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Mayor

Nancy Berry

Mayor Pro Tem

John Crompton

City Manager

Glenn Brown

Council members

Jess Fields

Dennis Maloney

Katy-Marie Lyles

Dave Ruesink

Agenda
College Station City Council
Regular Meeting
Thursday, September 09, 2010 at 7:00 PM
City Hall Council Chamber, 1101 Texas Avenue
College Station, Texas

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

Hear Visitors: A citizen may address the City Council on any item which does not appear on the posted Agenda. Registration forms are available in the lobby and at the desk of the City Secretary. This form should be completed and delivered to the City Secretary by 5:30 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. Comments should not personally attack other speakers, Council or staff.

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 July 7, 2010, July 13, 2010, August 11, 2010, and August 26, 2010 Workshop and Regular Meetings.

b. Presentation, possible action, and discussion on a letter agreement for year 2 of the Professional Auditing Services engagement with Ingram, Wallis & Co., P.C. for the fiscal year ending September 30, 2010 with expenditures totaling \$82,000 from the City of College Station and \$16,500 from BVSWMA.

c. Presentation, possible action, and discussion on the purchase of a John Deere Tractor Mower from Coufal-Prater Equipment to be used by the Brazos Valley Solid Waste Management Agency in the amount of \$59,634.40.

d. Presentation, possible action, and discussion on an amendment to the contract with the Texas Department of State Health Services for the Mayor's Council on Physical Fitness Grant Contract.

e. Presentation, possible action, and discussion regarding the authorization for the Mayor to execute the renewal of two utility easements located on the Texas A&M University System Property.

f. Presentation, possible action, and discussion regarding renewal of contract #08-084 with Envirosolve and the City of College Station and City of Bryan to provide Household Hazardous Waste collection services in an amount not to exceed \$229,510.00.

g. Presentation, possible action, and discussion to amend Chapter 14, Section 3 of the Code of Ordinances of the City of College Station and to adopt a resolution increasing Emergency Medical Services (EMS) fees as set forth in Chapter 14, Sections 1 and 3 of the Code of Ordinances of the City of College Station.

h. Presentation, possible action and discussion of an ordinance amending Chapter 10 "Traffic Code", to add Section I. "Thirty Minute Parking" for the implementation of Loading Zones on a 50 foot section of Cherry Street and Cross Street to allow vehicles to be parked for up to 30 minutes while the vehicle is loaded or unloaded.

i. Presentation, possible action, and discussion on the second reading of a five (5) year franchise agreement with Texas Commercial Waste for the collection, processing, and marketing of recyclable materials for an annual cost of approximately \$576,420.

j. Presentation, possible action, and discussion regarding approval of a real estate contract in the amount of \$265,000 between the City of College Station (Buyer) and Debra Lynn Boyett (Seller) for the purchase of Lot One (1), Block Eighteen (18), W. C. Boyett Estate Partition, also known as 502 Boyett Street.

k. Presentation, possible action, and discussion of an ordinance amending Chapter 3, "Building Regulations", Section 2, "Right-Of-Way Maintenance", of the Code of Ordinances.

Regular Agenda

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

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

If an individual does not wish to address the City Council, but still wishes to be recorded in the official minutes as being in support or opposition to an agenda item, the individual may complete the registration form provided

in the lobby by providing the name, address, and comments about a city related subject. These comments will be referred to the City Council and City Manager.

1. Presentation, possible action, and discussion on the first reading of a franchise agreement with Professional Trash Valet, LLC dba Brazos Valley Trash Valet & Recycling for the collection of recyclable commodities from multifamily apartments and commercial businesses.
2. Public hearing, presentation, possible action, and discussion on an ordinance amending Chapter 3, "Building Regulations", Section 6.E., "Amendments to the 2009 International Plumbing Code", of the Code of Ordinances of the City of College Station, Texas, regarding a solids interceptor for food service facilities.
3. Public hearing, presentation, possible action, and discussion on an ordinance amendment to Chapter 12 "Unified Development Ordinance," Article 3 "Development Review Procedures," Article 6 "Use Regulations," Article 7 "General Development Standards," and Article 11 "Definitions," of the College Station Code of Ordinances, specifically related to school facilities.
4. Public hearing, presentation, possible action, and discussion on an ordinance amendment to Chapter 12 "Unified Development Ordinance," Section 6.4 "Home Occupations" and Section 11.2 "Defined Terms" of the College Station Code of Ordinances, specifically related to taxicab services.
5. 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, specifically rezoning 5.10 acres from M-1 Light Industrial to R-4 Multi-Family for 100 Luther Street West, generally located southeast of the intersection of Luther Street West and Marion Pugh Drive.
6. Public hearing, presentation, possible action, and discussion regarding "Leash Free" Dog Activities at Lick Creek Park as requested by the City Council on June 24, 2010.
7. Public hearing, presentation, possible action, and discussion concerning Phase II of the Hike and Bike Trail project along FM 2818 continuing from Welsh Avenue to the Campus Village trail and through Southwest Park.
8. Presentation, possible action, and discussion regarding rescheduling the first City Council meeting in November.
9. Presentation, possible action, and discussion regarding selection of applicants to various Citizen Boards and Committees.
10. Adjourn.

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

APPROVED:

City Manager

City Council Regular Meeting
Thursday, September 9, 2010

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, September 09, 2010 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 3rd day of September, 2010 at 5:00 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 . The Agenda and Notice are readily accessible to the general public at all times. Said Notice and Agenda were posted on September 3, 2010 at 5:00 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 _____, 2010 By _____

Subscribed and sworn to before me on this the ____ day of _____, 2010.

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

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



Mayor
Nancy Berry
Mayor Pro Tem
John Crompton
City Manager
Glenn Brown

Councilmembers

Jess Fields
Dennis Maloney
Katy-Marie Lyles
Dave Ruesink

Minutes
City Council Special Meeting
Wednesday, July 7, 2010 at 1:00 pm
College Station Conference Center
1300 George Bush Drive
College Station, Texas

Special Item No. 1 -- Call to Order.

Mayor Berry called meeting to order at 1:00 p.m.

Special Item No. 2 -- Executive Session to be held in Room 104 of the College Station Conference Center.

Personnel {Gov't Code Section 551.074}; possible action

The City Council may deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer. After executive session discussion, any final action or vote taken will be in public.

The following public officer(s) may be discussed:

City Secretary

Special Item No. 3 -- Action on executive session.

No formal action was taken.

Special Item No. 4 -- Adjourn.

Hearing no objections, Mayor Berry concluded Special Meeting at 4:30 pm.

PASSED AND APPROVED this September 9, 2010

ATTEST:

APPROVED:

City Secretary

Mayor Nancy Berry



Mayor

Nancy Berry

Mayor Pro Tem

John Crompton

City Manager

Glenn Brown

Councilmembers

Jess Fields

Dennis Maloney

Katy-Marie Lyles

Dave Ruesink

**Minutes
College Station City Council
Special Meeting
Tuesday, July 13, 2010 at 5:00 pm
City Hall Council Chambers, 1101 Texas Avenue
College Station, Texas**

COUNCIL PRESENT: Mayor Nancy Berry, Council members Maloney, Fields, Lyles and Ruesink

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

Mayor Berry called special meeting to order at 5:00 p.m.

Mayor Berry called for a motion to except absence request from Mayor ProTem Crompton.

Council member Maloney move to approve absence request. Council member Ruesink seconded, motion carried 5-0.

Special Item No. 1 – Presentation, possible action, and discussion regarding the appointment of a City Secretary.

Mayor Berry presented Sherry Mashburn from San Marcos to fill the appointment of College Station City Secretary to Council.

Council member Maloney moved to approve Sherry Mashburn as College Station City Secretary and to start August 16, 2010. Council member Lyles seconded the motion, which carried 5-0.

FOR: Mayor Berry, Council members Fields, Maloney, Lyles and Ruesink

AGAINST: None

ABSENT: Mayor ProTem Crompton

Special Item No. 2 – Presentation, possible action, and discussion regarding a policy establishing term limits for City Council board appointments.

Council discussed a policy establishing term limits for City Council board appointments.

City Council Special Minutes

Tuesday, July 13, 2010

Council member Fields moved to approve **Resolution No. 07-13-10-02** that the City Council hereby finds that members who serve on Boards, Commissions, and Committees shall hold office for a term of two (2) years or no more than two (2) completed consecutive terms for a total of four (4) years or until his successor is appointed, exclusive of any unexpired term to which the member may have been appointed to fill due to a vacancy on the Board, Commission, or Committee, and with the exception of Planning and Zoning Commission shall hold office for a term of three (3) years or no more than two (2) completed consecutive terms. Council member Ruesink seconded the motion, which carried 5-0.

FOR: Mayor Berry, Council members Fields, Maloney, Lyles and Ruesink

AGAINST: None

ABSENT: Mayor ProTem Crompton

At 5:40 pm, Mayor Berry announced that the City Council would convene into executive session pursuant to Sections 551.074 of the Open Meetings Act to discuss personnel.

Special Item No. 3 - Executive Session to be held in Room 104 of the College Station Conference Center.

Personnel {Gov't Code Section 551.074}; possible action

The City Council may deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer. After executive session discussion, any final action or vote taken will be in public. The following public officer(s) may be discussed:

- a. City Secretary
- b. Planning and Zoning Commission
- c. Zoning Board of Adjustments
- d. Parks and Recreation Board

Council returned from executive session at 6:20 p.m.

Special Item No. 4 - Action on executive session.

Council member Maloney moved to approve salary for City Secretary as \$77,500 a year, \$2,500 for moving expenses, and no car allowance. Council member Fields seconded the motion, which carried 5-0.

FOR: Mayor Berry, Council members Fields, Maloney, Lyles and Ruesink

AGAINST: None

ABSENT: Mayor ProTem Crompton

Special Item No. 5 - Adjourn.

Hearing no objections, Mayor Berry concluded Special Meeting at 6:30 pm.

PASSED AND APPROVED this September 9, 2010

ATTEST:

APPROVED:

Deputy City Secretary

Mayor Nancy Berry



Mayor
Nancy Berry
Mayor Pro Tem
John Crompton
City Manager
Glenn Brown

Councilmembers
James Massey
Dennis Maloney
Katy-Marie Lyles
Dave Ruesink

Minutes
City Council Special (Budget) Meeting
Wednesday, August 11, 2010 at 3:00 p.m.
City Hall Council Chambers, 1101 Texas Avenue
College Station, Texas

1. **Call to order.**
Mayor Berry called the meeting to order at 3:00 p.m.
2. **Presentation, possible action and discussion on the FY 2010-2011 Proposed Budget.**
Jeff Kersten, Chief Financial Officer presented Council an overview of the FY 2010-2011 Proposed Budget.
3. **Presentation, possible action and discussion on calling a public hearing on the City of College Station 2010-2011 Proposed Budget for Thursday, August 26, 2010.**
Jeff Kersten, Chief Financial Officer recommended to Council to call a public hearing on the City of College Station 2010-2011 Proposed Budget for Thursday, August 26, 2010.

Council member Maloney moved to call a public hearing on Thursday, August 26, 2010 for the 2010-2011 Proposed Budget. Council member Lyles seconded the motion, which carried 5-0.

FOR: Mayor Berry, Mayor Protem Crompton, Maloney, Lyles and Ruesink.

AGAINST: None

ABSENT: Council member Fields

4. **Adjourn.**
Hearing no objections, Mayor Berry concluded Special Meeting at 5:15 pm

PASSED AND APPROVED this September 9, 2010

ATTEST:

APPROVED:

City Secretary

Mayor Nancy Berry

MINUTES OF THE CITY COUNCIL WORKSHOP
CITY OF COLLEGE STATION
AUGUST 26, 2010

STATE OF TEXAS §
 §
COUNTY OF BRAZOS §

Present:

Nancy Berry

Council:

John Crompton
Jess Fields
Dennis Maloney
Katy-Marie Lyles
Dave Ruesink

City Staff:

Glenn Brown, City Manager
David Neeley, Assistant City Manager
Harvey Cargill, City Attorney
Sherry Mashburn, City Secretary
Tanya McNutt, Deputy City Clerk

Call to Order and Announce a Quorum is Present

With a quorum present, the Workshop of the College Station City Council was called to order by Mayor Nancy Berry at 2:05 p.m. on Thursday, August 26, 2010 in the Council Chambers of the City of College Station City Hall, 1101 Texas Avenue, College Station, Texas 77842.

1. Presentation, possible action, and discussion on items listed on the consent agenda.

Items 2c and 2f were pulled from the Consent Agenda.

2c. Jeff Kersten, Chief Financial Officer, explained the interest and fees in the proposed depository contract.

2f. Mayor Berry moved the discussion on this item to the Regular meeting at 7:00 p.m.

2. Presentation, possible action, and discussion regarding the formation of a BVSWMA Inc.; a new Local Government Corporation for solid waste disposal.

Mark Smith, Director of Public Works, provided the historical perspective regarding the mediation process between Bryan and College Station which ultimately led to an Interlocal Cooperative Agreement. Each city would provide input in the budgeting process, and the board would have seven members. Three members are appointed by each city, and the seventh member was agreed upon by the other six members. A tri-party Operations Agreement between the two cities and BVSWMA was approved in May/June. The Borrowed Employee Agreement is to be considered tonight. This document covers College Station employees used to operate the landfill operation, and sets out the framework; employees will remain College Station employees and report to College Station supervisors and will be paid by College Station. BVSWMA will reimburse College Station. The Executive Director will interact with employees through a College Station representative. College Station will retain disciplinary processes as well. Employees will retain College Station benefits such as TMRS. Through attrition, all employees will eventually become BVSWMA employees, but no hard date has been set for the purpose of protecting the benefits of those employees.

A joint meeting is scheduled for September 13, and the following items are needed for closing: 1) an operations agreement, including assignments and assumptions of contracts and payables; 2) a borrowed employee agreement; 3) a bill of sale for capital items to be transferred; 4) a special warranty deed for real property; 5) the agency must open a depository account; 6) transfer of TCEQ permits; and 7) a final settlement agreement and release (Bryan/College Station lawsuit would be dismissed).

Related issues include the Twin Oaks opening, gas to energy and carbon credits, and the Rock Prairie landfill closure. A tour will be available on September 13.

3. Presentation, possible action and discussion on the Cost Analysis of Responses to Residential Recycling Franchise RFP #10-43.

Pete Caler, Assistant Director of Public Works, reported that the current recycling program had a five year agreement that expires this September. Staff prepared an RFP that was advertised nationally and only received two proposals. Curbside recycling has been in place since 1991 with a participation rate of 65% - 70%. 1,064 tons of recyclables were collected last year.

Texas Commercial Waste is proposing source separated collections at \$2.40 per home and 100% return in commodities. They will continue to collect the items currently being collected and would add phone books. There is a \$0.30 increase, but there is enough in our reserves to cover the additional cost. The pros for this proposal are a significantly lower cost, no present rate increase, and an established relationship. The con is this is a less convenient collection system.

Inland Service Corporation proposed single stream collection at \$4.27 per home and a zero percent return in commodities. They also provide radio frequency identification participation tracking. This proposal has a \$1.83 increase over the TCW proposal, and there is not enough in reserves to cover the additional cost. Pros include a very convenient collection system and additional materials are accepted. Cons include high cost and the need for a transition plan.

Staff recommends awarding the contract to Texas Commercial Waste since there is no rate increase, continuation of a long lasting relationship, and being the lowest cost proposal. They also recommend investigating a future partnership with BVCOG, BVSWMA, and the City of Bryan for single stream recycling.

MOTION: Upon a motion made by Councilmember Lyles and a second by Councilmember Ruesink, the City Council voted six (6) for and none (0) opposed, to approve a five-year Franchise Agreement with Texas Commercial Waste. The motion carried unanimously.

4. Presentation, possible action, and discussion regarding a contract for an equipment upgrade and general renovation of the College Main Parking Garage Access and Exit System.

David Gwin, Director of Economic and Community Development, reported the College Main parking garage is currently outfitted with a controlled access system. It is over ten years old, component repairs consume limited staff resources, and complete equipment replacement is required. New equipment will improve customer service and garage efficiency. Some elements will increase garage safety.

The proposed contract has five elements: 1) proposed operational functions; 2) equipment upgrades; 3) new amenities, 4) contract information; and 5) an implementation schedule. Operational functions will essentially remain the same: maintain controlled ingress and egress, and have distinct “peak” and “off-peak” operating periods (8pm – 3am Thu, Fr, Sat nights; a nightly flat rate system; full automatic pay stations and window cashiers; two additional credit card pay stations) (non-peak times include all other times and maintains the existing hourly rate systems).

The unreserved contract parking currently has a disjointed system, but the new system will integrate all systems. Equipment upgrades will include two new fully automatic pay stations, two new credit card pay kiosks, a ZipPark wireless event management system, new access control equipment, and new revenue control equipment.

New amenities will provide ZipPark for peak time/game day/special events and the ability to pre-sell parking online in the future.

This is a large contract with a total contract amount of \$345,353. The new annual service agreement will cost \$29,293 in the first year; \$43,991 in the second year; and \$45,091 in the third year.

The implementation schedule is 15 weeks from start to finish: six weeks for engineering and assembly and eight - nine weeks for on-site installation, staging and training.

The marketing campaign provides enhanced advertising for the Northgate parking assets coinciding with the garage renovation; works with merchants to raise awareness; prepares an in-house marketing campaign (Channel 19, CSTX Facebook/Twitter/etc.); and secures print and social media advertising; e.g. The Battalion.

5. Presentation, possible action, and discussion regarding resolutions to be considered by the Texas Municipal League.

Hayden Migl, Assistant to the City Manager, reported that we currently have a transportation funding resolution being forwarded to TML. He noted any additional resolutions need to be approved at the first Council meeting in September.

Councilmember Maloney proposed the following for consideration: support of Tax Infrastructure Investment Zones; support the imposition of a gas tax for road projects in that taxing entity; and support the collection of a sales tax on new and used car sales dedicated to infrastructure/road projects in the city. Council consensus was to take these forward.

6. Council Calendar

- **August 31 Community Impact Awards Luncheon at Briarcrest Country Club at 11:45 a.m.**
- **September 2 Planning & Zoning Meeting in Council Chambers at 6:00 p.m.**
- **September 6 City Offices Closed - HOLIDAY**
- **September 9 Council Workshop/Regular Meeting in Council Chamber at 3:00 & 7:00 p.m.**
- **November 11 Dedication of the Korean War Memorial on the Lynn Stuart Pathway, Veterans Park, 4:00 p.m.**
- **November 11 Reading of the Names at the Veterans Memorial, Adams Plaza, Veterans Park, 6:00 p.m.**
- **November 11 Memorial Day Ceremony at the American Pavilion, Veterans Park, 7:00 p.m.**

Council was asked to look at calendars to see if they wish to re-schedule the November 11 Regular Council meeting.

7. Presentation, possible action, and discussion on future agenda items: a Council Member may inquire about a subject for which notice has not been given. A statement of specific factual information or the recitation of existing policy may be given. Any deliberation shall be limited to a proposal to place the subject on an agenda for a subsequent meeting.

Councilmember Crompton requested a workshop item on outsourcing parking operations and a review of power supply issues. He also requested appointing a panel of experts for an overview of the electric utility

Councilmember Lyles requested information on the status of texting while driving. Mr. Brown reported it was scheduled for an upcoming workshop.

Councilmember Fields requested an item on wind options.

Councilmember Maloney requested items related to City-initiated zoning of C1 for: from Texas along Highway 30 to Highway 6; Highway 60 from 2818 on the north and south sides; and

discussion on a next generation business park south of town (possible partnership with City of Navasota).

8. Discussion, review and possible action regarding the following meetings: Arts Council of the Brazos Valley, Audit Committee, Brazos County Health Dept., Brazos Valley Council of Governments, Brazos Valley Wide Area Communications Task Force, BVSWMA, BWWACS, Cemetery Committee, Code Review Committee, Design Review Board, Historic Preservation Committee, Interfaith Dialogue Association, Intergovernmental Committee, Joint Relief Funding Review Committee, Landmark Commission, Library Board, Mayor's Council on Physical Fitness, Metropolitan Planning Organization, National League of Cities, Outside Agency Funding Review, Parks and Recreation Board, Planning and Zoning Commission, Research Valley Partnership, Regional Transportation Committee for Council of Governments, Signature Event Task Force, Sister City Association, TAMU Student Senate, Texas Municipal League, Transportation Committee, Wolf Pen Creek Oversight Committee, Zoning Board of Adjustments, (Notice of Agendas posted on City Hall bulletin board).

Councilmember Ruesink reported on the CVB meeting he attended yesterday. Two new staff will come on in September, and they are looking at restructuring personnel. The CVB is looking at new businesses working with the Biomedical corridor and a regional fair drawing state and national shows. They are also looking at ways A&M and the CVB can work together on the use of facilities for major enterprises coming to College Station, sporting venues in particular.

9. Executive Session

In accordance with the Texas Government Code §551.071-Consultation with Attorney, §551.074-Personnel, and §551.087-Deliberation Regarding Economic Development Negotiation, the College Station City Council convened into Executive Session at 4:25 p.m. on Thursday, August 26, 2010 in order to continue discussing matters pertaining to:

A. Consultation with Attorney to seek advice regarding pending or contemplated litigation regarding:

- City of Bryan's application with TCEQ for water and sewer permits in Westside/Highway 60 area, near Brushy Water Supply Corporation to decertify City of College Station and certify City of Bryan.
- City of Bryan suit filed against College Station, legal issues and advise on Brazos Valley Solid Waste Management Agency contract, on proposed methane gas contract.
- Water CCN/2002 Annexation/Wellborn Water Supply Corporation.
- Weingarten Realty Investors v. College Station, Ron Silvia, David Ruesink, Lynn McIlhaney, and Ben White.
- Chavers et al v. Tyrone Morrow, Michael Ikner, City of Bryan, City of College Station, et al
- Clancey v. College Station, Glenn Brown, and Kathy Merrill.

B. Consultation with Attorney to see legal advice regarding:

- Discussion of Legal Issues; to wit: Wellborn Incorporation Request.

- Contemplated litigation. Legal remedies available to abate weeds, rubbish, brush and other unsanitary matter from a lot in the College Hills residential area.
- Legal issues of purchase and lease back to Arts Council.
- Legal issues related to the Café Eccell lease.

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

- City Manager.
- Council Self-Evaluation.
- Planning and Zoning Commission.
- Zoning Board of Adjustments.
- Parks and Recreation Board.

D. Deliberation on officer of possible incentives to entities considering locating, staying, or expanding in the College Station community; to wit:

- Pharmaceutical Prospect for Bio-Corridor.

The Executive Session adjourned at 6:55 p.m. on Thursday, August 26, 2010.

10. Reconvene and Consider Action on Items Discussed During Executive Session.

Action on Executive Session or any workshop item not completed or discussed in the workshop meeting may be discussed in the following Regular Meeting, if necessary.

11. Adjournment

MOTION: There being no objection, Mayor Berry adjourned the workshop of the College Station City Council at 6:55 p.m. on Thursday, August 26, 2010. The motion carried unanimously.

Nancy Berry, Mayor

ATTEST:

Sherry Mashburn, City Secretary

MINUTES OF THE REGULAR CITY COUNCIL MEETING
CITY OF COLLEGE STATION
AUGUST 26, 2010

STATE OF TEXAS §
 §
COUNTY OF BRAZOS §

Present:

Nancy Berry

Council:

John Crompton
Jess Fields
Dennis Maloney
Katy-Marie Lyles
Dave Ruesink

City Staff:

Glenn Brown, City Manager
David Neeley, Assistant City Manager
Harvey Cargill, City Attorney
Sherry Mashburn, City Clerk
Tanya McNutt, Deputy City Clerk

Call to Order and Announce a Quorum is Present

With a quorum present, the Regular Meeting of the College Station City Council was called to order by Mayor Nancy Berry at 7:06 p.m. on Thursday, August 26, 2010 in the Council Chambers of the City of College Station City Hall, 1101 Texas Avenue, College Station, Texas 77842.

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

- **Introduction of H.E.B. Tower Point Market Store Leadership Team.**
- **Presentation of a proclamation recognizing September 3, 2010 as College Colors Day a Texas A&M University.**
- **Citizen Comments**

Dr. Jorge Vanegas, dean of the Department of Architecture, stated that for 105 years the Architecture department has been an integral part of A&M University. They want to also be a part of the community and give to the community. They have many specialists, such as urban design specialists, landscape specialists, etc. They want to increase the quality of life for people.

In times when resources are scarce, the City should realize it has a partner with the Department of Architecture. They wish to formalize this partnership by initiating a dialog to see where this takes us.

CONSENT AGENDA

2a. Presentation, possible action, and discussion regarding minutes for July 13, 2010 Special Meeting and July 22, 2010 Workshop and Regular Meetings.

2b. Presentation, possible action and discussion of resolution amending an interlocal agreement between the City of College Station and Brazos County for the conduct and management of the City of College Station Special election and amending the Notice of Special Election that will be held on Tuesday, November 2, 2010. Presentacion, posible acción y discusión acerca la resolución que enmienda un acuerdo interlocal entre la Ciudad de College Station y el Condado de Brazos para conducir y manejar las elecciones especiales de la Ciudad de College Station y aprobar la Notificación de Elecciones especiales que se celebrarán el día martes 2 de noviembre de 2010.

2c. Presentation, possible action, and discussion on a resolution selecting a depository bank, approving a bank depository contract, designating the City Manager or his Designee as the designated officer to administer the depository services for the City, and authorizing the maximum expenditure of funds for the term of the contract. Citibank N.A. is the bank being recommended as the City's depository bank. The contract is for a three year term and it is anticipated that the cost for depository services will not exceed \$46,666 in any year of the contract.

2d. Presentation, possible action, and discussion regarding a contract for an equipment upgrade and general renovation of the College Main Parking Garage Access and Exit System in the amount of \$345,353.

2e. Presentation, possible action, and discussion regarding a payment to the Amateur Softball Association (ASA) for assessment fees for the 2010 USAIASA 16U Class National Softball Tournament in the amount of \$64,000.

2f. Presentation, possible action, and discussion regarding a City Ordinance designed to define and ban the possession and use of illegal smoking products and ingestion devices. This ordinance is being presented as a result of direction received from City Council at the August 12, 2010 meeting.

2g. Presentation, possible action, and discussion of a Borrowed Employee Agreement between the City of College Station and the Brazos Valley Solid Waste Management Agency Inc.

2h. Presentation, possible action, and discussion Semi-Annual Report on Impact Fees 92-01, 97-01, 97-02B, 99-01, 03-02, and consideration for a Resolution to support and execute a Compliance Certification Letter to the Attorney General.

2i. Presentation, possible action, and discussion regarding the monthly report on irrigation water use at city of College Station facilities and properties.

2j. Presentation, possible action, and discussion on the first reading of a five (5) year franchise agreement with Texas Commercial Waste for the collection, processing, and marketing of recyclable materials for an annual cost of approximately \$576,420.

Item 2f was pulled from the Consent Agenda.

Jessica Townsend, 1708 Treehouse Trail, agrees with making K2, Salvia and Spice illegal. Salvia, a K2 related drug, and K2 may become addictive. Some symptoms are loss of coordination and experiencing multiple realities. If someone gets into a car with these symptoms, then accidents could occur. Also, if there is a known risk, then that speaks for itself. People who consume these will most likely mix them with other illegal drugs. K2 and other related drugs must be banned because we care about the safety of our town.

Phillip King, 4201 Boyette, Bryan, read an excerpt from a Material Safety Data Sheet about acetic acid (diluted substance like vinegar) and noted there are dangerous substances all around us. He has personally used K2 and has not experienced any adverse reactions. Many who use it to relax do not inhale via pipes but use incense burners. To apply the same logic, we should ban vinegar based on the MSDS and we should ban red wine because people might become alcoholics. There has been no controlled medical study about K2. The most common phrase attached to any information on the internet is “lack of research”. It is available only in retail stores and is only sold to those over the age of 18. If K2 is removed from the stores, then it will be sold on the street, and street drugs are sold to children.

Mike Howell, 3766 Mancuso, Bryan, read a drug alert watch based upon source materials that have not been researched regarding potential hazards. Some say K2 is more potent than marijuana. This may be a good thing because those who smoke both will stop smoking the illegal drug and turn to K2. Sale should be restricted to those 18 years or older. He does want an age restriction on it.

Brenna McGruder, 1001 Harvey, stated that fear is a powerful catalyst. She has a Bachelor of Science in Micro Biology and has read and understood a portion of the research of the compounds in K2. She has seen no scientific evidence of any harmful effects brought on by these compounds. The only evidence presented is anecdotal, which is biased. Savvy business owners would not sell a product that would harm customers. By banning this product the City is saying she cannot make an adult decision.

Maury Jackson, 301 Church Street, said whether or not this is good or bad for our health, if the City bans K2, it will create an underground market. It is better if it is regulated. He would rather law enforcement focus on real crimes and real things that do impact society. There is no scientific research suggesting harmful effects, and he reiterated that everything has its downsides or bad effects.

MOTION: Upon a motion made by Councilmember Crompton and a second by Mayor Berry, the City Council voted six (6) for and none (0) opposed, with Councilmember Maloney abstaining from 2g, to approve the Consent Agenda, less item 2f. The motion carried.

(2f)MOTION: Upon a motion made and seconded, the City Council voted five (5) for and one (1) opposed, with Councilmember Fields voting against, to ban the possession and use of illegal smoking products and ingestion devices. The motion carried.

REGULAR AGENDA

1. Public hearing, presentation, possible action, and discussion on the City of College Station 2010-2011 Proposed Budget.

At approximately 8:03 p.m. Mayor Berry opened the Public Hearing.

Warren Finch, 700 Dover Drive, President of the Bush Presidential Museum, came before the Council to request \$50,000 from the HOT tax for advertising and promotion of the museum. 59,000 visitors come from a radius of 100 miles or more. 73,000 visitors come from the local area. They are asking for less than 1.5% of the HOT tax revenue. They are competing with cities like Austin, Dallas and Las Vegas, and they need the HOT tax to promote College Station. They do work closely with the CVB. We are one of few communities that have a presidential library. This is a marquee tourist location and brings prestige to College Station.

Judy LeUnes, 1356 S. Oaks, on behalf of the Brazos Animal Shelter, invited the Council to the Weiner Fest kickoff fundraiser for the new building. She thanked the City for its support.

Bob Strawser, 124 State Highway 6, Bryan, stated the Animal Shelter is a private organization that provides a service for three entities, Bryan, College Station, and the county, and all they are requesting is a reimbursement of those costs. The formula for arriving at the number is derived by taking the total expenses, subtracting the revenue from the sale of tags, and dividing that number by the number of animals they have housed.

There being no further comments, the Public Hearing was closed at 8:32 p.m.

2. Public hearing, possible action, and discussion on an ordinance Budget Amendment #4 amending ordinance number 3202 which will amend the budget for the 2009-2010 Fiscal Year in the amount of \$1,489,492; and presentation, possible action and discussion on three interfund transfers in the amount of \$424,206.

At approximately 8:37 p.m. Mayor Berry opened the Public Hearing.

There being no comments, the Public Hearing was closed at 8:37 p.m.

MOTION: Upon a motion made by Councilmember Lyles and a second by Councilmember Fields, the City Council voted six (6) for and none (0) opposed, to adopt Budget Amendment #4, amending Ordinance Number 3202, which will amend the budget for the 2009-2010 Fiscal Year in the amount of \$1,489,492 and approving three interfund transfers in the amount of \$424,206. The motion carried unanimously.

3. Public hearing, presentation, possible action and discussion of an ordinance amending Chapter 10 "Traffic Code", to remove parking on the south side of Poplar Street.

At approximately 8:39 p.m. Mayor Berry opened the Public Hearing.

There being no comments, the Public Hearing was closed at 8:40 p.m.

MOTION: Upon a motion made by Councilmember Maloney and a second by Councilmember Crompton, the City Council voted six (6) for and none (0) opposed, to adopt an ordinance amending Chapter 10 "Traffic Code", to remove parking on the south side of Poplar Street. The motion carried unanimously.

4. Public hearing, presentation, possible action, and discussion on an amendment to Chapter 12, "Unified Development Ordinance" Sections 6.2 "Types of Uses", and 6.3 "Specific Use Standards" of the Code of Ordinances of the City of College Station, Texas, specifically related to Recreational Vehicle (RV) Parks.

At approximately 8:55 p.m. Mayor Berry opened the Public Hearing.

Sherry Ellison, 2705 Brookway Drive, stated her concern with the general AO category that exists between single family neighborhoods, and this is not a good use between two single family neighborhoods. RVs are home-sized things that can be parked permanently. We are talking about something that can be allowed to be there for four months, and unless someone complains, it may be even longer. Actually there is a possibility this could become a permanent situation and may be passed down from one student to another. 60% of the park is for student living quarters.

Don Jones, 804 Berry Creek, presented photos of the park property to show the ultimate appearance of an RV park if you take care of it. On football weekends they have a dozen motor homes or RVs that each cost more than a home at Pebble Creek.

There being no further comments, the Public Hearing was closed at 9:16 p.m.

MOTION: Upon a motion made by Councilmember Fields and a second by Councilmember Lyles, the City Council voted five (5) for and none (0) opposed, with Councilmember Maloney voting against, to adopt an amendment to Chapter 12, "Unified Development Ordinance" Sections 6.2 "Types of Uses", and 6.3 "Specific Use Standards" of the Code of Ordinances of the City of College Station, Texas, specifically related to Recreational Vehicle (RV) Parks, conditioned on two parking spaces per pad site. The motion carried.

5. Public hearing, presentation, possible action, and discussion on an amendment to Chapter 12, "Unified Development Ordinance," Sections 5.2 "Residential Dimensional Standards" and 1 1.2 "Defined Terms," of the Code of Ordinances of the City of College Station, Texas, specifically related to allowable heights of public, civic, and institutional structures.

At approximately 9:25 p.m. Mayor Berry opened the Public Hearing.

Sherry Ellison, 2705 Brook Way Drive, stated that the way this is calculated bothers her. Within the length of a Windwood yard, 100 feet is not that long. With a five-story building, we are not just talking about height, but also width -- height as far as blocking the sun and stars; and as for buffering, no tree will grow in our lifetime that will block that view. Traffic is another issue. This is an issue of a really big building really close to homes.

There being no further comments, the Public Hearing was closed at 9:28 p.m.

MOTION: Upon a motion made by Councilmember Lyles and a second by Councilmember Fields, the City Council voted six (0) for and none (0) opposed, to adopt an amendment to Chapter 12, "Unified Development Ordinance," Sections 5.2 "Residential Dimensional Standards" and 1 1.2 "Defined Terms," of the Code of Ordinances of the City of College Station, Texas, specifically related to allowable heights of public, civic, and institutional structures. The motion carried unanimously.

6. Presentation, possible action, and discussion to approve an ordinance by the City Council of the City of College Station, Texas, issuing \$3,900,000 City of College Station Certificates of Obligation, Series 2010.

7. Presentation, possible action and discussion to approve an ordinance by the City Council of the City of College Station, Texas, issuing \$19,635,000 City of College Station General Obligation Bonds, Series 2010.

Items 6 & 7 were considered together.

MOTION: Upon a motion made by Councilmember Crompton and a second by Councilmember Ruesink, the City Council voted six (6) for and none (0) opposed, to adopt an ordinance by the City Council of the City of College Station, Texas, issuing \$3,900,000 City of College Station Certificates of Obligation, Series 2010. The motion carried unanimously.

MOTION: Upon a motion made by Councilmember Fields and a second by Councilmember Lyles, the City Council voted six (6) for and none (0) opposed, to adopt an ordinance by the City Council of the City of College Station, Texas, issuing \$19,635,000 City of College Station General Obligation Bonds, Series 2010. The motion carried unanimously.

8. Presentation, possible action, and discussion regarding selection of applicants to various Citizen Boards and Committees:

- **Bicycle, Pedestrian and Greenways Advisory Board**
- **Cemetery Committee**
- **Construction Board of Adjustments and Appeals**
- **Design Review Board**
- **Historic Preservation Committee**
- **Landmark Commission**
- **Medical Corridor Citizen Advisory Committee**
- **Parks and Recreation Board**
- **Planning and Zoning Commission**
- **Zoning Board of Adjustments**

MOTION: Upon a motion made by Councilmember Crompton and a second by Councilmember Maloney, the City Council voted six (6) for and none (0) opposed, to appoint

Susan Fox, Shane Wendell, George Jessup, and Mille Burrell to the Parks and Recreation Board, with Gary Erwin as Chair. The motion carried unanimously.

MOTION: Upon a motion made by Councilmember Lyles and a second by Councilmember Ruesink, the City Council voted six (6) for and none (0) opposed, to appoint Jodi Warner, Bo Miles, Doug Slack, and Craig Hall to the Planning and Zoning Commission, with Scott Shafer as Chair. The motion carried unanimously.

MOTION: Upon a motion made by Councilmember Fields and a second by Councilmember Lyles, the City Council voted six (6) for and none (0) opposed, to appoint Hunter Goodwin, Melissa Cunningham (moved up from alternates to board members); Jim Davis, and Dell Seiter as alternates to the Zoning Board of Adjustments, with Rodney Hill as Chair. The motion carried unanimously.

9. Adjournment.

MOTION: There being no further business, Mayor Berry adjourned the regular session of the College Station City Council at 10:02 p.m. on Thursday, August 26, 2010. The motion carried unanimously.

Nancy Berry, Mayor

ATTEST:

Sherry Mashburn, City Secretary

September 9, 2010
Consent Agenda Item No. 2b
Audit Services

To: Glenn Brown, City Manager

From: Jeff Kersten, Chief Financial Officer

Agenda Caption: Presentation, possible action and discussion on a letter agreement for year 2 of the Professional Auditing Services engagement with Ingram, Wallis & Co., P.C. for the fiscal year ending September 30, 2010 with expenditures totaling \$82,000 from the City of College Station and \$16,500 from BVSWMA.

Relationship to Strategic Goals: Goal I. 1 Spending taxpayer money efficiently.

Recommendation(s): Staff recommends contract renewal with Ingram, Wallis & Co. for the fiscal year ending September 30, 2010.

Summary:

In May 2009, staff solicited proposals for professional auditing services for the fiscal year ending September 30, 2009 with the option of renewing the engagement for up to four (4) subsequent years. The audits are to be performed in accordance with generally accepted auditing standards, the standards set forth for financial audits in the General Accounting Office's (GAO) *Government Auditing Standards* (2007), the provisions of the federal Single Audit Act of 1984 (as amended in 1996), and the provisions of the U.S. Office of Management and Budget (OMB) Circular A-133, *Audits of States, Local Governments, and Non-Profit Organizations*.

The Audit Committee recommended and on July 23, 2009, City Council selected Ingram, Wallis & Co., P.C. to be the City's external auditor and approved a letter agreement with them for the fiscal year ending September 30, 2009 and with the potential for extending the agreement annually for up to four additional years.

Budget & Financial Summary: Funds are available and budgeted in the General Fund, Fiscal Services Department, Accounting Division, the Community Development Budget, and the BVSWMA budget.

Attachments:

1. Renewal Agreement

RENEWAL ACCEPTANCE

By signing herewith, I acknowledge and agree to renew Contract No. 09-268 for Professional Audit Services in an amount not to exceed Ninety-Eight Thousand Five Hundred and No/100 (\$98,500.00) and all other terms and conditions previously agreed to and accepted.

I understand this renewal agreement will be for the performance of professional audit services for fiscal year ending September 30, 2010. This is the first renewal term.

INGRAM, WALLIS & CO., P.C.

James D. Ingram II
Authorized Representative

8/13/10
DATE

CITY OF COLLEGE STATION

Mayor

DATE

ATTEST:

City Secretary

DATE

APPROVED:

City Manager

DATE

Alan C. Fales
City Attorney

DATE

Chief Financial Officer

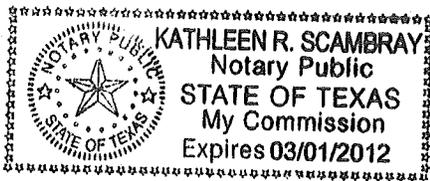
DATE

STATE OF TEXAS

CORPORATE ACKNOWLEDGMENT

COUNTY OF BRAZOS

This instrument was acknowledged on the 13TH day of AUGUST, 2010,
by JAMES D. INGRAM III in his/her capacity as VICE-PRESIDENT of
INGRAM WAHNS & CO, P.C., a Texas Corporation, on behalf of said corporation.



Kathleen R Scambray
Notary Public in and for the
State of Texas

STATE OF TEXAS

ACKNOWLEDGMENT

COUNTY OF BRAZOS

This instrument was acknowledged on the _____ day of _____, 2010,
by Nancy Berry, in her 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

INTRODUCTION

The City of College Station is soliciting Proposal(s) (RFP's) from qualified firms of certified public accountants to audit its financial statements for the fiscal year ending September 30, 2009. The initial term of this agreement will be one (1) year. Upon completion of the initial contract term and upon the mutual written agreement of both parties, the contract may be renewed for up to four (4) additional one (1) year terms to be awarded one (1) year at a time. It is the intent of the City of College Station to select a single firm to accomplish all the services outlined in this Request for Proposal.

All Proposals shall be submitted in two (2) parts:

- I. Qualifications shall be received in a sealed envelope by the time and date specified. Eleven copies shall be included - 1 original, 10 copies, plus 1 electronic Version (CD-Rom).
- II. Contract pricing shall be received under separate cover submitted at the same time as the Qualifications are received - by the time and date specified herein. Eleven (11) copies shall be included - 1 original, 10 copies, plus 1 electronic Version (CD-Rom).

You may upload one (1) electronic proposal in the format prescribed herein on our website at <http://brazosbid.cstx.gov/> . Response packages will be accepted until 4:00 p.m. CST on Monday, June 22, 2009 and should be addressed to:

Department of Fiscal Services
Purchasing Division
City of College Station
1101 Texas Avenue
P.O. Box 9960
College Station, Texas 77842

Schedule of Important Dates

The tentative schedule for this Request for Proposal is as follows:

Release RFP to Vendors	May 22, 2009
Advertisement Dates	May 22, 2009 & May 29, 2009
Deadline for Questions and Inquiries	June 16, 2009
Proposal Submission Deadline	June 22, 2009
Contract Evaluations/Negotiations	June/July 2009
Earliest Award by City	July 2009

September 9, 2010
Consent Agenda Item No. 2c
BVSWMA Purchase

To: Glenn Brown, City Manager

From: Mark Smith, Director of Public Works

Agenda Caption: Presentation, possible action, and discussion on the purchase of a John Deere Tractor Mower from Coufal-Prater Equipment to be used by the Brazos Valley Solid Waste Management Agency in the amount of \$59,634.40

Recommendation(s): Staff recommends award to Coufal-Prater for the total purchase price of \$59,634.40

Summary: This purchase is for a diesel powered John Deere Tractor Mower to be used by the Brazos Valley Solid Waste Management Agency. This purchase will upgrade the current 6605 Tractor that is scheduled for replacement, and \$15,000 will be received at trade-in. The tractor will be utilized in ground maintenance, discing and seeding operations, blowing hay for erosion control, and transporting pumps, etc. The enclosed cab tractor will be equipped with a 15' shredder to reduce the amount of time needed for mowing the Twin Oaks and Rock Prairie Road Facilities.

Budget & Financial Summary: This purchase is budgeted in the FY2010 BVSWMA Operating Fund as a service level adjustment. The transition service level adjustment was approved by the BVSWMA Policy Advisory Board and both the College Station and Bryan City Councils during the FY2010 budget approval process. The quote on this unit was acquired by Coufal-Prater utilizing TXMAS government pricing. **As this purchase is in excess of \$50,000, it will require the approval of the Bryan City Council.**

Attachments:

1. Quote

September 9, 2010
Consent Agenda Item No. 2d
Approval of a Contract Amendment for the Mayor's Council on Physical Fitness
Grant Contract

To: Glenn Brown, City Manager

From: David Schmitz, Assistant Director, Parks and Recreation

Agenda Caption: Presentation, possible action, and discussion on an amendment to the contract with the Texas Department of State Health Services for the Mayor's Council on Physical Fitness Grant Contract.

Relationship to Strategic Goals: Goal I. Action 5. – Financially stable city providing response to core services and infrastructures. Develop revenue streams independent of the General Fund

Recommendation(s): Staff recommends approval of the Contract Amendment as proposed.

Summary: In March of 2008, a grant proposal was submitted to the Governor's Advisory Council on Physical Fitness for the establishment of a Mayor's Council on Physical Fitness (MCPF). This was a seed money grant with no City matching funds required. The City received notification the last week of April that the City had been awarded a grant. A contract for the grant in the amount of \$23,280 was routed signed and returned to Texas Department of State Health Services.

A Phase II Grant Amendment was granted and approved in January of 2009 in the amount of \$50,000 for the implementation of programs, activities and marketing for the MCPF. These included a Walking Health Fair at the Wolf Pen Creek Amphitheater, the installation of replacement exercise equipment at Thomas Park and the installation of new equipment at Wolf Pen Creek and the hosting of weekly run/walk activities at Veterans Park.

A Phase III Amendment in the amount of \$7,500 was approved by the Council on September 24th 2009. After numerous attempts to receive a fully executed copy of the Amendment, staff never executed any expenditures. This Amendment is a renewal of the September 2009 Amendment which was received via e-mail on August 18, 2010. DSHS has requested that the Phase III amendment again be considered as a Contract Amendment since it is a continuation of the original state grant process. Given that this is a state grant, it is exempt from the competitive bidding procedures and the standard 25% increase in contract amount requirements do not apply. The original contract is on file with the City Secretary's office.

Budget & Financial Summary: This is a reimbursement state grant in the amount not to exceed \$80,780 in total. There is no City match required. A contingency transfer may be required to cover initial grant related expenditures prior to reimbursement from the state. Future funding for these activities would need to be addressed as a part of the City's normal budget process.

Attachments:

1. Texas Department state Health Services Contract Amendment Phase III to the Mayor's Council on Physical Fitness Grant Contract.
2. Texas Department of State Health Services Contract – on file in the City Secretary's Office.

DEPARTMENT OF STATE HEALTH SERVICES



Amendment
To

The Department of State Health Services (DSHS) and CITY OF COLLEGE STATION (Contractor) agree to amend the Program Attachment # 001B (Program Attachment) to Contract # 2008-027726 (Contract) in accordance with this Amendment No. 001C: DPIS/Governor's Advisory Council Physical Fitness, effective 06/24/2010.

The purpose of this Amendment is to extend the current contract until 08/31/2011.

Therefore, DSHS and Contractor agree as follows:

PROGRAM ATTACHMENT NO. ~~001B~~ 001C

TERM: Is revised to read as follows.
THRU: ~~08/31/2010~~ 08/31/2011

All other terms and conditions not hereby amended are to remain in full force and effect. In the event of a conflict between the terms of this contract and the terms of this Amendment, this Amendment shall control

Department of State Health Services

Contractor

Signature of Authorized Official

Signature of Authorized Official

Date: _____

Date: _____

Bob Burnette, C.P.M., CTPM

Name: _____

Director, Client Services Contracting Unit

Title: _____

1100 WEST 49TH STREET
AUSTIN, TEXAS 78756

Address: _____

(512) 458-7470

Phone: _____

Bob.Burnette@dshs.state.tx.us

Email: _____

CITY OF COLLEGE STATION

By: _____
Mayor
Date: _____

ATTEST:

City Secretary
Date: _____

APPROVED:

City Manager
Date: _____

Adm C. Felix

City Attorney
Date: _____

Chief Financial Officer
Date: _____

DEPARTMENT OF STATE HEALTH SERVICES



1100 WEST 49TH STREET
AUSTIN, TEXAS 78756-3199

CATEGORICAL BUDGET CHANGE REQUEST

DSHS PROGRAM: DPIS/Governor's Advisory Council Physical Fitness

CONTRATOR: CITY OF COLLEGE STATION

CONTRACT NO: 2008-027726

CONTRACT TERM: 05/01/2008 THRU: 08/31/2011

BUDGET PERIOD: 05/01/2008 THRU: 08/31/2011

CHG: 001C

DIRECT COST (OBJECT CLASS CATEGORIES)			
	Current Approved Budget (A)	Revised Budget (B)	Change Requested
Personnel	\$15,000.00	\$15,000.00	\$0.00
Fringe Benefits	\$2,280.00	\$2,280.00	\$0.00
Travel	\$0.00	\$0.00	\$0.00
Equipment	\$0.00	\$0.00	\$0.00
Supplies	\$500.00	\$500.00	\$0.00
Contractual	\$11,000.00	\$11,000.00	\$0.00
Other	\$52,000.00	\$52,000.00	\$0.00
Total Direct Charges	\$80,780.00	\$80,780.00	\$0.00
INDIRECT COST			
Base (\$)	\$0.00	\$0.00	\$0.00
Rate (%)	0.00%	0.00%	0.00%
Indirect Total	\$0.00	\$0.00	\$0.00
PROGRAM INCOME			
Program Income	\$0.00	\$0.00	\$0.00
Other Match	\$0.00	\$0.00	\$0.00
Income Total	\$0.00	\$0.00	\$0.00
LIMITS/RESTRICTIONS			
Advance Limit	\$0.00	\$0.00	\$0.00
Restricted Budget	\$0.00	\$0.00	\$0.00
SUMMARY			
Cost Total	\$80,780.00	\$80,780.00	\$0.00
Performing Agency Share	\$0.00	\$0.00	\$0.00
Receiving Agency Share	\$80,780.00	\$80,780.00	\$0.00
Total Reimbursements Limit	\$80,780.00	\$80,780.00	\$0.00
JUSTIFICATION			
This amendment is for a no cost extension to allow contractor addition time to cover activities required for Phase III of the project.			

Financial status reports are due: 08/29/2008, 12/01/2008, 03/02/2009, 06/01/2009, 09/30/2009, 12/30/2009, 03/30/2010, 06/30/2010, 11/01/2010

September 9, 2010
Consent Agenda Item No. 2e
Texas A&M University Systems Easement Renewal

To: Glenn Brown, City Manager

From: David Massey, Director of College Station Electric Utilities Department

Agenda Caption: Presentation, possible action, and discussion regarding the authorization for the Mayor to execute the renewal of two utility easements located on the Texas A&M University System Property.

Relationship to Strategic Goals: Financially Sustainable City Providing Response to Core Services and Infrastructure.

Recommendation(s): Staff recommends Council authorize the Mayor to sign the easement documents.

Summary: Easement location one (1) is at Marion Pugh Dr. and Luther St. for aerial Electric Distribution and underground Water lines which provide service to the customers in this area of College Station.

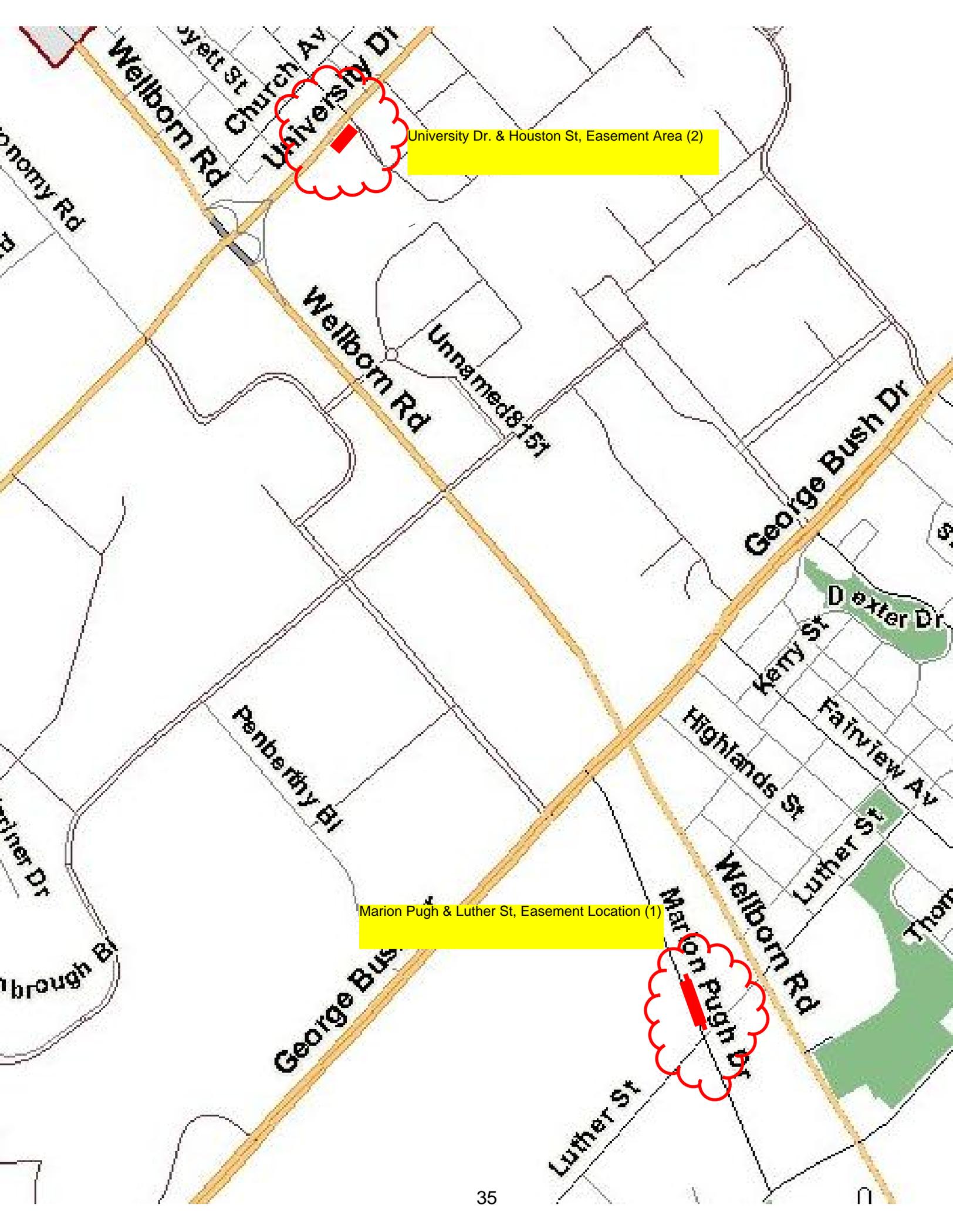
Easement location two (2) is at University Dr. and Houston St. and is covering underground Traffic Control Cables for this intersection.

Section 85.26 of the Texas Education Code, limits Texas A&M University to the grant of an easement for not more than 10 years after which time the Board may renew the easement. Texas A&M has requested the renewal of the listed easements.

Budget & Financial Summary: N/A

Attachments:

1. Vicinity Map showing easement locations
2. Easement (1) Aerial Electric & Underground Water
3. Easement (2) Underground Traffic Control Cables



University Dr. & Houston St, Easement Area (2)

Marion Pugh & Luther St, Easement Location (1)

EASEMENT AGREEMENT
(Aerial Electric and Underground Water)

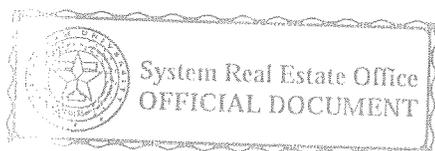
1. Grant of Easement. The **BOARD OF REGENTS OF THE TEXAS A&M UNIVERSITY SYSTEM**, as grantor (“**TAMUS**”), on behalf of the State of Texas, acting by and through its duly authorized officer, under authority of System Policy 41.01, and by virtue of authority granted to the Board of Regents by TEX. EDUC. CODE ANN. §85.26, in consideration of the mutual benefits to be derived by both parties, hereby **GRANTS, BARGAINS, SELLS, and CONVEYS** to **CITY OF COLLEGE STATION**, whose address is P.O. Box 9960, College Station, Texas, as grantee (“**CITY**”), its permitted successors and assigns, a nonexclusive right-of-way easement (the “Easement”). The Easement is fifty feet (50’) in width across certain property of **TAMUS** (the “Property”), located in College Station, Brazos County, Texas, more particularly described in Exhibit “A” attached hereto and made part of this Easement Agreement (this “Agreement”).

2. Purpose and Location of Easement. The Easement is granted for the purpose of installing and maintaining an aerial electric and underground 8 inch water line (the “Lines”). A plat of the Property showing the surface area affected by the Easement and the location of the Lines and **CITY**’s right-of-way is depicted on Exhibit “B” attached hereto and made a part of this Agreement.

3. Right of Access. **CITY** has the right of ingress and egress across the Property for the purpose of constructing, maintaining, repairing, replacing, and rebuilding the Lines. **CITY** agrees to occupy the surface of the Property only to the extent and for the length of time necessary for constructing, maintaining, repairing, replacing, and rebuilding the Lines. Any gate or opening used by **CITY** for ingress or egress in the exercise of its rights must be kept in proper condition and closed at all times.

4. Duties. **CITY** will clearly mark the location of the Lines in a manner and to the extent required by law. If **CITY** damages or destroys any fence, road, bridge, culvert, building, or other improvement, or any personal property, other than its own personal property, **CITY** must, within a reasonable period of time, repair, or replace the improvement or personal property to the extent that such improvement or personal property will, as nearly as practicable, be in like condition as before such damage or destruction. In lieu of requiring repair or replacement, **TAMUS** may, at its option, require that **CITY** pay money damages, including without limitation, those damages incurred as a result of **CITY** or its agents or employees entering or departing the Property, or by reason of being present on the Property. **CITY** agrees to notify **TAMUS** no later than three (3) business days after completion of the initial construction of the Lines, and to cooperate with **TAMUS**’ personnel in an onsite inspection to assess any damages resulting from **CITY**’s activities. **CITY** agrees to notify **TAMUS** five (5) business days prior to commencement of any repairs or replacements.

5. No Fee Interest Granted. This is a grant of a nonexclusive easement only, and does not grant any fee interest to the surface, subsurface, or any interest in the minerals on or under the Property. The conveyance is made subject to any and all outstanding restrictions,



reservations, covenants, conditions, easements and other encumbrances filed of record or apparent on the ground. TAMUS expressly retains all rights to grant, control and renew all restrictions, reservations, covenants, conditions, leases, easements and other encumbrances, of every kind and character, on, over or under the Property.

6. Duration of Easement. In accordance with TEX. EDUC. CODE ANN. §85.26(c), this grant is for a term of ten (10) years and may be renewed only at the election of TAMUS. CITY expressly understands that its continued possession of the Property under this Agreement after expiration of its term, without first obtaining a renewal from the Board of Regents of The Texas A&M University System, is a violation of state law that subjects CITY to a penalty of ONE HUNDRED DOLLARS (\$100) for each day of such violation. CITY agrees to pay TAMUS such penalty within ten (10) business days after receipt of notice from TAMUS sent in compliance with Paragraph 13 of this Agreement.

7. Removal of Equipment. CITY has the right to remove its equipment at the expiration of this Agreement provided all obligations to TAMUS under this Agreement are fully satisfied. All equipment must be removed within one hundred twenty (120) calendar days from the date of termination or abandonment of the Easement granted by this Agreement. If removal causes injury to the surface or to any improvements of TAMUS, CITY will restore the surface or improvements or at TAMUS' option, pay for such damage within sixty (60) calendar days after completion of such removal. If CITY fails to remove the equipment within the times set forth in this Paragraph, TAMUS shall have the right to remove and dispose of the equipment and collect all costs of removal and disposal from CITY.

8. Nonexclusive Easement. The Easement is nonexclusive. TAMUS reserves for TAMUS and TAMUS' successors and assigns the right to full use and enjoyment of the Property and the right to convey the Property or other rights or easements to others, so long as such use or conveyance does not unduly interfere with CITY's use.

9. Hold Harmless. CITY AND TAMUS, TO THE EXTENT ALLOWED BY THE CONSTITUTION AND THE LAWS OF THE STATE OF TEXAS, EACH AGREE TO INDEMNIFY AND HOLD THE OTHER HARMLESS FROM ANY AND ALL CLAIMS, DEMANDS, LIABILITIES, AND CAUSES OF ACTION FOR PERSONAL INJURY OR DEATH AND/OR DAMAGE TO OR DESTRUCTION OF PROPERTY OR IMPROVEMENTS CAUSED BY, ARISING OUT OF, OR RESULTING FROM THE EXERCISE OF EACH PARTIES RIGHTS AND OBLIGATIONS UNDER THIS AGREEMENT.

10. Use of Property. CITY will not commit or suffer to be committed waste upon the Property; will keep the Property, the improvements, and its equipment in good working order and repair and in a clean, safe, and healthful condition; and will comply with all federal, state, and local laws, rules, and regulations with regard to the use and condition of its improvements and equipment.

11. Hazardous Waste. CITY will not use the Property or permit the Property to be used so as to cause, suffer, or allow any contamination of soils, ground water, surface water, or



natural resources on or adjacent to the Property resulting from, but not limited to, spills or leaks of oil, gasoline, hazardous materials, hazardous wastes, or other chemical compounds. CITY is solely responsible for cleanup of any contamination resulting from violation of this provision.

IF THE PRESENCE OF HAZARDOUS MATERIALS ON THE PROPERTY IS CAUSED OR PERMITTED BY CITY AND SUCH MATERIALS RESULT IN CONTAMINATION OF THE PROPERTY OR IF CONTAMINATION OF THE PROPERTY BY HAZARDOUS MATERIAL OTHERWISE OCCURS AND IS RELATED TO CITY'S USE, THEN CITY, TO THE EXTENT ALLOWED BY THE CONSTITUTION AND THE LAWS OF THE STATE OF TEXAS, SHALL INDEMNIFY, DEFEND, AND HOLD TAMUS HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, JUDGMENTS, DAMAGES, PENALTIES, FINES, COSTS, LIABILITIES, OR LOSSES (INCLUDING DIMINUTION IN VALUE OF THE PROPERTY, DAMAGES FOR THE LOSS OF OR RESTRICTION ON USE OF THE PROPERTY OR OF ANY AMENITY OF THE PROPERTY, AND SUMS PAID IN SETTLEMENT OF CLAIMS, ATTORNEYS' FEES, CONSULTANTS' FEES AND EXPERTS' FEES) WHICH ARISE DURING OR AFTER THE EASEMENT TERM AS A RESULT OF SUCH CONTAMINATION. THIS INDEMNIFICATION OF TAMUS BY CITY INCLUDES COSTS INCURRED IN CONNECTION WITH ANY INVESTIGATION OF SITE CONDITIONS AND ANY CLEANUP, REMEDIAL, REMOVAL, OR RESTORATION WORK REQUIRED BY ANY FEDERAL, STATE, OR LOCAL GOVERNMENTAL AGENCY OR POLITICAL SUBDIVISION BECAUSE OF THE PRESENCE OF HAZARDOUS MATERIAL.

12. Default and Termination. It is agreed that upon default by CITY of any of the covenants and conditions set forth in this Agreement, TAMUS has the right, and such right is expressly reserved, to declare the Easement forfeited, without prejudice to any claim TAMUS may have against CITY; provided, however, TAMUS will give CITY written notice of its intention to terminate the Easement and the reasons for termination, and CITY will have thirty (30) calendar days after receipt of notice to rectify the default or violation. Upon timely correction, as determined by TAMUS in its sole discretion, the Easement will remain in full force and effect. Termination or abandonment of the Easement for any cause is automatic and all rights granted revert to TAMUS without the necessity of any further action or suit on the part of TAMUS. Upon termination or abandonment, CITY agrees to file a Release of Easement in the Deed Records of the County in which the Property is located, but if it fails to do so within ten (10) days following written demand from TAMUS, then TAMUS shall have the right to file the Release of Easement. Abandonment will be deemed to have occurred when the Easement is not used for the purposes granted for a continuous period of one calendar year.

13. Notices. Any notice required or permitted under this Agreement must be in writing, and shall be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address set out below. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, email, or other commercially reasonable means and will be effective when actually received. TAMUS and



CITY may change their respective notice address by sending to the other party a notice of the new address. Notices should be addressed as follows:

TAMUS: The Texas A&M University System
Office of General Counsel
Attn: System Real Estate
200 Technology Way, Suite 2079
College Station, Texas 77845-3424
Phone: (979) 458-6350
Fax: (979) 458-6359

CITY: City of College Station
Attn: City Manager
P.O. Box 9960
College Station, Texas 77840-7896
Phone: (979) 764-3510

14. Waiver. The failure of **CITY** or **TAMUS** to insist in any one or more instances on a strict performance of any of the covenants of this Agreement shall not be construed as a waiver or relinquishment of such covenants in future instances, but the same shall continue and remain in full force and effect.

15. Privileges and Immunities. **CITY** acknowledges that **TAMUS** is an agency of the State of Texas and nothing in this Agreement will be construed as a waiver or relinquishment by **TAMUS** of its right to claim exemptions, privileges, and immunities as may be provided by law.

16. Governing Law and Venue. The validity of this Agreement and all matters pertaining to this Agreement, including but not limited to, matters of performance, non-performance, breach, remedies, procedures, rights, duties, and interpretation or construction, shall be governed and determined by the Constitution and the laws of the State of Texas. Pursuant to Section 85.18, *Texas Education Code*, venue for any suit filed against **TAMUS** shall be in the county in which the primary office of the chief executive officer of **TAMUS** is located.

17. Grammatical Interpretation. When the singular number is used, it also includes the plural, and the masculine gender includes the feminine and neuter gender.

18. Headings. Headings are for reference and will not be construed to limit or alter the meaning of the provisions of this Agreement.

19. Saving Clause. If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions will remain in full force and effect and will not be affected, impaired or invalidated.



20. Assignment. CITY may not sell, assign, encumber or convey the Easement without the prior written consent of TAMUS and any attempt by CITY to sell, assign, encumber or convey the Easement without such consent will cause this Agreement to terminate.

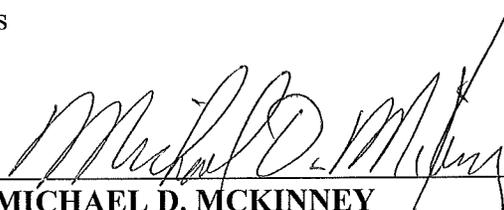
21. Successors and Assigns. This Agreement and each and all of its covenants, obligations, and conditions shall inure to the benefit of and be binding upon the heirs, personal representatives, successors, and permitted assigns of the parties.

22. Entire Agreement. This Agreement constitutes the complete agreement of the parties and supersedes any prior understanding or agreement, written or oral, between them regarding the issues covered by this Agreement. This Agreement may not be modified orally or in any manner other than by agreement in writing signed by the parties hereto or their permitted successors or assigns.

23. Effective Date. This Agreement is deemed to be in force as of the 12th day of September, 2010.

BOARD OF REGENTS OF THE TEXAS A&M UNIVERSITY SYSTEM, an agency of the State of Texas

By:



MICHAEL D. MCKINNEY
Chancellor
The Texas A&M University System

APPROVED AS TO FORM:



GINA M. JOSEPH
Assistant General Counsel
Office of General Counsel
The Texas A&M University System



TERMS AND CONDITIONS EXPRESSLY ACKNOWLEDGED AND ACCEPTED:

CITY OF COLLEGE STATION

By: _____
NANCY BERRY
Mayor
City of College Station

ATTEST:

CONNIE HOOKS
City Secretary
City of College Station

ACKNOWLEDGEMENTS

STATE OF TEXAS §
 §
COUNTY OF BRAZOS §

This instrument was acknowledged before me this 30 day of July, 2010 by **MICHAEL D. MCKINNEY**, Chancellor of The Texas A&M University System, on behalf of the Board of Regents of The Texas A&M University System, an agency of the State of Texas.

KrisAnn L. Everett
Notary Public



STATE OF TEXAS §
 §
COUNTY OF BRAZOS §

This instrument was acknowledged before me this ___ day of _____, 2010 by **NANCY BERRY**, Mayor of the City of College Station.

Notary Public



50-Foot Wide Utility Easement
Part of the I&GN Railroad Right-of-Way
(Now Abandoned)
J. E. Scott League
Brazos County, Texas

Field notes of a 50-foot wide tract or strip of land lying and being situated in the J. E. Scott League, Brazos County, Texas and being part of the abandoned I&GN Railroad right-of-way, and being more particularly described as follows:

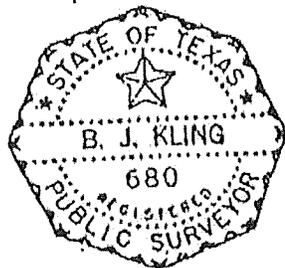
BEGINNING at the concrete monument found marking the south corner of the 17.25 acre tract conveyed by H. E. Burgess to R. A. Burke and described in the deed recorded in Volume 129, Page 621 of the Deed Records of Brazos County, Texas, said concrete monument being in the southwest right-of-way line of the beforementioned I&GN Railroad, now abandoned;

THENCE N 70° 30' 00" E for a distance of 50.00 feet and corner in the center of the beforementioned I&GN Railroad right-of-way;

THENCE S 19° 30' 00" E along the beforementioned center of the I&GN Railroad right-of-way for a distance of 128.55 feet and corner in the northwest right-of-way line of Luther Street;

THENCE S 47° 26' 22" W along the beforementioned northwest right-of-way line of Luther Street for a distance of 54.34 feet and corner in the beforementioned southwest right-of-way line of the I&GN Railroad;

THENCE N 19° 30' 00" W along the beforementioned southwest right-of-way line of the I&GN Railroad for a distance of 149.84 feet to the PLACE OF BEGINNING of this 50.00 foot wide strip of land, containing 0.159 acres, more or less.

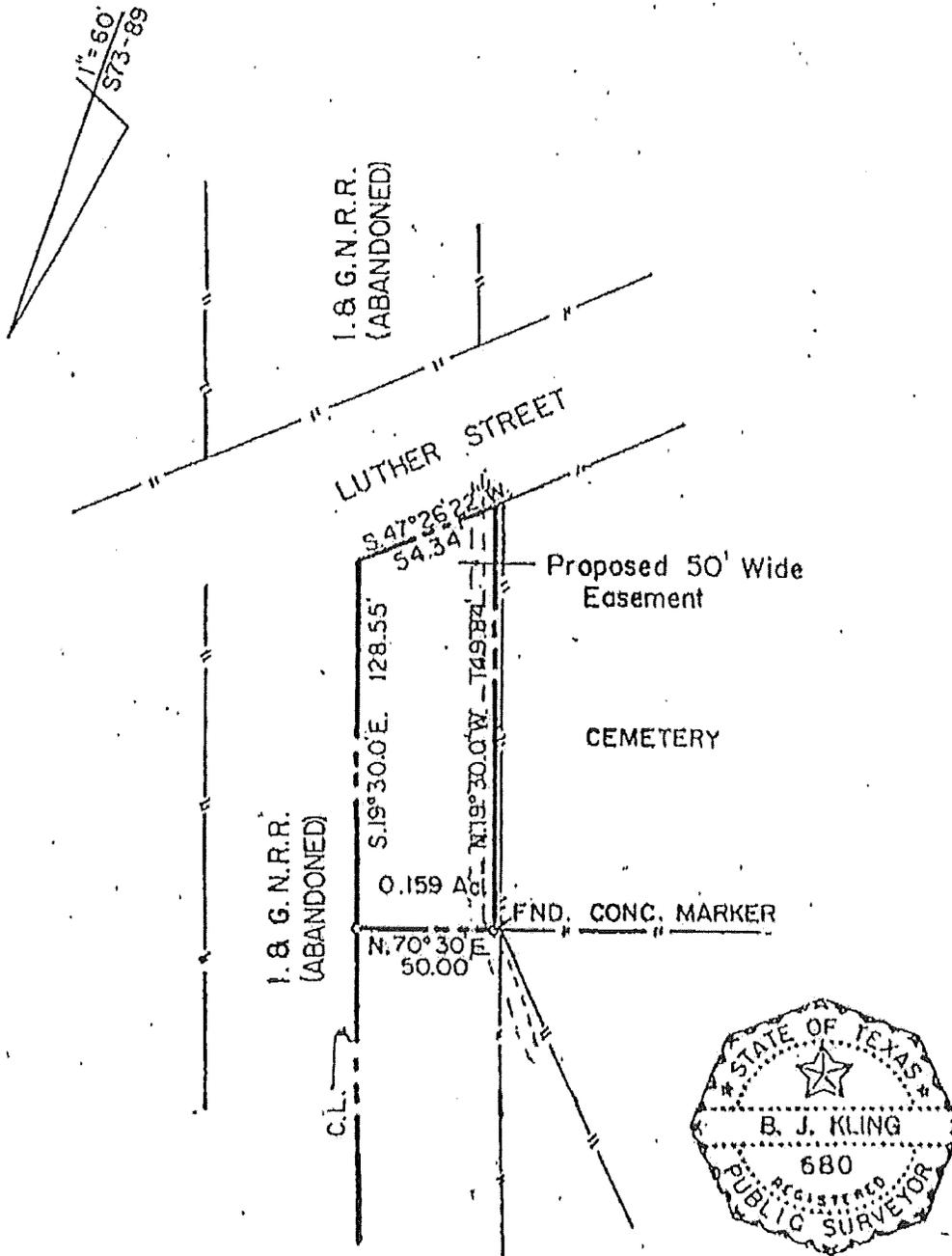


Surveyed April 1973

BY: *B. J. Kling*
B. J. Kling

Exhibit A

EXHIBIT "B"



50-FOOT WIDE UTILITY EASEMENT
PART OF THE I & GN RAILROAD RIGHT-OF-WAY
(NOW ABANDONED)
J. E. SCOTT LEAGUE
BRAZOS COUNTY, TEXAS

EASEMENT AGREEMENT (Underground Traffic Control Cable)

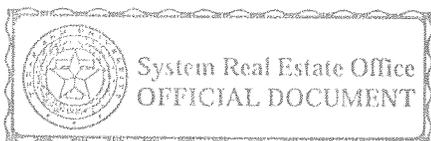
1. Grant of Easement. The **BOARD OF REGENTS OF THE TEXAS A&M UNIVERSITY SYSTEM**, as grantor (“**TAMUS**”), on behalf of the State of Texas, acting by and through its duly authorized officer, under authority of System Policy 41.01, and by virtue of authority granted to the Board of Regents by TEX. EDUC. CODE ANN. §85.26, in consideration of the mutual benefits to be derived by both parties, hereby **GRANTS, BARGAINS, SELLS, and CONVEYS** to **CITY OF COLLEGE STATION**, whose address is P.O. Box 9960, College Station, Texas, as grantee (“**CITY**”), its permitted successors and assigns, a nonexclusive right-of-way easement (the “Easement”) for an underground traffic control cable. The Easement is three feet (3’) in width across certain property of **TAMUS** (the “Property”), located in College Station, Brazos County, Texas, more particularly described in Exhibit “A” attached hereto and made part of this Easement Agreement (this “Agreement”).

The actual “as built” location of the underground line shall locate, define, and establish the centerline of the Easement.

2. Purpose and Location of Easement. The Easement is granted for the purpose of installing and maintaining an underground traffic control cable. A plat of the Property showing the surface area affected by the Easement and the location of the underground traffic control cable and **CITY**’s right-of-way is depicted on Exhibit “B” attached hereto and made a part of this Agreement.

3. Right of Access. **CITY** has the right of ingress and egress across the Property for the purpose of constructing, maintaining, repairing, replacing, and rebuilding the underground traffic control cable. **CITY** agrees to occupy the surface of the Property only to the extent and for the length of time necessary for constructing, maintaining, repairing, replacing, and rebuilding the underground traffic control cable. Any gate or opening used by **CITY** for ingress or egress in the exercise of its rights must be kept in proper condition and closed at all times.

4. Duties. **CITY** will clearly mark the location of the cable in a manner and to the extent required by law. The cable will be buried not less than twenty-four inches (24”) below the surface. If **CITY** damages or destroys any fence, road, bridge, culvert, building, or other improvement, or any personal property, other than its own personal property, **CITY** must, within a reasonable period of time, repair, or replace the improvement or personal property to the extent that such improvement or personal property will, as nearly as practicable, be in like condition as before such damage or destruction. In lieu of requiring repair or replacement, **TAMUS** may, at its option, require that **CITY** pay money damages, including without limitation, those damages incurred as a result of **CITY** or its agents or employees entering or departing the Property, or by reason of being present on the Property. **CITY** agrees to notify **TAMUS** no later than three (3) business days after completion of the initial construction of the underground traffic control cable, and to cooperate with **TAMUS**’ personnel in an onsite inspection to assess any damages resulting from **CITY**’s activities. **CITY** agrees to notify **TAMUS** five (5) business days prior to commencement of any repairs or replacements.



5. No Fee Interest Granted. This is a grant of a nonexclusive easement only, and does not grant any fee interest to the surface, subsurface, or any interest in the minerals on or under the Property. The conveyance is made subject to any and all outstanding restrictions, reservations, covenants, conditions, easements and other encumbrances filed of record or apparent on the ground. **TAMUS** expressly retains all rights to grant, control and renew all restrictions, reservations, covenants, conditions, leases, easements and other encumbrances, of every kind and character, on, over or under the Property.

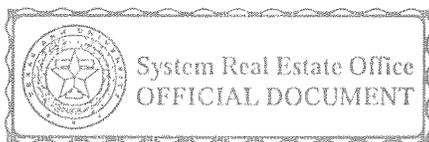
6. Duration of Easement. In accordance with TEX. EDUC. CODE ANN. §85.26(c), this grant is for a term of ten (10) years and may be renewed only at the election of **TAMUS**. **CITY** expressly understands that its continued possession of the Property under this Agreement after expiration of its term, without first obtaining a renewal from the Board of Regents of The Texas A&M University System, is a violation of state law that subjects **CITY** to a penalty of ONE HUNDRED DOLLARS (\$100) for each day of such violation. **CITY** agrees to pay **TAMUS** such penalty within ten (10) business days after receipt of notice from **TAMUS** sent in compliance with Paragraph 13 of this Agreement.

7. Removal of Equipment. **CITY** has the right to remove its equipment at the expiration of this Agreement provided all obligations to **TAMUS** under this Agreement are fully satisfied. All equipment must be removed within one hundred twenty (120) calendar days from the date of termination or abandonment of the Easement granted by this Agreement. If removal causes injury to the surface or to any improvements of **TAMUS**, **CITY** will restore the surface or improvements or at **TAMUS**' option, pay for such damage within sixty (60) calendar days after completion of such removal. If **CITY** fails to remove the equipment within the times set forth in this Paragraph, **TAMUS** shall have the right to remove and dispose of the equipment and collect all costs of removal and disposal from **CITY**.

8. Nonexclusive Easement. The Easement is nonexclusive. **TAMUS** reserves for **TAMUS** and **TAMUS**' successors and assigns the right to full use and enjoyment of the Property and the right to convey the Property or other rights or easements to others, so long as such use or conveyance does not unduly interfere with **CITY**'s use.

9. Hold Harmless. **CITY AND TAMUS, TO THE EXTENT ALLOWED BY THE CONSTITUTION AND THE LAWS OF THE STATE OF TEXAS, EACH AGREE TO INDEMNIFY AND HOLD THE OTHER HARMLESS FROM ANY AND ALL CLAIMS, DEMANDS, LIABILITIES, AND CAUSES OF ACTION FOR PERSONAL INJURY OR DEATH AND/OR DAMAGE TO OR DESTRUCTION OF PROPERTY OR IMPROVEMENTS CAUSED BY, ARISING OUT OF, OR RESULTING FROM THE EXERCISE OF EACH PARTIES RIGHTS AND OBLIGATIONS UNDER THIS AGREEMENT.**

10. Use of Property. **CITY** will not commit or suffer to be committed waste upon the Property; will keep the Property, the improvements, and its equipment in good working order and repair and in a clean, safe, and healthful condition; and will comply with all federal, state,



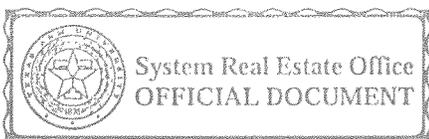
and local laws, rules, and regulations with regard to the use and condition of its improvements and equipment.

11. Hazardous Waste. CITY will not use the Property or permit the Property to be used so as to cause, suffer, or allow any contamination of soils, ground water, surface water, or natural resources on or adjacent to the Property resulting from, but not limited to, spills or leaks of oil, gasoline, hazardous materials, hazardous wastes, or other chemical compounds. CITY is solely responsible for cleanup of any contamination resulting from violation of this provision.

IF THE PRESENCE OF HAZARDOUS MATERIALS ON THE PROPERTY IS CAUSED OR PERMITTED BY CITY AND SUCH MATERIALS RESULT IN CONTAMINATION OF THE PROPERTY OR IF CONTAMINATION OF THE PROPERTY BY HAZARDOUS MATERIAL OTHERWISE OCCURS AND IS RELATED TO CITY'S USE, THEN CITY, TO THE EXTENT ALLOWED BY THE CONSTITUTION AND THE LAWS OF THE STATE OF TEXAS, SHALL INDEMNIFY, DEFEND, AND HOLD TAMUS HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, JUDGMENTS, DAMAGES, PENALTIES, FINES, COSTS, LIABILITIES, OR LOSSES (INCLUDING DIMINUTION IN VALUE OF THE PROPERTY, DAMAGES FOR THE LOSS OF OR RESTRICTION ON USE OF THE PROPERTY OR OF ANY AMENITY OF THE PROPERTY, AND SUMS PAID IN SETTLEMENT OF CLAIMS, ATTORNEYS' FEES, CONSULTANTS' FEES AND EXPERTS' FEES) WHICH ARISE DURING OR AFTER THE EASEMENT TERM AS A RESULT OF SUCH CONTAMINATION. THIS INDEMNIFICATION OF TAMUS BY CITY INCLUDES COSTS INCURRED IN CONNECTION WITH ANY INVESTIGATION OF SITE CONDITIONS AND ANY CLEANUP, REMEDIAL, REMOVAL, OR RESTORATION WORK REQUIRED BY ANY FEDERAL, STATE, OR LOCAL GOVERNMENTAL AGENCY OR POLITICAL SUBDIVISION BECAUSE OF THE PRESENCE OF HAZARDOUS MATERIAL.

12. Default and Termination. It is agreed that upon default by CITY of any of the covenants and conditions set forth in this Agreement, TAMUS has the right, and such right is expressly reserved, to declare the Easement forfeited, without prejudice to any claim TAMUS may have against CITY; provided, however, TAMUS will give CITY written notice of its intention to terminate the Easement and the reasons for termination, and CITY will have thirty (30) calendar days after receipt of notice to rectify the default or violation. Upon timely correction, as determined by TAMUS in its sole discretion, the Easement will remain in full force and effect. Termination or abandonment of the Easement for any cause is automatic and all rights granted revert to TAMUS without the necessity of any further action or suit on the part of TAMUS. Upon termination or abandonment, CITY agrees to file a Release of Easement in the Deed Records of the County in which the Property is located, but if it fails to do so within ten (10) days following written demand from TAMUS, then TAMUS shall have the right to file the Release of Easement. Abandonment will be deemed to have occurred when the Easement is not used for the purposes granted for a continuous period of one calendar year.

13. Notices. Any notice required or permitted under this Agreement must be in writing, and shall be deemed to be delivered (whether actually received or not) when deposited



with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address set out below. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, email, or other commercially reasonable means and will be effective when actually received. **TAMUS** and **CITY** may change their respective notice address by sending to the other party a notice of the new address. Notices should be addressed as follows:

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Office of General Counsel
Attn: System Real Estate
200 Technology Way, Suite 2079
College Station, Texas 77845-3424
Phone: (979) 458-6350
Fax: (979) 458-6359

CITY: City of College Station
Attn: City Manager
P.O. Box 9960
College Station, Texas 77840-7896
Phone: (979) 764-3510

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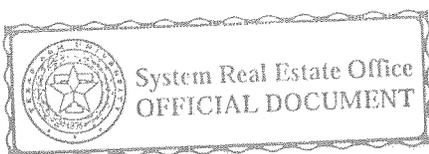
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18. Headings. Headings are for reference and will not be construed to limit or alter the meaning of the provisions of this Agreement.

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of the provisions will remain in full force and effect and will not be affected, impaired or invalidated.

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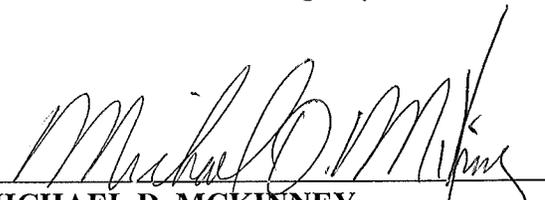
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23. Effective Date. This Agreement is deemed to be in force as of the 12th day of September, 2010.

**BOARD OF REGENTS OF THE TEXAS A&M
UNIVERSITY SYSTEM**, an agency of the State
of Texas

By:

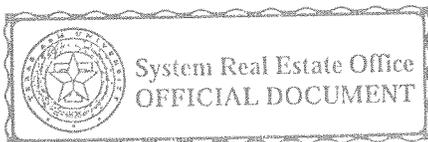


MICHAEL D. MCKINNEY
Chancellor
The Texas A&M University System

APPROVED AS TO FORM:



GINA M. JOSEPH
Assistant General Counsel
Office of General Counsel
The Texas A&M University System



TERMS AND CONDITIONS EXPRESSLY ACKNOWLEDGED AND ACCEPTED:

CITY OF COLLEGE STATION

By: _____
NANCY BERRY
Mayor
City of College Station

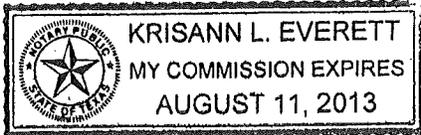
ATTEST:

CONNIE HOOKS
City Secretary
City of College Station

ACKNOWLEDGEMENTS

STATE OF TEXAS §
 §
COUNTY OF BRAZOS §

This instrument was acknowledged before me this 30 day of July, 2010 by **MICHAEL D. MCKINNEY**, Chancellor of The Texas A&M University System, on behalf of the Board of Regents of The Texas A&M University System, an agency of the State of Texas.

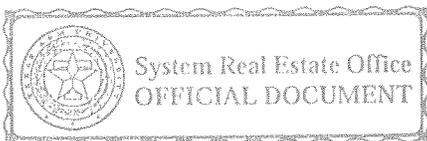


Krisann L. Everett
Notary Public

STATE OF TEXAS §
 §
COUNTY OF BRAZOS §

This instrument was acknowledged before me this ___ day of _____, 2010 by **NANCY BERRY**, Mayor of the City of College Station.

Notary Public



Field Notes
3' Easement for
Traffic Control Cable
City of College Station
September 9, 1988

BEING: a strip of land three (3) feet wide for easement and generally located parallel to the northeastern boundry of a tract of land lying and being situated in the J.E. Scott League, College Station, Brazos County, Texas, said tract being an 0.63 acre tract conveyed to the United States of America (Post Office Dept.) by the Agricultural and Mechanical College of Texas by deed recorded in Volume 91, Page 335 of the Warranty Deed Records of Brazos County, Texas and being more particularly described as follows:

COMMENCING: at a 1/2 inch iron rod for monument marking the southmost corner of the aforementioned 0.63 acre tract, said point being in the northeast line of Houston Street;

THENCE: with the southeastern boundry line of the aforementioned 0.63 acre tract N 50° 54' E a distance of 180 feet to a point in the northeastern boundry line of the aforementioned 0.63 acre tract for corner;

THENCE: with the northeastern boundry line of the aforementioned 0.63 acre tract N 36° 25' W a distance of 30.7 feet to a point in the said northeastern boundry line; said point being a distance of 4.6 feet opposite and northeast of a power pole owned by the City of College Station, Texas said point also being the POINT OF BEGINNING;

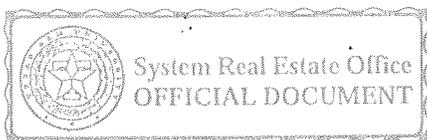
THENCE: Continuing along said northeastern boundry line of aforementioned 0.63 acre tract N 36° 25' W a distance of 119.3 feet to a point marking the northmost corner of said 0.63 acre tract; said point being in the southeast line of Farm-to-Market Road 50;

THENCE: northeasterly with a right deflection angle of ninety (90°) degrees a distance of three (3) feet to a point for corner;

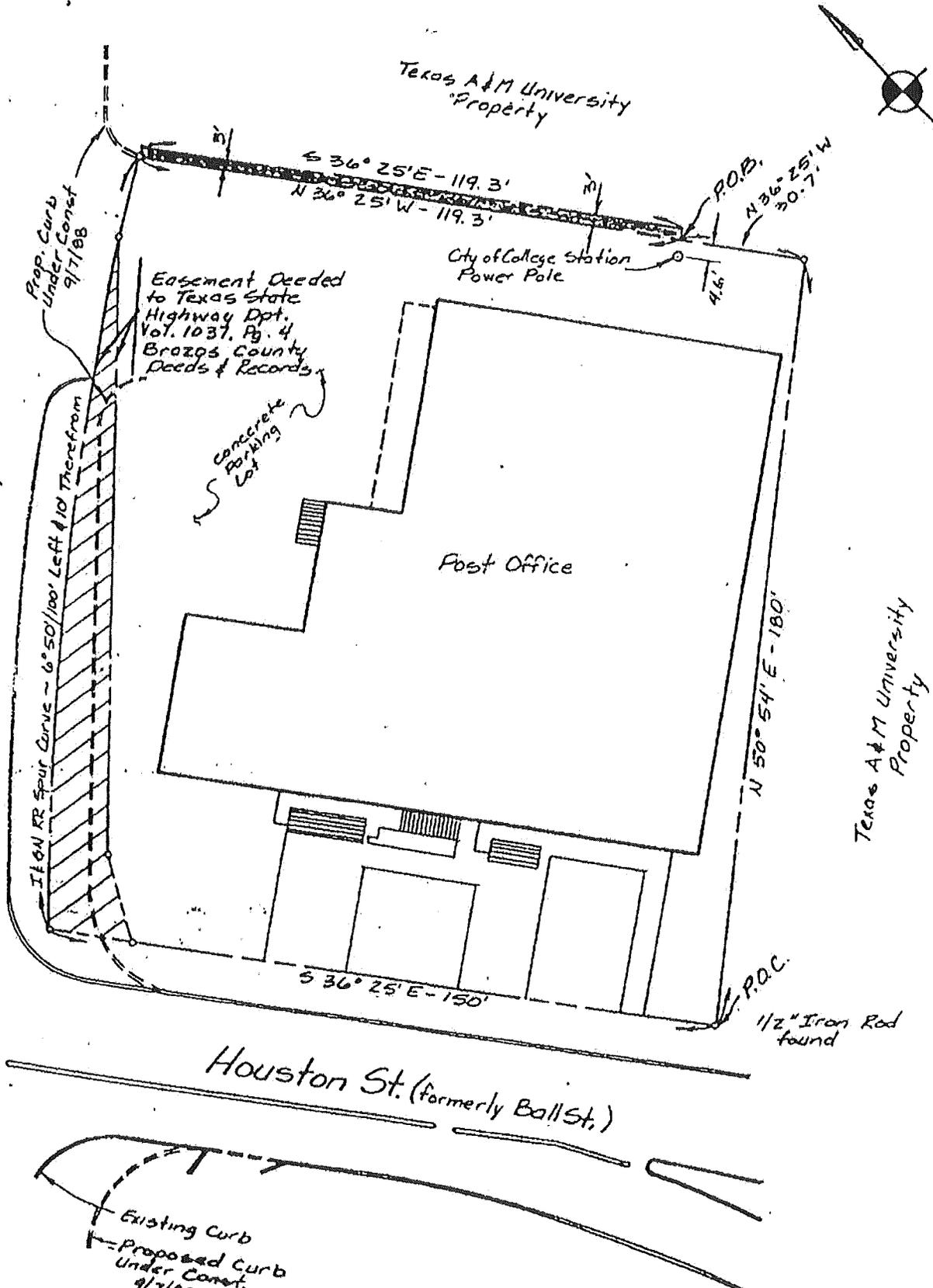
THENCE: in a southeasterly direction, parallel to and three (3) feet northeast from the northeastern boundry line of the aforementioned 0.63 acre tract a distance of 119.3 feet to a point for corner;

THENCE: southwesterly with a right deflection angle of ninety (90°) degrees a distance of three (3) feet to the POINT OF BEGINNING and containing 357.9 square feet of land more or less.

EXHIBIT A



University Drive (F.M. 60)



Houston St. (formerly Ball St.)

Existing Curb
Proposed Curb Under Const. 9/7/88

3' Easement for
Traffic Control Cable
City of College Station
September 9, 1988

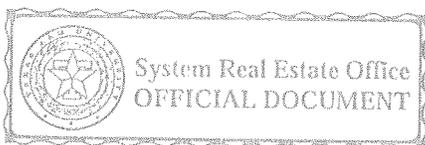


Exhibit B

**September 9, 2010
Consent Agenda Item No. 2f
Contract Renewal w/ Envirosolve**

To: Glenn Brown, City Manager

From: Mark Smith, Director of Public Works

Agenda Caption: Presentation, possible action, and discussion regarding renewal of contract #08-084 with Envirosolve and the City of College Station and City of Bryan to provide Household Hazardous Waste collection services in an amount not to exceed \$229,510.00.

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

Summary: Envirosolve was the successful bidder for a 2008 annual contract to supply the Cities with collection and disposal services for household hazardous waste. The total cost of all services provided under contract #08-084 may not exceed One Hundred Fourteen Thousand Seven Hundred Fifty-Five and No/100 Dollars (\$114,755.00) for completed and accepted work for each collection event held during the term of said contract as set forth and adjusted in accordance with the terms of the contract documents; provided, however, that the total maximum expenditure for the total number of collection events shall not exceed Two Hundred Twenty-Nine Thousand Five Hundred and no/100 Dollars (\$229,510.00). This 2010 renewal is the second of two optional annual renewals of the 2008 contract #08-084. This agreement will be good for the term of October 2010 through October 2011. The next household hazardous waste collection event will be held October 9, 2010.

Budget & Financial Summary: Funds are available and budgeted in the Brazos Valley Solid Waste Management Agency. This item must be approved by the City of Bryan.

Attachments:

1. Renewal Letter

.....

RENEWAL ACCEPTANCE

By signing herewith, I acknowledge and agree to renew contract No. 08-084, for Household Hazardous Waste Collection Services in accordance with all terms and conditions previously agreed to and accepted.

I understand this renewal term will be for the period beginning October 1, 2010 through September 30, 2011

ENVIROSOLVE, INC.



AUTHORIZED REPRESENTATIVE

Aug. 19, 2010

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 _____

This instrument was acknowledged on the _____ day of _____, 2010,
by _____ in his/her capacity as _____ of
_____, a _____ (state) Corporation, on behalf of said
corporation.

Notary Public in and for the
State of Texas

STATE OF TEXAS

ACKNOWLEDGMENT

COUNTY OF BRAZOS

This instrument was acknowledged on the _____ day of _____, 2010,
by _____, in the capacity as Mayor of the City of College Station, a Texas
home-rule municipality, on behalf of said municipality.

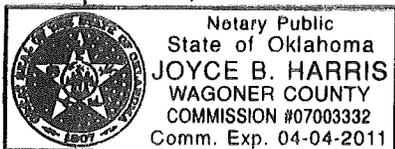
Notary Public in and for the
State of Texas

STATE OF OKLAHOMA

CORPORATE ACKNOWLEDGEMENT

COUNTY OF TULSA

This instrument was acknowledged on the 19th day of August, 2010,
by Timothy Taylor in his capacity as General Manager of Envirosolve, Inc.,
a Delaware Corporation, on behalf of said Corporation



Joyce B. Harris

Notary Public in and for the
State of Oklahoma



RENEWAL ACCEPTANCE

By signing herewith, I acknowledge and agree to renew contract No. 08-084, for Household Hazardous Waste Collection Services in accordance with all terms and conditions previously agreed to and accepted.

I understand this renewal term will be for the period beginning October 1, 2010 through September 30, 2011

CITY OF BRYAN

Mayor

DATE

ATTEST:

City Secretary

DATE

APPROVED:

City Manager

DATE

City Attorney

DATE

Chief Financial Officer

DATE



*1101 Texas Avenue
College Station, TX 77840
www.cstx.gov*

**ANNUAL PRICE AGREEMENT
AND
SPECIFICATIONS
FOR HOUSEHOLD HAZARDOUS WASTE COLLECTION SERVICES
BID #08-88**

BID OPENING DATE: AUGUST 18, 2008 @2:00 P.M. CST

Bids will be received at the City of College Station Purchasing Department, 1101 Texas Avenue, College Station, TX 77842, until Monday, August 18, 2008, at 2:00 p.m. CST, and publicly opened and read aloud at City Hall, 1101 Texas Avenue, College Station, TX. Any questions concerning the bid should be directed to Cynthia Sciulli, C.P.M., Buyer, Purchasing Services Division, 979.764.3437. **Clearly mark return bid envelope with Bid # and Bid Opening Date.**

INTRODUCTION

Bids are solicited for Household Hazardous Waste Collection Services with the following definitions, term and conditions of bidding. Should this bid contain the City's standard contract terms, conditions and insurance requirements, they will be attached as Exhibit A.

The bid will be for the categorization, packaging, manifesting, transporting, and disposal of Household Hazardous waste (HHW) in accordance with Federal, State, and Local environmental regulations on behalf of the Brazos Valley Solid Waste Management Agency (BVSWMMA). BVSWMMA is a solid waste management agency jointly owned by the Cities of College Station and Bryan and operated for the Cities by College Station under the authority of an interlocal cooperation agreement and is hereinafter referred to in this bid as "BVSWMMA". BVSWMMA is planning a series of HHW collection events for at least two weekends during a twelve (12) month period. The first collection will be held October 4, 2008 and the second event will be Spring 2009. The collections events will take place regardless of weather conditions. This program will give the citizens of College Station and Bryan and other cities within the Brazos Valley region an environmentally safe and convenient method to dispose of hazardous household wastes.

NOTE: Bid opportunities are posted on our website at www.cstx.gov. Some bids, but not all, are conducive to receipt of bids via the City of College Station's On-Line Bidding System. These bids are encrypted and remain effectively locked until the due date and time. If you

Cancellation

The City reserves the right to cancel this contract or any portion thereof immediately should supplier's delivery or service be unsatisfactory or for supplier's failure to comply with terms stated in contract.

Certification

Bids must be completed and submitted on the form included within the specifications of this bid. Certification of Bid must be fully completed.

Collusion

Advanced disclosures of any information to any particular bidder which gives that particular bidder any advantage over any other interested bidder in advance of the opening of bids, whether in response to advertising or an informal request for bids, made or permitted by a member of the governing body or an employee or representative thereof, will cause to void all proposals of that particular bid solicitation or request.

Communication

The City shall not be responsible for any verbal communication between any employee of the City and potential bidder(s). Only written specifications and price quotations will be considered.

Confidentiality

Public agencies in Texas are subject to the Public Information Act.

Delivery

All prices quoted shall be F.O.B. City of College Station. No freight or delivery charges will be accepted unless shown on bid.

Exceptions

The bidder will note any exceptions to the conditions of this bid. If no exceptions are stated, it will be understood that all general and specific conditions will be complied with, without exception.

Extension of Contract

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]. 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.

Financial Condition

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

Fiscal Funding

This contract includes fiscal funding provisions. If, for any reason, funds are not appropriated to continue this contract, said contract shall become null and void.

September 9, 2010
Consent Agenda Item No. 2g
Fire Department Fees Update

To: Glenn Brown, City Manager

From: Jeff Kersten, Chief Financial Officer

Agenda Caption: Presentation, possible action, and discussion to amend Chapter 14, Section 3 of the Code of Ordinances of the City of College Station and to adopt a resolution increasing Emergency Medical Services (EMS) fees as set forth in Chapter 14, Sections 1 and 3 of the Code of Ordinances of the City of College Station.

Relationship to Strategic Goals: Goal I. 2 Those who benefit from services should pay and I. 4 Services must pay for themselves.

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

Summary: Due to changes in legislation governing Medicare and Medicaid Services that became effective in 2010 and because it is the City's policy to offset costs of service with partial fee support (50-80%) for emergency medical services, staff requests the following:

1. Adopting fees that reflect level of service for BLS at a fee of \$650; ALS1 at a fee of \$850; and ALS2 at a fee of \$950.
2. Adopting a \$25 fee for disposable supplies used with BLS and \$50 for disposable supplies used with ALS1 or ALS2.
3. Adopting a \$60 fee to cover oxygen costs, when oxygen is used.
4. Increasing the loaded mileage rate from \$10 to \$12 per loaded mile for providing EMS with transport from a location within the corporate limits of College Station to a location within Brazos County.
5. Increasing the loaded mileage rate from \$12 to \$15 for providing EMS with transport from a location outside the corporate limits of College Station.
6. Increasing the loaded mileage rate from \$12 to \$15 for providing EMS with transport to a location outside of Brazos County.
7. Synchronizes the ordinance and resolution by providing for nursing home inspections and hospital opening inspections.

Changes to the ordinance reflect three tiers in level of EMS service, Basic Life Support (BLS), Advanced Life Support (ALS1), and Advanced Life Support, Level 2 (ALS2), as defined by Medicare Part B, and syncs the provisions in the ordinance and the resolution. Changes to the resolution provide the fees for the services.

30% of the City's EMS payor mix is Medicare. With Medicare and Medicaid reducing rates, it becomes even more important to increase the City's rates. By Medicare reducing its allowables, the City will not only get less reimbursement from Medicare, but the patient coinsurance is reduced as well. By increasing EMS fees, the City offsets this with insurance patients (cost shifting). By doing nothing, the City will receive less Medicare money and the same insurance monies.

In 2009, EMS providers received an increase in eligible reimbursement when Medicare allowed ALS services to be reimbursable as opposed to billing/paying only BLS levels regardless of whether the calls were BLS or not. The City's rates, however, currently charge a flat fee, which is interpreted as BLS.

The table below summarizes the recent changes in Medicare reimbursements:

<u>Medicare</u>	<u>2009</u>	<u>2010</u>
ALS	381.40	364.60
BLS	321.18	307.03
Mileage	6.87	6.74

On February 14, 2008, Council approved the most recent changes to EMS rates, with a flat fee of \$650 and loaded mileage rates of \$10 and \$12.

Budget & Financial Summary: If the City does not change its EMS rates, the City's EMS revenues will drop by approximately \$65,000 due to Medicare reductions made in 2010. Changing the rates to the three tiers of service recognized by Medicare Part B could raise an additional \$140,000 per year and will be included in the City's General Fund. Because the City outsourced its EMS billing and collection, Fiscal Services' Accounting budget will need to be increased by 5% of the projected \$140,000 increase, \$7,000, to offset the contractual billing and collection costs of the increased revenue.

Attachments:

1. Ordinance
2. Resolution

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 14, "SERVICE FEES" SECTION 3 "FIRE DEPARTMENT SERVICE FEES", 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 14, "SERVICE FEES" SECTION 3 "FIRE DEPARTMENT SERVICE FEES", of the Code of Ordinances of the City of College Station, Texas, be amended as set out in Exhibit "A", attached hereto and made a part of this ordinance for all purposes.

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

PART 3: That any person, firm, or corporation violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not less than Twenty-five Dollars (\$25.00) nor more than Two Thousand Dollars (\$2000.00). Each day such violation shall continue or be permitted to continue, shall be deemed a separate offense. Said Ordinance, being a penal ordinance, becomes effective ten (10) days after its date of passage by the City Council, as provided by Section 35 of the Charter of the City of College Station.

PASSED, ADOPTED and APPROVED this _____ day of _____, 2010.

APPROVED:

Mayor

ATTEST:

City Secretary

APPROVED:



City Attorney

EXHIBIT "A"

That **CHAPTER 14, "SERVICE FEES" SECTION 3 "FIRE DEPARTMENT SERVICE FEES"**, of the Code of Ordinances of the City of College Station, Texas, is hereby amended, and is to read as follows:

- A. Requests for incident reports prepared by the Fire Department.
- B. Mileage charges for Fire Department services outside the city limits will be in accordance with the IRS Standard Mileage Rates and may change from time to time.
- C. Fire Department inspections of day care centers.
- D. Fire Department inspections of foster homes.
- E. Fire Department inspections of nursing home facilities.
- F. Fire Department inspections of health care facilities.
- G. Automatic hood tests performed by the Fire Department.
- H. Fire Department inspections of automatic fire alarm systems.
- I. Fire Department testing of Underground Fire Lines.
- J. Fuel tank testing performed by the Fire Department.
- K. Fuel line leak testing performed by the Fire Department.
- L. Fire sprinkler system testing performed by the Fire Department.
- M. Fire Department inspections of a hospital's initial opening.
- N. The provision of Emergency Medical Services without transportation.
- O. The provision of Emergency Medical Services Basic Life Support (BLS) with transportation from a location within the corporate limits of College Station to a location within Brazos County.
- P. The provision of Emergency Medical Services Basic Life Support (BLS) with transportation from a location outside the corporate limits.
- Q. The provision of Emergency Medical Services Basic Life Support (BLS) with transportation to a location outside of Brazos County.

- R. The provision of Emergency Medical Services Advanced Life Support (ALS1) with transportation from a location within the corporate limits of College Station to a location within Brazos County.
- S. The provision of Emergency Medical Services Advanced Life Support (ALS1) with transportation from a location outside the corporate limits.
- T. The provision of Emergency Medical Services Advanced Life Support (ALS1) with transportation to a location outside of Brazos County.
- U. The provision of Emergency Medical Services Advanced Life Support, level 2 (ALS2) with transportation from a location within the corporate limits of College Station to a location within Brazos County.
- V. The provision of Emergency Medical Services Advanced Life Support, level 2 (ALS2) with transportation from a location outside the corporate limits.
- W. The provision of Emergency Medical Services Advanced Life Support, level 2 (ALS2) with transportation to a location outside of Brazos County.
- X. The provision of Emergency Medical Services without transportation to a location outside the corporate limits of College Station.
- Y. Administrative fees and reimbursement fees for supplies and medications.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF COLLEGE STATION, TEXAS, PRESCRIBING AN ASSESSMENT FOR CERTAIN SERVICES PROVIDED BY THE FIRE DEPARTMENT, PURSUANT TO CHAPTER 14, SERVICE FEES, SECTIONS 1 AND 3, OF THE CODE OF ORDINANCES OF THE CITY OF COLLEGE STATION, AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, CHAPTER 14, SERVICE FEES, SECTION 1 “FEES CHARGED” AND SECTION 3 “FIRE DEPARTMENT FEES”, of THE CODE OF ORDINANCES provides that certain services provided by the City of College Station Fire Department may be assessed and collected from the recipients of those services; and

WHEREAS, the City Council of the City of College Station has determined that certain services provided by the City of College Station Fire Department shall be assessed and collected from the recipients of those services as set forth in the fee schedule attached as Exhibit “A”; now, therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COLLEGE STATION THAT:

PART 1: Pursuant to the provisions of **CHAPTER 14, SERVICE FEES, SECTION 1 “FEES CHARGED” AND SECTION 3 “FIRE DEPARTMENT FEES”, of THE CODE OF ORDINANCES,** fees shall be assessed and collected from the recipients of certain services provided by the Fire Department as set in the attached Exhibit “A.”

PART 2: That this resolution shall be effective from and after its date of passage.

PASSED AND APPROVED this ____ day of _____, 2010.

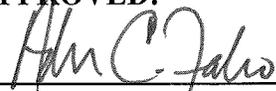
ATTEST:

APPROVED:

City Secretary

Mayor

APPROVED:



City Attorney

EXHIBIT "A"

The following services provided by the City of College Station Fire Department shall be paid for by the recipient of those services and the fees for those services shall be as follows:

- A. Requests for incident reports prepared by the Fire Department: \$4.00 per copy.
- B. Mileage charges for Fire Department services outside the city limits will be in accordance with the IRS Standard Mileage Rates and may change from time to time.
- C. Fire Department inspections of day care center: \$50.00 per inspection. All tests conducted outside the city limits shall be charged at this rate times 1.5 plus mileage plus \$20.00 for travel time.
- D. Fire Department inspections of foster home: \$30.00 per inspection. All tests conducted outside the city limits shall be charged at this rate times 1.5 plus mileage plus \$20.00 for travel time.
- E. Fire Department inspections of nursing home facility: \$150.00 per inspection. All tests conducted outside the city limits shall be charged at this rate times 1.5 plus mileage plus \$20.00 for travel time.
- F. Fire Department inspections of health care facility: \$150.00 per inspection. All tests conducted outside the city limits shall be charged at this rate times 1.5 plus mileage plus \$20.00 for travel time.
- G. Automatic hood tests performed by the Fire Department: \$50.00 per inspection. All tests conducted outside the city limits shall be charged at this rate times 1.5 plus mileage plus \$20.00 for travel time.
- H. Fire Department inspections of automatic fire alarm systems: \$100.00 up to 25 devices plus \$100.00 per 100 devices or fraction thereof in excess of 25 devices that include horns, strobes, horn strobe combinations, tamper and flow switches, smoke/heat detectors and alarm panels/remote annunciators. All tests conducted outside the city limits shall be charged at this rate times 1.5 plus mileage plus \$20.00 for travel time.
- I. Fire Department testing of Underground Fire Lines: \$100.00 per inspection. All tests conducted outside the city limits shall be charged at this rate times 1.5 plus mileage plus \$20.00 for travel time.
- J. Fuel tank testing performed by the Fire Department: \$100.00 per inspection. All tests conducted outside the city limits shall be charged at this rate times 1.5 plus mileage plus \$20.00 for travel time.

- K.** Fuel line leak testing performed by the Fire Department: \$100.00 per inspection. All tests conducted outside the city limits shall be charged at this rate times 1.5 plus mileage plus \$20.00 for travel time.
- L.** Fire sprinkler system testing performed by the Fire Department: \$125.00 per system up to 100 sprinklers plus \$50.00 per 100 sprinklers or fraction thereof in excess of 100. All tests conducted outside the city limits shall be charged at this rate times 1.5 plus mileage plus \$20.00 for travel time.
- M.** Fire Department inspections of a hospital's initial opening: \$250.00 per inspection. All tests conducted outside the city limits shall be charged at this rate times 1.5 plus mileage plus \$20.00 for travel time.
- N.** The provision of Emergency Medical Services without transportation shall be provided without charge within the corporate limits of the City of College Station.
- O.** The provision of Emergency Medical Services Basic Life Support (BLS) with transportation from a location within the corporate limits of College Station to a location within Brazos County shall be \$650 base fee plus \$12 per loaded mile.
- P.** The provision of Emergency Medical Services Basic Life Support (BLS) with transportation from a location outside the corporate limits shall be charged at \$650 base fee plus \$15 per loaded mile.
- Q.** The provision of Emergency Medical Services Basic Life Support (BLS) with transportation to a location outside of Brazos County shall be charged at \$650 base fee per individual transported plus \$15 per loaded mile.
- R.** The provision of Emergency Medical Services Advanced Life Support (ALS1) with transportation from a location within the corporate limits of College Station to a location within Brazos County shall be \$850 base fee plus \$12 per loaded mile.
- S.** The provision of Emergency Medical Services Advanced Life Support (ALS1) with transportation from a location outside the corporate limits shall be charged at \$850 base fee plus \$15 per loaded mile.
- T.** The provision of Emergency Medical Services Advanced Life Support (ALS1) with transportation to a location outside of Brazos County shall be charged at \$850 base fee per individual transported plus \$15 per loaded mile.
- U.** The provision of Emergency Medical Services Advanced Life Support, level 2 (ALS2) with transportation from a location within the corporate limits of College Station to a location within Brazos County shall be \$950 base fee plus \$12 per loaded mile.

- V. The provision of Emergency Medical Services Advanced Life Support, level 2 (ALS2) with transportation from a location outside the corporate limits shall be charged at \$950 base fee plus \$15 per loaded mile.
- W. The provision of Emergency Medical Services Advanced Life Support, level 2 (ALS2) with transportation to a location outside of Brazos County shall be charged at \$950 base fee per individual transported plus \$15 per loaded mile.
- X. The provision of Emergency Medical Services without transportation to a location outside the corporate limits of College Station shall be charged at \$100.
- Y. Administrative fees and reimbursement fees for supplies and medications:
 - 1. The provision of BLS, ALS1 or ALS2 services with transportation when oxygen is used shall be charged a \$60 supply fee to cover oxygen costs.
 - 2. The provision of BLS services with transportation shall be charged a \$25 supply fee to cover single patient use items.
 - 3. The provision of ALS1 or ALS2 services with transportation shall be charged a \$50 supply fee to cover single patient use item.

September 9, 2010
Consent Agenda Item No. 2h
Loading Zones on Cherry Street and Cross Street

To: Glenn Brown, City Manager

From: Mark Smith, Director of Public Works

Agenda Caption: Presentation, possible action and discussion of an ordinance amending Chapter 10 "Traffic Code", to add Section I. "Thirty Minute Parking" for the implementation of Loading Zones on a 50 foot section of Cherry Street and Cross Street to allow vehicles to be parked for up to 30 minutes while the vehicle is loaded or unloaded.

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

Summary: The Warehouse and the Factory are two private dormitories in Northgate. Residents of these dorms have difficulty finding parking near the front doors to load or unload their belongings and typically have to park down the street. Additionally, mail deliveries or even pizza deliveries have to park illegally or even down the street when providing services to the dormitory residents. The developer approached the city about helping solve the problem the residents were experiencing. After working closely with the developer, two loading zone locations were decided upon, one on Cherry Street to service the Factory and one on Cross to service the Warehouse. These loading zones will allow vehicles to be parked there for up to 30 minutes while the vehicle is loaded or unloaded. Additionally, the loading zone on Cross Street is only in affect between the hours of 9 AM and 5 PM. Outside of these hours, the area is open for untimed public on-street parking.

City staff worked with the developer to identify areas that would serve their needs while having minimal impacts on traffic and fire access. Both City staff and the developer believe these loading zones achieve their respective goals.

Budget & Financial Summary: The Loading Zone signs are planned operation and maintenance expenses accounted for in the Public Works Traffic Operations budget.

Attachments:

1. Ordinance
2. Map

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 10, "TRAFFIC CODE", OF THE CODE OF ORDINANCES OF THE CITY OF COLLEGE STATION, TEXAS, BY AMENDING SECTION 4 "ADMINISTRATIVE ADJUDICATION OF PARKING VIOLATIONS", BY ADDING SECTION I. "THIRTY MINUTE PARKING"; AND BY ADDING TRAFFIC CONTROL DEVICE INVENTORY SCHEDULE XIV, PROVIDING A SEVERABILITY CLAUSE; DECLARING A PENALTY; AND PROVIDING AN EFFECTIVE DATE.

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

PART 1: That **CHAPTER 10, "TRAFFIC CODE" SECTION 4 "ADMINISTRATIVE ADJUDICATION OF PARKING VIOLATIONS"** of the Code of Ordinances of the City of College Station, Texas, be amended by adding **SECTION I. "THIRTY MINUTE PARKING"** as set out in Exhibit "A" and by adding **TRAFFIC CONTROL DEVICE INVENTORY SCHEDULE XIV** as set out in Exhibit "B", attached hereto and made a part of this ordinance for all purposes.

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

PART 3: That any person, firm, or corporation violating any of the provisions of this chapter shall be deemed liable for a civil offense and/or guilty of a Class C misdemeanor, and, upon a finding of liability thereof, shall be punished by a civil penalty of not less than One Dollar (\$1.00) nor more than Two Thousand Dollars (\$2,000.00), or upon conviction thereof, shall be punished by a fine of not less than Twenty-five Dollars (\$25.00) nor more than Five Hundred Dollars (\$500.00). Said Ordinance becomes effective ten (10) days after date of passage by the City Council, as provided by Section 35 of the Charter of the City of College Station.

ORDINANCE NO. _____

Page 2

PASSED, ADOPTED and APPROVED this _____ day of September, 2010.

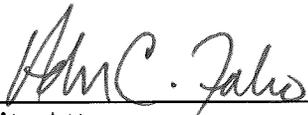
APPROVED:

Mayor

ATTEST:

City Secretary

APPROVED:



City Attorney

EXHIBIT "A"

That **CHAPTER 10, "TRAFFIC CODE" SECTION 4 "ADMINISTRATIVE ADJUDICATION OF PARKING VIOLATIONS"** of the Code of Ordinances of the City of College Station, Texas, be amended by adding **SECTION I. "THIRTY MINUTE PARKING"** and reads as follows:

I. THIRTY MINUTE PARKING

The City hereby designates certain areas as Thirty Minute Parking. The designated Thirty Minute Parking locations for the City of College Station are described in the Traffic Control Device Inventory – Schedule XIV (dated September 9, 2010) on file in the office of the City Secretary. This schedule is hereby adopted and incorporated in this Code as if set out at length herein. The schedule may be amended from time-to-time by ordinance of the City Council. A current Schedule shall be maintained by the City Secretary at all times.

EXHIBIT "B"

TRAFFIC CONTROL DEVICE INVENTORY SCHEDULE XIV

That the **TRAFFIC CONTROL DEVICE INVENTORY - SCHEDULE XIV** as referenced in **CHAPTER 10, "TRAFFIC CODE" SECTION 4 "ADMINISTRATIVE ADJUDICATION OF PARKING VIOLATIONS" SECTION I. "THIRTY MINUTE PARKING"** of the Code of Ordinances of the City of College Station, Texas, be amended to include the following:

1. **Cherry Street** – Thirty Minute Parking Zone on the south side of Cherry Street beginning 50 feet east of the intersection with College Main and extending 50 feet to the east.
2. **Cross Street** – Thirty Minute Parking Zone on the north side of Cross Street beginning 20 feet west of the intersection with Tauber Street and extending 50 feet to the west. This Thirty Minute Parking Zone is active only during the hours of 9:00 A.M. to 5:00 P.M. daily.



30 minute Loading Zone

30 minute Loading Zone (9AM - 5PM)

Cherry Street and Cross Street Loading Zones

**September 9, 2010
Consent Agenda Item No. 2i
Recycling Collection Franchise**

To: Glenn Brown, City Manager

From: Mark Smith, Director of Public Works

Agenda Caption: : Presentation, possible action, and discussion on the second reading of a five (5) year franchise agreement with Texas Commercial Waste for the collection, processing, and marketing of recyclable materials for an annual cost of approximately \$576,420.

Relationship to Strategic Goals: Green Sustainable City Goal.

Recommendation(s): Staff recommends approval of a five (5) year franchise agreement with Texas Commercial Waste for the collection, processing, and marketing of recyclable materials.

Summary: The proposed non-exclusive five (5) year franchise agreement allows for the collection, processing and marketing services for residential recyclable materials generated within the corporate limits of the City of College Station.

RFP #10-43 was opened on June 7, 2010 for the collection, processing, and marketing of residential recyclable commodities. Texas Commercial Waste and Inland Service Corp. were the only two responding firms. Staff reviewed and ranked the proposal based on the complete response to RFP, conformance to requirements, experience, cost of service, and revenue sharing. Based on these criteria, staff recommends awarding the franchise agreement to Texas Commercial Waste. The term of this agreement is for a five (5) year period to begin on October 1, 2010 and ending on September 30, 2015.

Section 120 of the City Charter states that "The City of College Station shall have the power by ordinance to grant any franchise or right mentioned in the preceding sections hereof, which ordinance, however, shall not be passed finally until it shall have been read at three (3) separate regular meetings of the City Council."

Budget & Financial Summary: Currently, Texas Commercial Waste charges the City \$485,000 annually for recycling services. Under the new franchise agreement, the City will pay an annual cost of approximately \$576,240.

At present, the provision of recycling collection services and associated public education programs accounts for \$2.80 out of the \$14.40 monthly sanitation fee charged to each customer. Funding for the cost of the franchise agreement is budgeted in the Sanitation Fund, Residential Collection Division. **The recycling franchise will not require a sanitation fee increase.**

Attachments:

1. Franchise Agreement

**RESIDENTIAL RECYCLING COLLECTION
ORDINANCE NO. _____**

AN ORDINANCE GRANTING TEXAS COMMERCIAL WASTE ITS SUCCESSORS AND ASSIGNS, A NON-EXCLUSIVE FRANCHISE FOR THE PRIVILEGE AND USE OF PUBLIC STREETS, ALLEYS, AND PUBLIC WAYS WITHIN THE CORPORATE LIMITS OF THE CITY OF COLLEGE STATION FOR THE PURPOSE OF PROVIDING RECYCLABLE COMMODITIES COLLECTION TO DESIGNATED SINGLE-FAMILY, DUPLEX, FOURPLEX, AND HANDICAP RESIDENTIAL LOCATIONS; PRESCRIBING THE TERMS, CONDITIONS, OBLIGATIONS, AND LIMITATIONS UNDER WHICH SAID FRANCHISE SHALL BE EXERCISED; PROVIDING FOR THE CONSIDERATION; FOR THE PERIOD OF THE GRANT; FOR ASSIGNMENT; FOR THE METHOD OF ACCEPTANCE; FOR REPEAL OF CONFLICTING ORDINANCES; AND FOR PARTIAL INVALIDITY.

WHEREAS, the City of College Station, by ordinance, provides exclusively all solid waste collection and disposal services for solid waste aggregated from within the corporate limits of the City of College Station including, but not limited to recyclable commodities; and

WHEREAS, the City of College Station may, pursuant to the College Station City Charter, Article XI, grant franchises to other entities for the use of public streets, alleys, and thoroughfares within the corporate limits of the city and for the collection and disposal of solid waste generated from within the corporate limits of the City of College Station; and

WHEREAS, the City of College Station desires to exercise the authority provided to it by ordinance and charter to grant a franchise for the collection of certain recyclable commodities that are generated from specified single-family, duplex, and fourplex residential locations within the corporate limits of the City of College Station; and

WHEREAS, Texas Commercial Waste, is engaged in the business of collection and resale of recyclable commodities and is requesting a franchise to operate its business within the City limits of the City of College Station; and

WHEREAS, the City of College Station hereinafter referred to as "City", believes it is in the best interest of College Station to grant this franchise to Texas Commercial Waste, hereinafter referred to as "Contractor", on such terms and conditions as will provide College Station with control and options necessary to provide for the public good; now, therefore,

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

**ARTICLE I
DEFINITIONS**

1.1 For the purposes of this Ordinance, when not inconsistent with the context, words, used in the present tense include the future tense, words in the plural include the singular, and words in the singular include the plural, and the use of any gender shall be applicable to all genders whenever the sense requires. The words "shall" and "will" are mandatory and the word "may" is permissive. Words not defined in this Ordinance shall be given their common and ordinary meaning. For the purposes of this Ordinance, the following words, terms, phrases and their derivations shall have the meaning given here

1.2 Agreement shall mean this franchise between City and Contractor for the collection of certain recyclable commodities within the jurisdictional limits of the City, under certain terms and conditions set out herein.

1.3 Approved Number of Households shall mean the maximum number of households that will be served pursuant to the terms of this Agreement, which number is to be determined by the City's Representative based on City building and development reports.

1.4 Bags shall mean weatherproofed clear plastic sacks, minimum 2 millimeters thick, with an identifying mark, which will have the capacity to hold fifty (50) pounds of recyclable commodities in each sack and that are designed to store recyclables with sufficient wall strength to maintain physical integrity when lifted by the top. The used bags must be recycled.

1.5 Brazos Valley Solid Waste Management Agency or BVSWMA shall mean a permitted municipal solid waste facility jointly owned by the Cities of Bryan and College Station and operated by the City of College Station on behalf of the cities as authorized by an interlocal agreement or as it may change.

1.6 City shall mean the City of College Station, a Texas Home Rule Municipal Corporation.

1.7 City Council or Council shall mean the governing body of the City.

1.8 City's Representative shall mean the Director of Public Works of the City or his designated appointee.

1.9 Collection shall mean the scheduled aggregation of recyclables by Contractor according to the terms governing scheduling contained in this Agreement

1.10 Contractor shall mean Texas Commercial Waste who is authorized under this Franchise for the collection of recyclable commodities.

1.11 Contaminated shall mean recyclable commodity that is mixed with solid waste or is altered in such a way that it has become unsalable.

1.12 Customers shall mean occupants of those designated single-family, duplex, and fourplex residences, that are located within the City limits and that generate recyclable materials.

1.13 Designated Single-Family, Duplex and Fourplex Residences or Designated Households shall mean all single-family, duplex, and fourplex residences within the corporate limits of the City designed as residential structures, housing the members of either one, two, or four families that receive utility service from the City.

1.14 Force Majeure shall mean, without limitation, by the following enumeration, acts of God and the public enemy, the elements, fire, or accidents.

1.15 Franchise shall mean this ordinance and all rights and obligations established herein or as it may be amended.

1.16 Parties shall mean the City of College Station and Texas Commercial Waste.

1.17 Recyclables or Recyclable Commodities shall mean materials that have been recovered from the solid waste stream for the purposes of reuse or reclamation, a substantial portion of which is consistently used in the manufacture of products that may otherwise be produced using raw or virgin materials. Recyclable commodities or recyclables are not solid waste unless they are abandoned or disposed rather than reprocessed into another product. The recyclable commodities or recyclables encompassed by this Agreement are set forth in **Addendum "A"** to this Agreement.

1.18 Residue shall mean the material regularly associated with and attached to recyclable commodities, as a part of the original packaging or usage of that commodity, that is not recyclable itself.

1.19 T.A.C. shall mean the Texas Administrative Code as it now exists or as it is hereinafter amended.

1.20 T.C.E.Q. shall mean Texas Commission for Environmental Quality.

**ARTICLE II
GENERAL DESCRIPTION OF SERVICES
TO BE PROVIDED BY CONTRACTOR**

2.1 For and in consideration of the use of the City's rights-of-way, streets, alleys, highways, avenues, and thoroughfares for the limited purpose contained herein as well as in consideration of the covenants and conditions herein set forth and the Ordinances and Regulations of City governing the collection and disposal of recyclable commodities, Contractor shall provide collection of certain recyclable commodities specified herein from designated single-family, duplex, and fourplex residences within the corporate limits of the City. Additionally, Contractor shall provide all reasonable, adequate and necessary supervision, supplies, equipment, labor, insurance, and other skills and property required to fulfill each of its obligations under this Agreement

2.2 The franchise fee, as provided in Article VI herein shall be in lieu of any and all other City imposed rentals or compensation or franchise, license, privilege, instrument, occupation, excise or revenue taxes or fees and all other exactions or charges (except ad valorem property taxes, special assessments for local improvements, city sales tax, and such other charges for utility services imposed uniformly upon persons, firms or corporations then engaged in business within the City) or permits upon or relating to the business, revenue, franchise, equipment, and other facilities of Contractor and all other property of Contractor and its activities, or any part thereof, in the City which relate to the operation of Contractor recycling collection business.

ARTICLE III AUTHORITY FOR CONTRACTOR TO PROVIDE SERVICE

3.1 City hereby grants to Contractor a nonexclusive franchise to operate and establish in the City, as constituted as of the effective date of this Agreement, or as may hereafter be constituted to collect recyclable commodities from all designated single-family, duplex, and fourplex residences within the corporate limits of City, not to exceed the approved number of households as defined herein, using clear plastic bags that have the specifications set forth in this Agreement and that are to be provided by Contractor, and Contractor is hereby granted passage and right-of-way on, along and across the streets, avenues, rights-of-way, alleys, and highways within the corporate limits of the City, for any such service and lawful purpose as herein mentioned; provided that all such work, activity and undertakings by Contractor shall be subject to the terms and provisions of this Franchise and the continuing exercise by the City of its governmental and police powers, and provided further that nothing herein shall be construed to require or authorize Contractor to exceed any rights granted herein or by the TCEQ.

3.2 Nothing in this Franchise shall be construed as granting an exclusive franchise or right.

ARTICLE IV COMMODITIES TO BE COLLECTED

4.1 Contractor shall collect and dispose of, according to the terms of this Agreement, all of the recyclable commodities set forth in **Addendum "A"** to this Agreement. Recyclables may be added to or deleted from the Addendum only by a written and signed agreement of the parties. Deletion of a recyclable from the Addendum will be approved by the City upon a determination by the City's Representative that the market price for that recyclable has declined to the point that it is no longer economically advantageous to collect, process, and sell the recyclable. Contractor shall not be authorized to begin collection of any additional recyclable commodities until the parties have agreed on the percentage return to be paid to City upon the sale of such recyclables.

**ARTICLE V
DISPOSAL SITE TO BE USED**

5.1 It is anticipated that Contractor will sell the recyclable commodities in accordance with Article VII of this Agreement. Failing such marketing or sale, and unless approved otherwise in writing by City, Contractor shall utilize the BVSWMA landfill located on Rock Prairie Road, College Station, Texas, or any other T.C.E.Q. approved disposal site. The Contractor shall only use disposal sites that are lawful for municipal solid waste disposal and for disposal of all contaminated, unmarketable recyclable commodities, or the residue from such recyclables, collected by Contractor from within the corporate limits of the City. Materials rejected for resale by Contractor because they do not meet the resale market's criteria for recycling or because they are contaminated shall be accepted at the BVSWMA landfill at no additional cost to Contractor.

**ARTICLE VI
RATES TO BE CHARGED BY CONTRACTOR**

6.1 City shall pay to Contractor for the cost of recyclable collection Two dollars and forty – five cents (\$2.45) per month per designated household for collection from designated households. Said payment shall be paid on City's receipt of a monthly invoice from Contractor. Payment shall be made within thirty (30) calendar days of the City's receipt of said invoice. The first invoice shall be sent to City no later than the twentieth (20th) calendar day following the end of the first calendar month of service by Contractor. Subsequent invoices to be sent to City no later than the twentieth (20th) calendar day of each month thereafter. Said invoice shall be a gross billing showing the number of single-family, duplex, and fourplex residences within the City served in the previous month by Contractor, the per unit charge(s), and the total invoice amount. The amount billed by Contractor to City shall be for service to all single-family, duplex, and fourplex residences located within the corporate City limits, not to exceed the approved number of households as defined herein.

6.2 Rate Modifier – The rate of compensation to the Contractor during the term of this franchise may be adjusted annually. The rate of compensation for each annual period shall be the rate of compensation for the previous year adjusted for the annual period by 100% of the 12 month increase or decrease of the published Consumer Price Index-All Urban Consumers, Series ID: CUSR0000SEHG02 Garbage and Trash Collection, published by the United States Department of Labor, Bureau of Labor Statistics (the CPI).

- a. The Contractor shall submit to the City in writing all proper documentation that would justify a rate adjustment.
- b. The Contractor shall submit the documents to the City before on or before April 30th of each year of this franchise.
- c. Any adjustment of the rate will be an amendment to this franchise and must be in writing and approved and signed by both parties and will go into effect October 1st of the same year the request for a rate adjustment was made to the City.

6.3 Contractor understands that recyclable commodities collection service is provided to residents of the City of College Station through the City utility department. As new utility

customers are added to the City's billing, the City shall notify Contractor of the additional customers who shall then become a designated household for purposes of this Agreement. Contractor shall begin collection service for newly added designated households within one week of receipt of notice that the household has been added to the City's utility billing. It shall be Contractor's responsibility to deliver bags to newly designated households in advance of the first collection date for each household.

ARTICLE VII SALE OF RECYCLABLES

7.1 Contractor agrees that all recyclable commodities that it collects and that have value will be sold to certified recycling vendors, brokers, toll end users, or recycling manufacturers. Contractor also agrees that all of the saleable recyclable commodities that it receives shall be recycled into usable products. Contractor further agrees that in no case will any uncontaminated recyclable commodities collected under this Agreement be deposited in a landfill.

7.2 Contractor shall pay proceeds to the City for recyclable commodities collected based on the percentage of revenue recovery set forth for each recyclable in **Addendum "A"**. The percentage paid to the City shall be based on the following market indices:

- a. **Paper:** set by the National Mill Buyers and Paper Recyclers in the publication called the "yellow sheet" or "OBM."
- b. **Metals:** indices set by the American Metals Market, based in New York, N.Y.
- c. **Glass:** index price set by Owens.
- d. **Other commodities:** industry index price standards.

7.3 An index specific to this region may be substituted for any recyclable commodity if written consent is obtained from the City's Representative.

7.4 Contractor shall utilize its best efforts in finding the best available markets for the sale of the recyclable commodities collected under the terms of this Agreement. Payment of said revenues shall be tendered to City by Contractor along with the monthly report required to be submitted by Contractor under the terms of this Section. Contractor guarantees timely payment of such revenues.

7.5 In the event that the Contractor fails to make any required payments to the City in a timely manner and in accordance with the terms of this Agreement, Contractor shall be required on demand by the City's Representative to post a deposit with City within twenty-four (24) hours, either by cash or assignment of certificate of deposit, in an amount equaling one-third (1/3) of the amount then due to the City. Failure to post the required deposit shall constitute a breach of this Agreement subject to the termination procedures provided in Article XIX herein. In the event that full payment of the balance due is made by the Contractor within ten (10) days of the date upon which the deposit is required to be posted with the City, then the deposit shall be applied to the balance due to the City. In the event that full payment is not made of the balance due to the City within ten (10) days of the date upon which the deposit is required to be posted

with the City, then the City may terminate this Agreement at its option and apply the deposit toward the outstanding balance of payments due as well as the costs of collection or enforcement of this Agreement.

7.6 If, during the term of this Agreement, alternate pricing for the sale of recyclable commodities can be identified that is more advantageous to the City, City shall advise Contractor in writing of this pricing. If the Contractor does not make good faith efforts to alter its resale arrangements such that it can pay City for recyclables under the more advantageous pricing structures, such failure by the Contractor shall constitute grounds for termination of this Agreement, and the City may notify Contractor under the applicable provisions of this Agreement of its intent to terminate this Agreement.

ARTICLE VIII REPORTING REQUIREMENTS

8.1 Along with the payment to the City of the City's agreed share of revenue from the sale of the recyclable commodities, Contractor shall provide a Monthly Recycling Activity Report to City that shall be due to the City no later than the twentieth calendar day of each month summarizing the recycling activity for the previous calendar month. Contractor's report shall include the following information:

- a. The amounts of recyclable commodities collected, broken down according to date, route and type of material.
- b. Summaries of tonnage of all recyclable commodities collected, broken down by type of material.
- c. Summaries of tonnage of all recyclable commodities sold, broken down by type of material.
- d. Market price for each type of material collected and/or sold.
- e. Reports of all complaints and investigations concerning the Contractor and actions taken by Contractor in response thereto.
- f. A listing of monthly revenue derived from recyclables collected in the City under the terms of this Agreement.
- g. Such information concerning the business of collection, processing and marketing of recyclable materials as may be required by the City's Representative.
- h. The amount of recyclables collected, but not sold and the disposition of those commodities (landfill, being held, etc.).

8.2 Each monthly report shall include a statement from Contractor that all recyclable commodities that have value are actually sold to certified recycling vendors, brokers, toll end users or recycling manufacturers, that all of the salable recyclable commodities that it receives are recycled into usable product and that in no case will any uncontaminated recyclable commodities collected under this Agreement be deposited in a landfill.

**ARTICLE IX
INSPECTION OF RECORDS AND OPERATIONS**

9.1 The City shall have the right to inspect the facilities, equipment, personnel, and operations of the Contractor to assure itself of the appearance, sound business operations and compliance with contractual provisions by the Contractor. The City shall have the right to inspect Contractor's records and all papers relating to the performance of this Agreement, including, but not limited to information concerning the quality of recyclables collected, quantity of recyclables collected and sold, number of designated households served, gross amounts paid to Contractor from sale of recyclables, as well as amounts paid by Contractor for recycling collection equipment. Contractor shall follow T.C.E.Q. guidelines regarding retention of records. Further, City shall have access to information regarding Contractor's markets and prices paid for each type of material sold. To the extent authorized by the Texas Public Information Act, Texas Government Code §552.001 (Vernon 2009) hereinafter as amended, all information obtained by City shall remain confidential. The City agrees to notify the Contractor at least twenty-four (24) hours prior to such inspection of operations or records.

**ARTICLE X
COMPLAINTS REGARDING SERVICE/SPILLAGE**

10.1 Contractor shall make provision for receiving and resolving customer complaints and service issues pertaining to service under this Agreement. Except for calls from customers concerning missed collections, any complaints received by City shall be forwarded to Contractor within seventy-two (72) hours of their receipt by City, and Contractor shall respond to all complaints within forty-eight (48) hours of receiving a complaint from a customer or notice of a customer complaint from the City. Regardless of the nature of the complaint, Contractor shall report the action taken to City in accordance with Section VIII of this Agreement.

10.2 In the event that a customer notifies the City or the Contractor that his recyclable commodities were not collected at the scheduled time, then Contractor must collect those recyclables from that customer within twenty-four (24) hours of the time the Contractor is made aware of the customer's notification. Any missed collection, whether real or alleged, shall be the collection responsibility of the Contractor.

10.3 Should the City receive ten (10) customer complaints within a forty five (45) day period, Contractor will be assessed a charge of One Hundred Dollars (\$100.00). Complaints are to be verified by the Contractor and the Director of Public Works. The charge shall be deducted from the Contractor's monthly invoice.

**ARTICLE XI
COMPLIANCE WITH APPLICABLE LAWS**

11.1 This ordinance shall be construed in accordance with the City's Charter and Code of Ordinances in effect on the Effective Date of this ordinance to the extent that such City Charter and Code of Ordinances are not in conflict with or in violation of the Constitution and Laws of the United States or the State of Texas.

11.2 This Ordinance shall be governed in accordance with the Laws of the State of Texas. Performance and all matters related thereto shall be in Brazos County, Texas, United States of America.

11.3 Notwithstanding any other provision in this franchise to the contrary, City and Contractor shall at all times comply with all laws, rules, and regulations of the state and federal government and any administrative agencies thereof, with respect to the subject matter of this Ordinance.

11.4 In the event that the Contractor uses BVSWMMA for disposal of materials that are collected under this Agreement, the Contractor agrees to comply with all BVSWMMA regulations. All collections made under this Agreement shall be made by Contractor without unnecessary noise, disturbance, or commotion.

**ARTICLE XII
COLLECTION PROCEDURES**

12.1 The Contractor shall provide bags for the recyclable materials to be collected under this Agreement. The City shall be responsible for educating the customers concerning the procedures for collection of recyclables. Under no circumstances shall Contractor cause to be placed or place bags on public streets, alleys, or thoroughfares without the prior approval of the City's Representative.

12.2 Contractor shall initially provide and distribute to each designated household a sufficient supply of bags for the purpose of segregation and storage of materials to be collected for recycling. Contractor shall provide additional bags to the customer in an efficient and timely manner through a reorder tag system and through a telephone order system. Contractor shall provide bags to customers within one week of receiving a reorder request from a customer. Contractor shall not be required to provide designated households additional bags, if it is determined by City that the household requesting additional bags is using them for purposes other than those set out in this Agreement.

12.3 Contractor shall collect bags containing source separated recyclable commodities that are placed on the curb in front of each designated household, for collection during regular City solid waste collection hours of operation. Contractor shall use open bed trucks, trailers or compaction trucks, or any combination thereof, for collection of the recyclables. Contractor shall collect recyclables according to a collection schedule, including routes, that has been submitted to the City's Representative for approval. Once a collection schedule has been approved, Contractor may only collect recyclables in the manner dictated by that schedule, unless otherwise approved

in writing by the City's Representative. The schedule shall divide the City into five areas and provide a collection route for each area. One route is to be collected on each weekday, and each route shall be collected once per week regardless of weather conditions. However, in the event of severe weather or a City designated emergency, the City's Representative may suspend Contractor's collection activities for as long as necessary. Collection of recyclables may not commence before 8:00 A.M., and Contractor shall use best efforts to complete collection by 5:00 P.M., but in no event shall Contractor perform collection activities between 8:00 P.M. and 8:00 A.M. on any day.

12.4 In the event that the Contractor wishes to alter an approved collection method, routes, or schedules then existing, the change must be approved in writing by the City's Representative. Once said change is approved, Contractor must provide notice to each designated household at its expense and in a manner that is approved by the City's Representative.

12.5 In the event that a scheduled collection day falls on an official holiday recognized by the City then recycling collection services may be cancelled on that date. When a scheduled collection is missed due to the observance of such a holiday, the Contractor shall notify the affected customers of the holiday taken by the Contractor and shall notify those customers of the make-up collection date. Said notification shall occur no less than forty-eight (48) hours in advance of the holiday and shall be approved in advance by the City's Representative. A holiday schedule shall be provided six to nine months in advance by the Contractor to the City in order to determine what days the Contractor will observe and not provide the collection services. A scheduled route shall not be missed more than one week in a row.

12.6 Contractor shall notify the City's Representative within sixty (60) minutes of any scheduled delay in the collection process. Such notice shall be accompanied by Contractor's proposal for completing the scheduled work within a reasonable time. Said proposal shall be subject to approval by the City's Representative.

12.7 Contractor shall maintain equipment to perform its obligations under this Agreement that is acceptable to City, with sufficient carrying capacity for the efficient collection of recyclables from designated households. Contractor shall maintain a constant available inventory of at least three thousand (3,000) prepared recycling kits at Contractor's facility.

ARTICLE XIII OWNERSHIP OF RECYCLABLES

13.1 At any time after recyclable commodities have been placed outside for collection, such recyclable commodities shall be considered transferred to City for the purpose of sale or other disposal pursuant to the terms of this Agreement. Only the customer who placed said recyclable commodities outside for collection may take back such materials as the customer desires until such recyclable commodities have been collected by Contractor. If there is a problem with the recyclable commodities placed out for collection, the Contractor shall notify the customer about the problem by leaving a door tag indicating the problem. At the time that the recyclables are collected by the Contractor, ownership of said recyclables shall transfer from the City to the

Contractor, subject to a lien in favor of the City for any payment owed to City under this Agreement.

**ARTICLE XIV
TRANSPORTATION OF RECYCLABLES**

14.1 The Contractor shall only transport collected recyclables for storage, processing, disposal or other necessary handling to locations and in a manner permitted by the terms of this Agreement as well as federal, state, and local law. The parties agree that this Agreement does not authorize Contractor to utilize the streets, alleys, or public ways to dispose of industrial or solid waste or waste from any other project under contract.

14.2 Contractor agrees that during transport of recyclable commodities, all vehicles used by Contractor in the removal of recyclable materials shall be covered to prevent release of refuse onto public streets or properties adjacent thereto. All equipment necessary for the performance of this Franchise shall be in good condition and repair. A standby vehicle shall be available at all times for transport of recyclables. Contractor's vehicles shall at all times be clearly marked with Contractor's name and phone number in letters and numbers not less than three (3) inches in height. Only labeled vehicles shall collect in designated routes.

**ARTICLE XV
PROCESSING FACILITIES**

15.1 The Contractor's processing facility shall have sufficient capacity to handle the volume of recyclable commodities collected under this Agreement. The facility must be equipped to process all recyclable commodities in a safe and efficient manner within a reasonable amount of time.

15.2 The Contractor shall make a monthly report of customer materials collected by the Contractor that are refused by the processing facility. The report shall be submitted to the Director of Public Works. These materials shall be disposed of at BVSWMA landfill or any other T.C.E.Q. approved disposal site and should only include materials rejected from the processing facility that were collected from the City's customers.

**ARTICLE XVI
APPEARANCE OF EQUIPMENT AND PERSONNEL**

16.1 The Contractor shall ensure that the collection service equipment is attractively painted and that said equipment is washed at least one time per week. Collection service personnel shall work in a City approved uniform. The City shall have the right to inspect and approve appearance of collection service equipment and personnel.

16.2 The appearance of recycling collection service equipment and personnel is important to the City because the equipment and personnel are seen on a daily basis by the customers and citizens of the City.

16.3 Any and all equipment used for collection within the City limits must be clearly marked and on each side of the vehicle with the Contractor's name. Only labeled vehicles shall collect in designated routes. The collection service personnel should be in some type of City approved uniform to include, at a minimum, matching shirts with blue jeans or other standard.

ARTICLE XVII TERMINATION

17.1 In addition to all other rights and powers retained by City under this Franchise or otherwise, City reserves the right to declare this Franchise forfeited and to terminate the Franchise and all rights and privileges of Contractor hereunder in the event of a material breach of the terms, covenants, or conditions herein set forth. A material breach by Contractor shall include, but not be limited to, the following:

- a. Failure to pay the fees prescribed by Article VI.
- b. Failure to materially provide the services provided for in this Franchise.
- c. Material misrepresentation of fact in the application for or negotiation of this Franchise.
- d. Conviction of any director, officer, employee, or agent of Contractor of the offense of bribery or fraud connected with or resulting from the awarding of this Franchise.
- e. Material misrepresentations of fact knowingly made to City with respect to or regarding Contractor's operations, management, revenues, services or reports required pursuant to this Franchise.
- f. Revocation or denial of registration or renewal of registration by TCEQ.
- h. Excessive interruption in service for a period of seventy-two (72) hours or more due to causes other than force majeure.

17.2 The Contractor shall not be excused by mere economic hardship nor by misfeasance or malfeasance of its directors, officers, or employees.

17.3 City may after a hearing as described herein, revoke and cancel the Franchise by and between the parties and said Franchise shall be null and void. City shall mail notice to Contractor, at the address designated herein or at such address as may be designated from time to time, by registered mail. The notice shall specify the time and place of the hearing and shall include the allegations being asserted for the revocation of this Agreement. The hearing shall be conducted in public before the City Council and Contractor shall be allowed to present evidence and be given an opportunity to answer all reasons for the termination set forth in the notice. In the event that the Council determines that the allegations set forth are true as set forth in the notice it may by majority vote cancel this Agreement between the parties at no penalty to the City.

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

**ARTICLE XVIII
NON-EXCLUSIVITY OF THE FRANCHISE**

18.1 Both parties understand and agree that nothing in this Agreement conveys to Contractor an exclusive franchise for the services described in this Agreement and that this Agreement is non-exclusive. The parties agree and acknowledge that the City may enter into a contract with another party for the disposal of solid waste or recyclable commodities not covered by the terms of this Agreement. The parties further agree that, in the event that the City develops other services or programs that result in commodities that may be recycled, including but not limited to multifamily structure recycling or commercial recycling, the City shall have the option to market these commodities through Contractor but the City shall not be obligated to do so. In the event that City and Contractor reach an agreement on the terms for recycling these additional commodities, such terms shall be incorporated into this Agreement by addendum.

**ARTICLE XIX
TERMINATION OF INDIVIDUAL SERVICE**

19.1 In the event that Contractor terminates service to any customer, Contractor must notify City by certified mail within forty-eight (48) hours of termination and state the reason for such termination. Upon written notice from the City's Representative that he or she does not find that the customer's service was terminated for good cause, Contractor shall reinstitute service for that customer immediately, and the failure to do so may be considered grounds for termination of this Agreement by the City. The parties agree that the City's Representative shall be the final arbiter regarding whether the Contractor had good cause for termination of service to a customer.

**ARTICLE XX
RECEIVERSHIP AND BANKRUPTCY**

20.1 The Council shall have the right to cancel this Franchise one hundred twenty days (120) after the appointment of receiver or trustee to take over and conduct the business of Contractor, whether in receivership, reorganization, bankruptcy, other action or proceeding, whether voluntary or involuntary, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty days, unless:

- a. Within one hundred twenty (120) days after his election or appointment, such receiver or trustee shall have fully complied with all the provisions of this franchise and remedied all defaults there under; or
- b. Such receiver or trustee, within one hundred twenty days, shall have executed an agreement, duly approved by the court having jurisdiction, whereby the receiver or trustee assumes and agrees to be bound by each and every provision of this Franchise.

**ARTICLE XXI
RELEASE AND INDEMNIFICATION**

21.1 CONTRACTOR ASSUMES FULL RESPONSIBILITY FOR THE WORK TO BE PERFORMED HEREUNDER, AND HEREBY RELEASES, RELINQUISHES, AND DISCHARGES CITY, ITS OFFICERS, AGENTS AND EMPLOYEES, FROM ALL CLAIMS, DEMANDS, AND CAUSES OF ACTION OF EVERY KIND AND CHARACTER INCLUDING THE COST OF DEFENSE THEREOF, FOR ANY INJURY TO, INCLUDING DEATH OF, ANY PERSON WHETHER THAT PERSON BE A THIRD PERSON, CONTRACTOR, OR AN EMPLOYEE OF EITHER OF THE PARTIES HERETO, AND ANY LOSS OF OR DAMAGE TO PROPERTY, WHETHER THE SAME BE THAT OF EITHER OF THE PARTIES HERETO OR OF THIRD PARTIES, CAUSED BY OR ALLEGED TO BE CAUSED BY, ARISING OUT OF OR IN CONNECTION WITH THE GRANT OF THIS FRANCHISE TO CONTRACTOR, WHETHER OR NOT SAID CLAIMS, DEMANDS AND CAUSES OF ACTION IN WHOLE OR IN PART ARE COVERED BY INSURANCE.

21.2 CONTRACTOR AGREES TO AND SHALL INDEMNIFY AND HOLD CITY HARMLESS AND DEFEND THE CITY, ITS OFFICERS, AGENTS AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF EVERY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEYS' FEES, FOR INJURY TO OR DEATH OF ANY PERSON, AND FOR DAMAGE TO ANY PROPERTY, OUT OF OR IN CONNECTION OPERATION OF CONTRACTOR'S RECYCLING BUSINESS UNDER THIS FRANCHISE AND DISPOSAL OF THE RECYCLED WASTE COLLECTED BY IT OR RESALE, AND ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OF THIS AGREEMENT, WHETHER THE CONTRACTOR'S NEGLIGENCE IS THE SOLE OR CONCURRING CAUSE OF THE INJURY, DEATH, OR DAMAGES, AND WHETHER THE CITY'S NEGLIGENCE IS THE SOLE OR CONCURRING CAUSE OF THE INJURY, DEATH, OR DAMAGES. IT IS THE EXPRESS INTENTION OF THE PARTIES HERETO, THAT THE INDEMNITY PROVIDED FOR HEREINABOVE IS INDEMNITY BY THE CONTRACTOR TO INDEMNIFY AND PROTECT THE CITY FROM THE CONSEQUENCES OF BOTH THE CITY'S OWN NEGLIGENCE, WHETHER THAT NEGLIGENCE IS THE SOLE OR A CONCURRING CAUSE OF THE INJURY, DEATH OR DAMAGE, AND THE CONTRACTOR'S NEGLIGENCE, WHETHER THAT NEGLIGENCE IS THE SOLE OR A CONCURRING CAUSE OF THE INJURY, DEATH OR DAMAGE.

21.3 CONTRACTOR ASSUMES RESPONSIBILITY AND LIABILITY AND HEREBY AGREES TO INDEMNIFY THE CITY FROM ANY LIABILITY CAUSED BY CONTRACTOR'S FAILURE TO COMPLY WITH APPLICABLE FEDERAL, STATE, OR LOCAL LAWS AND REGULATIONS, TOUCHING UPON THE MAINTENANCE OF A SAFE AND PROTECTED WORKING ENVIRONMENT, AND THE SAFE USE AND OPERATION OF MACHINERY AND EQUIPMENT IN THAT WORKING ENVIRONMENT.

**ARTICLE XXII
INSURANCE**

22.1 For the duration of this Agreement, Contractor shall procure and maintain at its sole cost and expense insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work under the terms of this Agreement by Contractor, its agents, representatives, volunteers, employees, or subcontractors.

22.2 Contractor's insurance shall be primary insurance with respect to the City, its officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officials, employees, or volunteers, shall be considered in excess of Contractor's insurance and shall not contribute to it.

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

22.4 Certificates of Insurance and endorsements shall be furnished to City and approved by City before work commences. During the term of this Agreement Contractor's insurance policies shall meet the following requirements:

a. Standard Insurance Policies Required

1. Commercial General Liability
2. Business Automobile Liability
3. Workers' Compensation

b. General Requirements Applicable to All Policies

1. Only Insurance Carriers licensed and admitted to do business in the State of Texas will be accepted.
2. Deductibles shall be listed on the Certificate of Insurance and are acceptable only on a per occurrence basis for property damage only.
3. "Claims Made" policies are not accepted.
4. Each insurance policy shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City of College Station.
5. Upon request, certified copies of all insurance policies shall be furnished to the City of College Station.
6. The City of College Station, its officials, employees and volunteers, are to be named as "Additional Insured" to the Commercial General and Business Automobile Liability policies. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees or volunteers.

c. Commercial General Liability

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

d. Business Automobile Liability

1. Business Automobile Liability insurance shall be written by a carrier with a "A:VIII" or better rating in accordance with the current Best Key Rating Guide.
2. Minimum Combined Single Limit of \$1,000,000.00 per occurrence for bodily injury and property damage.
3. Coverage shall be at least as broad as Insurance Service's Office Number CA 00 01.
4. The Business Auto Policy must show Symbol 1 in the Covered Autos Portion of the liability section in Item 2 of the declarations page.
5. The coverage shall include owned autos, leased or rented autos, non-owned autos, any autos and hired autos.
6. Pollution Liability coverage shall be provided by endorsement MCS-90, with a limit of \$1,000,000.00.

e. Endorsements

1. Those policies set forth in Paragraphs III and IV shall contain an endorsement naming the City as Additional Insured and further providing that the Contractor's policies are primary to any self-insurance or insurance policies procured by the City. The additional insured endorsement shall be in a form at least as broad as ISO form GC 2026. Waiver of subrogation in a form at least as broad as ISO form 2404 shall be provided in favor of the City on all policies obtained by the Contractor in compliance with the terms of this Agreement. Contractor shall be responsible for all deductibles which may exist on any policies obtained in compliance with the terms of this Agreement. All coverage for subcontractors shall be subject to the requirements stated herein. All Certificates of Insurance and endorsements shall be furnished to the City's Representative at the time of execution of this Agreement, attached hereto as **Addendum "B"**, and approved by the City before work commences.

f. Workers Compensation Insurance

1. Pursuant to the requirements set forth in Title 28, Section 110.110 of the Texas Administrative Code, all employees of the Contractor, all employees of any and all subcontractors, and all other persons providing services on the Project must be covered by a worker's compensation insurance policy: either directly through their employer's policy (the Contractor's or subcontractor's policy) or through an executed coverage agreement on an approved Texas Department of Insurance Division of Workers Compensation (DWC) form. Accordingly, if a subcontractor does not have his or her own policy and a coverage agreement is used, Contractors and subcontractors must use that portion of the form whereby the hiring Contractor agrees to provide coverage to the employees of the subcontractor. The portion of the form that would otherwise allow them not to provide coverage for the employees of an independent Contractor may not be used.
2. Workers compensation insurance shall include the following terms:
 - A. Employer's Liability minimum limits of \$1,000,000.00 for each accident/each disease/each employee are required.
 - B. "Texas Waiver of Our Right to Recover From Others Endorsement, WC 42 03 04" shall be included in this policy.
 - C. Texas must appear in Item 3A of the Workers Compensation coverage or Item 3C must contain the following: All States except those listed in Item 3A and the States of NV, ND, OH, WA, WV, and WY.
3. Pursuant to the explicit terms of Title 28, Section 110.110(c) (7) of the Texas Administrative Code, the bid specifications, this Agreement, and all subcontracts on this Project must include the following terms and conditions in the following language, without any additional words or changes, except those required to accommodate the specific document in which they are contained or to impose stricter standards of documentation:

Definitions:

- A. Certificate of coverage ("certificate") – An original certificate of insurance, a certificate of authority to self-insure issued by the Division of Workers Compensation, or a coverage agreement (DWC-81, DWC-83, or DWC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.
- B. Duration of the project - includes the time from the beginning of the work on the project until the Contractor's/person's work on the project has been completed and accepted by the governmental entity.
- C. Persons providing services on the project ("subcontractors" in § 406.096 [of the Texas Labor Code) - includes all persons or entities performing all or part of the services the Contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the

Contractor and regardless of whether that person has employees. This includes, without limitation, independent Contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

4. The Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, that meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the Contractor providing services on the project, for the duration of the project.
5. The Contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.
6. If the coverage period shown on the Contractor's current certificate of coverage ends during the duration of the project, the Contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.
7. The Contractor shall obtain from each person providing services on a project, and provide to the governmental entity:
 - A. a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and
 - B. no later than seven calendar days after receipt by the Contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.
8. The Contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.
9. The Contractor shall notify the governmental entity in writing by certified mail or personal delivery, within 10 calendar days after the Contractor knew or should have known, or any change that materially affects the provision of coverage of any person providing services on the project.
10. The Contractor shall post on each project site a notice, in the text, form and manner prescribed by the Division of Workers Compensation, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.
11. The Contractor shall contractually require each person with whom it contracts to provide services on a project, to:
 - A. Provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, that meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all

- of its employees providing services on the project, for the duration of the project;
- B. Provide to the Contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;
 - C. Provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 - D. Obtain from each other person with whom it contracts, and provide to the Contractor:
 - ii. A certificate of coverage, prior to the other person beginning work on the project; and
 - ii. A new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 - E. Retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
 - F. Notify the governmental entity in writing by certified mail or personal delivery, within 10 calendar days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
 - G. Contractually require each person with whom it contracts to perform as required by paragraphs (a) - (g), with the certificates of coverage to be provided to the person for whom they are providing services.
12. By signing this contract, or providing, or causing to be provided a certificate of coverage, the Contractor is representing to the governmental entity that all employees of the Contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project; that the coverage will be based on proper reporting of classification codes and payroll amounts; and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the Commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.
13. The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor that entitles the governmental entity to declare the contract void if the Contractor does not remedy the breach within ten calendar days after receipt of notice of breach from the governmental entity."
- g. Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent, and shall contain the following provisions and warranties:**

1. The company is licensed and admitted to do business in the State of Texas.
2. The insurance policies provided by the insurance company are underwritten on forms that have been provided by the Texas State Board of Insurance or ISO.
3. All endorsements and insurance coverages according to requirements and instructions contained herein.
4. The form of the notice of cancellation, termination, or change in coverage provisions to the City of College Station.
5. Original endorsements affecting coverage required by this section shall be furnished with the certificates of insurance.

**ARTICLE XXIII
ASSIGNMENT**

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

**ARTICLE XXIV
SAFETY**

24.1 The Contractor agrees that all prudent and reasonable safety precautions associated with the performance of this Agreement are a part of the collection techniques for which Contractor is solely responsible. In its execution of its obligations under this Agreement, Contractor shall use all proper skill and care, and Contractor shall exercise all due and proper precautions to prevent injury to any property or person.

**ARTICLE XXV
AD VALOREM TAXES**

25.1 Contractor agrees to render a list annually of all personal property utilized in its recycling operation services to Brazos County Appraisal District so that said personal property will be subject to ad valorem taxation by the applicable taxing entities.

**ARTICLE XXVI
NOTICES**

26.1 All notices required to be given by either party to the other party under the terms of this Contract shall be in writing and, unless written notice of a change of address is given, shall be sent to the parties at the addresses following:

CITY:

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

CONTRACTOR:

Ronald Schmidt, General Manager
Texas Commercial Waste
PO Box 645
Bryan, Texas 77806

26.2 All notices shall be deemed to have been properly served only if sent by Registered or Certified Mail to the person(s) at the address designated above, or to such other person and/or address that either party subsequently designates as its address for notice. Such designation shall be made by providing thirty (30) days advance written notice to the other party.

**ARTICLE XXVII
AMENDMENTS**

27.1 It is hereby understood and agreed by the parties to this Agreement that no alteration or variation to the terms of this Agreement, including all addendums hereto, shall be effective unless made in writing, approved and signed by both parties.

**ARTICLE XXVIII
SEVERABILITY**

28.1 If any section, sentence, clause, or paragraph of this Agreement shall be held to be invalid, illegal or unenforceable by a court 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 invalid, illegal or unenforceable provision(s) of this Agreement with valid legal terms and conditions approximating the original intent of the parties.

**ARTICLE XXIX
AUTHORIZATION TO EXECUTE**

29.1 The parties signing this Agreement shall provide adequate proof of their authority to execute this Agreement. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors or assigns as permitted herein.

**ARTICLE XXX
TERM OF AGREEMENT**

30.1 The term of this Agreement shall be for a period beginning on October 1, 2010 and ending on September 30, 2015.

**ARTICLE XXXI
ACCEPTANCE OF AGREEMENT**

31.1 In accordance with City of College Station City Charter, Section 120, Contractor shall have sixty (60) days, from and after the final passage and approval of this Ordinance to file its written acceptance thereof with the City Secretary within thirty (30) days from the final adoption of this Ordinance, and upon acceptance being filed, this Ordinance shall take effect and be in force from and after the date of its acceptance. Such acceptance shall be typed or printed on the letterhead of Contractor and, with the blank spaces appropriately completed, shall be as follows:

Attn: Public Works Director

Texas Commercial Waste acting by and through its undersigned who is acting with his official capacity and authority, hereby accepts the franchise to operate a recycling collection service within the City of College Station, Texas ("College Station") as said franchise is set forth and provided in Ordinance No. _____ (the "Ordinance"). TEXAS COMMERCIAL WASTE agrees to be bound and governed by each terms, provision and condition of the Ordinance, to accept and to give the benefits provided for in the Ordinance in a business like and reasonable manner and compliance with the Ordinance.

By: 
Name: RONALD SCHMITT
Title: GEN. MGR.
Date: 7-22-2010

31.2 By accepting this Agreement, Contractor represents that it has, by careful examination, satisfied itself as to the nature and location of the work, the character, quality and quantity of work to be performed, the character of the equipment and facilities necessary to fulfill its obligations under this Agreement, as well as the general and local conditions and all other matters that in any way affect the work to be performed under this Agreement.

**ARTICLE XXXII
CONTRACTOR'S DILIGENCE AND CARE**

32.1 Contractor shall use reasonable care and diligence in executing its obligations under this Agreement.

**ARTICLE XXXIII
ENTIRE AGREEMENT**

33.1 It is understood by the parties that this Agreement constitutes the entire agreement between the parties with respect to collection of recyclable commodities from designated households within the City. It is further understood and agreed that there are no other agreements between these parties with regard to the collection and disposal of recyclable commodities from designated households within the City.

**ARTICLE XXXIV
ENFORCEMENT OF PROVISIONS**

34.1 Failure of any party, at any time, to enforce a provision of this Agreement, shall in no way constitute a waiver of that provision, nor in any way affect the validity of this Agreement, any part hereof, or the right of such party thereafter to enforce each and every provision hereof.

**ARTICLE XXXV
CAPTIONS AND HEADINGS**

35.1 The captions, section numbers and other such designations appearing in this Agreement are inserted only as a matter of convenience and in no define, limit, construe, or describe the scope or intent of such sections in this Agreement or in any way affect this Agreement

**ARTICLE XXXVI
PUBLIC HEARING**

36.1 It is hereby found and determined that the meetings at which this ordinance was passed were open to the public, as required by Texas Government Code § 551.001 and that advance public notice of time, place, and purpose of said meetings was given.

First Consideration & Approval on the _____ day of _____, 2010

Second Consideration & Approval on the _____ day of _____, 2010

Third Consideration & Approval on the _____ day of _____, 2010

PASSED, ADOPTED and APPROVED by the City of College Station City Council on this the _____ day of _____ 2010.

TEXAS COMMERCIAL WASTE

CITY OF COLLEGE STATION

By: 

By: _____
Mayor

Printed Name: Ronald Schmitt

Title: Gen. Mgr.

Date: _____

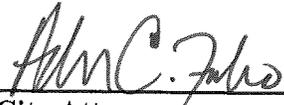
Date: 7/22/2010

ATTEST:

City Secretary
Date: _____

APPROVED:

City Manager
Date: _____


City Attorney
Date: _____

Chief Financial Officer
Date: _____

A
7/22/2010**ADDENDUM A
RECYCLABLE COMMODITIES**

1. **Aluminum Used Beverage Cans (UBC)**
 - 100% American metal markets – second edition of the month – domestic aluminum producer/UBC price less \$0.19/lb.
2. **Clear Glass (Sorted)**
 - 100% strategic materials – Houston price less \$70.00 per ton
3. **Brown Glass (Sorted)**
 - 100% strategic materials – Houston price less \$70.00 per ton
4. **Newspapers with Ad Slicks (ONP) and Magazines (OMG) (Commingled)**
 - 100% of the high side of the news (8) price S.W. Official Board Markets “Yellow Sheet” second edition of the month less \$70.00 per ton
5. **Steel Food Cans (Tin Cans)**
 - 0% less \$0.075 per lb.
6. **Plastic Bottles SPI Code 1 (PET) (Soda Liter)**
 - 100% of the Avangard Innovative Houston published price less \$.38 per lb.
7. **Plastic Bottles SPI Code 2 (HDPE) (Milk/Water Jugs)**
 - 100% of the Avangard Innovative Houston published price less \$.38 per lb.
8. **Lead-Acid Batteries**
 - \$0.00 per lb.
9. **Plastic SPI Code 2 (HDPE) Pigmented High Density Polyethylene**
 - 100% of the Avangard Innovative Houston published price less \$.38 per lb.
10. **Telephone Books/ Catalogues**
 - 100% of the high side of the news (8) price S.W. Official Board Markets “Yellow Sheet” second edition of the month less \$70.00 per ton
11. **White Paper**
 - \$0.00 per lb

R 7/22/2010

12. Use of Baler for Revenue Share of Cardboard (OCC)

- a. As part of this franchise, the Contractor shall provide, install, and maintain a baler at no additional cost to the City.
- b. The baler shall be a Waste Quip 6030HD or similar vertical baler with the following similar specs:
 - 1. Cylinder Bore – 6”
 - 2. Cylinder Rod – 3.5”
 - 3. Cylinder Stroke - 48”
 - 4. Motor - 10 H.P.
 - 5. Phase & Voltage - 3 Phase/208-230/460
 - 6. Bale Weight OCC - 800-1000#
 - 7. Bale Size - 30”x 60”x 48”
 - 8. Operating Pres. - 2200 PSI
- c. The baler will be located in a place to be determined by the City and the City will provide the power source.
- d. The baler can be used by the City for all recyclable commodities.
- e. In exchange for the City’s use of the baler there will be revenue sharing with the Contractor retaining \$40.00 per ton if less than \$100.00 per ton and \$50.00 per ton if more than \$100 per ton for Cardboard (OCC). The rates shall be determined by the Yellow Sheet market rate.

ADDENDUM B
CERTATES OF INSURANCE AND ENDORSEMENTS

ACORD™ CERTIFICATE OF LIABILITY INSURANCE		DATE (MM/DD/YYYY) 09/25/2009
PRODUCER (254)753-5317 FAX (254)753-1132 Bailey Insurance & Risk Management, Inc. 1201 Washington Ave. P.O. Box 298 Waco, TX 76701		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.
INSURED Texas Commercial Waste, B.A.G.S. M. Lipsitz & Company, Ltd. et al P. O. Box 1175 Waco, TX 76703		
		INSURERS AFFORDING COVERAGE
		NAIC #
		INSURER A: Travelers Lloyds Ins. Company
		INSURER B: Travelers Property Casualty
		INSURER C: Everest National Insurance Company
		INSURER D: Texas Mutual Insurance Company
		INSURER E:

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

INSR LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A		GENERAL LIABILITY	6607042M400	10/01/2009	10/01/2010	EACH OCCURRENCE	\$ 1,000,000
	<input checked="" type="checkbox"/>	COMMERCIAL GENERAL LIABILITY				DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 100,000
	<input type="checkbox"/>	CLAIMS MADE <input checked="" type="checkbox"/> OCCUR				MED EXP (Any one person)	\$ 5,000
						PERSONAL & ADV INJURY	\$ 1,000,000
						GENERAL AGGREGATE	\$ 2,000,000
						PRODUCTS - COMP/OP AGG	\$ 2,000,000
						GEN'L AGGREGATE LIMIT APPLIES PER:	
		<input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC					
B		AUTOMOBILE LIABILITY	BA5295L398	10/01/2009	10/01/2010	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000
	<input checked="" type="checkbox"/>	ANY AUTO				BODILY INJURY (Per person)	\$
	<input type="checkbox"/>	ALL OWNED AUTOS				BODILY INJURY (Per accident)	\$
	<input type="checkbox"/>	SCHEDULED AUTOS				PROPERTY DAMAGE (Per accident)	\$
		HIRED AUTOS					
		NON-OWNED AUTOS					
		GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT	\$
		ANY AUTO				OTHER THAN EA ACC	\$
						AUTO ONLY: AGG	\$
C		EXCESS/UMBRELLA LIABILITY	71GH000012091	10/01/2009	10/01/2010	EACH OCCURRENCE	\$ 10,000,000
	<input checked="" type="checkbox"/>	OCCUR <input type="checkbox"/> CLAIMS MADE				AGGREGATE	\$ 10,000,000
	<input type="checkbox"/>	DEDUCTIBLE					\$
	<input checked="" type="checkbox"/>	RETENTION \$ 25,000					\$
D		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	TSF0001109677	10/01/2009	10/01/2010	<input checked="" type="checkbox"/> WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER	
		ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED?				E.L. EACH ACCIDENT	\$ 1,000,000
		If yes, describe under SPECIAL PROVISIONS below				E.L. DISEASE - EA EMPLOYEE	\$ 1,000,000
		OTHER				E.L. DISEASE - POLICY LIMIT	\$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS
 City of College Station is included as an additional insured under the general liability, auto liability & excess liability if required by written contract. A waiver of subrogation applies under the general, auto & excess liability & workers compensation if required by written contract. Coverage shall not be suspended, voided, cancelled, reduce coverage of limits except after 30 days prior written notice by certified mail to the Certificate Holder. * Except 10 days for non-payment.

CERTIFICATE HOLDER City Of College Station Attn: Risk Management P O Box 9960 College Station, TX 77842	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30* DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE Wes Bailey/CHAR <i>Wes Bailey</i>
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September 9, 2010
Consent Agenda Item No. 2j
Northgate Park Project
Real Estate Contract – 502 Boyett Street

To: Glenn Brown, City Manager

From: Chuck Gilman, Director of Capital Projects

Agenda Caption: Presentation, possible action, and discussion regarding approval of a real estate contract in the amount of \$265,000 between the City of College Station (Buyer) and Debra Lynn Boyett (Seller) for the purchase of Lot One (1), Block Eighteen (18), W. C. Boyett Estate Partition, also known as 502 Boyett Street.

Relationship to Strategic Goals: Goal II, Neighborhood Integrity.

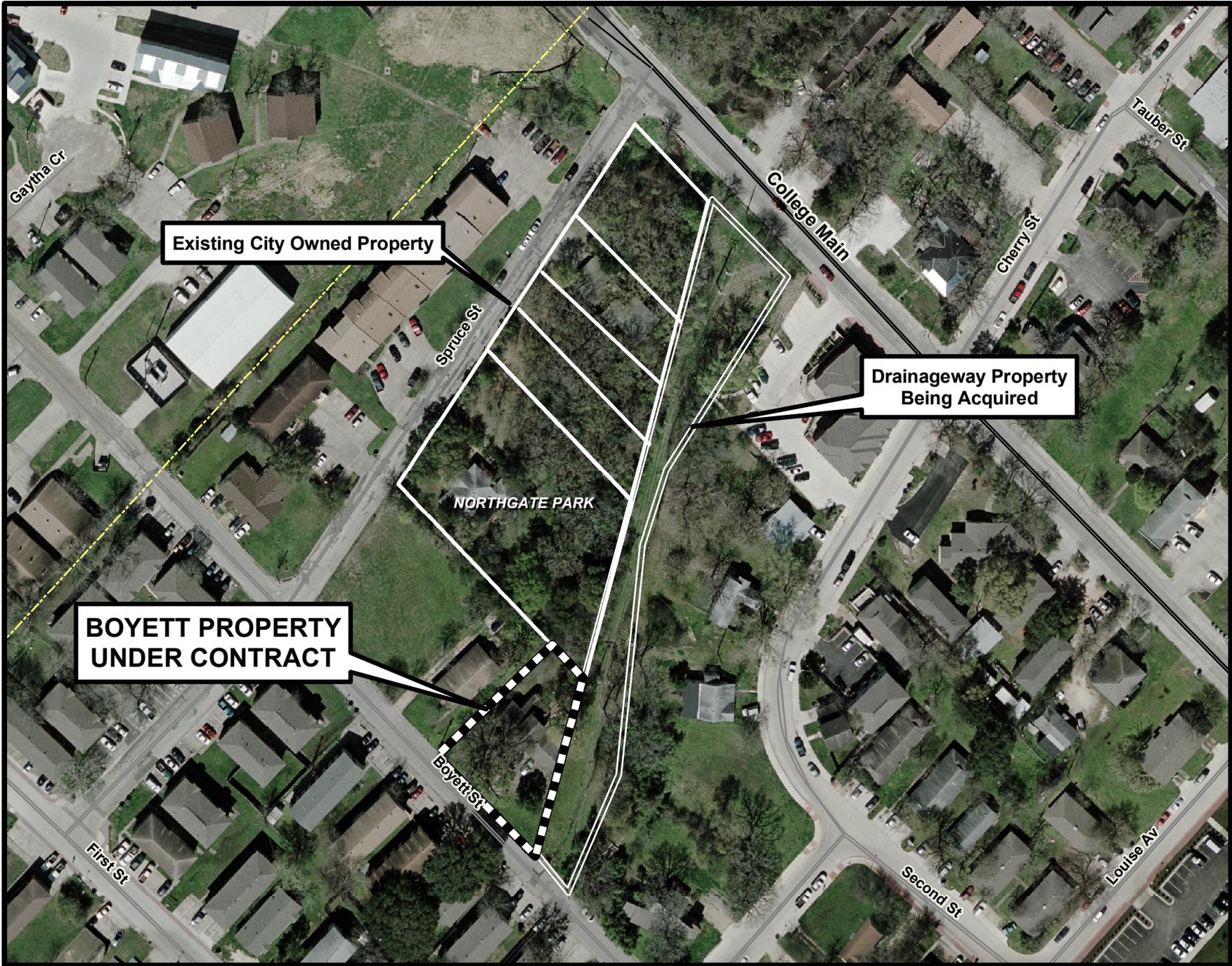
Recommendation(s): Staff recommends approval of the contract which will authorize the Mayor to execute the contract and will authorize the City Attorney to complete the transaction.

Summary: On March 8, 2007, City Council authorized the purchase of three lots on Spruce Street for the purpose of developing a neighborhood park in Northgate. On May 18, 2009, City Council directed staff to proceed with negotiations on additional property in an effort to enlarge the site and create a neighborhood park in the Northgate District. On August 27, 2009, City Council authorized the purchase of four lots on Spruce Street that adjoin the previously purchased lots. Staff has recently completed negotiations for the purchase of one additional lot improved with a single family residence. This lot adjoins the existing park land and a drainage area. The purchase of this property will also provide access to Boyett Street. As part of the contract negotiations, the seller will occupy the residence until September 1, 2011 at which time the City will demolish the structure. Additionally, in an effort to maximize the size of the park, Staff is working to acquire the drainage area that extends from Boyett Street to College Main. This land is owned by 20 heirs of W.C. Boyett.

Budget & Financial Summary: Funds for this purchase are budgeted in the Parks Capital Improvement Projects Fund as part of the Neighborhood Parks Revolving Fund Project. The total budget for this project is \$1,000,000 and \$428,754 has been expended or committed to date, leaving a balance of \$571,246 for future expenditures. The purchase price for the property is \$265,000. Additional funds amount of approximately \$10,000 will be required for a survey, environmental study, title insurance, closing costs and other fees.

Attachments: Project Map
Real Estate Contract – Available in City Secretary's Office

Boyett Property - 502 Boyett Street



**September 9, 2010
Consent Agenda Item No. 2k
Right-of-way Maintenance Ordinance**

To: Glenn Brown, City Manager

From: Mark Smith, Director of Public Works

Agenda Caption: Presentation, possible action and discussion of an ordinance amending Chapter 3, "Building Regulations", Section 2, "Right-Of-Way Maintenance", of the Code of Ordinances.

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

Summary: This ordinance amendment provides that registration and construction permits not be required when a current franchise provides for a process that adequately replaces or meets the requirements of registration and permitting in this section.

Budget & Financial Summary:

Attachments:

1 Ordinance

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 3, "BUILDING REGULATIONS", 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 3, "Building Regulations", of the Code of Ordinances of the City of College Station, Texas, be amended as set out in Exhibit "A", attached hereto and made a part of this ordinance for all purposes.

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

- PART 3: That any person, firm, or corporation violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not less than Twenty-five Dollars (\$25.00) nor more than 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 ten (10) days after its date of passage by the City Council, as provided by Section 35 of the Charter of the City of College Station.

PASSED, ADOPTED and APPROVED this _____ day of _____, 2010.

APPROVED:

MAYOR

ATTEST:

City Secretary

APPROVED:

Carla A. Robinson

City Attorney

EXHIBIT "A"

That Chapter 3, "Building Regulations", Section 2, "Right-Of-Way Maintenance", of the Code of Ordinances of the City of College Station, Texas, is hereby amended, by adding subsection F, paragraph (4), as set out hereafter to read as follows:

- (4) Registration and construction permits are not required when a current franchise provides for a process that adequately replaces or meets the requirements of registration and permitting in this section.

September 9, 2010
Regular Agenda Item No. 1
Multifamily/Commercial Recycling Franchise

To: Glenn Brown, City Manager

From: Hayden Migl, Assistant to the City Manager

Agenda Caption: Presentation, possible action, and discussion on the first reading of a franchise agreement with Professional Trash Valet, LLC dba Brazos Valley Trash Valet & Recycling for the collection of recyclable commodities from multifamily apartments and commercial businesses.

Relationship to Strategic Goals: V. Green Sustainable City

Recommendation(s): Staff recommends approval.

Summary: The proposed non-exclusive five (5) year franchise agreement allows for the collection of recyclable commodities from multifamily apartments and commercial businesses within the corporate limits of the City of College Station.

The company will be responsible for developing onsite recycling programs and shall provide the means of recycling to those multifamily apartments and commercial businesses that request this service.

Section 120 of the City Charter states that "The City of College Station shall have the power by ordinance to grant any franchise or right mentioned in the preceding sections hereof, which ordinance, however, shall not be passed finally until it shall have been read at three (3) separate regular meetings of the City Council."

Budget & Financial Summary: N/A

Attachments:

1. Franchise Ordinance

**MULTIFAMILY AND COMMERCIAL RECYCLING COLLECTION
ORDINANCE NO. 2010-_____**

AN ORDINANCE GRANTING PROFESSIONAL TRASH VALET, LLC dba BRAZOS VALLEY TRASH VALET & RECYCLING, ITS SUCCESSORS AND ASSIGNS, A NONEXCLUSIVE FRANCHISE FOR THE PRIVILEGE AND USE OF PUBLIC STREETS, ALLEYS, AND PUBLIC WAYS WITHIN THE CORPORATE LIMITS OF THE CITY OF COLLEGE STATION FOR THE PURPOSE OF PROVIDING RECYCLABLE COMMODITIES COLLECTION TO DESIGNATED MULTIFAMILY APARTMENT AND COMMERCIAL BUSINESS LOCATIONS; PRESCRIBING THE TERMS, CONDITIONS, OBLIGATIONS, AND LIMITATIONS UNDER WHICH SAID FRANCHISE SHALL BE EXERCISED; PROVIDING FOR THE CONSIDERATION; FOR THE PERIOD OF THE GRANT; FOR ASSIGNMENT; FOR THE METHOD OF ACCEPTANCE; FOR REPEAL OF CONFLICTING ORDINANCES; AND FOR PARTIAL INVALIDITY.

WHEREAS, the City of College Station, by ordinance, provides exclusively all solid waste collection and disposal services for solid waste aggregated from within the corporate limits of the City of College Station including, but not limited to recyclable commodities; and

WHEREAS, the City of College Station may, pursuant to the College Station City Charter, Article XI, grant franchises to other entities for the use of public streets, alleys, and thoroughfares within the corporate limits of the city and for the collection and disposal of solid waste generated from within the corporate limits of the City of College Station; and

WHEREAS, the City of College Station desires to exercise the authority provided to it by ordinance and charter to grant a franchise for the collection of certain recyclable commodities that are generated from specified multifamily apartment and commercial business locations within the corporate limits of the City of College Station; and

WHEREAS, BRAZOS VALLEY TRASH VALET & RECYCLING, is engaged in the business of collection of recyclable commodities and is requesting a franchise to operate its business within the City limits of the City of College Station; and

WHEREAS, the City of College Station hereinafter referred to as "City", believes it is in the best interest of College Station to grant this franchise to BRAZOS VALLEY TRASH VALET & RECYCLING, hereinafter referred to as "Contractor", on such terms and conditions as will provide College Station with control and options necessary to provide for the public good; now, therefore,

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

ARTICLE I DEFINITIONS

1.1 For the purposes of this Ordinance, when not inconsistent with the context, words used in the present tense include the future tense, words in the plural include the singular, and words in the singular include the plural, and the use of any gender shall be applicable to all genders whenever the sense requires. The words “shall” and “will” are mandatory and the word “may” is permissive. Words not defined in this Ordinance shall be given their common and ordinary meaning. For the purposes of this Ordinance, the following words, terms, phrases and their derivations shall have the meaning given here.

1.2 **Agreement** shall mean this franchise between City and Contractor for the collection of certain recyclable commodities within the jurisdictional limits of the City, under certain terms and conditions set out herein.

1.3 **Brazos Valley Solid Waste Management Agency or BVSWMA** shall mean a permitted municipal solid waste facility jointly owned by the Cities of Bryan and College Station and operated by the City of College Station on behalf of the cities as authorized by an interlocal agreement or as it may change.

1.4 **City** shall mean the City of College Station, a Texas Home Rule Municipal Corporation.

1.5 **City Council or Council** shall mean the governing body of the City.

1.6 **City's Representative** shall mean the Director of Public Works of the City or his designated appointee.

1.7 **Collection** shall mean the scheduled aggregation of recyclables by Contractor according to the terms governing scheduling contained in this Agreement.

1.8 **Contractor** shall mean BRAZOS VALLEY TRASH VALET & RECYCLING who is authorized under this Franchise for the collection of recyclable commodities.

1.9 **Contaminated** shall mean recyclable commodity that is mixed with solid waste or is altered in such a way that it has become unsalable.

1.10 **Customers** shall mean occupants of those designated multifamily apartment complexes and commercial businesses, that are located within the City limits and that generate recyclable materials.

1.11 **Force Majeure** shall mean, without limitation, by the following enumeration, acts of God and the public enemy, the elements, fire, or accidents.

1.12 **Franchise** shall mean this ordinance and all rights and obligations established herein or as it may be amended.

1.13 **Parties** shall mean the City of College Station and BRAZOS VALLEY TRASH VALET & RECYCLING.

1.14 Recyclables or Recyclable Commodities shall mean materials that have been recovered from the solid waste stream for the purposes of reuse or reclamation, a substantial portion of which is consistently used in the manufacture of products that may otherwise be produced using raw or virgin materials. Recyclable commodities or recyclables are not solid waste unless they are abandoned or disposed rather than reprocessed into another product.

1.15 Residue shall mean the material regularly associated with and attached to recyclable commodities, as a part of the original packaging or usage of that commodity, that is not recyclable itself.

1.16 T.A.C. shall mean the Texas Administrative Code as it now exists or as it is hereinafter amended.

1.17 T.C.E.Q. shall mean Texas Commission for Environmental Quality.

ARTICLE II AUTHORITY FOR CONTRACTOR TO PROVIDE SERVICE

2.1 City hereby grants to Contractor a nonexclusive franchise to operate and establish in the City, as constituted as of the effective date of this Agreement, or as may hereafter be constituted to collect recyclable commodities from multifamily apartment complexes and commercial businesses within the corporate limits of City, and Contractor is hereby granted passage and right-of-way on, along and across the streets, avenues, rights-of-way, alleys, and highways within the corporate limits of the City, for any such service and lawful purpose as herein mentioned; provided that all such work, activity and undertakings by Contractor shall be subject to the terms and provisions of this Franchise and the continuing exercise by the City of its governmental and police powers, and provided further that nothing herein shall be construed to require or authorize Contractor to exceed any rights granted herein or by the TCEQ.

2.2 Nothing in this Franchise shall be construed as granting an exclusive franchise or right.

ARTICLE III DISPOSAL SITE TO BE USED

3.1 In the event Contractor inadvertently collects solid waste that is in excess of residual amounts from the recyclable materials, then Contractor shall utilize the BSWMA landfill or any other T.C.E.Q. approved disposal site. The Contractor shall only use disposal sites that are lawful for municipal solid waste disposal and for disposal of all contaminated, unmarketable recyclable commodities collected by Contractor from within the corporate limits of the City.that are not accepted by any Material Recycling Facilities

**ARTICLE IV
RATES TO BE CHARGED BY CONTRACTOR**

4.1 Rates charged by Contractor will vary according to marketability of such services.

**ARTICLE V
PAYMENTS TO CITY**

5.1 For and in consideration of the grant of the franchise herein, Contractor agrees and shall pay to City upon acceptance of this Franchise Agreement and thereafter during the term hereof, a sum based on the following graduated fee schedule depending on the percentage of aggregate recycling accomplished.

5.2 No fee is required if Contractor reports aggregate recycling of at least eighty percent (80%) of recyclables collected.

5.3 A fee equivalent to ten percent (10%) of Contractor's monthly gross delivery and hauling revenues generated from Contractor's provision of recycling collection services within the City excluding landfill tipping charges is required if Contractor reports aggregate recycling less than eighty percent (80%) of recyclables collected.

5.4 The exclusion is limited only to the amount BSWMA charges Contractor for landfill tipping charges. Any revenue received by Contractor in excess of the landfill tipping charges will be subject to the franchise fee and shall be computed into Contractor's monthly gross delivery and hauling revenue. Said payment shall be paid quarterly to the City Manager or his designee and shall be due by the twentieth of the month following the end of the previous quarter. Payment after that date shall incur a ten percent (10%) late fee on the outstanding amount owed under this Article V.

5.5 Failure by Contractor to pay any amount due under this franchise constitutes a Failure to Perform under this contract and is subject to the provisions of Article XII TERMINATION of this Franchise Agreement.

**ARTICLE VI
ACCESS TO RECORDS AND REPORTING**

6.1 Upon legitimately reported law or ordinance violations, including, but not limited to, 1) illegal disposition of recycling materials, 2) collection of materials not in compliance with this Agreement, or 3) violations of any material aspect of this Agreement, then City shall have the right, upon reasonable notice, to inspect during normal business hours Contractor's records relevant and restricted to the scope of the reported violations, Contractor shall cooperate in allowing City to conduct the inspections.

6.2 Along with the payment to the City of the City's agreed share of revenue from the collection of recyclable commodities, Contractor shall provide an email to the City Manager's office of a report entitled Monthly Recycling Activity Report to City. Said report is due no later

than the twentieth calendar day of each month and summarizing the recycling activity for the previous calendar month. Contractor's report shall include the following information:

- a. Copies of all weight tickets that contain any recyclable materials collected within the City limits.
- b. For each weight ticket, provide an estimate of the percent of tonnage of recyclable materials collected within the City limits.
- c. Visual estimate the percentages of the composition of recycling materials collected delineated by plastics, metals, glass, paper, etc.
- d. Any materials collected by the Contractor that are refused by the material recycling facility and their related disposition. These materials shall be disposed of at BSWMA landfill or any other T.C.E.Q. approved disposal site and should only include materials rejected from the material recycling facility that were collected from the City's customers.

ARTICLE VII COMPLAINTS REGARDING SERVICE/SPILLAGE

7.1 Contractor shall handle directly any complaints pertaining to customer service, property damage or personal injury from their multifamily and commercial recycling service. Any such complaints received by City shall be forwarded to Contractor within twenty-four (24) hours of their receipt by City. Contractor shall respond to all complaints within twenty-four (24) hours of receiving notice of such complaint from City, resolve such complaints promptly and shall report to City the action taken..

ARTICLE VIII COMPLIANCE WITH APPLICABLE LAWS

8.1 This ordinance shall be construed in accordance with the City's Charter and Code of Ordinances in effect on the Effective Date of this ordinance to the extent that such City Charter and Code of Ordinances are not in conflict with or in violation of the Constitution and Laws of the United States or the State of Texas.

8.2 This Ordinance shall be governed in accordance with the Laws of the State of Texas. Performance and all matters related thereto shall be in Brazos County, Texas, United States of America.

8.3 Notwithstanding any other provision in this franchise to the contrary, City and Contractor shall at all times comply with all laws, rules, and regulations of the state and federal government and any administrative agencies thereof, with respect to the subject matter of this Ordinance.

8.4 In the event that the Contractor uses BSWMA for disposal of materials that are collected under this Agreement, the Contractor agrees to comply with all BSWMA regulations. All collections made under this Agreement shall be made by Contractor without unnecessary noise, disturbance, or commotion.

**ARTICLE IX
COLLECTION PROCEDURES**

9.1 The Contractor shall develop an onsite recycling program for multifamily apartment recycling that has collection from the door of multifamily units or location agreed upon with the multifamily apartment complex management.

9.2 The Contractor shall develop an onsite recycling program for commercial businesses that has collections from the loading dock or location agreed upon with the commercial business management, in accordance with City regulations.

9.3 Under no circumstances can collections occur from the rights-of-way.

9.4 The Contractor shall provide the means of recycling to these participating entities The City of College Station may provide for educating or promoting the community, residents, or businesses regarding this program.

**ARTICLE X
OWNERSHIP OF RECYCLABLES**

10.1 Sole and exclusive title to all recyclable commodities collected by Contractor under this Franchise Agreement shall pass to Contractor when said commodities are placed on Contractor's collection vehicle.

10.2 The City shall not presume ownership over any recyclable commodities collected by Contractor, and the City shall not be responsible for processing or disposal.

**ARTICLE XI
VEHICLE AND EQUIPMENT MAINTENANCE**

11.1 Contractor agrees to properly maintain in a safe, clean, and sanitary condition all equipment necessary for the performance of this franchise. Equipment shall be in good condition and repair.

11.2 All vehicles used by Contractor in the collection of recyclable commodities shall be covered during transport to prevent spillage, blowing, or scattering of refuse onto public streets or rights-of-way, private property or adjacent property. A standby vehicle shall always be available.

11.3 Contractor's vehicles shall at all times be clearly marked with Contractor's name, address, telephone number, and if applicable, state permit number, in letters not less than three (3) inches in height.

**ARTICLE XII
TERMINATION**

12.1 In addition to all other rights and powers retained by City under this Franchise or otherwise, City reserves the right to declare this Franchise forfeited and to terminate the Franchise and all rights and privileges of Contractor hereunder in the event of a material breach of the terms, covenants, or conditions herein set forth. A material breach by Contractor shall include, but not be limited to, the following:

- a. Failure to pay the fees prescribed by Article V.
- b. Failure to materially provide the services provided for in this Franchise.
- c. Material misrepresentation of fact in the application for or negotiation of this Franchise.
- d. Conviction of any director, officer, employee, or agent of Contractor of the offense of bribery or fraud connected with or resulting from the awarding of this Franchise.
- e. Material misrepresentations of fact knowingly made to City with respect to or regarding Contractor's operations, management, revenues, services or reports required pursuant to this Franchise.
- f. Revocation or denial of registration or renewal of registration by TCEQ.
- h. Excessive interruption in service for a period of seventy-two (72) hours or more due to causes other than force majeure.

12.2 Contractor shall not be excused by mere economic hardship nor by misfeasance or malfeasance of its directors, officers, or employees.

12.3 City may after a hearing as described herein, revoke and cancel the Franchise by and between the parties and said Franchise shall be null and void. City shall mail notice to Contractor, at the address designated herein or at such address as may be designated from time to time, by registered mail. The notice shall specify the time and place of the hearing and shall include the allegations being asserted for the revocation of this Agreement. The hearing shall be conducted in public before the City Council and Contractor shall be allowed to present evidence and be given an opportunity to answer all reasons for the termination set forth in the notice. In the event that the Council determines that the allegations set forth are true as set forth in the notice it may by majority vote cancel this Agreement between the parties at no penalty to the City.

**ARTICLE XIII
NON-EXCLUSIVITY OF THE FRANCHISE**

13.1 Both parties understand and agree that nothing in this Agreement conveys to Contractor an exclusive franchise for the services described in this Agreement and that this Agreement is non-exclusive.

13.2 In the event that the City begins offering the service outlined in this Agreement, the City reserves the right to terminate this Franchise and all rights and privileges of the Contractor per Article XI of the City Charter.

**ARTICLE XIV
RELEASE AND INDEMNIFICATION**

14.1 CONTRACTOR ASSUMES FULL RESPONSIBILITY FOR THE WORK TO BE PERFORMED HEREUNDER, AND HEREBY RELEASES, RELINQUISHES, AND DISCHARGES CITY, ITS OFFICERS, AGENTS AND EMPLOYEES, FROM ALL CLAIMS, DEMANDS, AND CAUSES OF ACTION OF EVERY KIND AND CHARACTER INCLUDING THE COST OF DEFENSE THEREOF, FOR ANY INJURY TO, INCLUDING DEATH OF, ANY PERSON WHETHER THAT PERSON BE A THIRD PERSON, CONTRACTOR, OR AN EMPLOYEE OF EITHER OF THE PARTIES HERETO, AND ANY LOSS OF OR DAMAGE TO PROPERTY, WHETHER THE SAME BE THAT OF EITHER OF THE PARTIES HERETO OR OF THIRD PARTIES, CAUSED BY OR ALLEGED TO BE CAUSED BY, ARISING OUT OF OR IN CONNECTION WITH THE GRANT OF THIS FRANCHISE TO CONTRACTOR, WHETHER OR NOT SAID CLAIMS, DEMANDS AND CAUSES OF ACTION IN WHOLE OR IN PART ARE COVERED BY INSURANCE.

14.2 CONTRACTOR AGREES TO AND SHALL INDEMNIFY AND HOLD CITY HARMLESS AND DEFEND THE CITY, ITS OFFICERS, AGENTS AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF EVERY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEYS' FEES, FOR INJURY TO OR DEATH OF ANY PERSON, AND FOR DAMAGE TO ANY PROPERTY, OUT OF OR IN CONNECTION WITH OPERATION OF CONTRACTOR'S RECYCLING BUSINESS UNDER THIS FRANCHISE AND DISPOSAL OF THE RECYCLABLE WASTE COLLECTED BY IT OR RESALE, AND ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OF THIS AGREEMENT, WHETHER THE CONTRACTOR'S NEGLIGENCE IS THE SOLE OR CONCURRING CAUSE OF THE INJURY, DEATH, OR DAMAGES, AND WHETHER THE CITY'S NEGLIGENCE IS THE SOLE OR CONCURRING CAUSE OF THE INJURY, DEATH, OR DAMAGES. IT IS THE EXPRESS INTENTION OF THE PARTIES HERETO, THAT THE INDEMNITY PROVIDED FOR HEREINABOVE IS INDEMNITY BY THE CONTRACTOR TO INDEMNIFY AND PROTECT THE CITY FROM THE CONSEQUENCES OF BOTH THE CITY'S OWN NEGLIGENCE, WHETHER THAT NEGLIGENCE IS THE SOLE OR A CONCURRING CAUSE OF THE INJURY, DEATH OR DAMAGE, AND THE CONTRACTOR'S NEGLIGENCE, WHETHER THAT NEGLIGENCE IS THE SOLE OR A CONCURRING CAUSE OF THE INJURY, DEATH OR DAMAGE.

14.3 CONTRACTOR ASSUMES RESPONSIBILITY AND LIABILITY AND HEREBY AGREES TO INDEMNIFY THE CITY FROM ANY LIABILITY CAUSED BY CONTRACTOR'S FAILURE TO COMPLY WITH APPLICABLE FEDERAL, STATE, OR LOCAL LAWS AND REGULATIONS, TOUCHING UPON THE MAINTENANCE OF A SAFE AND PROTECTED WORKING ENVIRONMENT, AND THE SAFE USE AND OPERATION OF MACHINERY AND EQUIPMENT IN THAT WORKING ENVIRONMENT.

**ARTICLE XV
INSURANCE**

15.1 For the duration of this Agreement, Contractor shall procure and maintain at its sole cost and expense insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work under the terms of this Agreement by Contractor, its agents, representatives, volunteers, employees, or subcontractors.

15.2 Contractor's insurance shall be primary insurance with respect to the City, its officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officials, employees, or volunteers, shall be considered in excess of Contractor's insurance and shall not contribute to it.

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

15.4 Certificates of Insurance and endorsements shall be furnished to City and approved by City before work commences. During the term of this Agreement Contractor's insurance policies shall meet the following requirements:

a. Standard Insurance Policies Required

1. Commercial General Liability
2. Business Automobile Liability
3. Workers' Compensation

b. General Requirements Applicable to All Policies

1. Only Insurance Carriers licensed and admitted to do business in the State of Texas will be accepted, if available. Otherwise, an Insurance Carrier shall be permitted outside the State of Texas, as long as policy is through an Insurance Broker authorized within Texas and the policy complies with the other insurance requirements contained in this Agreement.
2. Deductibles shall be listed on the Certificate of Insurance and are acceptable only on a per occurrence basis for property damage only.
3. "Claims Made" policies are not accepted.
4. Each insurance policy shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City of College Station.
5. Upon request, certified copies of all insurance policies shall be furnished to the City of College Station.
6. The City of College Station, its officials, employees and volunteers, are to be named as "Additional Insured" to the Commercial General and Business Automobile Liability policies. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees or volunteers.

c. Commercial General Liability

1. General Liability insurance shall be written by a carrier with a "A:VIII" or better rating in accordance with the current Best Key Rating Guide.
2. Limit of \$1,000,000.00 per occurrence for bodily injury and property damage with an annual aggregate limit of \$2,000,000.00 which limits shall be endorsed to be per Project.
3. Coverage shall be at least as broad as ISO form CG 00 01.
4. No coverage shall be excluded from the standard policy without notification of individual exclusions being attached for review and acceptance.
5. The coverage shall include but not be limited to the following: premises/operations with separate aggregate; independent contracts; products/completed operations; contractual liability.

d. Endorsements

1. Those policies set forth in Paragraphs III and IV shall contain an endorsement naming the City as Additional Insured and further providing that the Contractor's policies are primary to any self-insurance or insurance policies procured by the City. The additional insured endorsement shall be in a form at least as broad as ISO form GC 2026. Waiver of subrogation in a form at least as broad as ISO form 2404 shall be provided in favor of the City on all policies obtained by the Contractor in compliance with the terms of this Agreement. Contractor shall be responsible for all deductibles which may exist on any policies obtained in compliance with the terms of this Agreement. All coverage for subcontractors shall be subject to the requirements stated herein. All Certificates of Insurance and endorsements shall be furnished to the City's Representative at the time of execution of this Agreement, attached hereto as **Addendum "A"**, and approved by the City before work commences.

e. Workers Compensation Insurance

1. Pursuant to the requirements set forth in Title 28, Section 110.110 of the Texas Administrative Code, all employees of the Contractor, all employees of any and all subcontractors, and all other persons providing services on the Project must be covered by a worker's compensation insurance policy: either directly through their employer's policy (the Contractor's or subcontractor's policy) or through an executed coverage agreement on an approved Texas Department of Insurance Division of Workers Compensation (DWC) form. Accordingly, if a subcontractor does not have his or her own policy and a coverage agreement is used, Contractors and subcontractors must use that portion of the form whereby the hiring Contractor agrees to provide coverage to the employees of the subcontractor. The portion of the form that would otherwise allow them not to provide coverage for the employees of an independent Contractor may not be used.
2. Workers compensation insurance shall include the following terms:
 - A. Employer's Liability minimum limits of \$1,000,000.00 for each accident/each disease/each employee are required.
 - B. "Texas Waiver of Our Right to Recover From Others Endorsement, WC 42 03 04" shall be included in this policy.
 - C. Texas must appear in Item 3A of the Workers Compensation coverage or Item 3C must contain the following: All States except those listed in Item 3A and the States of NV, ND, OH, WA, WV, and WY.

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

Definitions:

- A. Certificate of coverage (“certificate”) – An original certificate of insurance, a certificate of authority to self-insure issued by the Division of Workers Compensation, or a coverage agreement (DWC-81, DWC-83, or DWC-84), showing statutory workers’ compensation insurance coverage for the person’s or entity’s employees providing services on a project, for the duration of the project.
 - B. Duration of the project - includes the time from the beginning of the work on the project until the Contractor’s/person’s work on the project has been completed and accepted by the governmental entity.
 - C. Persons providing services on the project (“subcontractors” in § 406.096 [of the Texas Labor Code] - includes all persons or entities performing all or part of the services the Contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the Contractor and regardless of whether that person has employees. This includes, without limitation, independent Contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. “Services” include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. “Services” does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.
4. The Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, that meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the Contractor providing services on the project, for the duration of the project.
 5. The Contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.
 6. If the coverage period shown on the Contractor’s current certificate of coverage ends during the duration of the project, the Contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.
 7. The Contractor shall obtain from each person providing services on a project, and provide to the governmental entity:
 - A. a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and
 - B. no later than seven calendar days after receipt by the Contractor, a new certificate of coverage showing extension of coverage, if the coverage

period shown on the current certificate of coverage ends during the duration of the project.

8. The Contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.
9. The Contractor shall notify the governmental entity in writing by certified mail or personal delivery, within 10 calendar days after the Contractor knew or should have known, or any change that materially affects the provision of coverage of any person providing services on the project.
10. The Contractor shall post on each project site a notice, in the text, form and manner prescribed by the Division of Workers Compensation, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.
11. The Contractor shall contractually require each person with whom it contracts to provide services on a project, to:
 - A. Provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, that meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;
 - B. Provide to the Contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;
 - C. Provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 - D. Obtain from each other person with whom it contracts, and provide to the Contractor:
 - ii. A certificate of coverage, prior to the other person beginning work on the project; and
 - ii. A new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 - E. Retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
 - F. Notify the governmental entity in writing by certified mail or personal delivery, within 10 calendar days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
 - G. Contractually require each person with whom it contracts to perform as required by paragraphs (a) - (g), with the certificates of coverage to be provided to the person for whom they are providing services.
12. By signing this contract, or providing, or causing to be provided a certificate of coverage, the Contractor is representing to the governmental entity that all employees of the Contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project; that the coverage will be based on proper reporting of classification codes and payroll amounts; and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the Commission's Division

of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

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

f. Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent, and shall contain the following provisions and warranties:

1. The company is licensed and admitted to do business in the State of Texas.
2. The insurance policies provided by the insurance company are underwritten on forms that have been provided by the Texas State Board of Insurance or ISO.
3. All endorsements and insurance coverages according to requirements and instructions contained herein.
4. The form of the notice of cancellation, termination, or change in coverage provisions to the City of College Station.
5. Original endorsements affecting coverage required by this section shall be furnished with the certificates of insurance.

**ARTICLE XVI
ASSIGNMENT**

16.1 This Agreement and the rights and obligations contained herein may not be assigned by Contractor without the specific prior written approval of the City Council. The Contractor may request assignment of the Contractor's rights or obligations under this Agreement upon written request to the City. City shall take the requested assignment before the City Council within thirty (30) days of receipt of request from Contractor, and will be recommended for approval by staff unless deemed unreasonable.

**ARTICLE XVII
SAFETY**

17.1 The Contractor agrees that all prudent and reasonable safety precautions associated with the performance of this Agreement are a part of the collection techniques for which Contractor is solely responsible. In its execution of its obligations under this Agreement, Contractor shall use all proper skill and care, and Contractor shall exercise all due and proper precautions to prevent injury to any property or person.

**ARTICLE XVIII
AD VALOREM TAXES**

18.1 Contractor agrees to render a list annually of all personal property utilized in its recycling operation services to Brazos County Appraisal District so that said personal property will be subject to ad valorem taxation by the applicable taxing entities.

**ARTICLE XIX
NOTICES**

19.1 All notices required to be given by either party to the other party under the terms of this Contract shall be in writing and, unless written notice of a change of address is given, shall be sent to the parties at the addresses following:

CITY:

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

CONTRACTOR:

Brazos Valley Trash Valet & Recycling
3515B Longmire Dr. #205
College Station, TX 77845

19.2 All notices shall be deemed to have been properly served only if sent by Registered or Certified Mail to the person(s) at the address designated above, or to such other person and/or address that either party subsequently designates as its address for notice. Such designation shall be made by providing thirty (30) days advance written notice to the other party.

**ARTICLE XX
AMENDMENTS**

20.1 It is hereby understood and agreed by the parties to this Agreement that no alteration or variation to the terms of this Agreement, including all addendums hereto, shall be effective unless made in writing, approved and signed by both parties.

**ARTICLE XXI
SEVERABILITY**

21.1 If any section, sentence, clause, or paragraph of this Agreement shall be held to be invalid, illegal or unenforceable by a court 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 invalid, illegal or unenforceable provision(s) of this Agreement with valid legal terms and conditions approximating the original intent of the parties.

**ARTICLE XXII
AUTHORIZATION TO EXECUTE**

22.1 The parties signing this Agreement shall provide adequate proof of their authority to execute this Agreement. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors or assigns as permitted herein.

**ARTICLE XXIII
TERM OF AGREEMENT**

23.1 The term of this Agreement shall be for a period beginning on October 1, 2010 and ending on September 30, 2015.

**ARTICLE XXIV
ACCEPTANCE OF AGREEMENT**

24.1 In accordance with City of College Station City Charter, Section 120, Contractor shall have sixty (60) days, from and after the final passage and approval of this Ordinance to file its written acceptance thereof with the City Secretary within thirty (30) days from the final adoption of this Ordinance, and upon acceptance being filed, this Ordinance shall take effect and be in force from and after the date of its acceptance. Such acceptance shall be typed or printed on the letterhead of Contractor and, with the blank spaces appropriately completed, shall be as follows:

Attn: Public Works Director

_____ acting by and through its undersigned who is acting with his official capacity and authority, hereby accepts the franchise to operate a recycling collection service within the City of College Station, Texas ("College Station") as said franchise is set forth and provided in Ordinance No. _____ (the "Ordinance").
_____ agrees to be bound and governed by each terms, provision and condition of the Ordinance, to accept and to give the benefits provided for in the Ordinance in a business like and reasonable manner and compliance with the Ordinance.

By: _____
Name: _____
Title: _____
Date: _____

24.2 By accepting this Agreement, Contractor represents that it has, by careful examination, satisfied itself as to the nature and location of the work, the character, quality and quantity of work to be performed, the character of the equipment and facilities necessary to fulfill its obligations under this Agreement, as well as the general and local conditions and all other matters that in any way affect the work to be performed under this Agreement.

**ARTICLE XXV
CONTRACTOR'S DILIGENCE AND CARE**

25.1 Contractor shall use reasonable care and diligence in executing its obligations under this Agreement.

**ARTICLE XXVI
ENTIRE AGREEMENT**

26.1 It is understood by the parties that this Agreement constitutes the entire agreement between the parties with respect to collection of recyclable commodities from multifamily apartment and commercial business locations within the City. It is further understood and agreed that there are no other agreements between these parties with regard to the collection and disposal of recyclable commodities from multifamily apartment and commercial business locations within the City.

**ARTICLE XXVII
ENFORCEMENT OF PROVISIONS**

27.1 Failure of any party, at any time, to enforce a provision of this Agreement, shall in no way constitute a waiver of that provision, nor in any way affect the validity of this Agreement, any part hereof, or the right of such party thereafter to enforce each and every provision hereof.

**ARTICLE XXVIII
CAPTIONS AND HEADINGS**

28.1 The captions, section numbers and other such designations appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe, or describe the scope or intent of such sections in this Agreement or in any way affect this Agreement.

**ARTICLE XXIX
PUBLIC HEARING**

29.1 It is hereby found and determined that the meetings at which this ordinance was passed were open to the public, as required by Texas Government Code § 551.001 and that advance public notice of time, place, and purpose of said meetings was given.

First Consideration & Approval on the _____ day of _____ 2010

Second Consideration & Approval on the _____ day of _____ 2010

Third Consideration & Approval on the _____ day of _____ 2010

PASSED, ADOPTED and APPROVED by the City of College Station City Council on this the _____ day of _____ 2010.

**BRAZOS VALLEY TRASH VALET
& RECYCLING**

CITY OF COLLEGE STATION

By: *Ricky Hux*
Printed Name: Ricky Hux
Title: Owner/Member
Date: 8-31-10

By: _____
Mayor
Date: _____

ATTEST:

City Secretary

Date

APPROVED:

City Manager

Date

Alan C. Fazio
City Attorney

Date

Chief Financial Officer

Date

**ADDENDUM A
CERTIFICATES OF INSURANCE AND ENDORSEMENTS**

**9 September 2010
Regular Agenda Item No. 2
Plumbing Code Amendment**

To: Glenn Brown, City Manager

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

Agenda Caption: Public hearing, presentation, possible action, and discussion on an ordinance amending Chapter 3, "Building Regulations", Section 6.E., "Amendments to the 2009 International Plumbing Code", of the Code of Ordinances of the City of College Station, Texas, regarding a solids interceptor for food service facilities.

Relationship to Strategic Goals: III.7, "Reduce the cost of doing business provided it doesn't increase the costs for taxpayers."

Recommendation(s): The Construction Board voted 5-0 to recommend approval at their meeting on 23 August 2010. Staff also recommends approval.

Summary: This ordinance adds an amendment to the City's adopted plumbing code to allow the omission of a solids interceptor for food waste grinders in commercial kitchens when connected to a 1,000 gallon or larger grease trap. This amendment is a result of negotiations with College Station Independent School District (CSISD) staff regarding the development standards that apply to CSISD construction projects. A complete list of proposed development standards for CSISD projects was presented to City Council on 25 March of this year. Council concurred with the proposal and authorized staff to proceed with the amendments related to exemptions for school facilities.

Budget & Financial Summary: N/A

Attachments:

1. Ordinance

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 3, "BUILDING REGULATIONS," SECTION 6.E., "AMENDMENTS TO THE 2009 INTERNATIONAL BUILDING CODE", OF THE CODE OF ORDINANCES OF THE CITY OF COLLEGE STATION, TEXAS, BY AMENDING CERTAIN SECTIONS AS SET OUT BELOW; PROVIDING A SEVERABILITY CLAUSE; DECLARING A PENALTY; AND PROVIDING AN EFFECTIVE DATE.

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

- PART 1: That Chapter 3, "Building Regulations," Section 6.E. "Amendments to the 2009 International Plumbing Code", of the Code of Ordinances of the City of College Station, Texas, be amended as set out in Exhibit "A", attached hereto and made a part of this ordinance for all purposes.
- PART 2: That if any provisions of any section of this ordinance shall be held to be void or unconstitutional, such holding shall in no way effect the validity of the remaining provisions or sections of this ordinance, which shall remain in full force and effect.
- PART 3: That any person, firm, or corporation violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not less than Twenty-five Dollars (\$25.00) nor more than Two 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 9th day of September, 2010.

APPROVED:

Mayor

ATTEST:

City Secretary

APPROVED:



City Attorney

EXHIBIT A

That Chapter 3 "Building Regulations", Section 6.E. "Amendments to the 2009 International Plumbing Code" of the Code of Ordinances of the City of College Station, Texas, is hereby amended to add the following amendment:

20. Section 1003.3.2 (Food waste grinders) is amended by adding the following exception:

“Exception: Food services facilities that require a health department permit are not required to have a solids interceptor when the food waste grinder discharge line connects to a 1,000 gallon, or larger, grease trap.”

**September 9, 2010
Regular Agenda Item No. 3
UDO Amendment for School Facilities**

To: Glenn Brown, City Manager

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

Agenda Caption: Public hearing, presentation, possible action, and discussion on an ordinance amendment to Chapter 12 "Unified Development Ordinance," Article 3 "Development Review Procedures," Article 6 "Use Regulations," Article 7 "General Development Standards," and Article 11 "Definitions," of the College Station Code of Ordinances, specifically related to school facilities.

Relationship to Strategic Goals: N/A

Recommendation(s): At their meeting on August 19th, the Planning and Zoning Commission voted (6-0) to recommend approval of the amendment. Staff recommended approval of the Ordinance amendment.

Summary: In recent years, College Station Independent School District, an entity that is a political subdivision of the State like the City, has generally been required only to comply with the City's development regulations that are grounded in health and life safety (building codes, fire codes, floodplain regulations, etc.). A 2009 opinion from the Attorney General of Texas, however, affirmed the authority of a home rule city to also enforce land development regulations on an independent school district for the purpose of aesthetics and the maintenance of property values. With the acknowledgement by both parties that not all of the City's development standards are fully applicable to projects such as a school, Staff from the City and CSISD reviewed the development standards that would be applicable to CSISD projects. The results of this effort are provided in the attached Proposed Development Standards Table that was presented at the March 25, 2010 Council Workshop. Council concurred with the proposal and authorized Staff to proceed with the amendments related to school facilities. This item seeks to revise the UDO to codify this agreement with some adjustments. In review of the ordinance language, it was determined that public and private schools should be regulated in the same manner so these amendments apply to all schools.

The UDO defines schools under the term "Educational Facility, Primary & Secondary." While a home rule city may regulate the development of public school facilities, it may not totally exclude the location of any of their facilities through zoning. Therefore, UDO Section 6.2.C "Use Table" is proposed to permit ("P") Educational Facility, Primary & Secondary uses in all zoning districts, similar to other institutional uses such as Places of Worship and Governmental Facilities. In Section 11.2 "Defined Terms," the definition of Educational Facility, Primary & Secondary is expanded to add a sentence to include all auxiliary facilities associated with schools.

The exemptions for subdivision and development plat requirements in Section 3.3.A "Applicability" are proposed to also exempt "Political Subdivisions of the State," which are governmental entities such as independent school districts, municipalities,

and counties. The exemption does provide that if these entities voluntarily choose to plat then the applicable platting requirements must be followed.

The remaining amendments necessary to implement the agreement relate to sign regulations, buffer requirements, non-residential architecture (NRA) standards, and outdoor lighting standards. In Section 7.4.E "Exempt Signs," #3 has been added to exempt Primary & Secondary Educational Facilities from the sign regulations, though these facilities are still required to adhere to the limitations of Section 7.4.D "Prohibited Signs." Section 7.6.B "Applicability" for the buffer requirements adds #2.e to exempt Primary & Secondary Educational Facilities that contain a Group "E" occupancy (schools) from buffer requirements. Section 7.9.A "Applicability" has been reformatted for greater clarity and proposes to exempt Primary & Secondary Educational Facilities from the NRA requirements. Section 7.10 "Outdoor Lighting Standards" has been reformatted to add an "Applicability" section and proposes to exempt Primary & Secondary Educational Facilities that contain a Group "E" occupancy (schools) from those requirements. Section 7.10 "Outdoor Lighting Standards" has also been clarified to exempt athletic fields as well as lighting not visible from the perimeter of a development.

Budget & Financial Summary: N/A

Attachments:

1. Proposed Development Standards Table
2. Draft Planning & Zoning Commission Minutes – August 19, 2010
3. Ordinance

Proposed CSISD Development Regulations

Regulation/ Requirement	Waived by Previous Resolution	Currently Addressed in UDO	Requires UDO/Building Code Amendment	Exempt from City Requirements	Compliance Required	Addressed by City Policy or ILA
Development Fees	X					
Land Use Regulations			X	X		
Sign Regulations ¹			X	X		
Buffer Requirements²			X	X		
NRA Requirements			X	X		
Outdoor Lighting Standards			X	X		
Parkland Dedication		X		X		X
Subdivision Regulations ³			X	X		
Utility Lines					X	
Easements					X	
Sidewalks/Bikeways					X	
Adopted Building/Fire Codes⁴			X		X	
Building Setbacks					X	
Height Restrictions (Related to Single- Family Setbacks)					X	
Driveway Access & Location Regulations					X	
Landscaping Requirements⁵					X	
Solid Waste Requirements & Standards					X	
Storm Drainage Requirements & Standards⁶					X	
Traffic Impact Analysis Requirements					X	

1. Provisions in 7.4 D "Prohibited Signs" of the UDO would apply

2. Applies to educational buildings (group "E" as defined by the International Building Code) and accessory uses

3. Should CSISD voluntarily pursue platting, the plat shall comply with the applicable requirements

4. Kitchen food grinders are not required to have a solids interceptor when connected to a 1,000 gallon (or larger) grease interceptor

5. The City would work with CSISD when landscaping and/or screening requirements cause security concerns. Also, CSISD would be exempt from fines associated with landscaping requirements.

6. The City of College Station will provide supporting engineering information for development requiring off-site studies



MINUTES
PLANNING & ZONING COMMISSION
Regular Meeting
August 19, 2010, 7:00 p.m.
City Hall Council Chambers
1101 Texas Avenue
College Station, Texas

COMMISSIONERS PRESENT: Chairman John Nichols, Scott Shafer, Mike Ashfield, Hugh Stearns, Tom Woodfin, and Doug Slack

COMMISSIONERS ABSENT: Paul Greer

CITY COUNCIL MEMBERS PRESENT: Dennis Maloney

CITY STAFF PRESENT: Senior Planners Jennifer Prochazka, Lindsay Kramer, and Jason Schubert, Staff Planner Lauren Hovde, Planning Administrator Molly Hitchcock, City Engineer Alan Gibbs, Assistant Director Lance Simms, Director Bob Cowell, First Assistant City Attorney Carla Robinson, Action Center Representative Kerry Mullins, and Administrative Support Specialist Brittany Caldwell

1. Call meeting to order.

Chairman Nichols called the meeting to order at 7:00 p.m.

Regular Agenda

9. Public hearing, presentation, possible action, and discussion regarding an amendment to the Unified Development Ordinance, Article 3 “Development Review Procedures,” Article 6 “Use Regulations,” Article 7 “General Development Standards,” and Article 11 “Definitions,” related to exemptions for school facilities. **Case # 10-00500158 (JS)**

Senior Planner Jason Schubert presented the ordinance amendment regarding exemptions for school facilities.

There was general discussion amongst the Commission regarding the ordinance amendment.

Chairman Nichols opened the public hearing.

Sherry Ellison, 2705 Brookway Drive, College Station, Texas, stated that she was concerned about buffering, lighting, and height requirements.

Clark Ealy, CSISD, spoke in favor of the ordinance amendment stating that it would make the development process easier for the City and school district.

Chairman Nichols closed the public hearing.

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

11. Adjourn.

Commissioner Woodfin motioned to adjourn the meeting. Commissioner Shafer seconded the motion, motion passed (6-0).

The meeting was adjourned at 9:33 p.m.

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 12, "UNIFIED DEVELOPMENT ORDINANCE," SECTION 3.3A.1.c, "EXEMPTIONS FROM SUBDIVISION PLAT REQUIREMENT," SECTION 3.3A.2.B, "EXEMPTIONS FROM DEVELOPMENT PLAT REQUIREMENT," SECTION 6.2.C, "USE TABLE," SECTION 7.4.E, "EXEMPT SIGNS," SECTION 7.6.B, "APPLICABILITY," SECTION 7.9.A, "APPLICABILITY," SECTION 7.10, "OUTDOOR LIGHTING STANDARDS," AND SECTION 11.2, "DEFINED TERMS", 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 12, "Unified Development Ordinance," Section 3.3A.1.c, "Exemptions from Subdivision Plat Requirement," Section 3.3A.2.b, "Exemptions from Development Plat Requirement," Section 6.2.C, "Use Table," Section 7.4.E, "Exempt Signs," Section 7.6.B, "Applicability," Section 7.9.A, "Applicability," Section 7.10, "Outdoor Lighting Standards," and Section 11.2, "Defined Terms," of the Code of Ordinances of the City of College Station, Texas, be amended as set out in Exhibit "A," Exhibit "B," Exhibit "C," Exhibit "D," Exhibit "E," Exhibit "F," Exhibit "G," and Exhibit "H," attached hereto and made a part of this ordinance for all purposes.

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

PART 3: That any person, firm, or corporation violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not less than Twenty-five Dollars (\$25.00) nor more than Two Thousand Dollars (\$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 9th day of September, 2010.

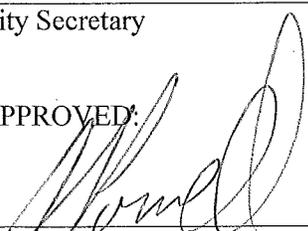
APPROVED:

MAYOR

ATTEST:

City Secretary

APPROVED:



City Attorney

EXHIBIT "A"

That Chapter 12, "Unified Development Ordinance," Section 3.3.A.1.c, "Exemptions from Subdivision Plat Requirement", of the Code of Ordinances of the City of College Station, Texas, is hereby amended to read as follows:

3.3 Plat Review**A. Applicability****1. Subdivision Plat Required****c. Exemptions from Subdivision Plat Requirement**

The following subdivisions are exempt from the Subdivision Plat Requirements:

- 1) A division of land into parts greater than five acres, where each part has access and no public improvement is being dedicated;
- 2) Division of property that results from a governmental entity's land acquisition for public facilities such as expansion of street right-of-way; or
- 3) Any lot or lots forming a part of a subdivision created and recorded prior to July 15, 1970, the effective date of the City of College Station Subdivision Regulations, or prior to the date in which the Subdivision Regulations applied to the property through extension of the City of College Station extraterritorial jurisdiction.
- 4) A division of land performed by a Political Subdivision of the State. Such entities that choose to plat voluntarily shall comply with all of the applicable requirements.

EXHIBIT "B"

That Chapter 12, "Unified Development Ordinance," Section 3.3.A.2.b, "Exemptions from Development Plat Requirement", of the Code of Ordinances of the City of College Station, Texas, is hereby amended to read as follows:

3.3 Plat Review**A. Applicability****2. Development Plat Required****b. Exemptions from Development Plat Requirement**

The following developments are exempt from this Section:

- 1) When an applicant is required to file a Preliminary or Final Subdivision Plat pursuant to other requirements of this Section, a Development Plat is not required in addition to the Subdivision Plat.
- 2) The development of a tract of land within the City limits or the extraterritorial jurisdiction (ETJ) of the City of College Station that meets all of the following criteria is not required to file a Development Plat:
 - (a) The tract is at least five (5) acres;
 - (b) The tract has access; and
 - (c) The development is a single-family home for the use of the property owner or a member of the property owner's family, an

- accessory structure(s) of the home, and/or an accessory structure(s) for the benefit of agricultural uses.
- 3) Development by a Political Subdivision of the State. Such entities that choose to plat voluntarily shall comply with all of the applicable requirements.
 - 4) The Administrator may waive the requirement for a Development Plat within the City limits when no parkland, infrastructure, or easement dedication is required on the subject tract.

EXHIBIT "C"

That Chapter 12, "Unified Development Ordinance," Section 6.2.C, "Use Table", of the Code of Ordinances of the City of College Station, Texas, is hereby amended to read as follows:

6.2 Types of Use

C. Use Table

Except as otherwise specifically provided herein, regulations governing the use of land and structures with the various zoning districts and classifications of planned developments are hereby established as shown in the following Use Table.

1. Permitted Uses

A "P" indicates that a use is allowed by right in the respective district. Such uses are subject to all other applicable regulations of this UDO.

2. Permitted Uses Subject to Specific Standards

A "P*" indicates a use that will be permitted, provided that the use meets the provisions in Section 6.3, Specific Use Standards. Such uses are also subject to all other applicable regulations of this UDO.

3. Conditional Uses

A "C" indicates a use that is allowed only where a conditional use permit is approved by the City Council. The Council may require that the use meet the additional standards enumerated in Section 6.2, Specific Use Standards. Conditional uses are subject to all other applicable regulations of this UDO.

USE TABLE	Residential Districts										Non-Residential Districts												
	A-O	A-OR	R-1	R-1B	R-2**	R-3**	R-4**	R-6**	R-7**	P-MUD**	A-P	C-1	C-2	C-3**	R & D**	M-1	M-2	C-U	WPC**	NG-1**	NG-2**	NG-3**	
Specific Uses																							
RESIDENTIAL																							
Boarding & Rooming House										P													P
Extended Care Facility / Convalescent / Nursing Home										P													P
Dormitory										P													P
Duplex									P														P
Fraternity / Sorority										P													P
Manufactured Home										P													P
Multi-Family										P*													P
Multi-Family built prior to January 2002										P													P
Single-Family Detached										P													P
Townhouse										P													P
PUBLIC, CIVIC AND INSTITUTIONAL																							
Educational Facility, College & University																							
Educational Facility, Indoor Instruction										P													P
Educational Facility, Outdoor Instruction										P													P
Educational Facility, Primary & Secondary										P													P
Educational Facility, Tutoring										P													P
Educational Facility, Vocational / Trade										P													P
Governmental Facilities										P*													P*
Health Care, Hospitals										P													P
Health Care, Medical Clinics										P													P
Parks										P													P
Places of Worship										P*													P*
COMMERCIAL, OFFICE AND RETAIL																							
Agricultural Use, Barn or Stable for Private Stock										P													P
Agricultural Use, Farm or Pasturage										P													P
Agricultural Use, Farm Product Processing										P													P

1 Multi-family residential uses located in stories or floors above retail commercial uses are permitted by right.
 2 Hotels only allowed when accessory to a Country Club development and are limited to a maximum of 15 rooms.
 3 Refer to Section 6.3.Z for Specific Use Standards.

USE TABLE	Residential Districts										Non-Residential Districts												
	A-O	A-OR	R-1	R-1B	R-2**	R-3**	R-4**	R-6**	R-7**	P-MUD**	A-P	C-1	C-2	C-3**	R & D**	M-1	M-2	C-U	WPC**	NG-1**	NG-2**	NG-3**	
Specific Uses																							
KEY:	P = Permitted by Right; P* = Permitted Subject to Specific Use Standards; C = Conditional Use; ** = District with Supplemental Standards (Refer to Article 5).																						
COMMERCIAL, OFFICE AND RETAIL (continued)																							
Animal Care Facility, Indoor											P	P	P	P	P								
Animal Care Facility, Outdoor	P*																						
Art Studio / Gallery											P	P	P	P									
Car Wash																							
Commercial Garden / Greenhouse / Landscape Maint.																							
Commercial Amusements											P	P*	P*										
Conference / Convention Center											P	P	P	P									
Country Club											P	P	P	P									
Day Care, Commercial	P	P	P	P																			
Drive-in / thru window											C	C	C										
Dry Cleaners & Laundry											P*	P*	P	P	P*								
Fraternal Lodge											P	P	P	P									
Fuel Sales											P*	P*	P	P*									
Funeral Homes											P	P	P										
Golf Course or Driving Range											P*	P*	P*										
Health Club / Sports Facility, Indoor											P	P	P	P									
Health Club / Sports Facility, Outdoor											P	P	P										
Hotels											C ²	C ²											
Night Club, Bar or Tavern											C	C											
Offices											P	P	P	P									
Parking as a Primary Use											P	P	C	P	P								
Personal Service Shop											P	P	P	P									
Printing / Copy Shop											P	P	P	P									
Radio / TV Station / Studios											P	P	P	P									
Recreational Vehicle (RV) Park											C ³	C ³											
Restaurants											P	P		P*									

¹ Multi-family residential uses located in stories or floors above retail commercial uses are permitted by right.

² Hotels only allowed when accessory to a Country Club development and are limited to a maximum of 15 rooms.

³ Refer to Section 6.3.Z for Specific Use Standards.

USE TABLE	Residential Districts							Non-Residential Districts															
	A-O	A-OR	R-1	R-1B	R-2**	R-3**	R-4**	R-6**	R-7**	P-MUD**	A-P	C-1	C-2	C-3**	R & D**	M-1	M-2	C-U	WPC**	NG-1**	NG-2**	NG-3**	
Specific Uses																							
KEY:	P = Permitted by Right; P* = Permitted Subject to Specific Use Standards; C = Conditional Use; ** = District with Supplemental Standards (Refer to Article 5).																						
COMMERCIAL, OFFICE AND RETAIL (continued)																							
Retail Sales - Single Tenant over 50,000 SF																							
Retail Sales and Service											P												
Retail Sales and Service - Alcohol																							
Sexually Oriented Business (SOB)	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*
Shooting Range, Indoor																							
Theater																							
Retail Sales, Manufactured Homes																							
Storage, Self Service																							
Vehicular Sales, Rental, Repair and Service																							
Wholesales / Services																							
INDUSTRIAL AND MANUFACTURING																							
Bulk Storage Tanks / Cold Storage Plant																							
Industrial, Light																							
Industrial, Heavy																							
Recycling Facility - Large																							
Salvage Yard																							
Scientific Testing / Research Laboratory																							
Storage, Outdoor - Equipment or Materials																							
Truck Stop / Freight or Trucking Terminal																							
Utility	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*
Warehousing / Distribution																							
Waste Services																							
Wireless Telecommunication Facilities - Intermediate	P*										P*												
Wireless Telecommunication Facilities - Major	C										C	C	C	C	C	C	C	C	C	C	C	C	C
Wireless Telecommunication Facilities - Unregulated	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P

¹ Multi-family residential uses located in stories or floors above retail commercial uses are permitted by right.
² Hotels only allowed when accessory to a Country Club development and are limited to a maximum of 15 rooms.
³ Refer to Section 6.3.Z for Specific Use Standards.

EXHIBIT "D"

That Chapter 12, "Unified Development Ordinance," Section 7.4.E, "Exempt Signs", of the Code of Ordinances of the City of College Station, Texas, is hereby amended to read as follows:

7.4 Signs**E. Exempt Signs**

The following signs are exempt from the requirements of this UDO:

1. Signs that are not easily identified from beyond the boundaries of the lot or parcel on which they are located or from any public thoroughfare or traveled right-of-way, as determined by the Administrator. Such signs are not exempt from the safety regulations contained herein and in City Building and Electrical Codes;
2. Official notices posted by government officials in the performance of their duties: government signs controlling traffic, regulating public conduct, identifying streets, or warning of danger. Bulletin boards or identification signs accessory to government buildings or other buildings are subject to the provisions of this UDO;
3. Signs related to a Primary & Secondary Educational Facility, except that such signs shall adhere to the limitations of Section 7.4.D Prohibited Signs;
4. Temporary signs erected by private property owners for the purpose of warning of a dangerous defect, condition, or other hazard to the public;
5. Non-commercial signs on private property or works of art that in no way identify or advertise a product or business, or by their location and placement impede traffic safety, except as stated in Section 7.4.R, Non-Commercial and Political Signs;
6. Temporary decorations or displays, if they are clearly incidental to and are customarily and commonly associated with any national, local, or religious celebration;
7. Temporary or permanent signs erected by public utilities or construction companies to warn of the location of pipelines, electrical conduits, or other dangers or conditions in public rights-of-way;
8. Non-Commercial Signs carried by a person and not set or affixed to the ground, that in no way identify or advertise a product or business, or by their location and placement impede traffic safety;
9. Commercial Signs carried by a person and not set on or affixed to the ground, provided that the sign is temporary, on-premise, and not used by the person on the premises for more than three (3) consecutive days, more than four (4) times per calendar year;
10. Outdoor advertising display signs for sponsors of charitable events held on public properties. These signs may be displayed for the duration of the event or not more than three days with approval of the City Manager;
11. Flags used as political symbols; and
12. Special District Identification Signs, as defined by Section 11.2 Defined Terms, that in no way advertise a product or a business, or by their location and placement impede traffic safety. Special District Identification Signs must be approved by the appropriate Board or Committee.
13. On-premise and/or off-premise signs where there has been a resolution adopted by the City of College Station or an executed contract with the City of College Station and the display of the signs are for designated locations, a specified time period, and;

- a. Promotes a positive image of the City of College Station for the attraction of business or tourism;
 - b. Depict an accomplishment of an individual or group; or
 - c. Creates a positive community spirit.
- 14.** Temporary signs erected for a neighborhood event sponsored by a neighborhood group that is registered with the City of College Station, provided that the signage is:
- a. Located within the perimeter of the neighborhood;
 - b. Provides the name of the association sponsoring the event on the sign;
 - c. In good repair;
 - d. Allowed up to fourteen (14) days prior to the event; and
 - e. Removed within twenty-four (24) hours of the event.
- 15.** Home Tour Event signs, as defined by Section 11.2 Defined Terms, with a limit of two (2) events per calendar year. Such signage shall:
- a. Be in good repair;
 - b. Display the name of the group sponsoring the event (if applicable);
 - c. Be allowed up to ten (10) consecutive days per event;
 - d. Be removed within twenty-four (24) hours of the end of the event;
 - e. Comply with the following if located within a right-of-way:
 - 1) Located outside the visibility triangle of intersections as defined in Section 7.1.C Visibility at Intersections in all Districts.
 - 2) Permitted by the State Department of Highways and Public Transportation if located on any state highway or roadway.
 - 3) Be constructed of durable material and no sign shall be greater in size than three feet (3') by three feet (3').

EXHIBIT "E"

That Chapter 12, "Unified Development Ordinance," Section 7.6.B, "Applicability", of the Code of Ordinances of the City of College Station, Texas, is hereby amended to read as follows:

7.6 Buffer Requirements

B. Applicability

1. Perimeter buffers shall be provided on building plots abutting developed (platted) or developing (in the process of platting) sites in accordance with the standards of this Section, as outlined in Section 7.6.F, Minimum Buffer Standards. The following shall provide buffers:
 - a. Vacant sites that develop;
 - b. Existing sites when additions, expansions, and/or redevelopments equal or are greater than 25% of the existing improvements;
 - c. Existing sites when cumulative additions, expansions, and/or redevelopments total 25% or more of the existing improvements;
 - d. Existing sites when a change of use intensifies the development in terms of elements such as traffic, processes, noise, water or air pollution, etc.;
 - e. Existing sites with lawfully established non-conforming uses when the use is expanded; and
 - f. Sexually-oriented businesses.

2. Exceptions to the terms of this Section will be made when:

- a. The adjacent developed use is non-conforming;
- b. The adjacent developed use is agricultural;
- c. The Land Use Plan designates the area as Redevelopment;
- d. The property is zoned P-MUD and the buffer requirement was determined through the rezoning process;
- e. The developing use is a Primary or Secondary Educational Facility containing a building with a Group "E" occupancy as defined in the International Building Code; or
- f. Properties in NG and RDD districts.

EXHIBIT "F"

That Chapter 12, "Unified Development Ordinance," Section 7.9.A, "Applicability", of the Code of Ordinances of the City of College Station, Texas, is hereby amended to read as follows:

7.9 Non-Residential Architectural Standards**A. Applicability**

The design standards of this Section shall apply to development, redevelopment, and façade changes to all non-residential buildings including single tenant buildings, multiple tenant buildings, and any grouping of attached or stand alone buildings and associated pad sites.

Uses located within the following districts are exempt from this Section: M-1 Light Industrial, M-2 Heavy Industrial, R&D Research & Development, NG-1 Core Northgate, NG-2 Transitional Northgate, and NG-3 Residential Northgate.

The following uses are exempt from this Section: Churches; Primary & Secondary Educational Facilities; Municipal Industrial facilities; and private utility buildings that are screened from public or private rights-of-way and adjacent properties.

EXHIBIT "G"

That Chapter 12, "Unified Development Ordinance," Section 7.10, "Outdoor Lighting Standards", of the Code of Ordinances of the City of College Station, Texas, is hereby amended to read as follows:

7.10 Outdoor Lighting Standards

It is recognized that no design can eliminate all ambient light from being reflected or otherwise being visible from any given development; however, the following requirements shall be followed to the fullest extent possible in order to limit nuisances associated with lighting and resulting glare.

A. Applicability

All lighting within developments shall meet the requirements of this Section, except that single-family residential, duplexes, Primary & Secondary Educational Facilities containing a building with a Group "E" occupancy as defined in the International Building Code, athletic fields, and lighting not visible from the perimeter of a development are exempted.

B. Site Lighting Design Requirements**1. Fixture (luminaire)**

The light source shall not project below an opaque housing. No fixture shall directly project light horizontally.

2. Light Source (lamp)

Only incandescent, florescent, metal halide, mercury vapor, or color corrected high-pressure sodium may be used. The same type must be used for the same or similar types of lighting on any one site throughout any master-planned development.

3. Mounting

Fixtures shall be mounted in such a manner that the projected cone of light does not cross any property line.

C. Specific Lighting Requirements

1. Façade and flagpole lighting must be directed only toward the façade or flag and shall not interfere with the night-visibility on nearby thoroughfares or shine directly at any adjacent residential use.

2. All lighting fixtures incorporated into non-enclosed structures (i.e., gas pump canopies, car washes, etc.) shall be fully recessed into the underside of such structures.

EXHIBIT "H"

That Chapter 12, "Unified Development Ordinance," Section 11.2, "Defined Terms", of the Code of Ordinances of the City of College Station, Texas, is hereby amended by amending the definition of "Educational, Facility, Primary and Secondary" to read as follows:

11.2 Defined Terms

Educational Facility, Primary and Secondary: Any public or private school licensed by the State which is designed, constructed, or used for education or instruction of students below the age of 20. Auxiliary uses to these schools are included herein.

September 9, 2010
Regular Agenda Item No. 4
UDO Amendment for Taxi Services as a Home Occupation

To: Glenn Brown, City Manager

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

Agenda Caption: Public hearing, presentation, possible action, and discussion on an ordinance amendment to Chapter 12 "Unified Development Ordinance," Section 6.4 "Home Occupations" and Section 11.2 "Defined Terms" of the College Station Code of Ordinances, specifically related to taxicab services.

Relationship to Strategic Goals: Goal II. Neighborhood Integrity

Recommendation(s): At their meeting on August 19th, the Planning and Zoning Commission voted (6-0) to recommend approval of the amendment. Staff recommended approval of the Ordinance amendment.

Summary: Section 6.4.C "Home Occupations" of the Unified Development Ordinance (UDO) currently outlines the standards, exemptions, and prohibitions for home occupations within the City of College Station. Currently, taxicab services are permitted home occupations provided they meet the required exemptions listed in the ordinance.

The proposed ordinance amendment would identify taxicab services as a specific home occupation with additional use standards. The amendment would limit the number of commercial taxicabs that can be parked on-premise, as well as parked on-street as part of a home occupation. Additionally, the amendments would provide a definition of taxicab service that includes not only dispatch but storage of taxicabs.

This proposed ordinance amendment was initiated from public comments received during the Central College Station Neighborhood Plan process and requested as part of the UDO Annual Review by the City Council.

Budget & Financial Summary: N/A

Attachments:

1. Draft Planning & Zoning Commission Regular Meeting Minutes
2. Ordinance



MINUTES
PLANNING & ZONING COMMISSION
Regular Meeting
August 19, 2010, 7:00 p.m.
City Hall Council Chambers
1101 Texas Avenue
College Station, Texas

COMMISSIONERS PRESENT: Chairman John Nichols, Scott Shafer, Mike Ashfield, Hugh Stearns, Tom Woodfin, and Doug Slack

COMMISSIONERS ABSENT: Paul Greer

CITY COUNCIL MEMBERS PRESENT: Dennis Maloney

CITY STAFF PRESENT: Senior Planners Jennifer Prochazka, Lindsay Kramer, and Jason Schubert, Staff Planner Lauren Hovde, Planning Administrator Molly Hitchcock, City Engineer Alan Gibbs, Assistant Director Lance Simms, Director Bob Cowell, First Assistant City Attorney Carla Robinson, Action Center Representative Kerry Mullins, and Administrative Support Specialist Brittany Caldwell

Regular Agenda

8. Public hearing, presentation, possible action, and discussion regarding an amendment to the Unified Development Ordinance, Sections 6.4.C "Home Occupations" and Section 11.2 "Definitions" related to taxicab services. **Case #10-00500136 (LK)**

Senior Planner Lindsay Kramer presented the ordinance amendment regarding taxicab services.

There was general discussion amongst the Commission regarding the ordinance amendment.

Chairman Nichols opened the public hearing.

Sherry Ellison, 2705 Brookway Drive, College Station, Texas and Jason Adams, Maroon Cab, College Station, Texas. Both citizens spoke in favor of the ordinance amendment.

Christian Ede, 1304 Todd Trail, College Station, Texas, spoke in opposition of the ordinance amendment stating that a property owner should be able to park multiple cars in their driveway and that the proposed ordinance would greatly affect his taxi business.

Chairman Nichols closed the public hearing.

Commissioner Slack motioned to recommend approval of the ordinance amendment. Commissioner Stearns second the motion, motion passed (6-0).

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 12, "UNIFIED DEVELOPMENT ORDINANCE," SECTION 6.4.C, "HOME OCCUPATIONS," AND SECTION 11.2, "DEFINED TERMS," 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 12, "Unified Development Ordinance," Section 6.4.C, "Home Occupations," and Section 11.2, "Defined Terms," of the Code of Ordinances of the City of College Station, Texas, be amended as set out in Exhibit "A", attached hereto and made a part of this ordinance for all purposes.

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

PART 3: That any person, firm, or corporation violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not less than Twenty-five Dollars (\$25.00) nor more than Two Thousand Dollars (\$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 9th day of September, 2010.

APPROVED:

MAYOR

ATTEST:

City Secretary

APPROVED:



City Attorney

EXHIBIT "A"

I

That Chapter 12, "Unified Development Ordinance," Section 6.4.C, "Home Occupations," of the Code of Ordinances of the City of College Station, Texas, is hereby amended by adding Section 6.4.C.3, "Taxicab Services" (which will result in the renumbering of the existing Sections 6.4.C.3-4 to Sections 6.4.C.4-5) to read as follows:

3. Taxicab Services

Taxicab services may be permitted as a home occupation provided that no more than two (2) commercial vehicles associated with a taxicab service are parked or stored on- or off-street at any time.

II

That Chapter 12, "Unified Development Ordinance," Section 11.2, "Defined Terms," of the Code of Ordinances of the City of College Station, Texas, is hereby amended to add the following definitions:

11.2 Defined Terms

Taxicab service: Any business associated with the storage or dispatch of vehicles for the transportation of passengers for hire.

Taxicab, Commercial Vehicle: Any motorized passenger vehicle permitted or should be permitted pursuant to the provisions of Chapter 4 of the City of College Station Code of Ordinances.

**September 9, 2010
Regular Agenda Item No. 5
Luther Street Rezoning**

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, specifically rezoning 5.10 acres from M-1 Light Industrial to R-4 Multi-Family for 100 Luther Street West, generally located southeast of the intersection of Luther Street West and Marion Pugh Drive.

Relationship to Strategic Goals: Financially Sustainable City Providing Response to Core Services and Infrastructure, Neighborhood Integrity, and Diverse Growing Economy

Recommendation(s): The Planning and Zoning Commission considered this item at their August 18, 2010 meeting and voted (6-0) to recommend approval of the rezoning request. Staff also recommended approval of this rezoning request.

Summary: The Unified Development Ordinance provides the following review criteria for zoning map amendments:

REVIEW CRITERIA

1. **Consistency with the Comprehensive Plan:** The Comprehensive Plan Future Land Use and Character Map designates the subject tract and surrounding area as Urban. The Comprehensive Plan describes the Urban designation as being for a very intense level of development activity that tends to consist of townhouses, duplexes, and apartments. The subject property is also located within Growth Area V. Within growth areas, an Urban designation may also permit commercial, office, business park, and vertical mixed uses.
2. **Compatibility with the present zoning and conforming uses of nearby property and with the character of the neighborhood:** Much of the property in the immediate vicinity is zoned R-4 Multi-Family and developed as large-scale apartment complexes. Also, approximately 12 acres of the 17.5 acre tract is already zoned R-4 Multi-Family.
3. **Suitability of the property affected by the amendment for uses permitted by the district that would be made applicable by the proposed amendment:** Properties similar to the subject tract in size and location have been developed for multi-family in the immediate area.
4. **Suitability of the property affected by the amendment for uses permitted by the district applicable to the property at the time of the proposed amendment:** The majority of the 17.5 acre tract is currently zoned R-4 Multi-Family. While industrial uses may be logical next to large thoroughfares and rail, industrial uses are not ideal in this location, which is surrounded by residential

development. Also, the portion currently zoned M-1 Light Industrial (5.10 acres) is configured in a way that makes it difficult to be developed for a light industrial use. The M-1 portion is approximately 1,500 feet in length (adjacent to the railroad right-of-way), at a depth of approximately 150 feet. Buffers required for industrial uses would further limit the buildable area by further reducing the depth. Additionally, access to any use in this location could only be obtained through the multi-family portion of the property, making multi-family the most suitable use.

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:** Given the property's limitations, marketability of the M-1 portion of the tract would be difficult.
6. **Availability of water, wastewater, stormwater, and transportation facilities generally suitable and adequate for the proposed use:** The subject tract is located adjacent to an 18-inch water main which runs along Marion Pugh Drive. The subject tract is located adjacent to an 8-inch sanitary sewer main which runs along the northern property line. The property is located in the Bee Creek Tributary "B" drainage basin and is not located within a floodplain. Development of the subject tract will be required to meet the minimum requirements of the City's Storm Water Design Guidelines. The subject tract is located adjacent to Marion Pugh Drive and Holleman Drive, both of which are 2-Lane Major Collectors – Urban Context on the City's Thoroughfare Plan. There is a bike lane proposed on the City's Bicycle, Pedestrian, and Greenways Master Plan for both of these thoroughfares. A Traffic Impact Analysis (TIA) is not required at the zoning stage because of the small size of the requested rezoning area. However, a TIA will be required when the larger area is site planned.

Budget & Financial Summary: N/A

Attachments:

1. Background Information
2. Aerial & Small Area Map (SAM)
3. Draft Planning & Zoning Commission meeting minutes
4. Ordinance

BACKGROUND

NOTIFICATIONS

Advertised Commission Hearing Date: August 19, 2010
 Advertised Council Hearing Dates: September 9, 2010

The following neighborhood organizations that are registered with the City of College Station's Neighborhood Services have received a courtesy letter of notification of this public hearing:

None

Property owner notices mailed: 15
 Contacts in support: None as of date of Staff Report
 Contacts in opposition: Staff has received a letter from a representative of Meadows Point Apartments in opposition to the request due to market saturation and increased competition.
 Inquiry contacts: None as of date of Staff Report

ADJACENT LAND USES

Direction	Comprehensive Plan	Zoning	Land Use
North	Urban	R-6 High Density Multi-Family	Apartments
South	Urban across Holleman Drive (Major Collector)	R-4 Multi-Family	Apartments across Holleman Drive
East	General Commercial, Urban, and Natural Areas across Wellborn Road (Major Arterial)	C-1 General Commercial and R-1 Single Family across Wellborn Road	Small commercial, vacant property and City park across Wellborn Road
West	Urban across Marion Pugh Drive (Major Collector)	R-4 Multi-Family	Apartments across Marion Pugh Drive

DEVELOPMENT HISTORY

Annexation: 1958
Zoning: The existing zoning on the property is already primarily R-4 Multi-Family, however, a strip of M-1 Light Industrial (5.10 acres) exists along the railroad right-of-way. The entirety of the subject tract was zoned for industrial uses upon annexation in 1958. In 1981, a portion of the property was zoned R-2 Duplex. The majority of the property was rezoned in 1982 from M-2 Heavy Industrial, M-1 Light Industrial and R-2

Duplex to R-5 Multi-Family (renamed to R-4 with the adoption of the UDO in 2003).

Final Plat:

The property is not currently platted. The property was legally subdivided as the McCulloch Industrial Area in the past, however, that plat was vacated in 1979.

Site development:

The property is currently vacant, but was historically used as a fertilizer plant and later as storage for the Coca-Cola Company. Structures related to these uses were removed after the uses ceased in the 1980s. The property owner has indicated that any previous contamination on site has been remediated to residential levels.

MINUTES
PLANNING & ZONING COMMISSION
Regular Meeting
August 19, 2010, 7:00 p.m.
City Hall Council Chambers
1101 Texas Avenue
College Station, Texas

COMMISSIONERS PRESENT: Chairman John Nichols, Scott Shafer, Mike Ashfield, Hugh Stearns, Tom Woodfin, and Doug Slack

COMMISSIONERS ABSENT: Paul Greer

CITY COUNCIL MEMBERS PRESENT: Dennis Maloney

CITY STAFF PRESENT: Senior Planners Jennifer Prochazka, Lindsay Kramer, and Jason Schubert, Staff Planner Lauren Hovde, Planning Administrator Molly Hitchcock, City Engineer Alan Gibbs, Assistant Director Lance Simms, Director Bob Cowell, First Assistant City Attorney Carla Robinson, Action Center Representative Kerry Mullins, and Administrative Support Specialist Brittany Caldwell

Regular Agenda

4. Public hearing, presentation, possible action, and discussion regarding a Rezoning from M-1 Light Industrial to R-4 Multi-Family for 5.10 acres located at 101 Luther Street West, generally located southeast of the intersection of Luther Street West and Marion Pugh Drive. **Case #10-00500143 (JP)**

Senior Planner Jennifer Prochazka presented the Rezoning and recommended approval.

There was general discussion amongst the Commission regarding the Rezoning.

Commissioner Stearns expressed concern about the potential of contamination on the property from the fertilizer plant that used to be located there.

Chairman Nichols opened the public hearing.

Rabon Metcalf, RME Consulting, stated that he was available for questions.

Chuck Carroll, American Campus Communities Operating Partnership, stated that any previous contamination from the property being used as a fertilizer plant had been remediated to residential levels.

Chairman Nichols closed the public hearing.

There was general discussion amongst the Commission regarding the Rezoning.

Commissioner Shafer motioned to recommend approval of the Rezoning. Commissioner Stearns seconded the motion, motion passed (6-0).

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 shown 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 9th day of September, 2010

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, described below and shown graphically in Exhibit "B", is rezoned from M-1 Light Industrial to R-4 Multi-Family:

**METES AND BOUNDS DESCRIPTION
OF A
5.10 ACRE TRACT
CRAWFORD BURNETT LEAGUE, A-7
COLLEGE STATION, BRAZOS COUNTY, TEXAS**

METES AND BOUNDS DESCRIPTION OF ALL THAT CERTAIN TRACT OR PARCEL OF LAND LYING AND BEING SITUATED IN THE CRAWFORD BURNETT LEAGUE, ABSTRACT NO. 7, COLLEGE STATION, BRAZOS COUNTY, TEXAS. SAID TRACT BEING A PORTION OF THE REMAINDER OF A CALLED 35.174 ACRE TRACT AS DESCRIBED BY A DEED TO CSL OF TEXAS, INC. RECORDED IN VOLUME 2005, PAGE 11 OF THE OFFICIAL PUBLIC RECORDS OF BRAZOS COUNTY, TEXAS, AND A PORTION OF A CALLED 0.238 ACRE TRACT BEING A PORTION OF LUTHER STREET RIGHT-OF-WAY ABANDONED BY CITY OF COLLEGE STATION ORDINANCE NO. 2806.

SAID TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING AT A 1/2 INCH IRON ROD FOUND ON THE SOUTHWEST LINE OF A 100.00 FOOT WIDE RAILROAD RIGHT-OF-WAY MARKING THE NORTHEAST CORNER OF CALLAWAY SUBDIVISION, PHASE TWO, ACCORDING TO THE PLAT RECORDED IN VOLUME 6869, PAGE 99 OF THE OFFICIAL PUBLIC RECORDS OF BRAZOS COUNTY, TEXAS;

THENCE: S 29° 40' 15" E ALONG THE EXTENSION OF THE SOUTHWEST LINE OF SAID RAILROAD RIGHT-OF-WAY FOR A DISTANCE OF 1615.60 FEET TO A 1/2 INCH IRON ROD SET MARKING THE SOUTHEAST CORNER OF SAID CALLAWAY SUBDIVISION, PHASE TWO, AND THE POINT OF BEGINNING OF THIS HEREIN DESCRIBED TRACT;

THENCE: S 29° 40' 15" E CONTINUING ALONG THE SOUTHWEST LINE OF SAID RAILROAD RIGHT-OF-WAY FOR A DISTANCE OF 1443.50 FEET TO AN "X" SET IN CONCRETE ON THE NORTHWEST LINE OF HOLLEMAN DRIVE (60' R.O.W.) MARKING THE SOUTHEAST CORNER OF THIS HEREIN DESCRIBED TRACT, FOR REFERENCE A 5/8 INCH IRON ROD FOUND ON THE SOUTHEAST LINE OF HOLLEMAN DRIVE MARKING THE NORTH CORNER OF LOT 2, HOLLEMAN ARMS APARTMENTS, BEARS: S 29° 40' 15" E FOR A DISTANCE OF 60.00 FEET;

THENCE: S 59° 54' 45" W ALONG THE NORTHWEST LINE OF HOLLEMAN DRIVE FOR A DISTANCE OF 180.00 FEET, FOR REFERENCE A 1/2 INCH IRON ROD FOUND BEARS: S 59° 54' 45" W FOR A DISTANCE OF 317.72 FEET;

THENCE: N 27° 45' 17" W THROUGH SAID REMAINDER OF 35.174 ACRE TRACT AND SAID 0.238 ACRE TRACT FOR A DISTANCE OF 1402.22 FEET TO THE COMMON LINE OF SAID 0.238 ACRE TRACT AND CALLAWAY SUBDIVISION, PHASE TWO;

THENCE: N 42° 16' 52" E ALONG THE COMMON LINE OF SAID 0.238 ACRE TRACT AND CALLAWAY SUBDIVISION, PHASE TWO, FOR A DISTANCE OF 140.00 FEET TO THE POINT OF BEGINNING CONTAINING 5.10 ACRES OF LAND, MORE OF LESS, AS SURVEYED ON THE GROUND MAY 2010. BEARING SYSTEM SHOWN HEREIN IS BASED ON GRID NORTH AS ESTABLISHED FROM GPS OBSERVATION.

BRAD KERR
REGISTERED PROFESSIONAL
LAND SURVEYOR No. 4502
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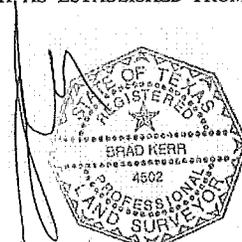
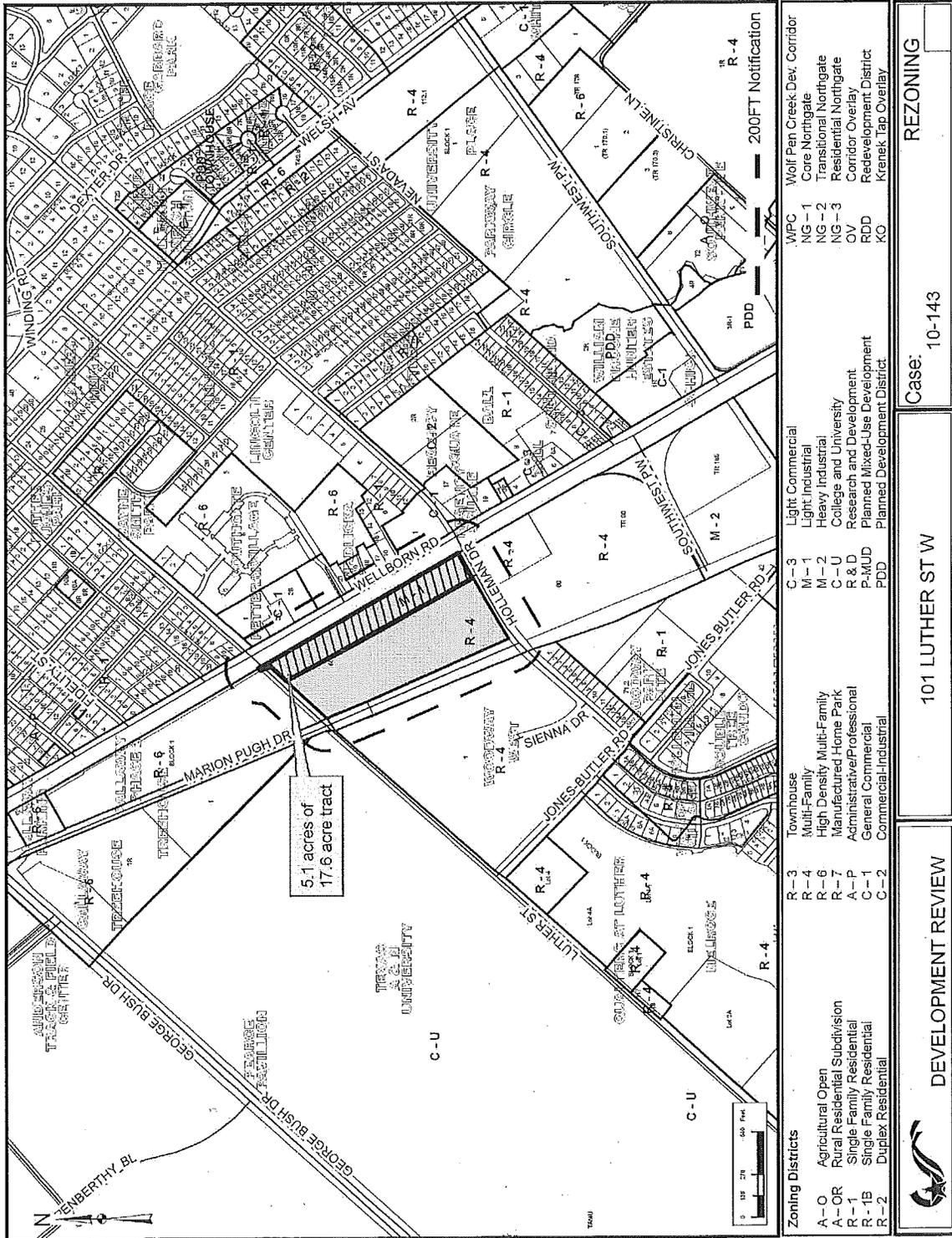


EXHIBIT "B"



September 9, 2010
Regular Agenda Item No. 6
Public Hearing on "Leash Free" Dog Activities at Lick Creek Park

To: Glenn Brown, City Manager

From: David Schmitz, Assistant Director, Parks and Recreation

Agenda Caption: Public hearing, presentation, possible action, and discussion regarding "Leash Free" Dog Activities at Lick Creek Park as requested by the City Council on June 24, 2010.

Relationship to Strategic Goals: V. Green Sustainable City – Focus on natural areas/greenways vs. recreational parks

Recommendation(s): The Parks and Recreation Advisory Board and staff recommend that Lick Creek Park continue to be designated as a "leash free" park as provided for by the City's Code of Ordinances.

Summary: The 515 acre park serves as a preserve for hiking, jogging, cycling, bird watching, equestrian activities, nature study and "leash free" dog activities. Lick Creek Park has been a "leash free" park since February 26, 1998, when City Ordinance No. 2314 was adopted designating it as such. Chapter 1, Section 14, Subsection J of the Code of Ordinances of the City of College Station further states:

"It shall be unlawful for any owner or person in control of any dog to keep or permit the same in or about any park or recreation area unless such dog is kept under restraint at all times by means of a leash, except at Lick Creek Park, which is designated "leash free" with dogs required to be under "voice control" of the owner or person in control; and except in designated dog parks."

The Parks and Recreation Advisory Board at their June 15, 2010 meeting considered a proposed ordinance that included the addition of the City's two dog parks as "leash free" areas to the Code of Ordinances. The issue about the current "leash free" dog operations at Lick Creek Park was heavily discussed. In the end, the Board voted 6 to 2 to recommend adoption of the ordinance to the City Council. The City Council adopted the ordinance at their June 24, 2010 meeting and asked that a public hearing be held as a part of a future City Council meeting to discuss the current "leash free" dog operations at Lick Creek Park.

Budget & Financial Summary: N/A

Attachments:

1. Parks and Recreation Advisory Board Minutes, June 15, 2010

4. **Consideration, discussion, and possible action of minutes from the meeting of May 11, 2010:** Glenn Schroeder made a motion to approve the minutes as submitted, and Doug Becker seconded the motion. The vote was called. All were in favor, and the motion passed unanimously.
5. **Discussion and possible action concerning the Senior Advisory Committee Appointments:** Marci Rodgers, Senior Services Coordinator, reported on the different individuals that applied for the Senior Advisory Committee. The Committee is recommending that Joanna Yeager serve as Chair for one year and Anne Hazen serve as Vice Chair for one year. David Scott moved that the four applications included in the packet be appointed, and Glenn Schroeder seconded the motion. The vote was called. All were in favor, and the motion passed unanimously.

Jody Ford moved to accept the recommendations for Chair and Vice Chair, and George Jessup seconded the motion. The vote was called. All were in favor, and the motion passed unanimously.



6. **Consideration, discussion and possible action concerning the Proposed Ordinance related to Park Vendor Permits and Dogs in Parks:** Marco A. Cisneros stated that the Park Vendor Permits and the Dogs in Parks are included together in one proposed ordinance to help simplify the number of ordinances. Discussion followed regarding this item regarding the "leash free" aspect at Lick Creek Park. Some believed that it was best to keep the dogs on leashes and others would like to keep Lick Creek Park as wild and free as possible.

Kristy Becker said that she runs in all of the parks, and she does not think it is a good idea to have dogs in parks without a leash. She commented that "as a runner" it is very scary to be running and have dogs coming after you. She said that specifically as a part of the running community that uses Lick Creek Park, she points out that there is no one there to listen to her if she yells.

Glenn Schroeder made a recommendation to Council for adoption of the ordinance with Exhibit A and B, with the inclusion of per class/per section to the fees, and Jody Ford seconded the motion. The vote was called. The motion passed with a vote of 6: 2. (Gerard Kyle being absent) Douglas Becker and Billy Hart were in opposition to the recommendation due to the "leash free" aspect at Lick Creek Park related to the dogs in parks portion of the ordinance.

7. **Update and discussion regarding the June 2, 2010 Skate Park Public Meeting:** Mark Savarino with Bleyl and Associates reported on the Skate

September 9, 2010
Regular Agenda Item No. 7
FM 2818 Hike & Bike Trail Phase II

To: Glenn Brown, City Manager

From: Chuck Gilman, P.E., Director of Capital Projects

Agenda Caption: Public Hearing, presentation, possible action and discussion concerning Phase II of the Hike and Bike Trail project along FM 2818 continuing from Welsh Avenue to the Campus Village trail and through Southwest Park.

Relationship to Strategic Goals: Goal IV, Improving Multi Modal Transportation.

Recommendation(s): Staff recommends approval of the plan to move forward with Phase II of the Hike & Bike Trail Completion Project.

Summary: Staff has identified an opportunity to complete the multiuse trail system identified on the Bicycle, Pedestrian, and Greenways Master Plan from Texas Avenue along FM 2818 to Southwest Parkway. The first phase of the Hike & Bike Trail Completion Project, which is currently under construction along FM 2818, will complete the trail segment from Texas Avenue to Welsh Avenue. Phase I is currently under construction and is being delivered under budget.

The Campus Village development under construction at the corner of FM 2818 and FM 2154 is constructing a multiuse path through their property which will begin immediately west of the A&M Consolidated High School property line and end at Southwest Park. Staff feels this short segment of path between Phase I of the Hike and Bike Trail project, which terminates at Welsh, and the Campus Village path is an important connection in the hike and bike network. Staff proposes to use the remaining budget in Phase I of the project to design and construct this segment that will connect Phase I with Campus Village. Additionally, staff is proposing to extend the trail from Campus Village through Southwest Park to Southwest Parkway. Staff proposes to use Parkland dedication funds from Zone 6 for the proposed improvements in Southwest Park. In an effort to maximize the money available for construction of these improvements, Staff is proposing to design these improvements and develop the bidding documents.

The proposed trail aligns with Council's Strategic Goal for improving multi-modal transportation by providing greater multi-modal mobility along the FM 2818 corridor and by providing a parallel route for bicyclist to Wellborn Road, one of the major transportation corridors in the City. The trail will also connect destinations including A&M Consolidated High School, several City parks, business centers, and residential properties that have traditionally been rented by students.

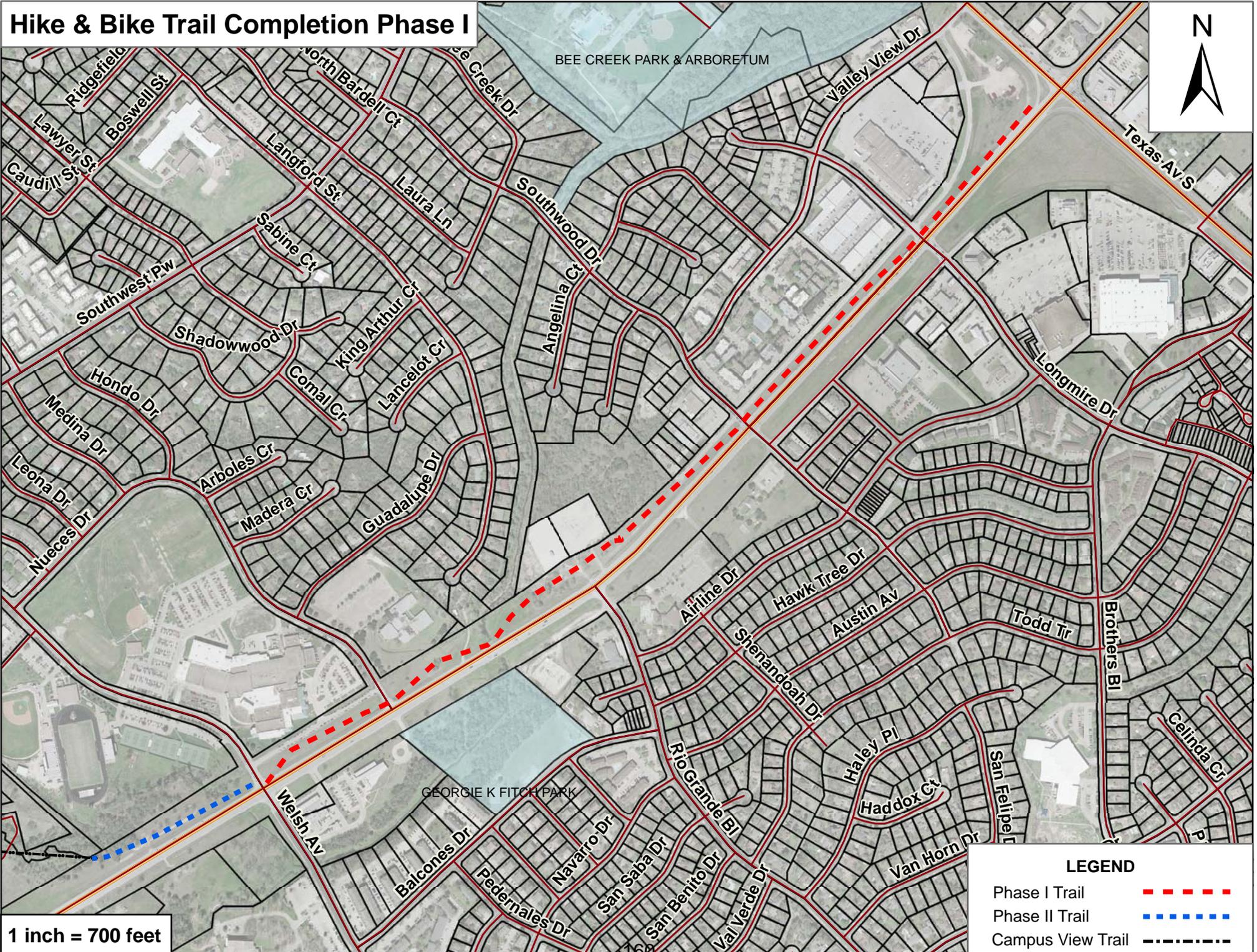
Budget & Financial Summary: Phase I is funded from the 2008 Bond Authorization in the amount of \$1,000,000. Funds in the amount of \$661,818.29 have been committed or expended to date, leaving a balance of \$338,181.71. Funds in the amount of \$77,810 have been budgeted for other expenditures associated with the construction of Phase I, leaving a balance of \$260,371.71.

Funds in the amount of \$258,000 have been budgeted for the development of Southwest Park. Funds in the amount of \$219.54 have been expended to date, leaving a balance of \$257,780.46.

Attachments:

- 1.) Project Map

Hike & Bike Trail Completion Phase I

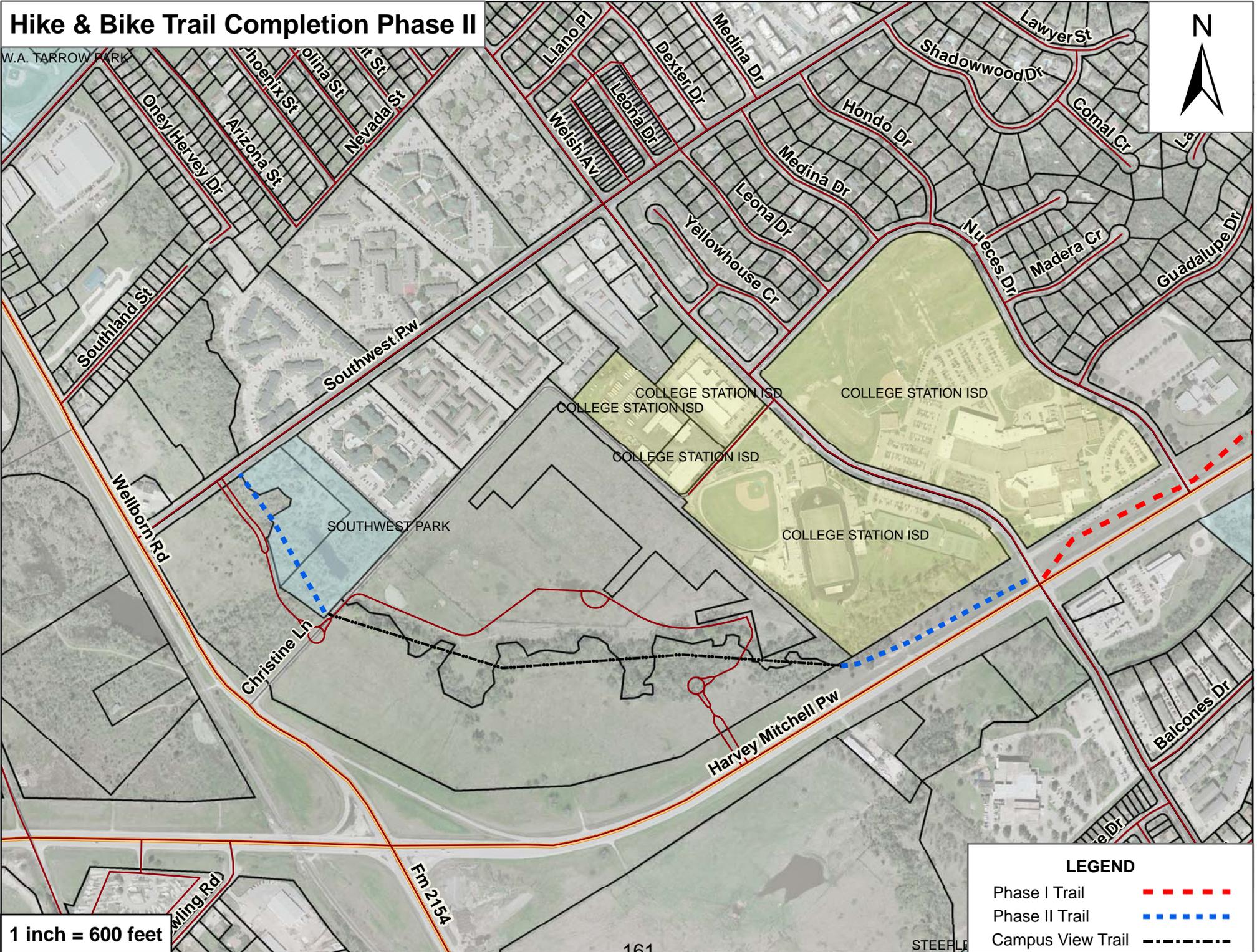


LEGEND

- Phase I Trail 
- Phase II Trail 
- Campus View Trail 

1 inch = 700 feet

Hike & Bike Trail Completion Phase II



1 inch = 600 feet

LEGEND	
Phase I Trail	-----
Phase II Trail	-----
Campus View Trail	-----

**September 9, 2010
Regular Agenda Item No. 8
First Council Meeting in November**

To: Glenn Brown, City Manager

From: City Manager's Office and City Secretary's Office

Agenda Caption: Presentation, possible action, and discussion regarding rescheduling the first City Council meeting in November.

Recommendation(s): N/A

Summary: The scheduled date for the first City Council meeting in November is currently November 11. The meeting on this date conflicts with a number of Veterans Day activities scheduled from late afternoon through the evening. This item is meant to give the Council a chance to look at alternative dates. The dates identified by staff include:

- Tuesday, November 9
- Wednesday, November 10

Meeting on Wednesday, November 10 will allow the Council to canvass the votes from the November 2 election.

Budget & Financial Summary: N/A

Attachments: N/A

September 9, 2010
Regular Agenda Item No. 9
Appointment of Citizens to Various Boards and Committees

To: Glenn Brown, City Manager

From: Sherry Mashburn, City Secretary

Agenda Caption: Presentation, possible action, and discussion regarding selection of applicants to various Citizen Boards and Committees.

CITIZEN MEMBERSHIP

Bicycle, Pedestrian and Greenways Advisory Board

Cemetery Committee

Construction Board of Adjustments and Appeals

Design Review Board

Historic Preservation Committee

Landmark Commission

Medical Corridor Citizen Advisory Committee

Attachments:

Notebook of Citizen Committee applications provided prior to meeting.