4. Ordinance

**BACKGROUND**

**NOTIFICATIONS**

Advertised Commission Hearing Date:            May 21, 2009  
 Advertised Council Hearing Dates:            June 25, 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:

- Wilshire HOA
- Foxfire HOA
- Chadwick HOA
- Amberlake HOA
- Shadow Crest HOA
- Stonebridge HOA
- Stonebridge Court HOA
- Sandstone HOA

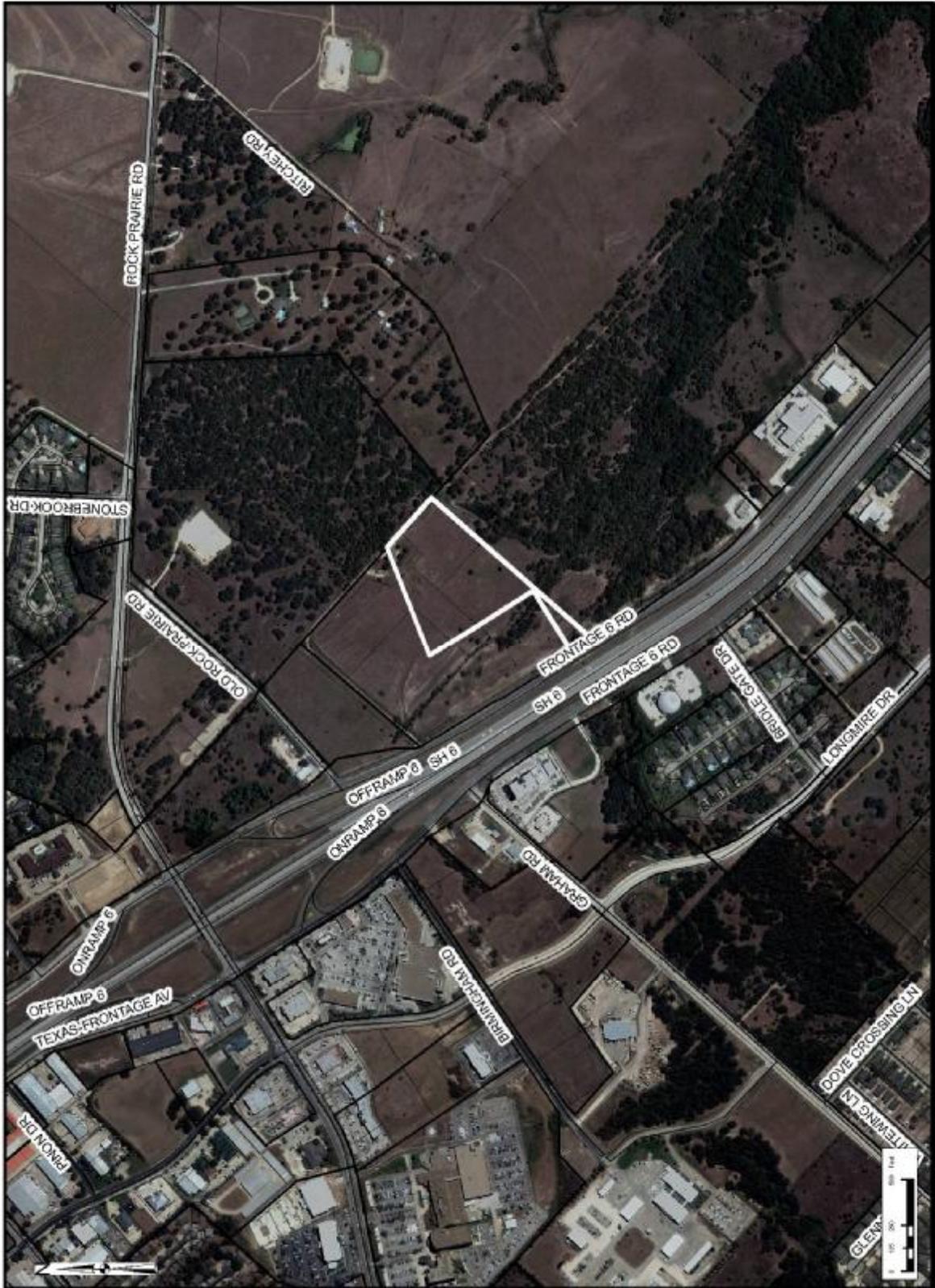
Property owner notices mailed:            3  
 Contacts in support:                            None as of date of staff report  
 Contacts in opposition:                        Approximately 10 nearby residents have expressed concerns included traffic impact to the area, incompatible land uses, and a degradation of quality of life for the nearby residential neighborhoods.  
 Inquiry contacts:                                None as of date of staff report

**ADJACENT LAND USES**

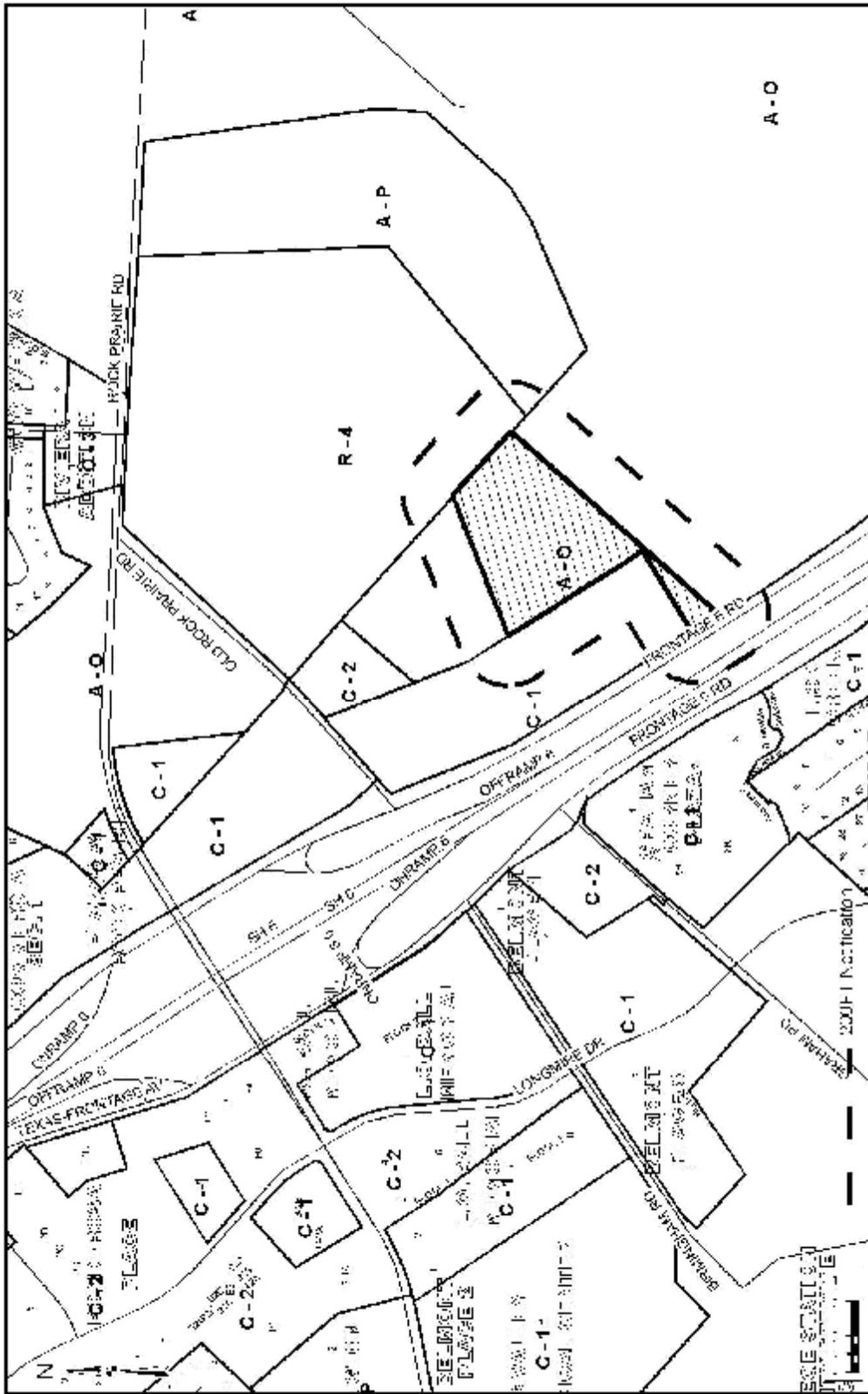
Direction	Comprehensive Plan	Zoning	Land Use
North	General Suburban, Suburban Commercial & General Commercial	R-4 Multi-family, A-O Agricultural Open	Rural, vacant
South	General Commercial, Natural Areas Reserved	A-O Agricultural Open	Rural, vacant
East	General Suburban	A-O Agricultural Open, A-P Administrative Professional	Rural, vacant
West	General Commercial	C-1 General Commercial	Rural, vacant

**DEVELOPMENT HISTORY**

Annexation:                                        1983  
 Zoning:    A-O Agricultural-Open upon annexation  
 Final Plat:                                        Unplatted. Included in the Rock Prairie Market Place Master Plan (2008)  
 Site development:                                Vacant



<p>REZONING</p>	<p>Case: 09-055</p>	<p>WEINGARTEN TRACT - 8.76 ACRES</p>
<p>DEVELOPMENT REVIEW</p>		



Zoning Districts	Level of Use	Light Commercial	WUPC	WUPC Use Corridor
A-O	Light Commercial	C-3	WUPC	WUPC
A-OR	Light Commercial	M-1	NG-1	Core District
R-1	Light Commercial	M-2	NG-2	Transitional Northgate
R-2	Light Commercial	C-U	NG-3	Residential Northgate
R-3	Light Commercial	PAD	OW	Corridor Overlay
R-4	Light Commercial	P-MUD	RDD	Recreational District
R-5	Light Commercial	PCC	KO	Krenek Tap Overlay
R-6	Light Commercial			
R-7	Light Commercial			
R-8	Light Commercial			
R-9	Light Commercial			
R-10	Light Commercial			
R-11	Light Commercial			
R-12	Light Commercial			
R-13	Light Commercial			
R-14	Light Commercial			
R-15	Light Commercial			
R-16	Light Commercial			
R-17	Light Commercial			
R-18	Light Commercial			
R-19	Light Commercial			
R-20	Light Commercial			
R-21	Light Commercial			
R-22	Light Commercial			
R-23	Light Commercial			
R-24	Light Commercial			
R-25	Light Commercial			
R-26	Light Commercial			
R-27	Light Commercial			
R-28	Light Commercial			
R-29	Light Commercial			
R-30	Light Commercial			
R-31	Light Commercial			
R-32	Light Commercial			
R-33	Light Commercial			
R-34	Light Commercial			
R-35	Light Commercial			
R-36	Light Commercial			
R-37	Light Commercial			
R-38	Light Commercial			
R-39	Light Commercial			
R-40	Light Commercial			
R-41	Light Commercial			
R-42	Light Commercial			
R-43	Light Commercial			
R-44	Light Commercial			
R-45	Light Commercial			
R-46	Light Commercial			
R-47	Light Commercial			
R-48	Light Commercial			
R-49	Light Commercial			
R-50	Light Commercial			

**DEVELOPMENT REVIEW**

**WEINGARTEN TRACT - 8.76 ACRES**

**Case: 09-055**

**REZONING**



**MINUTES**  
**PLANNING AND ZONING COMMISSION**  
**Regular Meeting**  
**Thursday, May 21, 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:** Lynn McElhaney and John Crompton

**CITY STAFF PRESENT:** Senior Planner Jennifer Prochazka, Assistant City Engineer Josh Norton, Senior Assistant City Engineer Carol Cotter, City Engineer Alan Gibbs, Greenways Program Manager Venessa Garza, Transportation Planning Coordinator Joe Guerra, Planning Administrator Molly Hitchcock, Director Bob Cowell, Assistant Director Lance Simms, First Assistant City Attorney Carla Robinson, Action Center Representative Kerry Mullins, and Staff Assistant Brittany Caldwell

**Regular Agenda**

5. Public hearing, presentation, possible action, and discussion on a rezoning from A-O Agricultural-Open to C-1 General Commercial for approximately 8.76 acres generally located east of State Highway 6, approximately 2,600 feet south of the intersection of State Highway 6 and Rock Prairie Road. **Case #09-00500055 (JP)**

Jennifer Prochazka, Senior Planner, presented the rezoning of 8.76 acres and 35.70 acres and recommended denial of both.

Chairman Nichols opened the public hearing.

Brock Bailey, 1445 Ross Avenue Ste. 3800, Dallas, Texas, gave a brief history of the site. He stated that C-1, General Commercial, is consistent with the Comprehensive Plan. He said that staff comments are focused on utilities rather than compatibility and if Weingarten developed the property mitigation would be improved.

David Usari, Traffic Engineer, stated that if the property is rezoned and mitigation is implemented the development would not have a significant impact on the roadway system. He said that if the current zoning remains and there is no mitigation, the roadway system will experience a significant and major traffic impact by 2011.

Patricia Klein, 9214 Brookwater Circle, College Station, Texas; Melanie Burrel, 9100 Waterford Drive, College Station, Texas; Ann Hazen, 1309 Wilshire Court, College Station, Texas; Gary Sorenson, 2405 Faulkner, College Station, Texas. Some of the concerns of the citizens were traffic, safety, environmental impacts, and infrastructure not being present.

Chairman Nichols closed the public hearing.

There was concern expressed by the Commissioners about the traffic that the development would generate.

**Commissioner Slack motioned to recommend denial of both rezonings. Commissioner Stearns seconded the motion, motion passed (6-0).**

6. Public hearing, presentation, possible action, and discussion on a rezoning from A-O Agricultural-Open, C-2 Commercial Industrial, and R-4 Multi-Family to C-1 General Commercial for approximately 35.70 acres generally located southeast of the intersection of State Highway 6 and Rock Prairie Road. **Case #09-00500056 (JP)**

This item was presented with the previous rezoning.

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" and graphically in Exhibit "B", 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 25<sup>th</sup> day of June, 2009

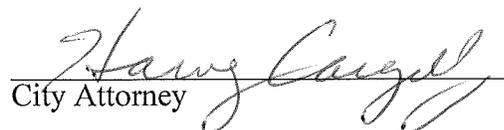
APPROVED:

\_\_\_\_\_  
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 A-O Agricultural Open to C-1 General Commercial and is graphically shown in Exhibit "B":

METES AND BOUNDS DESCRIPTION  
**8.76 ACRES, TRACT IV**  
IN THE ROBERT STEVENSON SURVEY, A-54  
CITY OF COLLEGE STATION, BRAZOS COUNTY, TEXAS

All that certain 8.76 acres of land, out of the 5.576 acre tract of land described in the deed to Weingarten/Investments, Inc., recorded in Volume 7488, Page 256, in the Deed Records of Brazos County, Texas, the 7.158 acre tract described in the deed to Weingarten/Investments, Inc., recorded in Volume 7222, Page 7, in the Deed Records of Brazos County, Texas, and the 19.10 acre tract described in the deed to Weingarten/Investments, Inc., recorded in Volume 7488, Page 248, in the Deed Records of Brazos County, Texas, in the Robert Stevenson Survey, A-54, City of College Station, Brazos County, Texas, and more particularly described by metes and bounds as follows (all bearings based on the Texas State Plane Coordinate System, Central Zone):

COMMENCING at a 5/8" iron rod with a cap stamped "PATE" found for the northwest corner of a 5.917 acre tract, conveyed to Weingarten/Investments, Inc. by deed recorded in Volume 7310, Page 98, in the Deed Records of Brazos County, Texas, said iron rod being the southwest corner of Old Rock Prairie Road (right-of-way varies), in the east right-of-way line of State Highway 6 (right-of-way varies); thence North 48° 31' 21" East – 424.60' to a point for corner; thence South 21° 52' 47" East – 660.96' to an angle point; thence South 32° 11' 28" East – 194.69' to the POINT OF BEGINNING; said beginning point also being located North 21°20'38" West – 2,574.44' from the City of College Station GPS monument number 131;

THENCE North 68°22'53" East – 637.89' to a corner of the herein described tract;

THENCE South 47°37'07" East – 364.64' to a corner of the herein described tract;

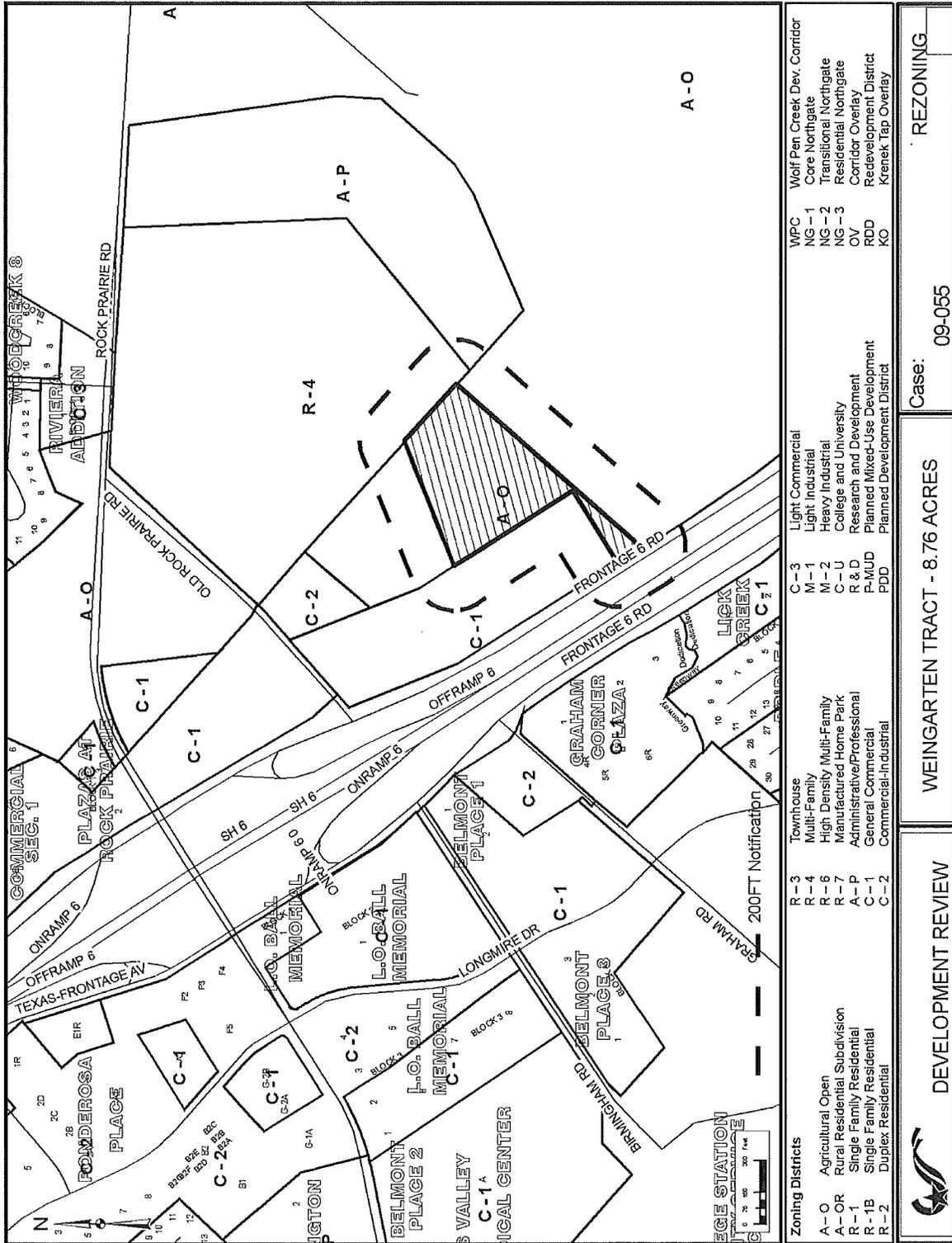
THENCE South 41°15'11" West – 1172.67' to a concrete TxDOT monument found in the east right-of-way line of State Highway 6 for the southwest corner of the herein described tract;

THENCE North 32°11'28" West – 133.48' along the east right-of-way line of State Highway 6 to a corner of the herein described tract;

THENCE North 57°48'32" East – 400.00' to a corner of the herein described tract;

THENCE North 32°11'28" West – 669.22' to the POINT OF BEGINNING and containing 8.76 acres of land.

EXHIBIT "B"



Zoning Districts	Development Review	Case:	Rezoning
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	WEINGARTEN TRACT - 8.76 ACRES	09-055	REZONING

**June 25, 2009**  
**Regular Agenda Item No. 2**  
**Weingarten Rezoning (35.7 acre tract on Rock Prairie Road)**

**To:** Glenn Brown, City Manager

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

**Agenda Caption:** Public hearing, presentation, possible action, and discussion regarding 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 changing the zoning district boundaries of an area consisting of 35.7 acres generally located along Rock Prairie Road, southeast of the intersection of Rock Prairie Road and State Highway 6, from A-O Agricultural-Open, C-2 Commercial Industrial, and R-4 Multi-Family to C-1 General Commercial.

**Recommendation(s):** The Planning and Zoning Commission unanimously recommended denial of the amendment (6-0) at their May 21st meeting. Staff also recommends denial.

**Summary:**

**REVIEW CRITERIA**

- 1. Consistency with the Comprehensive Plan:** The 2009 Comprehensive Plan designates the majority of the subject property as Suburban Commercial and the remainder as General Commercial. The Suburban Commercial designation is stated to be for commercial activity that caters primarily to nearby residents versus the larger community or region. It continues by saying that "designated areas are generally small in size and adjacent to major roads. Designs of structures in these areas are intended to be compatible in size, roof type and pitch, architecture, and lot coverage with the surrounding single-family uses." Because of the intensity and scale of the uses permitted in the C-1 General Commercial District, the requested rezoning is not in compliance with the proposed Suburban Commercial designation for the property.

The stated purpose of the General Commercial designation is to provide locations for concentrations of commercial activities that cater to both nearby residents and to the larger community or region. Generally, these areas tend to be large in size and located near the intersection of two regionally significant roads (arterials and freeways). It is preferred that in such areas development be concentrated in nodes rather than spread out in strips. Based on this description, the C-1 General Commercial district, which is intended to allow general commercial uses such as retail sales and services for the regional community, would be an appropriate zoning district to implement this portion of the Plan. C-3 Light Commercial, A-P Administrative Professional, and PDD Planned Development District are also appropriate districts to implement the Comprehensive Plan's General Commercial designation.

The 2009 Thoroughfare Plan designates this portion of Rock Prairie as a 4-Lane General Suburban Boulevard. State Highway 6, a Freeway on the Thoroughfare Plan, is located adjacent to the property to the west.

- 2. Compatibility with the present zoning and conforming uses of nearby property and with the character of the neighborhood:** Generally, the C-1 General Commercial zoning district allows for the development of retail sales and service uses

that function to serve the entire community and its visitors. As such, the proposed zoning is generally compatible with the commercially zoned property located to the west. The property to the north, across Rock Prairie Road, is largely zoned A-O Agricultural Open and is undeveloped. At the entrance to the Woodcreek Subdivision, the Riviera Day Spa is zoned and developed as light commercial. While the C-1 designation is compatible with the light commercial in the area, it may not be compatible with the larger neighborhood to the north. Previously, representatives of nearby neighborhoods have voiced concerns about proposed commercial developments in close proximity to existing residential neighborhoods. The primary concerns have focused on a potential lack of compatibility of the land uses and an increase in traffic congestion in the area. The subject property is part of a larger development tract (approximately 70 acres) that is in the area of influence of a number of neighborhoods.

The property to the east is zoned A-O Agricultural-Open and is shown as Institutional on the Land Use Plan. This property is owned by the College Station Independent School District. At this time, there are no known development plans for the property.

- 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 property is located east of the grade-separated intersection of a freeway and a major arterial roadway. Rezoning the subject property to C-1 General Commercial could allow it to be developed in conjunction with the approximately 26-acre C-1 property located at the corner of the intersection (and extending south along the Frontage Road). In total, the development could include approximately 61 acres of land. Additionally, C-1 zoning for another 8.7 acres has also been requested by the applicant. If approved, the potential size of the general commercial development in this area could exceed 70 acres in size.

This has been identified by the Fire Department as an area that is located within the 2.5 mile ladder truck response area, but is not located in a 1.5 mile engine response area. In general, fire service facilities are lacking on the east side of the Bypass, resulting in increased response times.

Utility and transportation infrastructure do not currently exist to serve a development of this intensity. The general suitability of the land for development, including a discussion of the availability of water, wastewater and transportation infrastructure is included in Review Criteria #6. No FEMA floodplain exists on the property.

- 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:** A portion of the property is currently zoned A-O Agricultural Open. In this area, the A-O district is used as a holding zone for property that is projected in the Comprehensive Plan for conversion to more intensive urban use at such time as the need for the uses is present and when it is possible to adequately serve development with necessary infrastructure and public services. While the permitted uses in A-O, including low density residential, agricultural or open space uses, are generally compatible with residential development, not all agricultural uses may be appropriate on the property due to its location and the level of development that has occurred in the area. Generally, the uses permitted in the A-O district are less intense, generate less traffic, and have lower utility demands than C-1 uses. A-O uses generally have fewer service, infrastructure and facility needs. The property is generally suitable for A-O uses.

Another portion of the property is zoned C-2 Commercial Industrial. Commercial Industrial is a district that is designed to provide a location for businesses offering goods and services to a limited segment of the general public. The uses permitted in this district generally serve other commercial and industrial enterprises, and because of this, are not as reliant on high-visibility site locations. The portion of the property zoned C-2 does not have frontage on a public street. Generally, the uses permitted in the C-2 district generate about half of the traffic of C-1 uses. The property is generally suitable for C-2 uses.

A large portion of the subject property is zoned R-4 Multi-Family Residential. This portion of the subject property contains an active oil well that would need to be considered with any residential development plans. R-4 land uses generate approximately a quarter of the traffic generated by C-1 uses. The property is generally suitable for R-4 uses.

This has been identified by the Fire Department as an area that is located within the 2.5 mile ladder truck response area, but is not located in a 1.5 mile engine response area. In general, fire service facilities are lacking on the east side of the Bypass, resulting in increased response times.

Utility and transportation infrastructure do not currently exist to serve a development of this intensity. The general suitability of the land for development, including a discussion of the availability of water, wastewater and transportation infrastructure is included in Review Criteria #6. No FEMA floodplain exists on the 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 existing zoning allows the property to be marketed for residential and agricultural uses, commercial industrial development, and multi-family development. The proposed rezoning would generally allow for the property, in conjunction with the adjacent 26-acre tract, to be marketed for large-scale retail development.

A market analysis of the subject property has not been provided to the City; however, the existing A-O and C-2 districts permit a mix of agricultural, residential, commercial, office, institutional, and light industrial uses, which are consistent with other uses found along the east side of the Bypass. The majority of the property is zoned R-4 Multi-Family and was platted in anticipation of a multi-family development in 2008 by the property owner. While, in general, this area of the City is not anticipated to develop as multi-family housing (based on the proposed Land Use Plan for the area), it can be assumed that the existing R-4 zoning on this portion of the property may still be viable from a market perspective, based on recent development actions by the property owner. In general, multi-family housing in College Station has very high occupancy rates, further indicating the strength of this market opportunity.

- 6. Availability of water, wastewater, stormwater, and transportation facilities generally suitable and adequate for the proposed use:** There are existing water lines along State Highway 6 and Rock Prairie Road that can adequately provide water to this area. Required Water Master Plan lines also affect this property and will need to be designed and constructed in conjunction with the development of the property.

There are existing 8" and 12" sanitary sewer lines near the State Highway 6 and Rock Prairie Road intersection. Required Sewer Master Plan lines also affect this property, and will need to be designed and constructed in conjunction with the development of the

property. Comprehensive Plan policies state that the City should approve development only in areas that can be reliably and economically served within the City's capabilities. In addition, the Comprehensive Plan promotes utility improvements and extensions to promote infill and redevelopment versus expansion of the urbanized area.

The City is currently in the process of updating its utility master plans. This property is currently planned to gravity flow to the Lick Creek Wastewater Treatment Plant to the south; however, the infrastructure, including sewer collection lines, is not yet in place to support this. While the existing sanitary sewer lines in this area were not designed to include capacity for this property, it may be possible for the property to be served by the existing 8" line that sewers to the north (Carter Creek Wastewater Treatment Plant). In order to sewer to the sewershed to the north, an interim lift station would be required to be constructed and maintained. A City owned and operated lift station would not be a best value to City ratepayers because of future operation and maintenance concerns and the inability to serve additional customers via gravity flows to the lift station. The most preferred option for the development of the property is to be served by a gravity sanitary sewer line, and not a lift station.

The property is surrounded by State Highway 6 and Rock Prairie Road. State Highway 6 is classified on the City's Thoroughfare Plan as Freeway/Expressway and Rock Prairie Road is classified as a 4-lane General Suburban Boulevard, although it is currently constructed to a rural street standard. Access to the property will be from Rock Prairie Road.

College Station's Unified Development Ordinance (UDO) requires the development and submittal of a Traffic Impact Analysis (TIA) to help inform the Planning & Zoning Commission and City Council on the question of Rezoning. In accordance with this requirement, the applicant submitted a TIA that complies with the requirements outlined in Section 7.12.D.3 of the UDO (Zoning TIA Content) for the combined 44.6 acres currently under consideration for rezoning to C-1 General Commercial.

The TIA concludes that the current system cannot operate at the minimum Level of Service -LOS D- once the subject property is developed. In compliance with the requirements of the UDO, the applicant has proposed to mitigate the impacts through roadway improvements. However, some of the proposed mitigation techniques may not be acceptable to the City, including a four-way signalized intersection at Stonebrook Drive and Rock Prairie Road – a primary entrance to a single-family neighborhood. A four-way intersection at this location was recently and intentionally removed from the Thoroughfare Plan with the adoption of the East College Station Transportation Study. Additionally, the proposed mitigation fails to address all of the service impacts associated with the development. Further discussion of proposed mitigation can be found at the end of this section.

Below is a summary of the findings of the TIA, including a comparison of the existing Levels of Service in the area and the LOS after proposed mitigation measures are constructed.

**Intersection Level of Service**

INTERSECTION	EXISTING LOS	MITIGATED LOS
Rock Prairie at Stonebrook	A	C

Rock Prairie at SH 6 Northbound FR	C	D
Rock Prairie at SH 6 Southbound FR	B	D
Rock Prairie at Longmire	C	D
Rock Prairie at Rio Grande	B	B
Rock Prairie at Welsh	A	B
Rock Prairie at New Prvt Collector		C
New Prvt Collector at SH 6 Northbound FR		C

LOS is ranked from A to F, with A being the highest service level and F being the lowest. In general, LOS D is considered the minimum LOS that is acceptable. The above chart demonstrates that while meeting the minimum LOS (average of the intersection), most of the intersections in the area experience a degradation in service (post-mitigation).

LOS of an intersection is determined by the movements contributing to that intersection. Each traffic movement was analyzed and, in accordance with standard practices, an average was taken for the intersection as a whole, regardless of whether one of the traffic movements was below the acceptable LOS D. For example, if the through movement was rated as an F and the right-turn movements and left-turn movements were rated as an A and B, then the average LOS would be a B. Even though the through lane was failing, the intersection as a whole appears to exceed the minimum LOS required.

As one example, even after mitigation, the intersection of Rock Prairie Road at Longmire Drive has several movements that will significantly degrade in service after mitigation. Queue lengths (the length of autos waiting to enter the intersection) for the individual traffic movements that were identified at unacceptable LOS were extensive. The eastbound through movement queue length was 517 feet (21 vehicles) with a LOS E for that traffic individual movement. However, the average LOS for the intersection as a whole is shown to be a D.

**Intersection: Rock Prairie Road at Longmire Drive**

MOVEMENT	EXISTING LOS	MITIGATED LOS
Eastbound Left	C	C
Eastbound Through	B	E

Westbound Left	C	F
Westbound Through	B	C
Northbound Left	D	F
Northbound Through	C	D
Northbound Right	A	A
Southbound Left	C	E
Southbound Through	D	E
Southbound Right	A	A

There are several other similar issues noted elsewhere in the TIA.

The proposed mitigation based on the findings of the TIA includes the following:

- § Construct a 4-lane collector road (backage road)
- § Construct a new eastbound lane on Rock Prairie Road from State Highway 6 Northbound Frontage Road to Stonebrook Drive (widening of Rock Prairie Road by adding a lane)
- § Right-in and right-out only movements at intersection of new four-lane private collector and Rock Prairie Road
- § Construct a four-way intersection at Rock Prairie Road and Stonebrook Drive (proposed signalized access point to the development)
- § Construct a 150-foot right-turn lane at the eastbound lane to State Highway 6 southbound Frontage Road (at Rock Prairie and State Highway 6 southbound Frontage Road). Modify pavement markings
- § Construct a 150-foot right-turn lane on State Highway 6 southbound Frontage Road on to westbound Rock Prairie Road. Modify pavement markings on Rock Prairie Road eastbound to provide one left-turn lane and two through lanes.

**Budget & Financial Summary:** N/A

**Attachments:**

1. Background Information
2. Aerial and Small Area Map (SAM)
3. Draft Planning and Zoning Commission Meeting Minutes, May 21, 2009
4. Ordinance

**BACKGROUND**

**NOTIFICATIONS**

Advertised Commission Hearing Date: May 21, 2009

Advertised Council Hearing Dates: June 25, 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:

- Wilshire HOA
- Foxfire HOA
- Chadwick HOA
- Amberlake HOA
- Shadow Crest HOA
- Stonebridge HOA
- Stonebridge Court HOA
- Sandstone HOA

Property owner notices mailed: 7

Contacts in support: None as of date of staff report

Contacts in opposition: Approximately 10 nearby residents have expressed concerns including traffic impact to the area, incompatible land uses, and a degradation of quality of life for the nearby residential neighborhoods.

Inquiry contacts: None as of date of staff report

**ADJACENT LAND USES**

Direction	Comprehensive Plan	Zoning	Land Use
North (across Rock Prairie Road)	Major Arterial (Suburban Commercial & General Suburban)	(A-O Agricultural Open, C-3 Light Commercial)	Rock Prairie Road (Vacant, Riviera Day Spa)
South	General Commercial	A-O Agricultural Open	Rural, vacant
East	General Suburban	R-4 Multi-Family	Rural, vacant
West	General Commercial	C-1 General Commercial	Rural, vacant

**DEVELOPMENT HISTORY**

**Annexation:** 1983 and 1995

**Zoning:** Annexed as A-O Agricultural-Open. A-O to C-2 Commercial Industrial in 1986; C-2 to R-5 Apartment/Medium Density in 1994; and R-5 renamed to R-4 Multi-Family in 2003

**Final Plat:** A portion of the property platted as Rock Prairie Heights in 2008

**Site development:** Largely vacant, with an on-site oil well



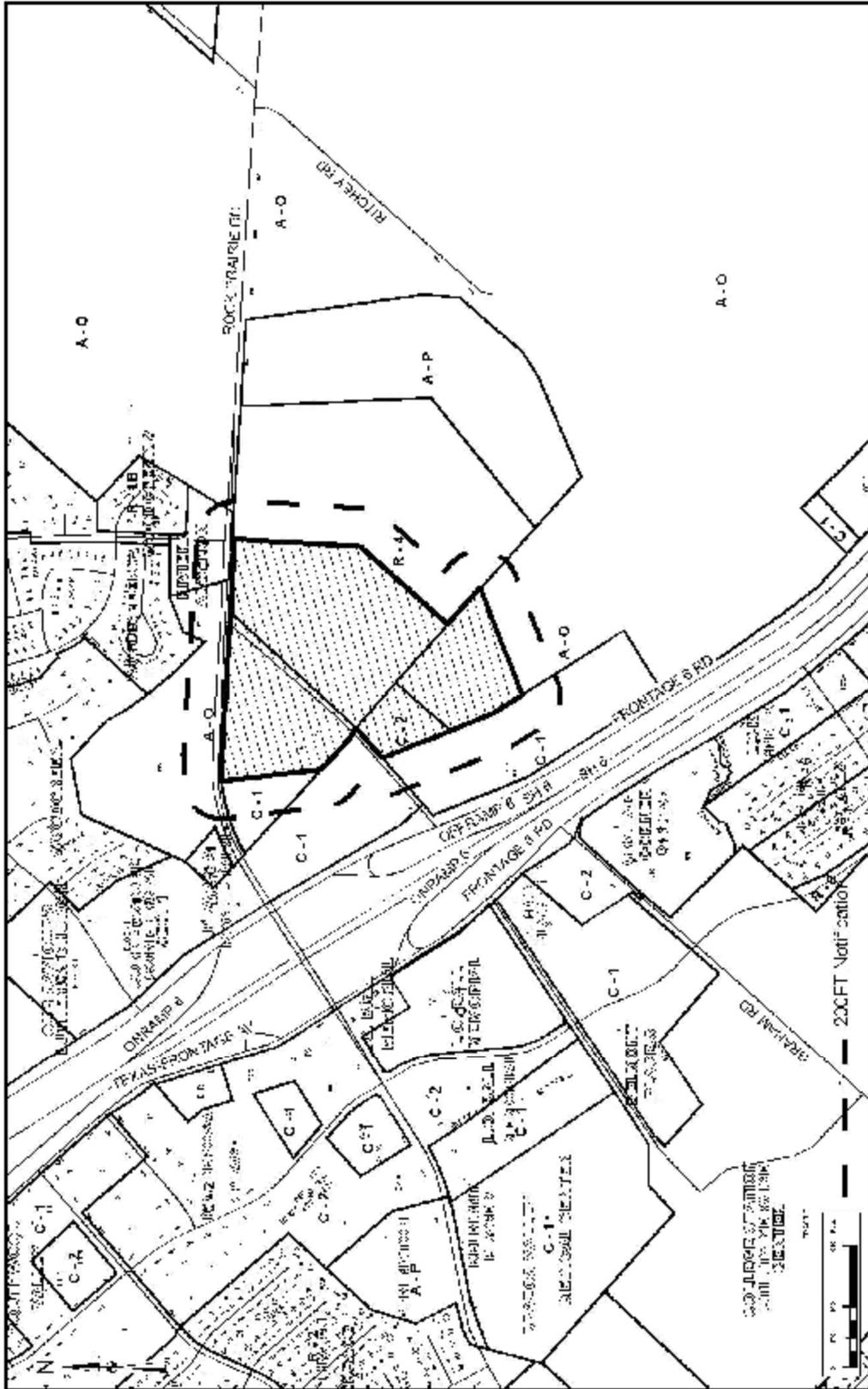
REZONING

Case: 09-056

WEINGARTEN TRACT - 35.7 ACRES

DEVELOPMENT REVIEW





Zoning Districts	R-3	Townhouse	C-3	WPC	Map
A-1	R-3	Townhouse	C-3	MS-1	Map 1
A-2	R-4	Multi-Family	M-1	MS-2	Map 2
A-3	R-5	Light Density Multi-Family	M-2	MS-3	Map 3
A-4	R-6	Medium Density Multi-Family	C-1	MS-4	Map 4
A-5	R-7	Administrative/Professional	R-3	MS-5	Map 5
A-6	R-8	General Commercial	P-MD	MS-6	Map 6
A-7	R-9	Community/Industrial	IND	MS-7	Map 7
A-8	R-10			MS-8	Map 8
A-9	R-11			MS-9	Map 9
A-10	R-12			MS-10	Map 10
A-11	R-13			MS-11	Map 11
A-12	R-14			MS-12	Map 12
A-13	R-15			MS-13	Map 13
A-14	R-16			MS-14	Map 14
A-15	R-17			MS-15	Map 15
A-16	R-18			MS-16	Map 16
A-17	R-19			MS-17	Map 17
A-18	R-20			MS-18	Map 18
A-19	R-21			MS-19	Map 19
A-20	R-22			MS-20	Map 20
A-21	R-23			MS-21	Map 21
A-22	R-24			MS-22	Map 22
A-23	R-25			MS-23	Map 23
A-24	R-26			MS-24	Map 24
A-25	R-27			MS-25	Map 25
A-26	R-28			MS-26	Map 26
A-27	R-29			MS-27	Map 27
A-28	R-30			MS-28	Map 28
A-29	R-31			MS-29	Map 29
A-30	R-32			MS-30	Map 30
A-31	R-33			MS-31	Map 31
A-32	R-34			MS-32	Map 32
A-33	R-35			MS-33	Map 33
A-34	R-36			MS-34	Map 34
A-35	R-37			MS-35	Map 35
A-36	R-38			MS-36	Map 36
A-37	R-39			MS-37	Map 37
A-38	R-40			MS-38	Map 38
A-39	R-41			MS-39	Map 39
A-40	R-42			MS-40	Map 40
A-41	R-43			MS-41	Map 41
A-42	R-44			MS-42	Map 42
A-43	R-45			MS-43	Map 43
A-44	R-46			MS-44	Map 44
A-45	R-47			MS-45	Map 45
A-46	R-48			MS-46	Map 46
A-47	R-49			MS-47	Map 47
A-48	R-50			MS-48	Map 48
A-49	R-51			MS-49	Map 49
A-50	R-52			MS-50	Map 50
A-51	R-53			MS-51	Map 51
A-52	R-54			MS-52	Map 52
A-53	R-55			MS-53	Map 53
A-54	R-56			MS-54	Map 54
A-55	R-57			MS-55	Map 55
A-56	R-58			MS-56	Map 56
A-57	R-59			MS-57	Map 57
A-58	R-60			MS-58	Map 58
A-59	R-61			MS-59	Map 59
A-60	R-62			MS-60	Map 60
A-61	R-63			MS-61	Map 61
A-62	R-64			MS-62	Map 62
A-63	R-65			MS-63	Map 63
A-64	R-66			MS-64	Map 64
A-65	R-67			MS-65	Map 65
A-66	R-68			MS-66	Map 66
A-67	R-69			MS-67	Map 67
A-68	R-70			MS-68	Map 68
A-69	R-71			MS-69	Map 69
A-70	R-72			MS-70	Map 70
A-71	R-73			MS-71	Map 71
A-72	R-74			MS-72	Map 72
A-73	R-75			MS-73	Map 73
A-74	R-76			MS-74	Map 74
A-75	R-77			MS-75	Map 75
A-76	R-78			MS-76	Map 76
A-77	R-79			MS-77	Map 77
A-78	R-80			MS-78	Map 78
A-79	R-81			MS-79	Map 79
A-80	R-82			MS-80	Map 80
A-81	R-83			MS-81	Map 81
A-82	R-84			MS-82	Map 82
A-83	R-85			MS-83	Map 83
A-84	R-86			MS-84	Map 84
A-85	R-87			MS-85	Map 85
A-86	R-88			MS-86	Map 86
A-87	R-89			MS-87	Map 87
A-88	R-90			MS-88	Map 88
A-89	R-91			MS-89	Map 89
A-90	R-92			MS-90	Map 90
A-91	R-93			MS-91	Map 91
A-92	R-94			MS-92	Map 92
A-93	R-95			MS-93	Map 93
A-94	R-96			MS-94	Map 94
A-95	R-97			MS-95	Map 95
A-96	R-98			MS-96	Map 96
A-97	R-99			MS-97	Map 97
A-98	R-100			MS-98	Map 98
A-99				MS-99	Map 99
A-100				MS-100	Map 100

Case: 09-056

REZONING

WEINGARTEN TRACT - 35.7 ACRES

DEVELOPMENT REVIEW



**MINUTES**  
**PLANNING AND ZONING COMMISSION**  
**Regular Meeting**  
**Thursday, May 21, 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:** Lynn McElhane and John Crompton

**CITY STAFF PRESENT:** Senior Planner Jennifer Prochazka, Assistant City Engineer Josh Norton, Senior Assistant City Engineer Carol Cotter, City Engineer Alan Gibbs, Greenways Program Manager Venessa Garza, Transportation Planning Coordinator Joe Guerra, Planning Administrator Molly Hitchcock, Director Bob Cowell, Assistant Director Lance Simms, First Assistant City Attorney Carla Robinson, Action Center Representative Kerry Mullins, and Staff Assistant Brittany Caldwell

**Regular Agenda**

5. Public hearing, presentation, possible action, and discussion on a rezoning from A-O Agricultural-Open to C-1 General Commercial for approximately 8.76 acres generally located east of State Highway 6, approximately 2,600 feet south of the intersection of State Highway 6 and Rock Prairie Road. **Case #09-00500055 (JP)**

Jennifer Prochazka, Senior Planner, presented the rezoning of 8.76 acres and 35.70 acres and recommended denial of both.

Chairman Nichols opened the public hearing.

Brock Bailey, 1445 Ross Avenue Ste. 3800, Dallas, Texas, gave a brief history of the site. He stated that C-1, General Commercial, is consistent with the Comprehensive Plan. He said that staff comments are focused on utilities rather than compatibility and if Weingarten developed the property mitigation would be improved.

David Usari, Traffic Engineer, stated that if the property is rezoned and mitigation is implemented the development would not have a significant impact on the roadway system. He said that if the current zoning remains and there is no mitigation, the roadway system will experience a significant and major traffic impact by 2011.

Patricia Klein, 9214 Brookwater Circle, College Station, Texas; Melanie Burrel, 9100 Waterford Drive, College Station, Texas; Ann Hazen, 1309 Wilshire Court, College Station, Texas; Gary Sorenson, 2405 Faulkner, College Station, Texas. Some of the concerns of the citizens were traffic, safety, environmental impacts, and infrastructure not being present.

Chairman Nichols closed the public hearing.

There was concern expressed by the Commissioners about the traffic that the development would generate.

**Commissioner Slack motioned to recommend denial of both rezonings. Commissioner Stearns seconded the motion, motion passed (6-0).**

6. Public hearing, presentation, possible action, and discussion on a rezoning from A-O Agricultural-Open, C-2 Commercial Industrial, and R-4 Multi-Family to C-1 General Commercial for approximately 35.70 acres generally located southeast of the intersection of State Highway 6 and Rock Prairie Road. **Case #09-00500056 (JP)**

This item was presented with the previous rezoning.

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" and graphically in Exhibit "B", 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 25<sup>th</sup> day of June, 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 A-O Agricultural Open, C-2 Commercial Industrial, and R-4 Multi-Family to C-1 General Commercial and is graphically shown in Exhibit "B":

METES AND BOUNDS DESCRIPTION  
**35.70 ACRES, TRACT III**  
 IN THE THOMAS CARUTHERS LEAGUE SURVEY, A-9 &  
 THE ROBERT STEVENSON SURVEY, A-54  
 CITY OF COLLEGE STATION, BRAZOS COUNTY, TEXAS

All that certain 35.70 acres of land, in the Thomas Caruthers League Survey, A-9 and the Robert Stevenson Survey, A-54, in the City of College Station, Brazos County, Texas, which includes part of the following tracts of land conveyed to Weingarten/Investments, Inc.: the 6.565 acre tract recorded in Volume 7282, Page 72, the 5.916 acre tract recorded in Volume 7310, Page 98, the 7.158 acre tract recorded in Volume 7222, Page 7, the 5.576 acre tract recorded in Volume 7488, Page 256, the 19.10 acre tract recorded in Volume 7488, Page 248, the 4.310 acre tract recorded in Volume 7583, Page 108, Deed Records, Brazos County, Texas and all of the 17.211 acre tract recorded in Volume 7488, Page 261, Deed Records, Brazos County, Texas and including part of the existing right-of-way of Old Rock Prairie Road, (all bearings based on the Texas State Plain Coordinate System, Central Zone);

COMMENCING at a 1/2" iron rod found for the south corner of the southeast cutback corner of State Highway 6 (a variable width right-of-way) and Rock Prairie Road (a 90' right-of-way); THENCE North 12°47'34" East – 21.22' along the southeast cutback corner of said State Highway 6 and Rock Prairie Road, to a 5/8" iron rod with a cap stamped "PATE" found for the northeast cutback corner of the said southeast cutback corner of State Highway 6 and Rock Prairie Road; THENCE North 57°46'36" East – 259.85' along the south right-of-way line of said Rock Prairie Road to a 5/8" iron rod with a cap stamped "PATE" found for the Point of Curvature of a curve to the right having a central angle of 27°13'14", a radius of 955.00', and a chord bearing and distance of North 71°23'40" East – 449.45'; THENCE along said curve to the right, continuing along said Rock Prairie Road in northeasterly direction an arc length of 453.71' to the POINT OF BEGINNING of the herein described tract, which is a point on a curve to the right, having a central angle of 08°32'19", a radius of 955.00' and a chord bearing and distance of North 89°16'26" East – 142.19'; said beginning point also being located South 67°33'45" East – 1,359.80' from the City of College Station GPS monument number 130; <sup>8</sup>

THENCE along said curve to the right, in a northeasterly direction continuing along said Rock Prairie Road for a total arc distance of 142.32' to a 1/2" iron rod found for the end of curve;

THENCE South 86°27'25" East – continuing along the south right-of-way line of said Rock Prairie Road, passing a 5/8" iron rod found at 720.25', and continuing 72.70' to a 1/2" iron rod found, and continuing on for a total distance of 1,203.06' to a 5/8" iron rod with a cap stamped "PATE" found for the northeast corner of the herein described tract;

THENCE South 03°20'51" West – 695.50' to a 1/2" iron rod found for an angle corner of the herein described tract;

THENCE South 41°34'16" West – 650.03' to a 1/2" iron rod found for an angle corner of the herein described tract;

THENCE South 47°37'07" East – 270.00' to an angle corner of the herein described tract;

THENCE South 68°22'53" West – 637.89' to an angle corner of the herein described tract;

THENCE North 32°11'28" West – 194.69' to an angle corner of herein described tract;

THENCE North 21°52'47" West – 660.96' to an angle corner of herein described tract;

THENCE North 48°31'21" East – 227.64' to an angle corner of the herein described tract;

THENCE North 64°22'24" West – 64.61' to an angle corner of the herein described tract;

THENCE North 47°41'55" West – 237.24' to an angle corner of the herein described tract;

THENCE North 06°37'07" West – 557.42' to THE POINT OF BEGINNING and containing 35.70 acres of land.



**June 25, 2009**  
**Regular Agenda Item No. 3**  
**Ch. 13 Flood Hazard Protection – No Adverse Impacts to Floodplain**

**To:** Glenn Brown, City Manager

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

**Agenda Caption:** Public Hearing, presentation, possible action, and discussion an ordinance amending City of College Station Code of Ordinances Chapter 13: Flood Hazard Protection.

**Recommendation(s):** Staff recommends approval of this ordinance amendment with the primary benefit of enhanced flood hazard protection.

**Summary:** At the March 12, 2009 Regular Council Meeting, City Council directed staff to conduct a third stakeholder meeting to seek additional input on the previous proposed ordinance amendment, and then to bring the ordinance amendment back for Council consideration. This stakeholder presentation and discussion session was well attended on April 13, 2009 and a summary of the minutes and attendants is attached. The attached current proposed ordinance amendment incorporates several of the significant stakeholder comments. The following summarizes the ordinance amendment proposals:

- (1) To restrict the following activities that would have an adverse impact on the FEMA Special Flood Hazard Area or the Ultimate Base Floodplain area:
  - a. increased flood elevation,
  - b. increased Special Flood Hazard Area,
  - c. decreased conveyance capacity,
  - d. decreased storage volume, and
  - e. increased velocities;
  
- (2) To exempt the above restrictions:
  - a. Where the adverse impact is wholly contained:
    1. on the subject property,
    2. on a property where its owner joins the associated development permit application which causes, quantifies, and outlines the adverse impact,
    3. within a Private Drainage Easement which is specified to be privately owned and maintained, and is recorded at the Brazos County Court House, or
    4. within the Public Right-of-Way;
  
  - b. For tracts platted prior to August 16, 2009 which is 120 days from consideration at this meeting. So, subsequent Site Plans, Development Permits, and Building Permits on grandfathered tracts would be exempt from these proposed amendments.
  
- (3) To require that approved mitigation such as excavation, must be properly approved and occur prior to any approved encroachment or fill is placed in the construction sequencing.

- (4) To require an Engineer's Certification of Compaction of fill in accordance with FEMA Technical Bulletin 10-01 for proposed fill activities encroaching into the FEMA Special Flood Hazard Area or the Ultimate Base Floodplain area;
- (5) To quantify that Conditional Letters of Map are required for modification of any watercourse where total of 300 feet reach or more of channelization or closing within a culvert;
- (6) To establish that the City Engineer is the Administrator of the Flood Hazard Ordinance.

Lastly, similar to one of the exemptions above, the effective date for this ordinance has a proposed 120 day effective date from adoption to further enable projects underway to not be influenced.

**Budget & Financial Summary:** N/A

**Attachments:**

1. Ordinance
2. Stakeholder Minutes Summary

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE AMENDING CHAPTER 13, "FLOOD HAZARD PROTECTION", 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 13, "Flood Hazard Protection Ordinance", of the Code of Ordinances of the City of College Station, Texas, be amended as set out in Exhibits "A-G," 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 Five Hundred Dollars (\$500.00). 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 one hundred and twenty (120) days after its date of passage by the City Council, and 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 13, "Flood Hazard Protection," Section 3, "General Provisions and Applicability" of the Code of Ordinances of the City of College Station, Texas, is hereby amended, by deleting Subsection E.(4).

**EXHIBIT "B"**

That Chapter 13, "Flood Hazard Protection," Section 4-A, "Designation of Administrator" of the Code of Ordinances of the City of College Station, Texas, is hereby amended, by deleting said section and substituting the following:

"SECTION 4: ADMINISTRATION.

A. DESIGNATION OF ADMINISTRATOR

The City Engineer shall be the Administrator to implement, administer, and oversee the provisions, terms, and conditions and requirements of this Chapter and shall maintain as his guideline for administration the purposes of this Chapter."

**EXHIBIT "C"**

That Chapter 13, "Flood Hazard Protection", Section 5-C, "Revision or Amendment of Flood Insurance Study", of the Code of Ordinances of the City of College Station, Texas, is hereby amended, by replacing, as set out hereafter to read as follows:

C. REVISION OR AMENDMENT OR FLOOD INSURANCE STUDY

Any revision or amendment to the Flood Insurance Study which is requested by a land owner in the City shall be submitted to the designated Administrator of the Stormwater Management Program in accordance with the requirements set forth in the Bryan/College Station Unified Design Guidelines, Standard Details, and Technical Specifications. All requests for map amendment or map revision must be approved by the Administrator in writing prior to their submission to FEMA. If modification of any watercourse is involved where a total of 300 feet reach or more is channelized or a closed within a culvert, an effective Conditional Letter of Map Amendment shall be on file with the Administrator prior to any development or issuance of a Development Permit. All submittals to FEMA shall be made at no cost to the City.

**EXHIBIT "D"**

That Chapter 13, "Flood Hazard Protection", Section 5-E, "Special Provisions for Areas of Special Flood Hazard", of the Code of Ordinances of the City of College Station, Texas, is hereby amended, by replacing Section 5-E, as set out hereafter to read as follows:

**"E. SPECIAL PROVISIONS FOR AREAS OF SPECIAL FLOOD HAZARD**

In all areas of Special Flood Hazard the following requirements shall apply:

- (1) All new construction, any substantial improvement to a structure, and appurtenances shall be securely anchored to prevent flotation, collapse or lateral movement.

**(Ordinance No. 2950 of January 11, 2007)**

- (2) All new construction, any substantial improvement to a structure, and appurtenances shall be constructed in such a manner as to minimize flood damage and provide adequate drainage; and, all electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities shall be designed and/or located at least one foot above the Base Flood Elevation so as to prevent water from entering or accumulating within the components during conditions of flooding;"

**(Ordinance No. 3133 of November 5, 2008)**

- (3) New and replacement sanitary sewage systems, including but not limited to septic tanks and drain fields, package treatment plants, etc., shall be designed to minimize or eliminate infiltration of flood waters into the system and discharges from the system into flood waters;
- (4) New and replacement water supply systems including wells, treatment plants, distribution facilities, etc., shall be designed to prevent infiltration of flood waters into the system;
- (5) Solid or liquid waste disposal sites or systems shall be designed and located to avoid contamination from them during flooding and to avoid impairment of their operation during times of flooding;
- (6) All new construction or any substantial improvement of any residential structure shall have the lowest floor, including all utilities, ductwork and any basement, at an elevation at least one foot above the Base Flood Elevation. Certification that the applicable standards have been satisfied shall be submitted to the Administrator, said certification shall bear the dated seal and signature of a registered professional engineer or registered public surveyor on the form provided by the Administrator;
- (7) All new construction or any substantial improvement of any commercial, industrial, or other non-residential structure shall either have the lowest floor, including all utilities, ductwork and basements, elevated at least one foot above the Base Flood Elevation, or the structure with its attendant utility, ductwork, basement and sanitary facilities shall be flood-proofed so that the structure and utilities, ductwork, basement and sanitary facilities shall be watertight and impermeable to the intrusion of water in all areas below the Base Flood Elevation, and shall resist the structural loads and buoyancy effects from the hydrostatic and hydrodynamic conditions. Certification that the applicable standards have been satisfied shall bear the dated seal and signature of a registered professional engineer on the form provided by the Administrator;

- (8) For all new construction and substantial improvements, fully enclosed areas below the lowest floor that are used solely for parking of vehicles, building access or storage in an area other than a basement and that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria: A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters;
- (9) In areas of special flood hazard where Base Flood Elevations have not been established, Base Flood Elevation data shall be generated for subdivision proposals and other proposed development, including manufactured home parks, which are greater than 50 lots or 5 acres, whichever is less.
- (10) In A1-30, AH, and AE Zones [or areas of special hazard], all recreational vehicles to be placed on a site must (i) be elevated and anchored; and (ii) be on the site for less than 180 consecutive days; and (iii) be fully licensed and highway ready.
- (11) (a) Any new construction, substantial improvement to a structure or fill that encroaches into the Special Flood Hazard Area shall be prohibited unless it can be demonstrated that same will have no adverse impacts as set forth below. Certification of this shall be required as approved by the Administrator based upon a submitted engineering report that includes hydrologic and hydraulic analysis which conform to the requirements of this Chapter and the Bryan/College Station Unified Design Guidelines, Standard Details, and Technical Specifications. All submitted information required herein shall bear the dated seal and signature of a registered professional engineer:
- (1) The engineering report shall demonstrate that such construction, improvement or fill creating the encroachment does not, at any time, cause any of the following upstream, within, near, adjacent, or downstream of such encroachment:
    - a) An increase in the Base Flood Elevations. In the event that Base Flood Elevations are not known at the time of submitting the information required herein, Base Flood Elevations must be determined;
    - b) Creation of additional areas of Special Flood Hazard Area;
    - c) A loss of conveyance capacity to that part of the Special Flood Hazard Area that is not in the floodway and where the velocity of flow in the Base Flood event is greater than one foot per second. Equal conveyance modeling shall be utilized;
    - d) A loss of Base Flood water storage volume to the part of the Special Flood Hazard Area that is beyond the floodway and conveyance area where the velocity of flow in the Base Flood is equal to and less than one foot per second without acceptable compensation as set forth herein. Acceptable compensation for the loss of storage volume requires a demonstration of cuts and fills, must be mitigated on-site and

must demonstrate no net fill. In general, excavation within the Special Flood Hazard Area and below the Base Flood Elevation is the only acceptable method of mitigation of fill placed below the Base Flood Elevation in the Special Flood Hazard Area; and

- e) An increase in Base Flood velocities. In the event the Future Conditions Flood data is known at the time of submittal, then the Future Conditions modeling must be used in lieu of the Base Flood modeling.
- (2) In meeting the requirements set forth in 11(a)(1) above, if fill is proposed a Certification of Compaction of fill in accordance with FEMA Technical Bulletin 10-01 must be submitted.
- (3) The following are exempt from subparagraph (a)(1) above:
- (a) Lots where the adverse impacts are wholly contained:
    - 1. On the subject property or only impacting the subject property and other property with same ownership,
    - 2. On a property where its owner joins the associated development permit application which causes, quantifies, and outlines the adverse impact defined above,
    - 3. Within a Private Drainage Easement which is specified to be privately owned and maintained, and is recorded at the Brazos County Court House, or
    - 4. Within public Rights-of-Way provided other requirements for use and encroachments within public Rights-of-Way as set forth elsewhere in this Code of Ordinances are met; or
  - (b) Lots legally platted and recorded at Brazos County Court House prior to the adoption of this ordinance, unless such plat is subsequently replatted, vacated or otherwise altered. However, an amending plat does not remove this exemption.
- (12) For all new construction, substantial improvement to a structure, or fill located within Floodways, the following provisions apply:
- (1) A variance must be granted; and
  - (2) It must be demonstrated as certified by a professional engineer that such construction, improvement or fill encroaching the Floodway does not increase the Base Flood Elevation. Such certification shall bear the dated seal and signature of the professional engineer.
- (13) The following are exempt from both subparagraphs (11) and (12) above:
- (a) Customary and incidental routine grounds maintenance, landscaping and home gardening provided same (i) does not increase the Base Flood Elevation; (ii) does not create Areas of Special Flood Hazard upstream, within, nearby or downstream; and (iii) does not require a building permit, zone change request, or variance from the provisions of the Zoning Ordinance;

- (b) Temporary emergency repairs deemed necessary for the preservation of life, health, or property provided a permanent repair be done as soon as practicable; and provided that to the maximum degree deemed reasonable and prudent by the City such repair is made and maintained so as to minimize increasing water surface elevation and to minimize the creation of additional Areas of Special Flood Hazards. Certification of this shall be required on a form provided by the Administrator based upon a submitted engineering report that includes hydrologic and hydraulic analysis, conforms to the requirements of this Chapter and the Bryan/College Station Unified Design Guidelines, Standard Details, and Technical Specifications, and bears the dated seal and signature of a registered professional engineer; and
  - (c) Temporary excavation for the purpose of maintaining or repairing any public street, public utility facility including service lines related thereto, or any other public infrastructure provided such area of excavation is returned as soon as practicable to its prior condition or better with respect to meeting the requirements set forth in this Section.
- (14) Approved mitigation such as excavation, must be properly approved and occur prior to any approved encroachment or fill is placed in the construction sequencing.

**EXHIBIT "E"**

That Chapter 13, "Flood Hazard Protection", Section 5-F, "Special Provisions for Manufactured Homes in Areas of Special Flood Hazard", of the Code of Ordinances of the City of College Station, Texas, is hereby amended, by replacing Section 5-F, as set out hereafter to read as follows:

"F. SPECIAL PROVISIONS FOR MANUFACTURED HOMES IN AREAS OF SPECIAL FLOOD HAZARD

The following provisions are required in all Areas of Special Flood Hazard:

- (1) No manufactured home shall be placed in a floodway;
- (2) All manufactured homes shall be anchored to resist flotation, collapse, or lateral movement and shall meet the following requirements:
  - (a) over-the-top ties shall be provided at each of the four corners of the manufactured homes;
  - (b) on manufactured homes of 50 feet in length or less, one additional over-the-top tie shall be provided approximately at the mid point;
  - (c) on manufactured homes of over 50 feet in length, two additional over-the-top ties shall be provided at intermediate locations;
  - (d) frame ties shall be provided at each of the four corners of the manufactured home;
  - (e) on manufactured homes of 50 feet in length or less, four additional frame ties shall be provided at intermediate locations;
  - (f) on manufactured homes of over 50 feet in length, five additional frame ties shall be provided at intermediate locations;
  - (g) all components of the anchoring system for manufactured homes shall be capable of carrying a force of 4800 pounds without sustaining permanent damage.
- (3) For new manufactured home developments; expansions to existing manufactured home developments; existing manufactured home developments where repair, reconstruction, or improvement of the streets, utilities, or building pads exceeds half of the value of the streets, utilities, and building pads before such repair, reconstruction or improvement; and for manufactured homes not placed in a manufactured home development; a registered professional engineer or land surveyor shall certify that the following applicable standards have been satisfied in a manner approved by the Administrator and shall bear the dated seal and signature of such registered professional engineer or land surveyor:
  - (a) That stands or lots shall be elevated on compacted fill or on pilings such that the lowest floor of the manufactured home will be one foot above the Base Flood Elevation and the elevation of the center of the stand shall be no more than one foot below the Base Flood Elevation.

- (b) adequate surface drainage and access for a hauler shall be provided.
- (c) if a manufactured home is elevated on pilings:
  - (i) lots shall be large enough to permit steps;
  - (ii) piling foundations shall be placed in stable soil no more than ten feet apart;
  - (iii) reinforcement shall be provided for pilings more than six feet above the existing or finished ground level.”

**EXHIBIT "F"**

That Chapter 13, "Flood Hazard Protection", Section 5, "Special Provisions", of the Code of Ordinances of the City of College Station, Texas, is hereby amended, by deleting Section 5-G, "Special Provisions for Floodways" and by adding a new Section 5-G, "Special Provisions for Areas of Shallow Flooding" as set out hereafter to read as follows:

"G. SPECIAL PROVISIONS FOR AREAS OF SHALLOW FLOODING

Located within the Areas of Special Flood Hazard established in Section 5-B are areas designated as Areas of Shallow Flooding. These areas have special flood hazards associated with base flood depths of 1 to 3 feet where a clearly defined channel does not exist and where the pathway of flood waters is indeterminate and unpredictable; therefore, the following provisions shall be required:

- (1) All new construction or any substantial improvement of any residential structure shall have the lowest floor, including basements, elevated at least one foot above the depth number specified on the community's FIRM.
- (2) All new construction or any substantial improvement of any commercial, industrial, or other non-residential structure shall:
  - (a) Have the lowest floor, including basements, elevated at least one foot above the depth number specified on the community's FIRM; or
  - (b) The structure with its attendant utility and sanitary facilities shall be floodproofed so that the structure and utility and sanitary facilities shall be watertight and impermeable to the intrusion of water in all areas below the Base Flood Elevation, and shall resist the structural loads and buoyancy effects from hydrostatic and hydrodynamic conditions. A registered professional engineer shall certify that this standard has been satisfied in a manner approved by the Administrator and shall bear the dated seal and signature of such registered professional engineer.
- (3) Adequate drainage paths to guide floodwaters around and away from proposed structures shall be provided for all proposed structures on slopes in Zones AH or AO."

**EXHIBIT "G"**

That Chapter 13, "Flood Hazard Protection", Section 5, "Special Provisions", of the Code of Ordinances of the City of College Station, Texas, is hereby amended, by deleting Section 5-H, "Special Provisions for Areas of Shallow Flooding".

**No Adverse Impacts Stakeholder Meeting**

**Monday, April 13, 2009**

**11:30 am**

**Staff present: City Engineer Alan Gibbs, Sr. Assistant City Engineer Carol Cotter, Graduate Civil Engineer Erika Bridges, Drainage Inspector Donnie Willis, Neighborhood Services Coordinator Barbara Moore, Director of Capital Projects Chuck Gilman, Greenways Program Manager Venessa Garza, First Assistant City Attorney Mary Ann Powell, Staff Assistants Deborah Grace-Rosier, Brittany Caldwell, and Nicole Padilla**

**City Council Members present: John Crompton and David Ruesink**

**Stakeholders present: Veronica Morgan, Joel Mitchell, Chuck Ellison, Hunter Goodwin, Dale Browne, Fred Paine, Paul Kaspar, Steven Davis, Henry Wittner, Doris Watson, Parviz Vessali, Rebecca Riggs, Danielle Singh, James Batenhorst, Kent Laza, Jeremy Peters, Ani Dutta, Jesse Durden, Chris Harris, Kim Jacobs, Mike Davis, Chris Wilde, Brandon Hilbrich, Ralph Wurbs, Jeff Robertson, and Steve Duncan**

**Presentation by Alan Gibbs discussing primary intent of meeting to hear public feedback on No Adverse Impact draft ordinance as directed by City Council at their March 12<sup>th</sup> meeting. Mr. Gibbs discussed the five future floodplain initiatives that are under consideration: Speculative Fill Policy, Riparian Buffer/Setback, Increased Free-Board, Future Conditions Modeling, and Parallel Open Space between the creek and developments. Current floodplain management initiatives he mentioned as currently under way include: the Tree Preservation Ordinance, Application to FEMA to become CRS Community, the Greenways Master Plan, Drainage/Floodplain Management in the ETJ, Green College Station, Parks Acquisition/Dedication, the Stormwater Management Plan, the TPDES Committee membership, and FEMA Map Modernization.**

**To preface the discussion about the proposed ordinance, Mr. Gibbs stated that by definition No Adverse Impact seeks to go beyond federal and state minimum requirements and provide a higher level of protection for citizens and prevent increased flooding presently and in the future. He discussed the following changes which are proposed under the draft ordinance:**

- **Restrict activities in the Special Flood Hazard Area so that: Flood Elevation not increased, Special Flood Hazard Area not increased, Conveyance Capacity should not be decreased, Storage Volume should not be decreased, and Velocities should not be increased. Exemptions include if negative impacts are contained on subject property or within Public ROW and grandfathered for tracts platted prior to 120 days after passage of the ordinance.**
- **Prohibiting removal of trees and vegetation for mitigation of encroachments.**
- **Requirement of Engineer's Certification of Compaction in accordance with FEMA Technical Bulletin.**
- **Mitigation constructed prior to other proposed site improvements.**
- **Clarify that CLOMRs are required for 300-ft channel or culvert modification.**
- **Utilize Future Conditions Floodplain Model, if available, in lieu of BFEs for Elevation Certificates and Minimum Finished Floor Elevations.**
- **Defining what the Future Conditions elevation is and Mannings Roughness Coefficient.**
- **Clarify that the City Engineer is the Flood Ordinance Administrator.**

**Open forum:**

**Initial presentation brought about discussion regarding the wording of the draft ordinance amendment and future conditions.**

- 1. Comment regarding language used for grandfathered properties which were platted 120 days prior to passage of the ordinance.**

**Chuck Ellison suggested that the phrase "prior to" be removed from the draft ordinance if this really refers to tracts platted up to 120 days after the passage of the ordinance. Mr. Gibbs indicated that he would verify the language.**

- 2. Question about encroachment in Future Conditions models.**

**Veronica Morgan expressed concern about the way the draft ordinance is worded. Her understanding is that encroachment would not be permitted on property currently outside the Special Flood Hazard area but included in that area in the Future Conditions model. Mr. Gibbs clarified stating that floodplain encroachment would still be permitted, but would need to follow all ordinance requirements.**

3. Question if Future Conditions models would account for site specific or regional detention facilities.

Fred Paine questioned whether Future Conditions models without construction of flood detention structures accounted for site specific or regional detention.

Mr. Gibbs referenced a federal court ruling in which detention was left out of their definition of Future Conditions based on a regional mitigation effort. If there is only a “planned” regional detention facility, you cannot take credit through the model for detention until it is actually built.

4. Question regarding how Future Conditions model would be developed.

Rebecca Riggs asked how the City anticipated creating the Future Conditions models for all of the local watersheds.

Alan Gibbs responded that it would most likely be done by individual watershed or at least by tributary. He anticipates updating the hydrology for future conditions and using the existing HEC-RAS models. Ms. Morgan replied that hydrology and cross-sections would both need to be updated to reflect current and future conditions since so much development has occurred since they were developed.

Mr. Gibbs commented that the City may be able to OP more extensive studies where LOMRs are already being prepared and it wouldn't be much additional work to model the remaining tributary.

Mr. Gibbs also mentioned that despite our detention policies, flows within the channels continue to rise. Future Conditions modeling is a way to address some of this increased flow.

5. Concern that increasing floodplain in areas due to Future Conditions modeling, and not accounting for required detention on the site, would in effect be “double dipping.”

Fred Paine said that most site development requires detention, and it seems like “double dipping” to increase floodplain on sites but not account for detention. Mr. Gibbs responded that H&H modeling does not typically account for small commercial and residential detention and proposed Future Conditions modeling would be consistent with that practice.

Mr. Paine likened this concept to providing site detention under proposed conditions because it is a requirement, but modeling the site without

taking it into account because detention may not work. Mr. Gibbs indicated that the City is open to utilizing a more detailed model.

6. Concern that Future Conditions modeling for upstream properties would increase floodplain on unrelated sites downstream which would be “exaction” of property.

Chuck Ellison reiterated the concerns of Veronica Morgan and Fred Paine asking why floodplain would be increased in a fully developed model if post-development flows be equal to or less the pre-development flows. He went on to state that increasing the floodplain downstream to account for upstream development would be an illegal exaction of land.

Mr. Gibbs responded that in future conditions models, it would not make sense to account for the benefits of regional detention which is not yet built because it may not be built. Furthermore, not all properties require detention and take flows back to pre-development rates. Some properties lie in areas where detention is not required and it becomes a timing issue with the rapid conveyance.

7. Comment that ordinance language should be changed to utilize updated existing conditions rather than future conditions.

Veronica Morgan suggested that the language be changed in the ordinance to not include Future Conditions. She said that the ordinance could be reworded to reflect updated Existing Conditions and that would alleviate concerns about how a Future Conditions model should be built.

Mr. Gibbs stated that the intent at this point was to collect comments and possibly redraft the language. He also added that this method is being used in communities across the state and nation, so he is comfortable that it was not an exaction issue.

Mark Smith stated that the draft ordinance that was presented refers to Future Conditions, but the ordinance would be operating under Existing Conditions until the new model was adopted by Council. He said that there would be separate discussions later regarding Future Conditions design methodology. Mr. Smith indicated that this is only one part of the No Adverse Impacts Toolkit, but it would benefit the community and reduce flood risk.

8. Comment that new ordinance should not be adopted until Future Conditions model is complete.

Chuck Ellison suggested that it may be better to amend the Flood Hazard ordinance later after there the Future Conditions model is complete.

Mr. Smith agreed and reiterated that the Future Conditions model design would be debated in the future and the ordinance would operate under the Existing Conditions model.

Mr. Gibbs also agreed that the Future Conditions should probably be removed from the Flood Ordinance until the model is ready.

9. Comment about use of Future Conditions model in other cities.

Veronica Morgan stated that Future Conditions models in other cities are used as a basis for raising the BFE, etc. but do not preclude development in the floodplain.

Mark Smith agreed and stated that the City has used a similar approach as Future Conditions in the past with excess freeboard requirements. He said he could also see using the Future Conditions model in bridge and culvert design.

Alan Gibbs mentioned that the City of Plano is an example of a city with a more stringent ordinance. They require that all Future Conditions floodplain areas be dedicated to the City, which is more aggressive than what is being proposed by the City of College Station. He also stated that the City had considered proposing that developers to provide Future Conditions models for the entire basin when a LOMR is being done, but ultimately felt that it was too onerous.

10. Question about permitting removal of vegetation in a case where channel improvements and mitigation are proposed.

Veronica Morgan proposed a scenario where a development is proposing a floodplain encroachment but mitigating with upper bank improvements (above the high water mark) and some additional storage volume. As the ordinance reads, Ms. Morgan feels that this would be allowed although she would be removing some vegetation.

Mr. Gibbs stated the ordinance was trying to keep people from clear-cutting trees only as means to drop the n-value as their sole form of mitigation. He suggested that language be included in the ordinance to allow channel improvements and also stated that the ordinance was not actually prohibiting trees from being removed.

Fred Paine mentioned that he submitted a LOMR and FEMA told him reduce the “n” value to reflect the existing conditions on the site. Mr. responded that a separate model could be submitted to the City in which n-values were not reduced.

Ms. Morgan questioned how a bridge crossing and associated channel improvements could be accomplished without removing trees. Mark Smith responded that removing vegetation would be fine in that case because you aren't removing the vegetation for the purpose of lowering the n-value. Mr. Smith stated that this regulation would go beyond FEMA requirements. The City wants to achieve Zero Rise, but does not want to sacrifice vegetation to do it. He said there are two objectives: to not increase flood rise and less removal of vegetation in greenbelts in College Station. Both objectives are related, but not necessarily hard-wired together. Some trees will have to be removed when doing channel improvements.

Fred Paine suggested that some sort of "Tree Protection Line" be required that would prevent removal of trees beyond a certain point.

Mr. Gibbs clarified that this was not intended as a complete Tree Ordinance, but currently there was a Tree Ordinance being drafted. He added that there was language included in the ordinance that would exempt rise occurring in the right-of-way.

Joel Mitchell commented that the language in the ordinance regarding removal of vegetation to lower n-values was written backwards. He feels that Zero Rise cannot be achieved without channel improvements, but channel improvements cannot occur without removal of vegetation.

Mr. Gibbs agreed that the language needed to be clearer in establishing the difference between removals of vegetation for channel improvements and clear-cutting to reduce n-values. Mr. Mitchell offered to aide in revising this language.

There seemed to be a consensus that some sort of riparian buffer (either including the entire floodplain or 50-ft off of the centerline of the creek) may be the best option.

11. Question concerning where LOMR would be required.

Mike Davis questioned when conditional LOMRs would be required and if this applies to any channel or waterway upstream.

Alan Gibbs responded that currently Conditional LOMRs are only required when a watercourse is modified and only applies to FEMA Special Flood Hazard areas.

A suggestion was made that more specific wording be added to the ordinance as to where this would be required. Mr. Gibbs stated that this

should only apply to Special Flood Hazard areas that should be applied to the entire section of the ordinance without adding additional verbage.

Fred Paine asked if the ordinance would apply to areas that are waterways but not currently considered FEMA Special Flood Hazard zones or haven't been studied. Mr. Gibbs said that the ordinance would not apply to those areas as drafted.

12. Concern that incidental effects may occur on adjacent property when altering floodplain.

Mike Davis raised the concern that any changes made to the floodplain on one property would cause some sort of effect (i.e. increased velocity or rise) on an adjacent property. What effects on an adjacent property would be permitted?

Mr. Gibbs responded that FEMA considers Zero Rise as a 0.02-foot or less rise (since it rounds to zero). The way the language in the ordinance is drafted, the City would be able to use FEMA's interpretation of Zero Rise.

13. Concern that adjacent property owner may not want to plat in order to allow improvements on their site.

Veronica Morgan stated that the language to allow purchase or easement on an adjacent property owner's land was not included in the ordinance. She expressed concern that she would have a hard time proceeding with development if she had to get adjacent property owners to plat as well. Could an easement or something be permitted on the adjacent property?

Mr. Gibbs stated that language may be able to be added to allow the adjacent property owner to be a co-applicant without triggering the platting requirement. Ultimately, the items that trigger platting would be a legal and planning issue.

Mark Smith commented that if easements were granted, it would be preferred that they were granted between property owners rather than from a property owner to the City. Ms. Morgan concurred.

14. Concern about the equitability of the ordinance.

Hunter Goodwin commented that the City is the primary developer within the floodplain but would not have to follow the constraints of the Flood Hazard and Tree Ordinances. He added that it would be costly for a developer to remove trees in the floodplain and mitigate, but the City would not incur costs for doing the same.

**Alan Gibbs responded that the City would have to follow the same regulations as the development community. Mark Smith added that the City may have to look at transferring money into the Greenways Fund or something similar to mitigate for its development in the floodplain.**

**Meeting closed 2:00pm.**

**Enclosures (2)**

**June 25, 2009**  
**Regular Agenda Item No. 4**  
**New Affordable Housing Construction Contract for 1022 Crested Point Drive**

**To:** Glenn Brown, City Manager

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

**Agenda Caption:** Presentation, possible action, and discussion regarding a Resolution approving a contract with Schenck Builders, L.L.C. in an amount not to exceed \$87,700.00 for the construction of a new, affordable, single-family residence at 1022 Crested Point Drive using federal HOME Investment Partnership Grant (HOME) funds.

**Recommendation(s):** Staff recommends approval of the Resolution awarding the contract to the lowest responsible bidder meeting the City of College Station's Bid Documents and Contract Requirements, Schenck Builders, L.L.C. in an amount not to exceed \$87,700.00.

**Summary:** In continuing to incorporate innovation and further grow the opportunities available to our more economically-challenged residents, the Economic and Community Development Department, in response to Council direction, has amended the City's new housing construction program to provide more geographically-diverse housing opportunities in the community. Instead of building homes exclusively in more traditional lower-income areas of the community, this new programming direction calls for the construction of affordable housing in some of our newest subdivisions located in the southern part of the community. This programming change will add a new aspect of economic diversity to some of our newer neighborhoods and serve to further integrate hard-working, but economically-disadvantaged, families into other areas of the city.

On Wednesday, April 8, 2009, four (4) bid proposals were received in response to Bid No. 09-50 for the construction of a new, single-family residence at 1022 Crested Point Drive. All bids were considered. A copy of the bid tabulation for the project is attached for reference. Sixteen (16) vendors requested bid packets and plans for this project during the bid period.

Once construction is complete, the resulting new home will be sold to an income-eligible homebuyer meeting the City's program requirements. Federal HOME grant funds will be used to construct the dwelling and may also be used to provide down-payment assistance to the buyer. This project will allow the City to obligate federal funds that must be reserved by the end of this fiscal year.

**NOTE:** Per Down Payment Assistance (DAP) program requirements, a lien will be placed on the property to keep the property from being leased or rented. The lien will ensure that the property remains "owner-occupied" for the duration of the mortgage loan and will require that the buyer repay the loan upon sale of the property.

**Budget & Financial Summary:** The total cost of the project is 143,050.00, which includes the lot, construction of the home, oversight, and Down Payment Assistance (DAP). Funding for this project will come entirely from the City's federal HOME funds, as allocated in the current fiscal year's Economic and Community Development budget. HOME grant funds may only be used for affordable housing projects and activities. With the exception of staff program delivery costs, the majority of this project's costs will be returned to the Economic and Community Development budget when an eligible buyer ultimately purchases the property.

**Attachments:**

1 - Resolution – 1022 Crested Point Drive

2 - Bid Tabulation – 1022 Crested Point Drive

3 - Project Location Map – 1022 Crested Point Drive

4 – Photo of Comparable Home Constructed by the City –1218 Carolina

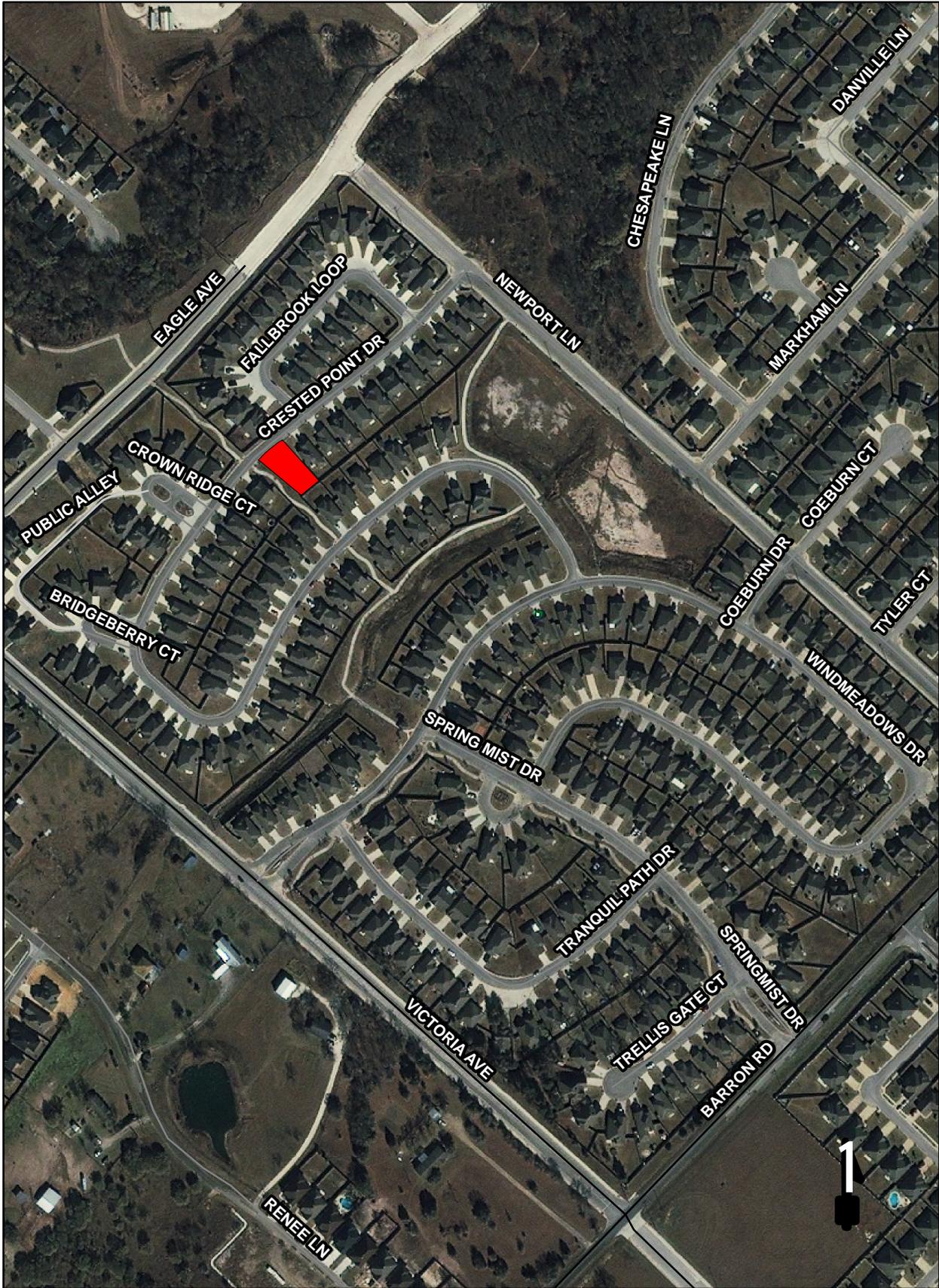


**City of College Station - Purchasing Department**  
**Bid Tabulation for #09-50**  
**"New Home Construction 1022 Crested Point Drive, College Station, TX"**  
**Open Date: Wednesday, April 8, 2009 @ 2:00 p.m.**

				Schenck Builders	Jamal Building Systems, Inc.	Two Rivers Construction, LLC	Marek Brothers Construction, Inc.
ITEM	QTY	UNIT	DESCRIPTION	TOTAL BID AMOUNT	TOTAL BID AMOUNT	TOTAL BID AMOUNT	TOTAL BID AMOUNT
1	1	Lot	New Home Construction, 1022 Crested Point Drive, College Station, Texas	\$87,700.00	\$114,500.00	\$121,735.00	\$126,870.00
<b>Total Bid Amount</b>				<b>\$87,700.00</b>	<b>\$114,500.00</b>	<b>\$121,735.00</b>	<b>\$126,870.00</b>
<b>Certification from bid package</b>				✓	✓	✓	✓
<b>Acknowledged Addendum 1</b>				✓	✓	✓	✓

*\*Total number of Calendar Days to substantial completion: 120*

Attachment 3: Location Map- 1022 Crested Point Drive





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

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

**A RESOLUTION OF THE CITY OF COLLEGE STATION, TEXAS APPROVING A CONTRACT FOR THE CONSTRUCTION OF A NEW SINGLE FAMILY RESIDENCE AND AUTHORIZING THE EXPENDITURE OF FUNDS.**

WHEREAS, the City of College Station, Texas, solicited bids for the construction of a new, single-family residence located at 1022 Crested Point Drive, College Station, Brazos County, Texas; and

WHEREAS, the selection of Schenck Builders, LLC. is being recommended as the lowest responsible bidder for the construction of the residence; now, therefore,

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

PART 1: That the City Council hereby finds that Schenck Builders, LLC. is the lowest responsible bidder.

PART 2: That the City Council hereby approves the contract with Schenck Builders, LLC. in an amount not to exceed \$87,700.00 for the labor and materials required for the improvements related to the construction of the residence.

PART 3: That the funding for this Project shall be as budgeted from the College Station Economic and Community Development Fiscal Year 2009 Budget, in an amount not to exceed \$87,700.00.

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

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, A.D. 2008.

ATTEST:

APPROVED:

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

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

APPROVED:

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