

Table of Contents

Agenda	4
Consent No. 2a - Minutes	
Coversheet revised	9
April 12 Workshop.	10
April 12 Regular Meeting	14
Consent No. 2b - Debt Reimbursement Resolution for Dexter Drive Sidewalks	
Coversheet revised	18
Resolution.	19
Consent No. 2c - Debt Reimbursement Resolution for State Highway 30/Copperfield Signal and Intersection Modifications	
Coversheet revised	22
Resolution.	23
Consent No. 2d - 2009 Homeland Security Grant Adjustment Notice	
Coversheet revised	26
Resolution.	27
Consent No. 2e - University Dr and Copperfield Pkwy Signal Advanced Funding Agreement	
Coversheet revised	29
AFA	30
Map	36
Consent No. 2f - TAMUS Easement Agreement Renewal Olsen Road at George Bush Drive	
Coversheet revised	37
Easement Agreement.	38
Consent No. 2g - Rock Prairie Road East Widening Design and ROW Project (ST0417) Real Estate Contract – Rice / Parcel Nos. 5a and 5b	
Coversheet revised	46
Location Map	47
Consent No. 2h - Sale of a Home at 4214 Cripple Creek	
Coversheet revised	48
Sales Contract	49
Location Map	58
Resolution.	59
Consent No. 2i - Purchase Exemption request for the Reynolds Company	
Coversheet revised	60
FY-12 Estimate	61
Consent No. 2j -City Wide Landscape Maintenance Contract Renewals	
Coversheet revised	62
Renewal Letters.	64
Change Orders	74

Consent No. 2k - Pad-Mounted Distribution Transformers Re-Award of Line Item #2	
Coversheet revised	77
Corrected Tabulation	78
Consent No. 2L - East Side Sewer Service Design Contract Award	
Coversheet revised	84
Map	85
Consent No. 2m - Medical Waste Hauling Franchise with Waste Management Healthcare Solutions, Inc.	
Coversheet revised	86
Consent No. 2n - Interlocal Agreement Between Brazos County, The City of College Station, and the City of Bryan for the 2012 Byrne Justice Assistance Grant (JAG) Program Award.	
Coversheet revised	87
Interlocal Agreement	88
Regular No. 1 - Public Hearing on the Old Arrington Road Right-of-Way Abandonment	
Coversheet revised	95
Map 1	96
Map 2	97
Ordinance	98
Ordinance Exhibit	110
Regular No. 2 - Public Hearing on Rezoning for 2849 Barron Road	
Coversheet revised	113
Background	117
Maps	118
Ordinance	121
Draft P&Z Minutes	127
Regular No. 3 - Public Hearing on Rezoning for Foster Avenue Apartments	
Coversheet revised	129
Background	134
Map	135
Ordinance	137
Draft P&Z Minutes	145
Regular No. 4 - Public Hearing on Rezoning for 3182 Holleman Drive South	
Coversheet revised	147
Background	149
Maps	150
Ordinance	152
Draft P&Z minutes	158
Regular No. 5 - Public Hearing on Rezoning for The Barracks II	
Coversheet revised	160
Background	166

Photos & Maps	168
Ordinance	170
Draft P&Z Minutes	176
Regular No. 6 - Public Hearing on Mobile Food Vendor Ordinance Revision	
Coversheet revised	178
Redline Ordinance	179
Ordinance	186
Stakeholder Comments	194
Regular No. 7 - Public Hearing on Northgate Outdoor Dining and Entertainment	
Coversheet revised	196
Redline Code of Ordinances Chapter 12, Section 5.6	198
Redline Code of Ordinances Chapter 1, Section 13	199
Redline Code of Ordinance Chapter 4, Section 4.	201
Ordinances	202
Regular No. 8 - Consider Ordinance Issuing General Obligation Improvement and Refunding Bonds	
Coversheet revised	216
GO and Refunding Ordinance	218
GO and Refunding Debt Issuance 2012	257
Regular No. 9 - Consider Ordinance Issuing Certificates of Obligation	
Coversheet revised	258
CO Ordinance	260
CO Debt Issuance 2012.	298



Mayor

Nancy Berry

Mayor Pro Tem

Dave Ruesink

City Manager

David Neeley

Council members

Blanche Brick

Jess Fields

Karl Mooney

Katy-Marie Lyles

Julie M. Schultz

Agenda
College Station City Council
Regular Meeting
Thursday, April 26, 2012 at 7:00 PM
City Hall Council Chamber, 1101 Texas Avenue
College Station, Texas

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

Presentations:

- Presentation of proclamation proclaiming May as Motorcycle Safety and Awareness Month.
- Presentation, possible action, and discussion proclaiming Pediatric Stroke Awareness Month.

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:
- April 12, 2012 Workshop
 - April 12, 2012 Regular Council Meeting

- b. Presentation, possible action, and discussion regarding approval of a resolution declaring intention to reimburse certain expenditures with proceeds from debt for the Dexter Drive Sidewalk project.
- c. Presentation, possible action, and discussion regarding approval of a resolution declaring intention to reimburse certain expenditures with proceeds from debt for the State Highway 30/Copperfield Signal and Intersection Modifications project.
- d. Presentation, possible action and discussion regarding the approval of a resolution accepting from the Texas Division of Emergency Management (TDEM) the 2009 Homeland Security Grant Adjustment Notice (GAN).
- e. Presentation, possible action, and discussion on an Advanced Funding Agreement (AFA) with the Texas Department of Transportation (TxDOT) to powdercoat new signal poles at the intersection of University Drive and Copperfield as part of TxDOT's project to widen University Drive from SH 6 to FM 158. The estimated cost of the City's participation is not to exceed \$4,000.
- f. Presentation, possible action, and discussion on an easement agreement renewal with the Texas A&M University System for the purpose of operating and maintaining a traffic signal at Olsen Road and George Bush Drive.
- g. Presentation, possible action, and discussion regarding approval of a real estate contract between the City of College Station (Buyer) and Britt Rice (Seller) in the amount of \$60,448.00 for the purchase of right-of-way (2.377 acres) and a public utility easement (1.058 acres) needed for the Rock Prairie Road East Widening Design and Right-of-Way Project.
- h. Presentation, possible action, and discussion regarding a Resolution approving a real estate contract approving a bid received in response to ITB #12-053 for the sale of City property at 4214 Cripple Creek, an affordable home.
- i. Presentation, possible action and discussion to authorize expenditure of funds for FY-12, items exempt from competitive bidding as described in Texas Local Government Code chapter 252.022, to purchase SCADA equipment from the Reynolds Company, not to exceed \$100,000.
- j. Presentation, possible action, and discussion regarding approval of renewals of landscape maintenance contracts to multiple vendors, and approval of change orders to add additional sites to the contracts, to Green Teams for \$266,629.22, to Rainbow Gardens for \$90,252.00, to Landscape USA for \$50,205.00, to Roots for \$12,240.00, and to ProGreen for \$81,728.00, in a total amount of \$508,434.22.
- k. Presentation, possible action and discussion regarding the cancellation of award, of fifteen (15) 50 KVA Padmount Transformers, in the amount of \$31,650.00 to Texas Electric Cooperatives, and approval of new award to HD Supply Utilities in the amount of \$31,755.00.
- l. Presentation, possible action, and discussion regarding a design contract with Jones & Carter, Inc., in the amount of \$204,000, for design of the East Side Sewer Service Project.
- m. Presentation, possible action and discussion on the third and final of three readings of a non-exclusive franchise agreement with Waste Management Health Care Solutions, Inc. for the purpose of collecting and disposing treated and untreated medical waste from various health care related facilities.

- n. Presentation, possible action, and discussion on an inter-local agreement (ILA) with Brazos County and the City of Bryan for the purpose of application and acceptance of a U.S. Department of Justice, 2012 Justice Assistance Grant (JAG).

Regular Agenda

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

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

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

1. Public Hearing, presentation, possible action, and discussion approving an ordinance vacating and abandoning a 1.18 Acre portion of Old Arrington Road Right-of-Way, extending 1,000 feet, more or less, from the northwest corner of a 5.53 acre tract in the SW Robertson League, A-202 recorded in Volume 8361, Page 279 to the northwest corner of a 2.445 acre tract in the SW Robertson League, A-202 recorded in Volume 9338, Page 178 of the Official Records of Brazos County, Texas.
2. Public Hearing, presentation, possible action, and discussion on a Rezoning from PDD Planned Development District to PDD Planned Development District, for a rezoning from PDD to PDD for 3.19 acres located at 2849 Barron Road, generally located at the corner of Barron Road and SH 40, North of the Sonoma Subdivision.
3. Public Hearing, presentation, possible action, and discussion regarding a zoning amendment request from R-6 High-Density Multi-Family Residential to PDD Planned Development District for 0.73 acre on Lots 9 and 10, Block 3 of the College Hills Estates Subdivision located at 1024 and 1026 Foster Avenue, generally located at the intersection of Foster Avenue and Francis Drive.
4. 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 for 5.379 acres within University Heights Subdivision Phase 5 located at 3182 Holleman Drive South, generally located north of Las Palomas Subdivision.
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 for 108.88 acres located at 3100 Haupt Road, generally located between Old Wellborn Road and Holleman Drive South, North of the Buena Vida Subdivision.

6. Public Hearing, presentation, possible action, and discussion regarding an amendment to the Code of Ordinances, Chapter 4 "Business Regulations," related to Mobile Food Vendors.
7. Public Hearing, presentation, possible action, and discussion regarding an ordinance amending Chapter 12, "Unified Development Ordinance", Section 5.6 "Design Districts", B "Northgate Districts", 13 "Outside Storage And Display Standards", of the Code of Ordinances of the City of College Station.
 - Public Hearing, presentation, possible action, and discussion regarding an ordinance amending Chapter 4, "Business Regulations" By adding Section 21 "Northgate Outdoor Dining And Entertainment", to the Code of Ordinances of the City of College Station.
 - Public Hearing, presentation, possible action, and discussion regarding an ordinance amending Chapter 1, "General Provisions" By Amending Section 13 "Alcoholic Beverages", B. "Possession And Consumption Of Alcoholic Beverages In Northgate Central Business District", of the Code of Ordinances of the City of College Station.
 - Public Hearing, presentation, possible action, and discussion regarding an ordinance amending Chapter 4, "Business Regulations" By Amending Section 4 "Carnivals, Circuses, Menageries, Sideshows, Concession, And Special Events", of the Code of Ordinances of the City of College Station.
8. Presentation, possible action and discussion on an ordinance authorizing the issuance and sale of up to \$38,000,000 in "City of College Station, Texas General Obligation Improvement and Refunding Bonds, Series 2012"; delegating the authority to certain City Officials to execute certain documents relating to the sale of the Bonds; approving and authorizing instruments and other procedures relating to said bonds; and enacting other provisions relating to the subject.
9. Presentation, possible action and discussion on an ordinance authorizing the issuance and sale of up to \$17,400,000 in "City of College Station, Texas Certificates of Obligation, Series 2012"; delegating the authority to certain City Officials to execute certain documents relating to the sale of the certificates; approving and authorizing instruments and procedures relating to the certificates; and enacting other provisions relating to the subject.
10. Adjourn.

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

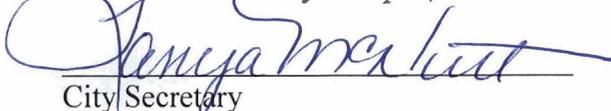
APPROVED:



City Manager

Notice is hereby given that a Regular Meeting of the City Council of the City of College Station, Texas will be held on the Thursday, April 26, 2012 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 20th day of April, 2012 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 April 20, 2012 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 _____, 2012 By _____

Subscribed and sworn to before me on this the ____ day of _____, 2012.

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.

April 26, 2012
City Council Consent Agenda Item No. 2a
City Council Minutes

To: David Neeley, City Manager

From: Sherry Mashburn, City Secretary

Agenda Caption: Presentation, possible action, and discussion of minutes for:

- April 12, 2012 Workshop
- April 12, 2012 Regular Council Meeting

Attachments:

- April 12, 2012 Workshop
- April 12, 2012 Regular Council Meeting

MINUTES OF THE CITY COUNCIL WORKSHOP
CITY OF COLLEGE STATION
APRIL 12, 2012

STATE OF TEXAS §
 §
COUNTY OF BRAZOS §

Present:

Nancy Berry, Mayor

Council:

Blanche Brick
Jess Fields
Karl Mooney
Katy-Marie Lyles
Julie Schultz
Dave Ruesink

City Staff:

David Neeley, City Manager
Kathy Merrill, Deputy City Manager
Frank Simpson, Deputy City Manager
Carla Robinson, City Attorney
Sherry Mashburn, City Secretary
Tanya McNutt, Deputy City Secretary

1. 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 5:00 p.m. on Thursday, April 12, 2012 in the Council Chambers of the City of College Station City Hall, 1101 Texas Avenue, College Station, Texas 77842.

2. Executive Session

In accordance with the Texas Government Code §551.071-Consultation with Attorney and §551.087-Economic Incentive Negotiation, the College Station City Council convened into Executive Session at 5:00 p.m. on Thursday, April 12, 2012 in order to continue discussing matters pertaining to:

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

- City of Bryan's application with TCEQ for water & sewer permits in Westside/Highway 60 area, near Brushy Water Supply Corporation to decertify City of College Station and certify City of Bryan
- Chavers et al v. Tyrone Morrow et al, No. 10-20792; Chavers v. Randall Hall et al, Case No. 10 CV-3922
- College Station v. Star Insurance Co., Civil Action No. 4:11-CV-02023
- Shirley Maguire and Holly Maguire vs. City of College Station, Cause No. 11-0025 16-CV-272, in the 272nd District Court of Brazos County, Texas
- Tracy Lynn Sheets, City of College Station (Intervener) v. Get Lucky, L.L.C. d/b/a Lux Nightclub and Alex Taylor Ford

B. Consultation with Attorney to seek legal advice; to wit:

- Legal issues related to abandonment of right-of-way in the Northgate area

C. Deliberation on economic development negotiations; to wit:

- Behavioral healthcare facility

The Executive Session adjourned at 6:05 p.m. on Thursday, April 12, 2012.

3. Take action, if any, on Executive Session.

No action was required from Executive Session.

4. Presentation of Proclamation declaring April 14-20, 2012 as Money Week Brazos Valley.

The Mayor and Council presented Ken Fogle, United Way Board President, with a proclamation declaring April 14-20 as Money Week Brazos Valley.

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

No items were pulled for additional clarification. Councilmember Fields stated he wanted to pull item 2j for a separate vote.

6. Presentation, possible action, and discussion relating to receiving the annual audit reports and Comprehensive Annual Financial Report (CAFR) for the fiscal year ended September 30, 2011.

Jeff Kersten, Executive Director of Fiscal Services, presented the CAFR for FY 11. He reported that our net assets \$410,669,001 with a \$7,937,360 increase from last year. Unrestricted net assets are \$62,908,795 and restricted net assets are \$27,153,738. Most of our net assets are capital assets (\$320,606,468). Ingram Wallis & Co. is the City's external auditor. Mr. Wallis commended staff for their assistance in getting the audit done. Their opinion is unqualified, the highest level of assurance. They presented the report to the Audit Committee on March 26, and the Audit Committee recommends Council accept the reports and CAFR.

MOTION: Upon a motion made by Councilmember Fields and a second by Councilmember Mooney, the City Council voted seven (7) for and none (0) opposed, to accept the annual audit report and CAFR. The motion carried unanimously.

7. Presentation, possible action, and discussion regarding changing the date of the May 10th Council Meeting to Monday, May 14th.

Council consensus was to move the meeting to Monday, May 14, at the regular times.

8. Council Calendar

- **April 13 Emerging Technologies Building Dedication Ceremony at the Corner of North Bizzell Street and University Drive, 2:00 p.m.**
- **April 13 Mosbacher Institute presents Robert W. Pease, President CEO, Motiva Enterprises at Annenberg Presidential Conference Center, 4:00 p.m.**
- **April 13 Citizen Fire Academy Alumni Annual picnic, Veterans Park - American Pavilion 6:00 pm**
- **April 19 BCS Chamber of Commerce - Business After Hours at Vineyard Court - 1500 George Bush Drive, 5:30 p.m.**
- **April 19 P&Z Workshop Meeting in Council Chambers at 6:00 p.m. (Jess Fields, Liaison)**
- **April 26 City Council Executive/Workshop/Regular Meeting at 5:00, 6:00 and 7:00 p.m.**

Council reviewed the Council calendar.

9. 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 Fields asked to revisit the tree ordinance. There was no consensus.

10. Discussion, review and possible action regarding the following meetings: Animal Shelter Board, Arts Council of the Brazos Valley, Arts Council Sub-committee, Audit Committee, Bicycle, Pedestrian, and Greenways Advisory Board, Brazos County Health Dept., Brazos Valley Council of Governments, Brazos Valley Wide Area Communications Task Force, BVSWMA, BVWACS, Cemetery Committee, Code Review Committee, Convention & Visitors Bureau, Design Review Board, Historic Preservation Committee, Interfaith Dialogue Association, Intergovernmental Committee, Joint Neighborhood Parking Taskforce, Joint Relief Funding Review Committee, Landmark Commission, Library Board, 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, Zoning Board of Adjustments.

Mayor Berry reported there was a COG meeting this week. Senator Kay Bailey Hutchison was the speaker.

Councilmember Lyles reported on the Brazos County Health Department.

Councilmember Ruesink reported on a student visit from Japan for Sister Cities. They are also firming up the trip to Salamanca in May.

11. Adjournment

MOTION: There being no further business, Mayor Berry adjourned the workshop of the College Station City Council at 6:50 p.m. on Thursday, April 12, 2012.

Nancy Berry, Mayor

ATTEST:

Sherry Mashburn, City Secretary

MINUTES OF THE REGULAR CITY COUNCIL MEETING
CITY OF COLLEGE STATION
APRIL 12, 2012

STATE OF TEXAS §
 §
COUNTY OF BRAZOS §

Present:

Nancy Berry

Council:

Blanche Brick
Jess Fields
Karl Mooney
Katy-Marie Lyles
Julie Schultz
Dave Ruesink

City Staff:

David Neeley, City Manager
Kathy Merrill, Deputy City Manager
Frank Simpson, Deputy City Manager
Carla Robinson, City Attorney
Sherry Mashburn, City Secretary
Tanya McNutt, Deputy City Secretary

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 7:01 p.m. on Thursday, April 12, 2012 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.

Citizen Comments

Gary Ives, 3943 Blue Jay Court, reported that his homeowners association voted to dedicate their Lick Creek drainage area to the City for the purpose of building the Lick Creek Greenway Trail through their neighborhood. The results of the vote were 58.8% favoring the route through the creek area, and 41.2% along the street rights-of-way. He noted over 86% of the 196 homeowners voted. He stated the Board is empowered to convey this land to the City for this purpose, and they have the mandate from the membership to do so. He also noted the vote is

under challenge by 20 concerned homeowners in Small Claims Court. The Board looks forward to working with City staff on a mutually acceptable conditional dedication agreement that would address everyone's concerns.

Olivia Tannery, 104 George Bush, presented the CAN program (Checkpoints At Northgate). The purpose of the program is to provide safe transportation during late night hours to make it a safer environment for students and community.

Melissa Smith, 614 Holleman, reported on Carpool, founded in 1999. Carpool is a non-profit, judgment-free way home. Last year, Carpool provided 199,000 safe rides home for all students.

CONSENT AGENDA

2a. Presentation, possible action, and discussion of minutes for:

- **March 22, 2012 Executive Session**
- **March 22, 2012 Workshop and Regular Council Meeting**

2b. Presentation, possible action and discussion on Resolution 04-12-12-2b, approving a Construction Contract (12-145) to Kieschnick General Contractors, in the amount of \$129,945.00 for the Fleet Wash Rack Improvements Project.

2c. Presentation, possible action, and discussion regarding Resolution 04-12-12-2c, approving a construction contract with Brazos Paving, Inc., in the amount of \$182,629.35, for the construction of the College Main Street from the city limit line to 80 feet south of Spruce Street.

2d. Presentation, possible action and discussion on the Renewal of Electric Annual Construction Contract #10-121, Bid #10-31, with H&B Construction for \$884,737.98 and approval of Resolution 04-12-12-2d, declaring intention to reimburse certain expenditures with proceeds from debt.

2e. Presentation, possible action and discussion on Resolution 04-12-12-2e, modifying the public engagement process for transportation capital improvement projects.

2f. Presentation, possible action, and discussion regarding award of contract for Janitorial Supplies. This is a contract with ProSTAR Industries in the amount of \$58,654.66.

2g. Presentation, possible action and discussion on the second of three readings of a non-exclusive franchise agreement with Waste Management Health Care Solutions, Inc. for the purpose of collecting and disposing treated and untreated medical waste from various health care related facilities.

2h. Presentation, possible action, and discussion to approve the amendment to the original contract with First Southwest Company in an amount not to exceed \$175,000 for financial advisory services.

2i. Presentation, possible action and discussion on a bid award for the purchase of various pad-mounted distribution transformers maintained in inventory to HD Supply Utilities \$43,692; Texas Electric Cooperatives \$31,650; and Wesco \$15,153 for a total of \$90,495.00.

2j. Presentation, possible action, and discussion regarding the addition of clarifying language to the Reconstruction Program guidelines.

Item 2j was pulled for a separate vote.

MOTION: Upon a motion made by Councilmember Lyles and a second by Councilmember Schultz, the City Council voted seven (7) for and none (0) opposed, to approve the Consent Agenda, less item 2j. The motion carried unanimously.

(2j)MOTION: Upon a motion made by Councilmember Mooney and a second by Councilmember Lyles, the City Council voted six (6) for and one (1) opposed, with Councilmember Fields voting against, to approve the addition of clarifying language to the Reconstruction Program guidelines. The motion carried.

REGULAR AGENDA

1. Public Hearing, presentation, possible action, and discussion approving Ordinance 2012-3401, vacating and abandoning:

• 0.58 acre portion of a variable width public utility easement, which is located on portions of Lots 2, 3 and 4 of the Century Hill Development Subdivision,

• 0.19 acre, 20-foot wide public utility easement, which is located on portions of Lots 1 and 2 of the Century Hill Development Subdivision,

• 0.08 acre portion of a 20-foot wide public utility easement, which is located on a portion of Lot 7 of the Century Hill Development Subdivision, and

• 1,652 square foot portion of a 10-foot wide public waterline easement, which is located on a portion of Lot 7 of the Century Hill Development Subdivision

At approximately 7:12 p.m. Mayor Berry opened the Public Hearing.

Manuel Gonzalez, 1506 Andover Court, signed up, but did not speak at this time.

Joe Schultz, 2730 Longmire, signed up, but did not speak at this time.

There being no further comments, the Public Hearing was closed at 7:12 p.m.

MOTION: Upon a motion made by Councilmember Mooney and a second by Councilmember Lyles, the City Council voted six (6) for and none (0) opposed, with Councilmember Schultz recusing herself, to adopt Ordinance 2012-3401, vacating and abandoning 0.58 acre portion of a variable width public utility easement, which is located on portions of Lots 2, 3 and 4 of the Century Hill Development Subdivision; a 0.19 acre, 20-foot wide public utility easement, which is located on portions of Lots 1 and 2 of the Century Hill Development Subdivision; a 0.08 acre portion of a 20-foot wide public utility easement, which is located on a portion of Lot 7 of the

Century Hill Development Subdivision; and a 1,652 square foot portion of a 10-foot wide public waterline easement, which is located on a portion of Lot 7 of the Century Hill Development Subdivision. The motion carried.

2. Presentation, possible action, and discussion regarding approval of the Owner Agreement for the Home Reconstruction Loan Program activity at 1017 Fairview.

MOTION: Upon a motion made by Councilmember Lyles and a second by Councilmember Schultz, the City Council voted six (6) for and one (1) opposed, with Councilmember Fields voting against, to approve the Owner Agreement for the Home Reconstruction Loan Program activity at 1017 Fairview. The motion carried.

3. Adjournment.

MOTION: There being no further business, Mayor Berry adjourned the Regular Meeting of the City Council at 7:24 p.m. on Thursday, April 12, 2012.

Nancy Berry, Mayor

ATTEST:

Sherry Mashburn, City Secretary

April 26, 2012
Consent Agenda Item No. 2b
Debt Reimbursement Resolution for
Dexter Drive Sidewalks

To: David Neeley, City Manager

From: Jeff Kersten, Executive Director, Business Services

Agenda Caption: Presentation, possible action, and discussion regarding approval of a resolution declaring intention to reimburse certain expenditures with proceeds from debt for the Dexter Drive Sidewalk project.

Recommendation(s): Staff recommends approval of the resolution declaring intention to reimburse certain expenditures with proceeds from debt.

Summary: The Dexter Drive Sidewalk project will be completed using sidewalk funds authorized as part of the 2008 General Obligation Bond program. It is anticipated that the project cost will be \$200,000. The sidewalks will be along the west side of Dexter Drive from Park Place south to Winding Road.

It is anticipated that long term debt will be issued for this project. An engineering contract for this project has been approved by the City Manager and expenses on this project have begun. On projects for which the expenditures will occur prior to the debt issue, a resolution declaring intention to reimburse certain expenditures with proceeds from debt must be adopted within 60 days of expenditure on the project.

Budget & Financial Summary: The "Resolution Declaring Intention to Reimburse Certain Expenditures with Proceeds from Debt" is necessary for this item because the long term debt has not been issued for the project. This debt is scheduled to be issued later this fiscal year.

Attachments:

1. Resolution Declaring Intention to Reimburse Certain Expenditures with Proceeds from Debt

RESOLUTION NO. _____

RESOLUTION DECLARING INTENTION TO REIMBURSE CERTAIN EXPENDITURES WITH
PROCEEDS FROM DEBT

WHEREAS, the City of College Station, Texas (the "City") is a home-rule municipality and political subdivision of the State of Texas;

WHEREAS, the City expects to pay expenditures in connection with the design, planning, acquisition and construction of the projects described on Exhibit "A" hereto (collectively, the "Project") prior to the issuance of obligations by the City in connection with the financing of the Project from available funds;

WHEREAS, the City finds, considers, and declares that the reimbursement of the City for the payment of such expenditures will be appropriate and consistent with the lawful objectives of the City and, as such, chooses to declare its intention, in accordance with the provisions of Section 1.150-2 of the Treasury Regulations, to reimburse itself for such payments at such time as it issues obligations to finance the Project;

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

Section 1. The City reasonably expects it will incur debt, as one or more series of obligations, with an aggregate maximum principal amount not to exceed \$200,000, for the purpose of paying the aggregate costs of the Project.

Section 2. All costs to be reimbursed pursuant hereto will be capital expenditures. No tax-exempt obligations will be issued by the City in furtherance of this Statement after a date which is later than 18 months after the later of (1) the date the expenditures are paid or (2) the date on which the property, with respect to which such expenditures were made, is placed in service.

Section 3. The foregoing notwithstanding, no tax-exempt obligation will be issued pursuant to this Statement more than three years after the date any expenditure which is to be reimbursed is paid.

PASSED AND APPROVED THIS 26th DAY OF APRIL, 2012.

Nancy Berry, Mayor

ATTEST:

Sherry Mashburn, City Secretary

(Seal)

APPROVED:



McCall, Parkhurst & Horton L.L.P.
Bond Counsel

Exhibit "A"

The projects to be financed that are the subject of this Statement are:

Dexter Drive Sidewalk Improvements

April 26, 2012
Consent Agenda Item No. 2c
Debt Reimbursement Resolution for
State Highway 30/Copperfield Signal and Intersection Modifications

To: David Neeley, City Manager

From: Jeff Kersten, Executive Director, Business Services

Agenda Caption: Presentation, possible action, and discussion regarding approval of a resolution declaring intention to reimburse certain expenditures with proceeds from debt for the State Highway 30/Copperfield Signal and Intersection Modifications project.

Recommendation(s): Staff recommends approval of the resolution declaring intention to reimburse certain expenditures with proceeds from debt.

Summary: The State Highway 30/Copperfield Signal and Intersection Modifications project will be completed using traffic signal funds authorized as part of the 2003 and 2008 General Obligation Bond programs. It is anticipated that the project cost will be \$777,000.

It is anticipated that long term debt will be issued for this project. An engineering contract for this project has been approved by the City Manager and expenses on this project have begun. On projects for which the expenditures will occur prior to the debt issue, a resolution declaring intention to reimburse certain expenditures with proceeds from debt must be adopted within 60 days of expenditure on the project.

Budget & Financial Summary: The "Resolution Declaring Intention to Reimburse Certain Expenditures with Proceeds from Debt" is necessary for this item because a portion of the long term debt has not been issued for the project. This debt is scheduled to be issued later this fiscal year.

Attachments:

1. Resolution Declaring Intention to Reimburse Certain Expenditures with Proceeds from Debt

RESOLUTION NO. _____

RESOLUTION DECLARING INTENTION TO REIMBURSE CERTAIN EXPENDITURES WITH
PROCEEDS FROM DEBT

WHEREAS, the City of College Station, Texas (the "City") is a home-rule municipality and political subdivision of the State of Texas;

WHEREAS, the City expects to pay expenditures in connection with the design, planning, acquisition and construction of the projects described on Exhibit "A" hereto (collectively, the "Project") prior to the issuance of obligations by the City in connection with the financing of the Project from available funds;

WHEREAS, the City finds, considers, and declares that the reimbursement of the City for the payment of such expenditures will be appropriate and consistent with the lawful objectives of the City and, as such, chooses to declare its intention, in accordance with the provisions of Section 1.150-2 of the Treasury Regulations, to reimburse itself for such payments at such time as it issues obligations to finance the Project;

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

Section 1. The City reasonably expects it will incur debt, as one or more series of obligations, with an aggregate maximum principal amount not to exceed \$800,000, for the purpose of paying the aggregate costs of the Project.

Section 2. All costs to be reimbursed pursuant hereto will be capital expenditures. No tax-exempt obligations will be issued by the City in furtherance of this Statement after a date which is later than 18 months after the later of (1) the date the expenditures are paid or (2) the date on which the property, with respect to which such expenditures were made, is placed in service.

Section 3. The foregoing notwithstanding, no tax-exempt obligation will be issued pursuant to this Statement more than three years after the date any expenditure which is to be reimbursed is paid.

PASSED AND APPROVED THIS 26th DAY OF APRIL, 2012.

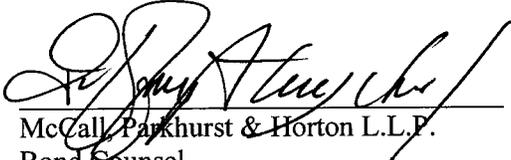
Nancy Berry, Mayor

ATTEST:

Sherry Mashburn, City Secretary

(Seal)

APPROVED:



McCall Parkhurst & Horton L.L.P.
Bond Counsel

Exhibit "A"

The projects to be financed that are the subject of this Statement are:

Traffic signal and related intersection modifications at State Highway 30 and Copperfield.

April 26, 2012
Consent Agenda Item No. 2d
2009 Homeland Security Grant Adjustment Notice

To: David Neeley, City Manager

From: Robert Alley, Fire Chief

Agenda Caption: Presentation, possible action and discussion regarding the approval of a resolution accepting from the Texas Division of Emergency Management (TDEM) the 2009 Homeland Security Grant Adjustment Notice (GAN).

Recommendation(s): Staff recommends acceptance of the grant adjustment notice from Texas Division of Emergency Management.

Summary: The City of College Station has been awarded the 2009 Homeland Security program grant of \$82,000.00 through TDEM. The city has expended \$81,973.50 on equipment for the Fire and Police Departments. The remaining \$26.50 will be returned to the State Administrating Agency for redistribution.

Budget & Financial Summary: This is an equipment grant and the City of College Station has no matching funds committed.

Attachments:
2009 Homeland Security Grant Adjustment Notice
Resolution Number: _____

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COLLEGE STATION, TEXAS, APPROVING A 2009 GRANT ADJUSTMENT NOTICE IN THE AMOUNT OF \$26.50 TO REFUND TO THE TEXAS DIVISION OF EMERGENCY MANAGEMENT PURSUANT TO A 2009 HOMELAND SECURITY GRANT PROGRAM; AND CONTAINING OTHER PROVISIONS RELATED TO THE SUBJECT.

WHEREAS, the Texas Division of Emergency Management (TDEM) awarded the City of College Station ("City") \$82,000 pursuant to the 2009 Homeland Security Grant Program it administers of which the City spent \$81,973.50; and

WHEREAS, the Office for Domestic Preparedness, a component of the U.S. Department of Homeland Security from where this grant originated has served the City with a Grant Adjustment Notice in the amount of \$26.50 to be returned by the City; now therefore

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

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

PART 2: That the City Council hereby approves the 2009 State Homeland Security Grant Adjustment Notice in the amount of \$26.50 to be returned to the Texas Division of Emergency Management as administrator of said grant program originating from the Office for Domestic Preparedness, a component of the U.S. Department of Homeland Security, and as further set forth in the 2009 Grant Adjustment Notice attached hereto as Exhibit "A" and made a part hereof.

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

ADOPTED this _____ day of, _____ 2012.

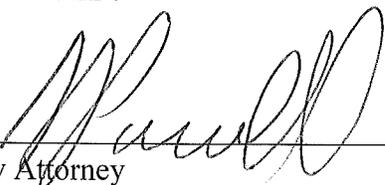
ATTEST:

APPROVED:

City Secretary

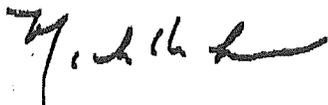
Mayor

APPROVED:



City Attorney

EXHIBIT "A"

	<h2 style="margin: 0;">Texas Department of Public Safety</h2> <h3 style="margin: 0;">2009 Grant Adjustment Notice</h3> <p style="margin: 0;">for</p> <h3 style="margin: 0;">City of College Station</h3>																		
<p>Date of Award March 27, 2012</p>																			
<p>1. Sub-Recipient Name and Address</p> <p>Mayor Nancy Berry City of College Station P.O. Box 9960 College Station, TX 77842-0960</p>	<p>2. Prepared by: Youngs, Jarnie 3. SAA Award Number: 09-GA 15976-03</p>																		
<p>4. Federal Grant Information</p>																			
<p>Federal Grant Title: Homeland Security Grant Program</p> <p>Federal Grant Award Number: 2009-SS-T9-0064</p> <p>Date Federal Grant Awarded to TxDPS: August 1, 2009</p> <p>Federal Granting Agency: Department of Homeland Security FEMA Grant Programs Directorate</p>																			
<p>5. Award Amount and Grant Breakdowns</p>																			
<p>Total Award Amount</p> <p style="font-size: 1.2em;">\$81,973.50</p>	<p>Note: Additional Budget Sheets (Attachment A): <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <table border="1" style="width: 100%; border-collapse: collapse; text-align: center;"> <tr> <td style="width: 16.6%;"> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="font-size: 0.8em;">SHSP 97.073</td> </tr> <tr> <td style="font-size: 0.8em;">\$81,973.50</td> </tr> </table> </td> <td style="width: 16.6%;"> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="font-size: 0.8em;">SHSP-LEAP 97.073</td> </tr> <tr> <td style="font-size: 0.8em;">\$0.00</td> </tr> </table> </td> <td style="width: 16.6%;"> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="font-size: 0.8em;">UASI 97.008</td> </tr> <tr> <td style="font-size: 0.8em;">\$0.00</td> </tr> </table> </td> <td style="width: 16.6%;"> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="font-size: 0.8em;">UASI-LEAP 97.008</td> </tr> <tr> <td style="font-size: 0.8em;">\$0.00</td> </tr> </table> </td> <td style="width: 16.6%;"> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="font-size: 0.8em;">CCP 97.053</td> </tr> <tr> <td style="font-size: 0.8em;">\$0.00</td> </tr> </table> </td> <td style="width: 16.6%;"> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="font-size: 0.8em;">MMRS 97.071</td> </tr> <tr> <td style="font-size: 0.8em;">\$0.00</td> </tr> </table> </td> </tr> </table> <p>This award supersedes all previous awards. Performance Period: Aug 1, 2009 to Apr 15, 2012</p>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="font-size: 0.8em;">SHSP 97.073</td> </tr> <tr> <td style="font-size: 0.8em;">\$81,973.50</td> </tr> </table>	SHSP 97.073	\$81,973.50	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="font-size: 0.8em;">SHSP-LEAP 97.073</td> </tr> <tr> <td style="font-size: 0.8em;">\$0.00</td> </tr> </table>	SHSP-LEAP 97.073	\$0.00	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="font-size: 0.8em;">UASI 97.008</td> </tr> <tr> <td style="font-size: 0.8em;">\$0.00</td> </tr> </table>	UASI 97.008	\$0.00	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="font-size: 0.8em;">UASI-LEAP 97.008</td> </tr> <tr> <td style="font-size: 0.8em;">\$0.00</td> </tr> </table>	UASI-LEAP 97.008	\$0.00	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="font-size: 0.8em;">CCP 97.053</td> </tr> <tr> <td style="font-size: 0.8em;">\$0.00</td> </tr> </table>	CCP 97.053	\$0.00	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="font-size: 0.8em;">MMRS 97.071</td> </tr> <tr> <td style="font-size: 0.8em;">\$0.00</td> </tr> </table>	MMRS 97.071	\$0.00
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MMRS 97.071																			
\$0.00																			
<p>6. Statutory Authority for Grant: This project is supported under Consolidated Security, Disaster Assistance and Continuing Appropriations Act. 2009 Public Law No. 110-329.</p>																			
<p>7. Method of Payment: Primary method is reimbursement. See the enclosed instructions for the process to follow in the submission of invoices.</p>																			
<p>8. Debarment/Suspension Certification: The Sub-Recipient certifies that the subgrantee and its' contractors/vendors are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded by any federal department or agency and do not appear in the Excluded Parties List System at http://www.epls.gov.</p>																			
<p>9. Agency Approval</p>																			
<p>Approving TxDPS Official:</p> <p>Machelle Pharr, Deputy Assistant Director State Administrative Agency Texas Department of Public Safety</p>	<p>Signature of TxDPS Official:</p> 																		
<p>10. Sub-Recipient Acceptance</p>																			
<p>I have read and understand the attached Terms and Conditions.</p>																			
<p>Type name and title of Authorized Sub-Recipient official:</p> <p>Nancy Berry Mayor</p>	<p>Signature of Sub-Recipient Official:</p>																		
<p>11. Enter Employer Identification Number (EIN) / Federal Tax Identification Number:</p> <p>74-6000534</p>	<p>12. Date Signed :</p>																		
<p>13. DUE DATE: April 15, 2012</p> <p>Signed award and Direct Deposit Form (if applicable) must be returned to TxDPS on or before the above due date.</p>																			

April 26, 2012
Consent Agenda Item No 2e
University Dr and Copperfield Pkwy Signal
Advanced Funding Agreement

To: David Neeley, City Manager

From: Chuck Gilman, P.E., PMP, Public Works Director

Agenda Caption: Presentation, possible action, and discussion on an Advanced Funding Agreement (AFA) with the Texas Department of Transportation (TxDOT) to powdercoat new signal poles at the intersection of University Drive and Copperfield as part of TxDOT's project to widen University Drive from SH 6 to FM 158. The estimated cost of the City's participation is not to exceed \$4,000.

Relationship to Strategic Goals: Diverse Growing Economy – Plan for and invest in infrastructure, facilities, services, and personnel, and equipment necessary to meet project needs and opportunities

Recommendation(s): Staff recommends approval of the AFA

Summary: The Texas Department of Transportation (TxDOT) is developing plans to widen University Drive (FM 60) from SH 6 to FM 158 from an existing 2-lane undivided highway to a 4-lane roadway with a raised median. As part of the widening project, a new signal at the intersection of University Drive and Copperfield will be installed. For over a decade, the City has installed or participated with TxDOT to install bronze powdercoated traffic signal poles for an improved appearance of the infrastructure. Participation in this Advanced Funding Agreement with TxDOT will continue the uniform appearance of the traffic signals throughout the City.

Budget & Financial Summary: Funds for the City's costs (\$4,000) associated with this project are available in the Public Works Traffic Operation budget.

Attachments:

1. Advanced Funding Agreement (AFA)
2. Map

STATE OF TEXAS §

COUNTY OF TRAVIS §

**ADVANCE FUNDING AGREEMENT FOR VOLUNTARY
LOCAL GOVERNMENT CONTRIBUTIONS
TO TRANSPORTATION IMPROVEMENT
PROJECTS WITH NO REQUIRED MATCH**

THIS AGREEMENT is made by and between the State of Texas, acting by and through the Texas Department of Transportation, called the "State", and the City of College Station, acting by and through its duly authorized officials, called the "Local Government."

WITNESSETH

WHEREAS, Transportation Code, Chapters 201, 221, 227, and 361, authorize the State to lay out, construct, maintain, and operate a system of streets, roads, and highways that comprise the State Highway System; and,

WHEREAS, Government Code, Chapter 791, and Transportation Code, §201.209 and Chapter 221, authorize the State to contract with municipalities and political subdivisions; and,

WHEREAS, Commission Minute Order Number 112696 authorizes the State to undertake and complete a highway improvement generally described as improving the traffic signals on FM 60 at the intersection of FM 60 and Copperfield Drive; and,

WHEREAS, the Local Government has requested that the State allow the Local Government to participate in said improvement by funding that portion of the improvement described as powdercoating the new traffic signal poles, mast arms and pedestrian poles at the intersection of FM 60 and Copperfield Drive, called the "Project"; and,

WHEREAS, the State has determined that such participation is in the best interest of the citizens of the State;

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties hereto, to be by them respectively kept and performed as hereinafter set forth, the State and the Local Government do agree as follows:

AGREEMENT

1. Time Period Covered

This agreement becomes effective when signed by the last party whose signing makes the agreement fully executed, and the State and the Local Government will consider it to be in full force and effect until the Project described in this agreement has been completed and accepted by all parties or unless terminated, as provided for by this agreement.

2. Project Funding and Work Responsibilities

A. The State will authorize the performance of only those Project items of work which the Local Government has requested and has agreed to pay for as described in Attachment A, Payment Provision and Work Responsibilities which is attached to and made a part of this contract. In addition to identifying those items of work paid for by payments to the State, Attachment A, Payment Provision and Work Responsibilities, also specifies those Project

items of work that are the responsibility of the Local Government and will be carried out and completed by the Local Government, at no cost to the State.

- B. At least sixty (60) days prior to the date set for receipt of the construction bids, the Local Government shall remit its remaining financial share for the State's estimated construction oversight and construction costs.
- C. In the event that the State determines that additional funding by the Local Government is required at any time during the Project, the State will notify the Local Government in writing. The Local Government shall make payment to the State within thirty (30) days from receipt of the State's written notification.
- D. Whenever funds are paid by the Local Government to the State under this agreement, the Local Government shall remit a check or warrant made payable to the "Texas Department of Transportation Trust Fund." The check or warrant shall be deposited by the State in an escrow account to be managed by the State. Funds in the escrow account may only be applied by the State to the Project. If, after final Project accounting, excess funds remain in the escrow account, those funds may be applied by the State to the Local Government's contractual obligations to the State under another advance funding agreement with approval by appropriate personnel of the Local Government.

3. Right of Access

If the Local Government is the owner of any part of the Project site, the Local Government shall permit the State or its authorized representative access to the site to perform any activities required to execute the work.

4. Adjustments Outside the Project Site

The Local Government will provide for all necessary right of way and utility adjustments needed for performance of the work on sites not owned or to be acquired by the State.

5. Responsibilities of the Parties

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

6. Document and Information Exchange

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

7. Interest

The State will not pay interest on funds provided by the Local Government. Funds provided by the Local Government will be deposited into, and retained in, the State Treasury.

8. Inspection and Conduct of Work

Unless otherwise specifically stated in Attachment A, Payment Provision and Work Responsibilities, to this contract, the State will supervise and inspect all work performed

hereunder and provide such engineering inspection and testing services as may be required to ensure that the Project is accomplished in accordance with the approved plans and specifications. All correspondence and instructions to the contractor performing the work will be the sole responsibility of the State. Unless otherwise specifically stated in Attachment A to this contract, all work will be performed in accordance with the Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges adopted by the State and incorporated in this agreement by reference, or special specifications approved by the State.

9. Increased Costs

- A.** In the event it is determined that the funding provided by the Local Government will be insufficient to cover the State's cost for performance of the Local Government's requested work, the Local Government will pay to the State the additional funds necessary to cover the anticipated additional cost. The State shall send the Local Government a written notification stating the amount of additional funding needed and stating the reasons for the needed additional funds. The Local Government shall pay the funds to the State within thirty (30) days of the written notification, unless otherwise agreed to by all parties to this agreement. If the Local Government cannot pay the additional funds, this contract shall be mutually terminated in accordance with Article 11 – Termination. If this is a fixed price agreement as specified in Attachment A, Payment Provision and Work Responsibilities, this provision shall only apply in the event changed site conditions are discovered or as mutually agreed upon by the State and the Local Government.
- B.** If any existing or future local ordinances, commissioners court orders, rules, policies, or other directives, including but not limited to outdoor advertising billboards and storm water drainage facility requirements, are more restrictive than State or Federal Regulations, or if any other locally proposed changes, including but not limited to plats or replats, result in increased costs, then any increased costs associated with the ordinances or changes will be paid by the Local Government. The cost of providing right of way acquired by the State shall mean the total expenses in acquiring the property interests either through negotiations or eminent domain proceedings, including but not limited to expenses related to relocation, removal, and adjustment of eligible utilities.

10. Maintenance

Upon completion of the Project, the State will assume responsibility for the maintenance of the completed Project unless otherwise specified in Attachment A to this agreement.

11. Termination

- A.** This agreement may be terminated in the following manner:
1. By mutual written agreement and consent of both parties;
 2. By either party upon the failure of the other party to fulfill the obligations set forth in this agreement; or
 3. By the State if it determines that the performance of the Project is not in the best interest of the State.
- B.** If the agreement is terminated in accordance with the above provisions, the Local Government will be responsible for the payment of Project costs incurred by the State on behalf of the Local Government up to the time of termination.
- C.** Upon completion of the Project, the State will perform an audit of the Project costs. Any funds due to the Local Government, the State, or the Federal Government will be promptly paid by the owing party.

12. Notices

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

Local Government:	State:
Mayor City of College Station P.O. Box 9960 College Station, Texas 77842-9960	Director of Contract Services Texas Department of Transportation 125 E. 11 th Street Austin, Texas 78701

All notices shall be deemed given on the date so delivered or so deposited in the mail, unless otherwise provided in this agreement. Either party may change the above address by sending written notice of the change to the other party. Either party may request in writing that such notices shall be delivered personally or by certified U.S. mail and such request shall be honored and carried out by the other party.

13. Sole Agreement

In the event the terms of the agreement are in conflict with the provisions of any other existing agreements between the Local Government and the State, the latest agreement shall take precedence over the other agreements in matters related to the Project.

14. Successors and Assigns

The State and the Local Government each binds itself, its successors, executors, assigns, and administrators to the other party to this agreement and to the successors, executors, assigns, and administrators of such other party in respect to all covenants of this agreement.

15. Amendments

By mutual written consent of the parties, this agreement may be amended prior to its expiration.

16. State Auditor

The state auditor may conduct an audit or investigation of any entity receiving funds from the State directly under the contract or indirectly through a subcontract under the contract. Acceptance of funds directly under the contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

17. Insurance

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

18. Signatory Warranty

Each signatory warrants that the signatory has necessary authority to execute this agreement on behalf of the entity represented.

THIS AGREEMENT IS EXECUTED by the State and the Local Government in duplicate.

THE LOCAL GOVERNMENT

Signature

Nancy Berry
Typed or Printed Name

Mayor, City of College Station
Title

Date

ATTEST:

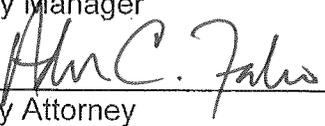
City Secretary

Date: _____

APPROVED:

City Manager

Date: _____



City Attorney

Date: _____

Chief Financial Officer

Date: _____

THE STATE OF TEXAS

Regional Director

Date

ATTACHMENT A PAYMENT PROVISION AND WORK RESPONSIBILITIES

The Local Government will fund the cost to powdercoat the new traffic signal poles, mast arms and pedestrian poles to be placed at the intersection of FM 60 and Copperfield Drive, an on-system location, which is beyond the standard finish provided by the State for these elements. The Local Government's participation is 100% of the cost of these particular improvements. The Local Government's estimated cost of this work is \$4,000, including construction items and construction engineering and contingencies. The Local Government and State have estimated the project to be as follows:

Description	Total Estimated Cost	Federal Participation		State Participation		Local Participation	
		%	Cost	%	Cost	%	Cost
Engineering (by State)	\$0	0%	\$0	0%	\$0	0%	\$0
Construction (by State) – Powder Coating Signal Poles and Mast Arms	\$3,900	0%	\$0	0%	\$0	100%	\$3,900
Subtotal	\$3,900	0%	\$0	0%	\$0	100%	\$3,900
Environmental Direct State Costs	\$0	0%	\$0	0%	\$0	0%	\$0
Right of Way Direct State Costs	\$0	0%	\$0	0%	\$0	0%	\$0
Engineering Direct State Costs	\$0	0%	\$0	0%	\$0	0%	\$0
Utility Direct State Costs	\$0	0%	\$0	0%	\$0	0%	\$0
Construction Direct State Costs	\$100	0%	\$0	0%	\$0	100%	\$100
Indirect State Costs	\$0	0%	\$0	0%	\$0	0%	\$0
TOTAL	\$4,000	0%	\$0	0%	\$0	100%	\$4,000

Initial payment by the Local Government to the State: \$4,000

Payment by the Local Government to the State before construction: \$4,000

Estimated total payment by the Local Government to the State: \$4,000

This is an estimate. The final amount of Local Government participation will be based on actual costs.



FM 60 and Copperfield Pkwy Intersection

April 26, 2012
Consent Agenda Item No. 2f
TAMUS Easement Agreement Renewal
Olsen Road at George Bush Drive

To: David Neeley, City Manager

From: Chuck Gilman, P.E., PMP, Public Works Director

Agenda Caption: Presentation, possible action, and discussion on an easement agreement renewal with the Texas A&M University System for the purpose of operating and maintaining a traffic signal at Olsen Road and George Bush Drive.

Relationship to Strategic Goals: Improving Mobility – Maintain and rehabilitate system to avoid costly replacement

Recommendation(s): Staff recommends approval of the agreement

Summary: This agreement renews a previously approved between the Texas A&M University System and the City of College Station for an easement to operate and maintain a traffic signal at the intersection of Olsen Road and George Bush Drive.

Budget & Financial Summary: There are no budget or financial impacts associated with the passage of this agreement.

Attachments:

1. Easement Agreement

EASEMENT AGREEMENT
(Traffic Cable)

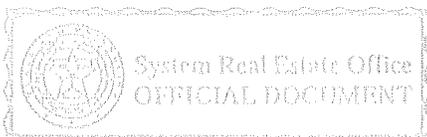
1. Grant of Easement. The **BOARD OF REGENTS OF THE TEXAS A&M UNIVERSITY SYSTEM**, as grantor (“**TAMUS**”), on behalf of the State of Texas, acting by and through its duly authorized officer, under authority of System Policy 41.01, and by virtue of authority granted to the Board of Regents by TEX. EDUC. 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, TEXAS**, a municipality of the State of Texas, as grantee (“**COLLEGE STATION**”), its permitted successors and assigns, a nonexclusive right-of-way easement (the “Easement”) for a traffic signal. The Easement is variable in width on, across and under certain property of **TAMUS** (the “Property”), located in 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 operating and maintaining a traffic signal at Olsen Road and George Bush Drive. A plat of the Property showing the surface area affected by the Easement and the location of **COLLEGE STATION**’s right-of-way is depicted on Exhibit “B” attached hereto and made a part of this Agreement.

3. Right of Access. **COLLEGE STATION** has the right of ingress and egress across the Property for the purpose of maintaining, repairing, replacing, and rebuilding such line. **COLLEGE STATION** 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 such line. Any gate or opening used by **COLLEGE STATION** for ingress or egress in the exercise of its rights must be kept in proper condition and closed at all times.

4. Duties. **COLLEGE STATION** will clearly mark the location of the cable in a manner and to the extent required by law. If **COLLEGE STATION** damages or destroys any fence, road, bridge, culvert, building, or other improvement, or any personal property, other than its own personal property, **COLLEGE STATION** 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 **COLLEGE STATION** pay money damages, including without limitation, those damages incurred as a result of **COLLEGE STATION** or its agents or employees entering or departing the Property, or by reason of being present on the Property. **COLLEGE STATION** agrees to notify **TAMUS** five (5) business days prior to commencement of any repairs, replacements or additional construction on the Property.

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.

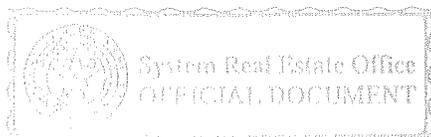
6. Duration of Easement. In accordance with TEX. EDUC. CODE ANN. §85.26(c), this grant is for a term of ten (10) years and may be renewed only at the election of TAMUS. COLLEGE STATION expressly understands that its continued possession of the Property under this Agreement after expiration of its term, 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 COLLEGE STATION to a penalty of ONE HUNDRED DOLLARS (\$100) for each day of such violation. COLLEGE STATION 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. COLLEGE STATION 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, COLLEGE STATION 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 COLLEGE STATION 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 COLLEGE STATION.

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 COLLEGE STATION's use.

9. Hold Harmless. COLLEGE STATION 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; Compliance. During the term of this Agreement, COLLEGE STATION shall comply with and obtain any permits or licenses which may be required by federal, state or local statute in connection with the use of the Property, including the Antiquities Code of Texas, Chapter 191 of the Texas Natural Resources Code. COLLEGE STATION agrees that title to all archaeological objects and artifacts, if any, discovered in or on the Property shall remain with TAMUS.



11. Hazardous Waste. COLLEGE STATION 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. COLLEGE STATION 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 COLLEGE STATION AND SUCH MATERIALS RESULT IN CONTAMINATION OF THE PROPERTY OR IF CONTAMINATION OF THE PROPERTY BY HAZARDOUS MATERIAL OTHERWISE OCCURS AND IS RELATED TO COLLEGE STATION'S USE, THEN COLLEGE STATION, 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 COLLEGE STATION 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 COLLEGE STATION 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 COLLEGE STATION; provided, however, TAMUS will give COLLEGE STATION written notice of its intention to terminate the Easement and the reasons for termination, and COLLEGE STATION 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, COLLEGE STATION 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 **COLLEGE STATION** 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
301 Tarrow, 6th Floor
College Station, Texas 77840-7896
Phone: (979) 458-6350
Fax: (979) 458-6359

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

14. Waiver. The failure of **COLLEGE STATION** 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. **COLLEGE STATION** 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. COLLEGE STATION may not sell, assign, encumber or convey the Easement without the prior written consent of TAMUS and any attempt by COLLEGE STATION 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 3rd day of October, 2010.

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

By: 
JOHN SHARP
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, TEXAS,
a municipality of the State of Texas

By: _____
NANCY BERRY
Mayor

APPROVED AS TO FORM AND CONTENT:

Carla A Robinson
CARLA ROBINSON
City Attorney

ATTEST:

SHERRY MASHBURN
City Secretary

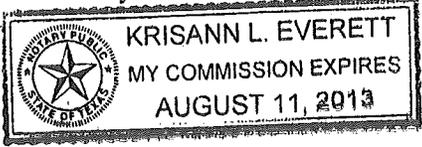
ACKNOWLEDGEMENTS

STATE OF TEXAS §
 §
COUNTY OF BRAZOS §

This instrument was acknowledged before me this 22 day of March, 2012 by **JOHN SHARP**, 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 _____, 2012 by **NANCY BERRY**, Mayor of the City of College Station, Texas, a municipality of the State of Texas, on behalf of said municipality.

Notary Public



FIELD NOTES
Variable Width Easement
At Intersection of Olsen Blvd. and F.M. 2347
0.1574 Acres

Being all that certain tract or parcel of land lying and being situated in the J.E. SCOTT LEAGUE, Abstract No. 50 in College Station, Brazos County, Texas and being part of a 773 acre residue of that certain 1226 acre tract of land conveyed to the Agricultural and Mechanical College of Texas by J. Fred Cox by deed dated June 21, 1871 and recorded in Volume M, Page 142 of the Deed Records of Brazos County, Texas (B.C.D.R.), and being more particularly described by metes and bounds as follows:

COMMENCING: at a found TxDOT aluminum disk on a 5/8-inch iron rod marking an angle point in the northwest line of the variable width right-of-way of F.M. 2347 (commonly known as George Bush Drive) from whence a found concrete right-of-way marker bears N 42° 21' 16" E at a distance of 2.26 feet, said TxDOT aluminum disk being perpendicular to baseline station 45+00.19;

THENCE: along said northwest right-of-way line of F.M. 2347 for the following three (3) calls:

- 1) N 42° 21' 16" E for a distance of 1901.14 feet to a found TxDOT aluminum disk on a 5/8-inch iron rod;
- 2) N 45° 13' 00" E for a distance of 100.12 feet to a found TxDOT aluminum disk on a 5/8-inch iron rod and
- 3) N 42° 21' 16" E for a distance of 654.80 feet to a wood stake set for the POINT OF BEGINNING;

THENCE: N 40° 19' 10" W for a distance of 56.16 to a wood stake set for corner;

THENCE: N 49° 34' 08" E for a distance of 134.91 feet to a wood stake set for corner;

THENCE: S 40° 48' 51" E for a distance of 6.00 feet to a wood stake set for the Point of Curvature of a curve to the left;

THENCE: 33.61 feet along the arc of said curve having a central angle of 96° 17' 47", a radius of 20.00 feet, a tangent of 22.33 feet, and a long chord bearing S 88° 57' 45" E at a distance of 29.79 feet to a wood stake set for the Point of Tangency;

THENCE: N 42° 53' 22" E for a distance of 15.00 feet to a wood stake set for corner;

THENCE: S 48° 12' 20" E for a distance of 9.02 feet to a wood stake set for corner in the northwest right-of-way line of a 0.211 acre right-of-way parcel of F.M. 2347 conveyed to the State of Texas by Texas A&M University System by deed recorded in Volume 2411, Page 276 of the Official Records of Brazos County, Texas (O.R.B.C.);

THENCE: S 41° 47' 40" W along the said right-of-way parcel for a distance of 129.38 feet to an angle point;

THENCE: S 42° 21' 16" W for a distance of 45.67 feet to the POINT OF BEGINNING and containing 0.1574 acres of land (6,858 square feet), more or less.

I, Michael R. McClure, Registered Professional Land Surveyor No. 2859 in the State of Texas do certify to the best of my knowledge information and belief and in my professional opinion that this survey is true correct and agrees with a survey made on the ground under my supervision.



Michael R. McClure 4/14/2000

Michael R. McClure, R.P.L.S. #2859

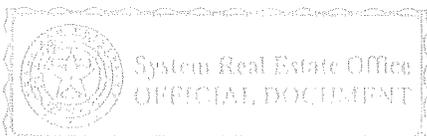
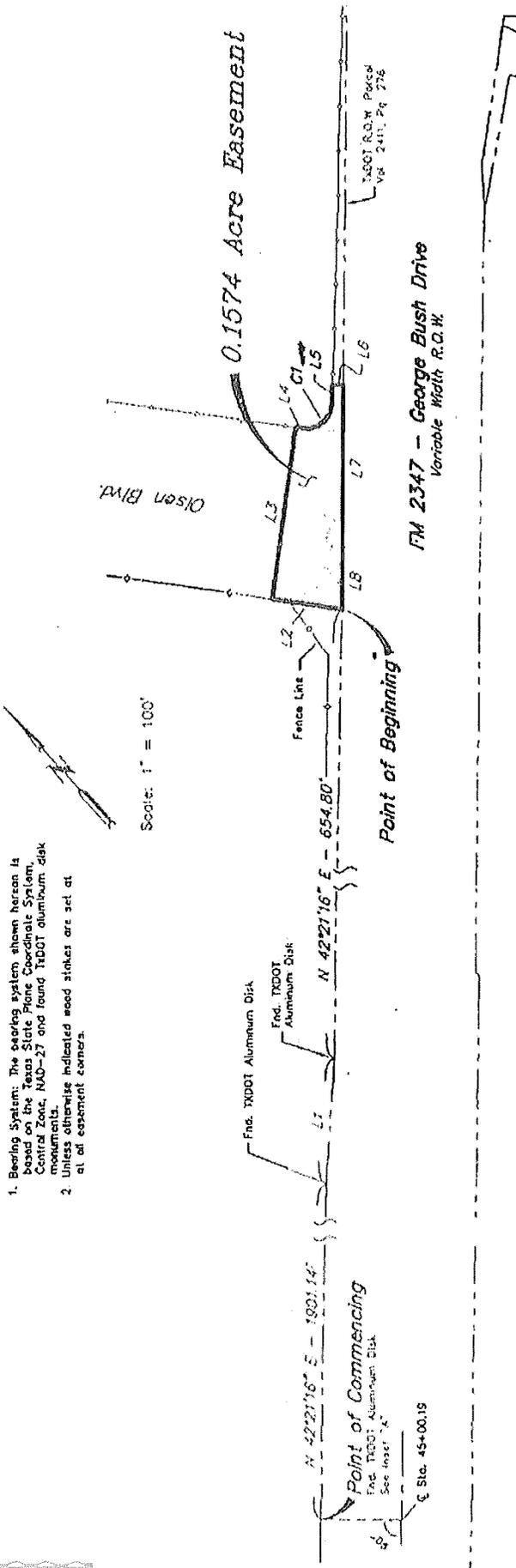


Exhibit A

1. Bearing System: The bearing system shown herein is based on the Texas State Plane Coordinate System, Central Zone, NAD-27 and found TxDOT aluminum disk monuments.
2. Unless otherwise indicated wood stakes are set at all of easement corners.

Scale: 1" = 100'

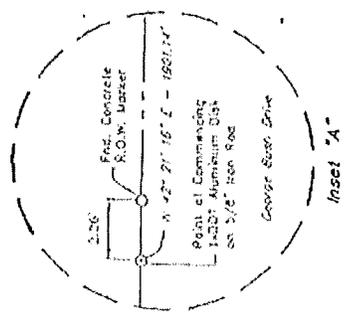


LINE TABLE

LINE	BEARING	Distance
L1	N 45°13'00" E	100.12'
L2	N 40°19'10" W	56.16'
L3	N 49°34'08" E	134.91'
L4	S 40°48'51" E	6.00'
L5	N 42°53'22" E	15.00'
L6	S 48°12'20" E	9.02'
L7	S 41°47'40" W	129.38'
L8	S 42°21'16" W	45.67'

CURVE TABLE

CURVE	DELTA	RADIUS	LENGTH	TANGENT	CHORD	CHORD BRG.
C1	96°17'47"	20.00'	33.61'	22.33'	S 88°57'45" E	28.79'



Sheet 1 of 2
McCLURE ENGINEERING, INC
 1008 Woodcreek Drive, Suite 103
 College Station, Texas 77845
 (979) 693-3638
 9807-ee.dwg

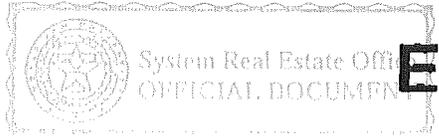


Exhibit B

April 26, 2012
Consent Agenda Item No. 2g
Rock Prairie Road East Widening Design and ROW Project (ST0417)
Real Estate Contract – Rice / Parcel Nos. 5a and 5b

To: David Neeley, City Manager

From: Chuck Gilman, P.E., PMP, Public Works Director

Agenda Caption: Presentation, possible action, and discussion regarding approval of a real estate contract between the City of College Station (Buyer) and Britt Rice (Seller) in the amount of \$60,448.00 for the purchase of right-of-way (2.377 acres) and a public utility easement (1.058 acres) needed for the Rock Prairie Road East Widening Design and Right-of-Way Project.

Relationship to Strategic Goals: Improving Mobility – Plan for infrastructure necessary to meet projected growth and physical development. Provide complete streets that accommodate vehicles, bicyclists, and pedestrians.

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

Summary: On June 10, 2010, City Council authorized the acquisition of right-of-way and utility easements along Rock Prairie Road East from SH 6 to William D. Fitch as part of the Rock Prairie Road East Widening Design and ROW Project. The project includes the design and right-of-way acquisition for the future widening of Rock Prairie Road East. The property to be acquired is located along Rock Prairie Road East, between the State Highway 6 Frontage Road and Bird Pond Road. The right-of-way to be acquired for the road widening includes 2.377 acres of land and the adjacent public utility easement includes 1.058 acres of land.

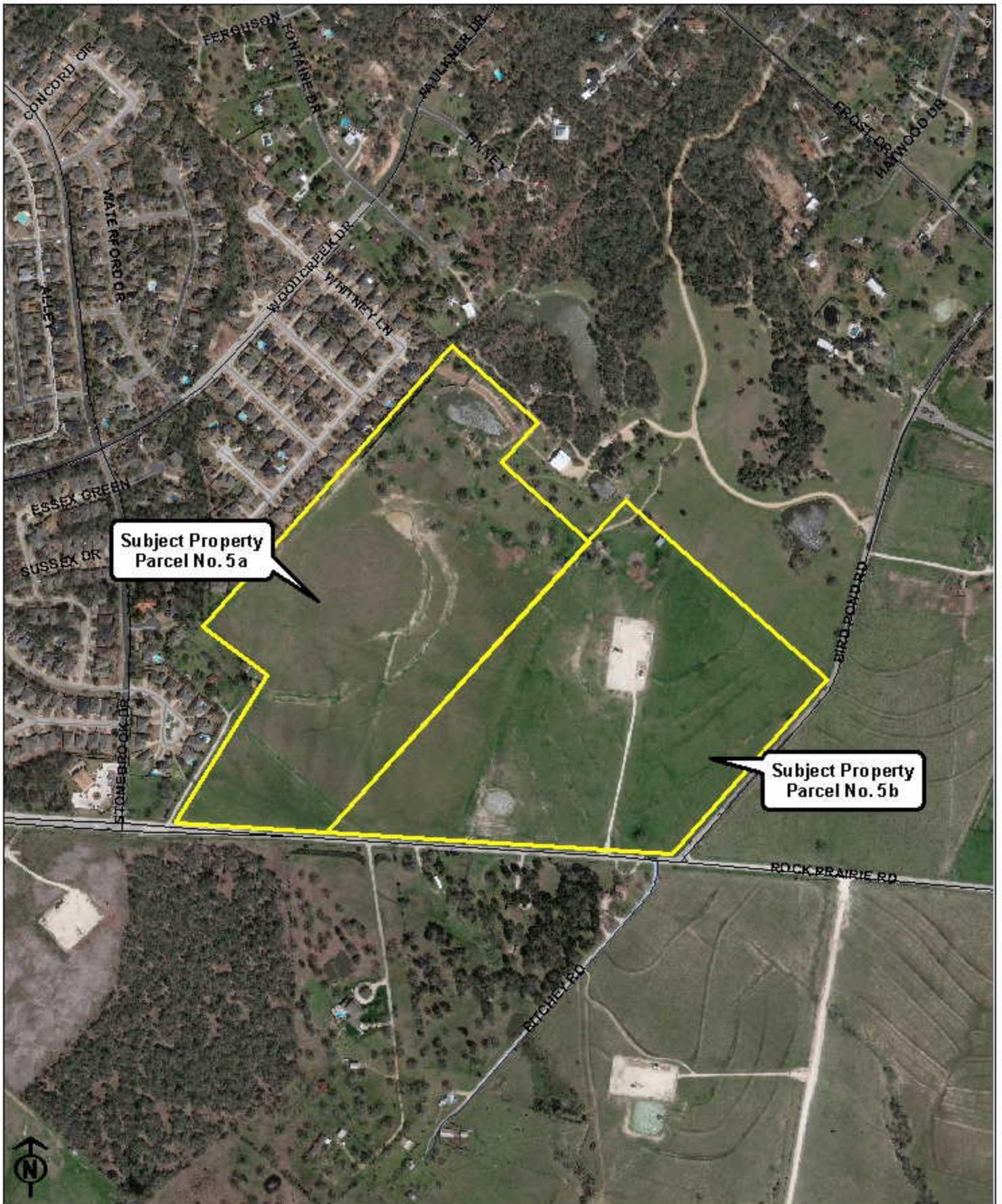
The purchase price of \$60,448.00 is a negotiated amount based on an appraisal completed by the City's Land Agent, Mark McAuliffe, a State Certified Real Estate Appraiser. A settlement agreement was reached with the landowner for the appraised value of \$53,196.00 plus additional damages in the amount of \$7,252.00 to compensate for specialized fencing to maintain the current use of the property (grazing exotic animals). Staff feels that the settlement amount is fair compensation for the right-of-way and easement acquisition plus damages.

Budget & Financial Summary: The purchase price for the property to be acquired is \$60,448. Additional funds in the amount of approximately \$1,000 will be required for closing costs. The total current budget for the Rock Prairie Road East Widening Design and ROW Project is \$2,969,000. Funding for this project is from the 2003 general obligation bond authorization. Funds in the amount of \$1,407,918 have been expended or committed to date, leaving a balance of \$1,561,082 for remaining design, right-of-way purchases and related expenses. This project budget is for design and land acquisition only. Funds for construction are not currently budgeted.

Attachments:

1. Location Map
2. Real Estate Contract – Available in City Secretary's Office

**Rock Prairie Road East Widening Project
Property Exhibit
Parcel Nos. 5a and 5b / Britton L. Rice**



April 26, 2012
Consent Agenda Item No. 2h
Sale of a Home at 4214 Cripple Creek

To: David Neeley, City Manager

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

Agenda Caption: Presentation, possible action, and discussion regarding a Resolution approving a real estate contract approving a bid received in response to ITB #12-053 for the sale of City property at 4214 Cripple Creek, an affordable home.

Relationship to Strategic Goals: Financially Sustainable City, Core Services and Infrastructure, and Neighborhood Integrity

Recommendation(s): Staff recommends approval for the Mayor to sign the resolution, contract, and deed transferring this property to the eligible bidder.

Summary: On March 27, 2012 staff released an Invitation to Bid for the sale of City property located at 4214 Cripple Creek to individuals, households, or families at or below 80% of the area median income.

Staff evaluated the bid submitted as of the April 10, 2012 deadline and this bid accomplishes the principal requirement of selling this property to an individual, household, or family at or below 80% of the area median income. This requirement is mandated by the U.S. Department of Housing and Urban Development.

Staff, therefore, recommends approval of the currently held bid for sale of City property located at 4214 Cripple Creek.

Budget & Financial Summary: The subject property at 4214 Cripple Creek was constructed in 2010 utilizing HOME Investment Partnership Program grant funds in the amount of \$149,335. The minimum bid specified in the Invitation to Bid #12-053 was \$149,900.00, the appraised value of the property. The bid currently held bid is for \$149,900.

Attachments:

Attachment 1: Resolution

Attachment 2: Real Estate Contract

Attachment 3: Location Map

EXHIBIT "G"

FORM REAL ESTATE CONTRACT

REAL ESTATE CONTRACT

THIS CONTRACT OF SALE is made by and between the CITY OF COLLEGE STATION, TEXAS, a Texas Home Rule Municipal Corporation, situated in Brazos County, Texas ("SELLER"), and Rex Robinson ("BUYER"), upon the terms and conditions set forth herein.

ARTICLE I PURCHASE AND SALE

1.1 SELLER agrees to sell and convey in fee simple by Special Warranty Deed with Vendor's Lien, and BUYER agrees to purchase and pay for the tract of land known as 4214 Cripple Creek Ct. (Lot 7), College Station, Brazos County, Texas, more particularly described on Exhibit "A" attached hereto and incorporated herein by reference for all purposes ("PROPERTY"), together with all and singular the rights and appurtenances pertaining to the PROPERTY, together with SELLER's interest in any improvements and fixtures situated on and attached to the PROPERTY, for the consideration and subject to the terms, provisions, and conditions set forth herein. This Contract by SELLER to sell the PROPERTY is subject to approval by the City Council of the City of College Station, Texas; such approval indicated by signature of SELLER's representatives to this Real Estate Contract.

1.2 Within ten (10) calendar days of the execution of this Contract, SELLER shall request University Title Company (TITLE COMPANY) to furnish a Commitment for Title Insurance (the "Title Commitment") to insure indefeasible title to the BUYER for Buyer's review together with legible copies of all instruments referred to in the Title Commitment. The SELLER shall request the title company to furnish these items to BUYER within fifteen (15) calendar days of the date of this Contract. BUYER shall have a period of five (5) business days (the "Title Review Period") after receipt of the Title Commitment and the copies of the instruments referred to in Schedule B as exceptions within which to notify SELLER of BUYER's objection to any item shown on or referenced by those documents (the "Reviewable Matters"). Any Reviewable Matter to which BUYER does not object within the Title Review Period shall be deemed to be accepted by BUYER. If BUYER objects to any such Reviewable Matter and gives notice to SELLER as provided herein, SELLER may at its election, on or before closing, attempt to cure same. If SELLER fails to cure same by the closing date, or is unwilling to cure same, the closing date shall be extended for five (5) business days for BUYER to either (a) waive such objections and accept such title as SELLER is able to convey or (b) terminate this Contract by written notice to the Title Company and to SELLER, in which case the earnest money shall be refunded

to BUYER, and neither SELLER nor BUYER shall have any further rights or obligations under this Contract.

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

1.4 SELLER is a tax-exempt entity.

1.5 The sale of the PROPERTY shall be made by a Special Warranty Deed with Vendor's Lien from SELLER to BUYER in the form prepared by BUYER attached hereto as Exhibit "B".

ARTICLE II PURCHASE PRICE

one hundred
fourty nine
thousand nine hundred
2.1 The purchase price for said PROPERTY shall be the sum of *one hundred forty nine thousand* AND NO/100 DOLLARS (\$*149,900.00*). The purchase price shall be payable as follows: *thousand*
thousand nine hundred AND NO/100 DOLLARS (\$*149,900*) as a credit for the *nine*
consideration heretofore paid for the PROPERTY, and the balance payable at closing. *hundred*

EARNEST MONEY

2.2 BUYER shall deposit \$500.00 as earnest money with University Title Company (TITLE COMPANY) at College Station, Texas; as escrow agent, upon execution of this Contract by both parties.

ARTICLE III
REPRESENTATIONS AND WARRANTIES OF SELLER

3.1 SELLER hereby represents and warrants to BUYER as follows:

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

(b) SELLER has no actual knowledge of any parties in possession of any portion of the PROPERTY, either as lessees, tenants at sufferance, trespassers, or other persons in possession. Additionally, SELLER has no actual knowledge of any action by adjacent landowners, or any natural or artificial conditions upon the PROPERTY, or any significant adverse fact or condition relating to the PROPERTY, which has not been disclosed in writing to BUYER by SELLER, which would prevent, limit, impede or render more costly BUYER's contemplated use of the PROPERTY.

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

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

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

(f) To the best of SELLER's knowledge there are no unpaid charges, debts, liabilities, claims or obligations arising from any construction, occupancy, ownership, use or operation of the PROPERTY, or the business operated thereon, if any, which could give rise to any mechanic's or materialmen's or other statutory lien against the PROPERTY, or any part thereof, or for which BUYER will be responsible.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES OF BUYER

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

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

(b) BUYER will comply with all requirements of **BID #12-053** which is a part of the terms conditions, covenants and restrictions of the sale.

ARTICLE V CLOSING

5.1 The closing shall be held at University Title Company (TITLE COMPANY), within fortyfive (45) calendar days from the execution and tender of this Real Estate Contract by BUYER, at such time and date as SELLER and BUYER may agree upon (the "closing date").

5.2 At the closing, SELLER shall:

(a) Deliver to BUYER the duly executed and acknowledged Special Warranty Deed with Vendor's Lien prepared by SELLER conveying good and indefeasible title in the PROPERTY, free and clear of any and all liens, encumbrances, except for the Reviewable Matters and subject to the BUYER's election to terminate this Real Estate Contract in the event BUYER disapproves of any Reviewable Matter, which objection is to be cured by SELLER on or prior to the closing as provided by Article I of this Contract.

(b) Deliver possession of the PROPERTY to BUYER.

(c) Deliver to BUYER, at BUYER's expense, a Title Policy insuring indefeasible title issued by University Title Company (TITLE COMPANY), in BUYER's favor in the full amount of the purchase price, insuring BUYER's fee simple interest in the PROPERTY subject only to such exceptions as shown on the Title Commitment and not objected to by BUYER prior to closing.

(d) Prepare, at its cost, the Special Warranty Deed with Vendor's Lien document.

(e) Pay the SELLER's expenses and attorney fees, if any.

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

(a) Pay the balance of the purchase price and all closing costs, with the exception of prorated taxes, at closing.

(b) Execute a third party, first lien promissory note and deed of trust in favor of Bank of America.

(c) Execute a second lien real estate lien note and deed of trust in favor of the City of College Station, Texas in the amount of twenty nine thousand AND NO/100 DOLLARS (\$29,988). nine hundred eighty

(d) Pay the escrow fees.

(e) Pay the title insurance.

(f) Pay the costs to obtain, deliver and record all documents including but not limited to, the Special Warranty Deed with Vendor's Lien from SELLER to BUYER and Deed of Trust securing second lien note to the City of College Station.

(g) Pay the BUYER's expenses or attorney fees.

(h) Pay the additional premium for the survey/boundary deletion in the title policy, if the deletion is requested by BUYER.

(i) Pay the costs of work required by BUYER to have the survey reflect matters other than those required under this Real Estate Contract.

ARTICLE VI SPECIAL CONDITIONS

6.1 Both parties agree that the sale of this PROPERTY is subject to Title II of the Cranston-Gonzalez National Affordable Housing Act, as amended (42 United States Code §§ 12701 et seq.) and 24 Code of Federal Regulations Part 92, the City of College Station Community Development Downpayment Assistance Program, the General Administrative Guidelines, and the BID #ITB-12-053.

6.2 EXCEPT FOR THE REPRESENTATIONS CONTAINED IN THIS REAL ESTATE CONTRACT BETWEEN BUYER AND SELLER, BUYER ACKNOWLEDGES THAT SELLER HAS NOT MADE AND DOES NOT MAKE ANY REPRESENTATIONS AS TO THE PHYSICAL CONDITION OF THE PROPERTY, OR ANY OTHER MATTER AFFECTING OR RELATED TO THE PROPERTY (OTHER THAN WARRANTIES OF TITLE AS PROVIDED AND LIMITED HEREIN). BUYER EXPRESSLY AGREES THAT TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE PROPERTY IS CONVEYED "AS IS" AND "WITH ALL FAULTS", AND SELLER EXPRESSLY DISCLAIMS, AND BUYER ACKNOWLEDGES AND ACCEPTS THAT SELLER HAS DISCLAIMED, ANY AND ALL REPRESENTATIONS, WARRANTIES OR GUARANTIES OF ANY KIND, ORAL OR WRITTEN, EXPRESS OR IMPLIED

(EXCEPT AS TO TITLE AS HEREIN PROVIDED AND LIMITED) CONCERNING THE PROPERTY, INCLUDING WITHOUT LIMITATION (i) THE VALUE, CONDITION, MERCHANTABILITY, HABITABILITY, MARKETABILITY, PROFITABILITY, SUITABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE, OF THE PROPERTY (ii) THE MANNER OR QUALITY OF THE CONSTRUCTION, OR THE MATERIALS, IF ANY, INCORPORATED INTO THE CONSTRUCTION, OF ANY IMPROVEMENTS TO THE PROPERTY AND (iii) THE MANNER OF REPAIR, QUALITY OF REPAIR, STATE OF REPAIR OR LACK OF REPAIR OF ANY SUCH IMPROVEMENTS. BY BUYER'S ACCEPTANCE OF THIS REAL ESTATE CONTRACT, BUYER REPRESENTS THAT BUYER HAS MADE (i) ALL INSPECTIONS OF THE PROPERTY TO DETERMINE ITS VALUE AND CONDITION DEEMED NECESSARY OR APPROPRIATE BY BUYER, INCLUDING, WITHOUT LIMITATION, INSPECTIONS FOR THE PRESENCE OF ASBESTOS, PESTICIDE RESIDUES, HAZARDOUS WASTE AND OTHER HAZARDOUS MATERIALS AND (ii) INVESTIGATIONS TO DETERMINE WHETHER ANY PORTION OF THE PROPERTY LIES WITHIN ANY FLOOD HAZARD AREA AS DETERMINED BY THE U.S. ARMY CORPS OF ENGINEERS OR OTHER APPLICABLE AUTHORITY.

6.3 BID #12-053 is attached hereto as Exhibit 1 and incorporated herein by reference.

ARTICLE VII BREACH BY SELLER

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

- (a) Enforce specific performance of this agreement; and/or
- (b) Bring suit for damages against SELLER.

ARTICLE VIII BREACH BY BUYER

8.1 In the event BUYER fails to consummate the purchase of the PROPERTY (BUYER being in default and SELLER not being in default hereunder), SELLER shall have the right to bring suit against BUYER only for expectancy and incidental damages, if any.

ARTICLE IX
MISCELLANEOUS

9.1 Survival of Covenants: Any of the representations, warranties, covenants, and agreements of the parties, as well as any rights and benefits of the parties, pertaining to the period of time following the closing date, shall survive the closing and shall not be merged by deed or otherwise be extinguished.

9.2 Notice: Any notice required or permitted to be delivered by this Contract shall be deemed received when sent by United States mail, postage prepaid, certified mail, return receipt requested, addressed to SELLER or BUYER, as the case may be, at the addresses set forth below:

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

BUYER: Rex Robinson
800 North Cowler
Bryan, TX 77803

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

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

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

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

9.7 Prior Agreements Superseded: This Contract embodies the entire agreement of the parties and supersedes any and all prior understandings or written or oral agreements between the parties respecting subject matter within and may only be amended or supplemented by an instrument in writing executed by the party against whom enforcement is sought.

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

9.9 Gender: Words of any gender used in this Contract shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, and vice versa, unless the context requires otherwise.

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

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

EXECUTED on this the _____ day of _____, 20__.

SELLER:

BUYER:

CITY OF COLLEGE STATION

Rex Robinson

BY: _____
Mayor

Printed Name: Rex Robinson

Date: _____

Date: April 2, 2012

ATTEST:

City Secretary

Date: _____

APPROVED:

City Manager
Date: _____

Executive Director Business Services
Date: _____

City Attorney
Date: _____

THE STATE OF TEXAS §
 § ACKNOWLEDGMENT
COUNTY OF BRAZOS §

This instrument was acknowledge before me on the ____ day of _____, 20 ____,
by _____ .

Notary Public in and for the State of Texas

THE STATE OF TEXAS §
 § ACKNOWLEDGMENT
COUNTY OF BRAZOS §

This instrument was acknowledge before me on the ____ day of _____, 20 ____,
by NANCY BERRY, as Mayor of the CITY OF COLLEGE STATION, a Texas Home Rule
Municipal Corporation, on behalf of said municipality.

Notary Public in and for the State of Texas

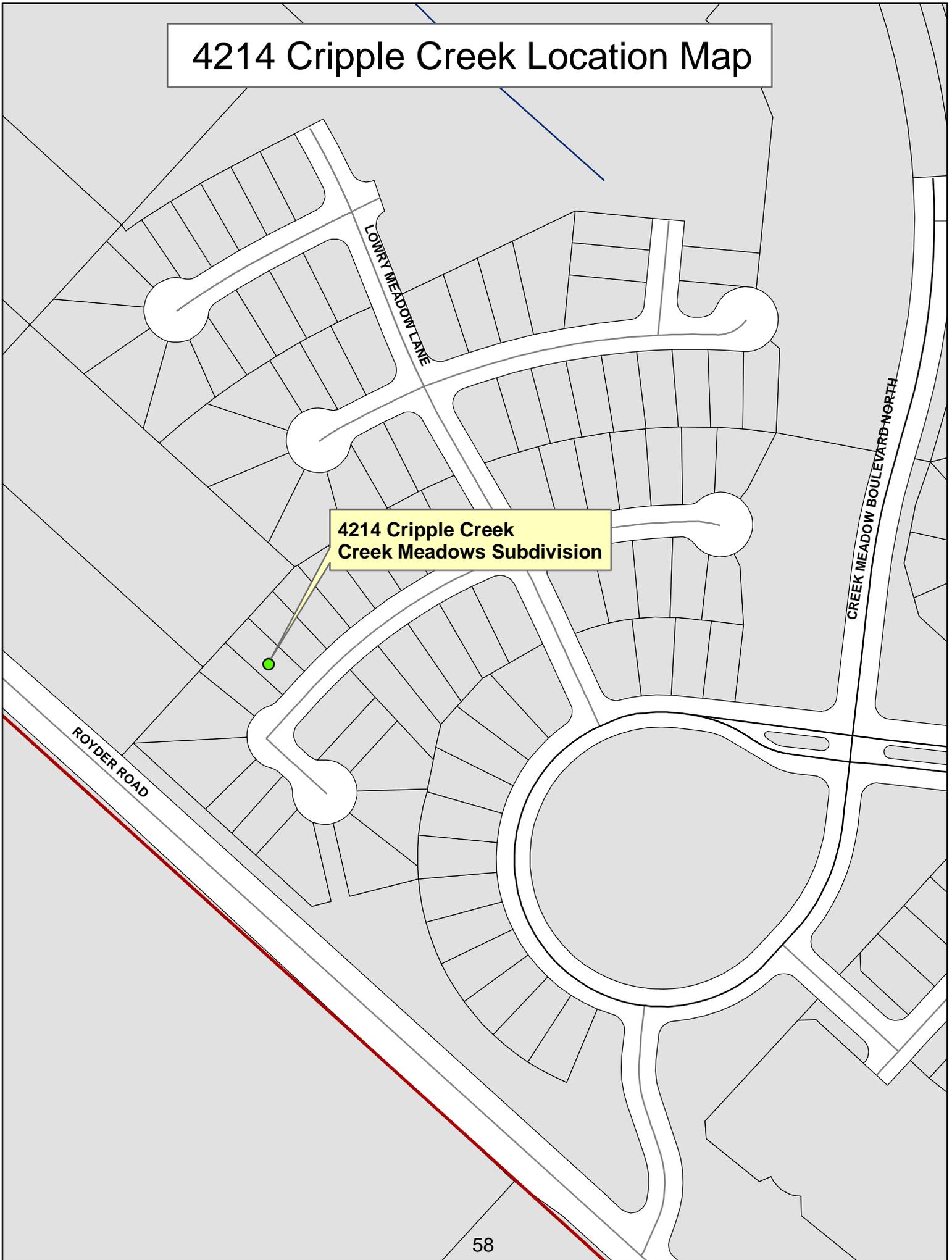
4214 Cripple Creek Location Map

**4214 Cripple Creek
Creek Meadows Subdivision**

LOWRY MEADOW LANE

CREEK MEADOW BOULEVARD NORTH

ROYDER ROAD



RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COLLEGE STATION, TEXAS,
APPROVING A REAL ESTATE CONTRACT FOR THE SALE OF 4214 CRIPPLE CREEK.**

WHEREAS, the City of College Station, Texas, solicited competitive bids for the sale of land under Section 272.001(a) of the Texas Local Government Code; and

WHEREAS, the selection of Rex Robinson is being recommended as the qualified bidder meeting all requirements; now, therefore,

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

PART 1: That the City Council hereby finds that Rex Robinson is the highest qualified bidder meeting all requirements of Bid # 12-053.

PART 2: That the City Council hereby approves the real estate contract with Rex Robinson for \$149,900 for the sale of the property and improvements located at 4214 Cripple Creek.

PART 3: The City Council hereby approves \$29,980.00 in down payment assistance to Rex Robinson to facilitate the purchase, as budgeted in the City of College Station Community Development FY 2012 Budget.

PART 4: That the proceeds from the sale of this Project shall be budgeted for future HOME Investment Partnership (HOME) Grant – eligible activities by the Planning and Development Services Department.

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

ADOPTED this _____ day of _____, A.D. 2012.

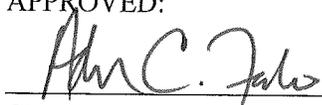
ATTEST:

APPROVED:

City Secretary

Mayor

APPROVED:



City Attorney

April 26, 2012
Consent Agenda Item No. 2i
Purchase Exemption request for the Reynolds Company

To: David Neeley, City Manager

From: David Coleman, Director of Water Services

Agenda Caption: Presentation, possible action and discussion to authorize expenditure of funds for FY-12, items exempt from competitive bidding as described in Texas Local Government Code chapter 252.022, to purchase SCADA equipment from the Reynolds Company, not to exceed \$100,000.

Relationship to Strategic Goals: Financially sustainable city providing response to core services and infrastructure.

Recommendation: Staff recommends approval of the purchase request.

Summary: In general, purchases are exempt from competitive bidding in accordance with Local Government Code 252.022 (a)(7)(A); other purchases greater than \$50,000 available from one source. In specific, the Reynolds Company purchases are available from only one source and thereby exempt from competitive bidding in accordance with LGC 252.022 (a)(7)(D); captive replacement parts or components for equipment, computer software and hardware maintenance and equipment lease and maintenance.

The Water Services Department's Supervisory Control and Data Acquisition (SCADA) system monitors and helps operate the Water and Wastewater systems efficiently, with minimal staff and within all regulatory requirements. In 2008, we requested proposals from automation companies, and selected Allen Bradley as the sole manufacturer to update our hardware/software and provide the best value to our utilities. The use of one manufacturer is done to ensure all system components are compatible, software programming is identical and that outside training and inventory needs are minimized. The Reynolds Company is the exclusive distributor for Allen Bradley products in the College Station area.

Whenever possible, we purchase Allen Bradley equipment directly from the manufacturer by using the Federal GSA Purchasing Contract 70. However, not all items necessary to complete the SCADA installations and replacements are available on this contract. This fact requires the City to purchase the compatible equipment from the authorized distributor, The Reynolds Company, and an estimate of annual purchases is attached. Staff recommends approval of this purchase request, not to exceed \$100,000 to allow us to comply with Purchasing Policy and keep the SCADA systems operating effectively.

Budget & Financial Summary: Funds are available in the appropriate areas of the Water and Wastewater Funds for these purchases.

Attachment:
FY-12 Estimate

WELL 5 MOTOR SOFT STARTER PROJECT

Qty	Catalog Number	Description	List Ea	Net Ea	Ext Net Ea (USD)
1	150-F625NBEB	SMC-Flex, Solid State Controller, Open, 625 A, 500 Hp @ 460V AC, Input Volt.: 200...480V, Control Volt.: 100...120V AC, Pump Control Option	\$ 16,495.32	\$ 16,495.32	\$ 16,495.32
1	20-HIM-A3	Hand Held Human Interface Modules - LCD Display, Full Numeric Keypad	\$ 186.85	\$ 186.85	\$ 186.85
1	20-COMM-D	Communication Modules - (IP30/Type 1), DeviceNet™	\$ 353.50	\$ 353.50	\$ 353.50
1	199-LG1	Terminal Lug Kit, #4..500 MCM AWG 25 mm2..240 mm2	\$ 127.26	\$ 127.26	\$ 127.26
1	20-HIM-C3S	Human Interface Module Interface Cables - LCD Display, Full Numeric Keypad (includes 3 m cable)	\$ 292.90	\$ 292.90	\$ 292.90
LCWWTP & NEW LIFT STATIONS					
15	1606-XLS240E	1606-XLS240E: Performance Power Supply, 24-48V DC, 240 W, 120/240V AC / 110-300V DC Input Voltage	\$ 575.70	\$ 575.70	\$ 8,635.50
200	1492-J4	IEC 1-Circuit Feed-Through Block, 4mm² max. wire, Gray,Pkg. Qty. of 100	\$ 1.17	\$ 1.17	\$ 234.00
6	1492-PD3263	1492 Power Block, Power Distribution Block, 3-Pole, Aluminum, 2 Openings Line Side, 6 Openings Load Side, 350 Amps	\$ 93.62	\$ 93.62	\$ 561.72
6	1492-PBC2	Power Block Cover	\$ 6.75	\$ 6.75	\$ 40.50
100	700-HK32A24-4	700-HK General Purpose Slim Line Relay, 8 Amp Contact, DPDT, 24V 50/60Hz, Pilot Light	\$ 20.45	\$ 20.45	\$ 2,045.00
100	700-HN122	Mini 8-Blade Base Socket, Screw Terminals, Guarded Touch Safe Terminal Construction (Pkg. Qty. 10)	\$ 13.23	\$ 13.23	\$ 1,323.00
40	1492-CJJ6-10	Screw Center Jumper, 6 mm Center to Center, 10 Pole, Yellow, Pkg. Qty. of 20	\$ 6.14	\$ 6.14	\$ 245.60
HENSEL PARK & LUTHER STREET LIFT STATION PROJECT					
4	1768 / 1769	CompactLogix System Group Selection			
4	1769-L32E	EtherNet Processor, 750 Kbyte Memory	\$ 2,969.40	\$ 2,969.40	\$ 11,877.60
4	1769-SDN	DeviceNet Scanner	\$ 835.27	\$ 835.27	\$ 3,341.08
4	1769-PB4	Power Supply 24VDC Input 4A @ 5VDC 2A @ 24VDC	\$ 451.47	\$ 451.47	\$ 1,805.88
4	1769-IF4I	4 Channel Analog Current/Voltage Isolated Input Module	\$ 905.97	\$ 905.97	\$ 3,623.88
4	1769-IQ16	16 Point 24 VDC Sinking/Sourcing Input Module	\$ 240.38	\$ 240.38	\$ 961.52
4	1769-OB8	8 Point High Power 24VDC Output Module	\$ 252.50	\$ 252.50	\$ 1,010.00
4	1769-ECR	Right End Cap/Terminator	\$ 33.93	\$ 33.93	\$ 135.72
4	1784-SD1	Industrial SD card	\$ 99.00	\$ 99.00	\$ 396.00
4	1783-MS10T	Stratix 8000 Ethernet Switch 10 Port Managed	\$ 2,110.00	\$ 2,110.00	\$ 8,440.00
4	1783-SFP1GLX	Stratix Fiber SFP, 1000Mbit over single-mode fiber	\$ 1,060.50	\$ 1,060.50	\$ 4,242.00

Subtotal \$ 66,374.83

12 % Contigency \$ 7,964.98

Total \$ 74,339.81

already expensed this FY \$ 24,000.00

Total expected expenses with The Reynolds Company for this FY \$ 98,339.81

**April 26, 2012
Consent Agenda Item No. 2j
City Wide Landscape Maintenance Contract Renewals**

To: David Neeley, City Manager

From: Chuck Gilman, P.E., PMP, Public Works Director

Agenda Caption: Presentation, possible action, and discussion regarding approval of renewals of landscape maintenance contracts to multiple vendors, and approval of change orders to add additional sites to the contracts, to Green Teams for \$266,629.22, to Rainbow Gardens for \$90,252.00, to Landscape USA for \$50,205.00, to Roots for \$12,240.00, and to ProGreen for \$81,728.00, in a total amount of \$508,434.22.

Relationship to Strategic Goals: Financially Sustainable City Providing Response to Core Services and Infrastructure – Spending taxpayer money efficiently.

Recommendation(s): Approval of the renewals and change orders.

Summary: In 2011, staff solicited proposals for all of the City's landscape maintenance needs (except regional parks and athletic fields). After receipt of the proposals, five contractors were chosen to provide services in five categories.

These annual contracts expire on April 30, 2012. The City provides the option of a maximum of two renewals of a contract upon agreement of both the City and the Contractor with a maximum of an 8% increase in the cost of the contract. All five contractors have returned signed agreements of the first renewal for one year. One of the five contractors, Green Teams, Inc., has requested an increase of 3%. The other four contractors did not request increases.

As several sites need to be added to the contracts, Staff also requests change orders to add these sites to the applicable category.

Renewal Letters were requested from the current contractors for continuation of landscape maintenance services into the 2012-2013 season. Change orders for additional sites are also requested. The following is a summary of the recommendation for renewal and change orders:

<u>Vendor</u>	<u>P.O.</u>	<u>Original Contract \$</u>	<u>Previous 2011 Change Order</u>	<u>2012 Renewal Increase</u>	<u>2012 Total Renewal</u>
Green Teams	110708	\$240,974.00	\$0	(3%) \$7,229.22	\$ 248,203.22
Rainbow Garden	110739	\$ 84,342.00	\$5,910.00	\$0.00	\$ 90,252.00
Landscape USA	110693	\$ 50,205.00	\$0	\$0.00	\$ 50,205.00
Roots	110709	\$ 12,240.00	\$0	\$0.00	\$ 12,240.00
ProGreen	110711	\$ 65,493.00	\$0	\$0.00	\$ 65,493.00

<u>Vendor</u>	<u>New 2102 Change Order</u>	<u>Total Change Order Percent (2011 & 2012) (25% max)</u>	<u>Requested Final Contract Amounts with All C.O.s and Renewals</u>
Green Teams	\$18,426.00	7.65%	\$ 266,629.22
Rainbow Garden	\$0.00	7.01%	\$ 90,252.00
Landscape USA	\$7,380.00	14.7%	\$ 57,585.00
Roots	\$0.00	0%	\$ 12,240.00
ProGreen	\$16,235.00	24.8%	\$ 81,728.00

TOTAL: \$508,434.22

Budget & Financial Summary: Budgeted ground maintenance of customer departments will fund the contracted maintenance operations.

Attachments:

1. Renewal Letter – Green Teams
2. Renewal Letter – Landscape USA
3. Renewal Letter – Rainbow Gardens
4. Renewal Letter – Roots
5. Renewal Letter – Pro-Green Landscape
6. Change Order – Green Teams
7. Change Order – Landscape USA
8. Change Order – ProGreen

.....

RENEWAL ACCEPTANCE

By signing herewith, I acknowledge and agree to renew contract no. 11-105(4), for **Annual Landscape Maintenance Services** in accordance with all terms and conditions previously agreed to and accepted in an amount not to exceed \$12,240.00.

I understand this renewal term will be for the period beginning May 1, 2012 through April 30, 2013.

ROOTS

CITY OF COLLEGE STATION

By: *Jeffrey A. Mazzolini*
Printed Name: JEFFREY A. MAZZOLINI
Title: MANAGER
Date: 3/15/12

By: _____
City Manager
Date: _____

APPROVED:

Malden
City Attorney
Date: _____

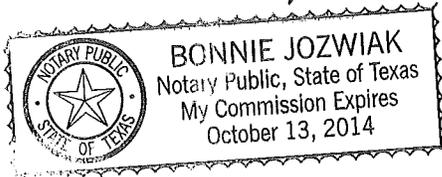
Executive Director Business Services
Date: _____

STATE OF TEXAS

CORPORATE ACKNOWLEDGMENT

COUNTY OF Brazos

This instrument was acknowledged on the 13 day of March, 2012,
by Jeffrey Mazzolini in his/her capacity as Owner/manager of
Roots Landscaping, a TEXAS Corporation, on behalf of said corporation.



Bonnie Jozwiak
Notary Public in and for the
State of Texas

STATE OF TEXAS

ACKNOWLEDGMENT

COUNTY OF BRAZOS

This instrument was acknowledged on the _____ day of _____, 2012,
by _____, in his capacity as City Manager of the City of College Station, a Texas
home-rule municipality, on behalf of said municipality.

Notary Public in and for the
State of Texas

.....
RENEWAL ACCEPTANCE

By signing herewith, I acknowledge and agree to renew contract no. 11-105(5), for **Annual Landscape Maintenance Services** in accordance with all terms and conditions previously agreed to and accepted in an amount not to exceed \$65,493.00.

I understand this renewal term will be for the period beginning May 1, 2012 through April 30, 2013.

PROGREEN

By: MR
Printed Name: Richard Reed
Title: Pres
Date: 3/12/12

CITY OF COLLEGE STATION

By: _____
City Manager
Date: _____

APPROVED:

Michael
City Attorney
Date: _____

Executive Director Business Services
Date: _____

STATE OF TEXAS

CORPORATE ACKNOWLEDGMENT

COUNTY OF BRAZOS

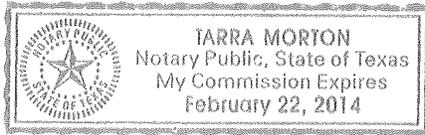
This instrument was acknowledged on the 12 day of MARCH, 2012,

by RICHARD REED in his/her capacity as PRESIDENT of

PROGREEN, a TEXAS Corporation, on behalf of said corporation.

Tarra Morton

Notary Public in and for the
State of Texas



STATE OF TEXAS

ACKNOWLEDGMENT

COUNTY OF BRAZOS

This instrument was acknowledged on the _____ day of _____, 2012 ,

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

Notary Public in and for the
State of Texas



RENEWAL ACCEPTANCE

By signing herewith, I acknowledge and agree to renew contract no. 11-105(3), for **Annual Landscape Maintenance Services** in accordance with all terms and conditions previously agreed to and accepted in an amount not to exceed \$50,205.00.

I understand this renewal term will be for the period beginning May 1, 2012 through April 30, 2013.

LANDSCAPE USA

CITY OF COLLEGE STATION

By: *Glen Conrad*
Printed Name: Glen Conrad
Title: Manager
Date: 3/13/12

By: _____
City Manager
Date: _____

APPROVED:

Molodt
City Attorney
Date: _____

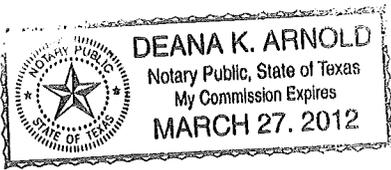
Executive Director Business Services
Date: _____

STATE OF TEXAS

CORPORATE ACKNOWLEDGMENT

COUNTY OF BRAZOS

This instrument was acknowledged on the 13 day of MARCH, 2012,
by Deana K Arnold in his/her capacity as Notary of
_____, a TEXAS Corporation, on behalf of said corporation.



Deana K Arnold
Notary Public in and for the
State of Texas

STATE OF TEXAS

ACKNOWLEDGMENT

COUNTY OF BRAZOS

This instrument was acknowledged on the _____ day of _____, 2012,
by _____, in his capacity as City Manager of the City of College Station, a Texas
home-rule municipality, on behalf of said municipality.

Notary Public in and for the
State of Texas

.....
RENEWAL ACCEPTANCE

By signing herewith, I acknowledge and agree to renew contract no. 11-105(2), for Annual Landscape Maintenance Services in accordance with all terms and conditions previously agreed to and accepted in an amount not to exceed \$90,252.00.

I understand this renewal term will be for the period beginning May 1, 2012 through April 30, 2013.

RAINBOW GARDENS

By: 
Printed Name: DANA RUSSELL
Title: PROJECT MANAGER
Date: 3-7-2012

CITY OF COLLEGE STATION

By: _____
City Manager
Date: _____

APPROVED:


City Attorney
Date: _____

Executive Director Business Services
Date: _____

STATE OF TEXAS

CORPORATE ACKNOWLEDGMENT

COUNTY OF Brazos

This instrument was acknowledged on the 7th day of March, 2012,
by Dana Russell in his/her capacity as Project Manager of
Rainbow Gardens, a TEXAS Corporation, on behalf of said corporation.



Brandi Whittenton
Notary Public in and for the
State of Texas

STATE OF TEXAS

ACKNOWLEDGMENT

COUNTY OF BRAZOS

This instrument was acknowledged on the _____ day of _____, 2012 ,
by _____, in his capacity as City Manager of the City of College Station, a Texas
home-rule municipality, on behalf of said municipality.

Notary Public in and for the
State of Texas

.....
RENEWAL ACCEPTANCE

By signing herewith, I acknowledge and agree to renew contract no. 11-105, for **Annual Landscape Maintenance Services** in accordance with all terms and conditions previously agreed to and accepted including a proposed 3% across the board increase.

I understand this renewal term will be for the period beginning May 1, 2012 through April 30, 2013 and with the 3% increase, the new total amount of the contract is \$248,203.22 (Two Hundred Forty Eight Thousand Two Hundred Three Dollars and 22/100).

GREEN TEAMS, INC.

CITY OF COLLEGE STATION

By: Tucker Gallogher
Printed Name: Tucker Gallogher
Title: VP
Date: 3/16/12

By: _____
City Manager
Date: _____

APPROVED:

Malden
City Attorney
Date: _____

Executive Director Business Services
Date: _____

STATE OF TEXAS

CORPORATE ACKNOWLEDGMENT

COUNTY OF Brazos

This instrument was acknowledged on the 16 day of March, 2012,
by Tucker Callaghan in his/her capacity as VP of
Green Teams, Inc. a TEXAS Corporation, on behalf of said corporation.



Sandra Rincon
Notary Public in and for the
State of Texas

STATE OF TEXAS

ACKNOWLEDGMENT

COUNTY OF BRAZOS

This instrument was acknowledged on the _____ day of _____, 2012 ,
by _____, in his capacity as City Manager 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

CHANGE ORDER NO. DATE: 4/10/12
 CONTRACT # 11-105 (5) PROJECT DESCRIPTION: Landscape Maint. Annual Contract
 P.O.#110711 PROJECT #

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

CONTRACTOR: ProGreen Landscape Solutions
 31 Highland Drive
 Huntsville, TX 77320

Ph: (936) 293-8556
 Fax:

PURPOSE OF THIS CHANGE ORDER:
 Item 1: Reduce extra cuts for medians
 Item 2: Add Barron Rd Phase 2 – 22 cycles
 Item 3: Add Wellborn Rd – 22 cycles

ITEM NO.	UNIT	DESCRIPTION	UNIT PRICE	ORIGINAL QUANTITY	REVISED QUANTITY	ADDED COST
1	1	Extra cuts – reduce from 10 to 5	\$1,615.00	10	5	(\$8,075.00)
2	22	Barron Rd Phase 2 – 22 cycles	\$ 480.00	0	22	\$10,560.00
3	22	Wellborn	\$ 625.00	0	22	\$13,750.00

THE NET AFFECT OF THIS CHANGE ORDER IS A \$16,235 (Increase).

ORIGINAL CONTRACT AMOUNT \$ 65,493.00
 Change Order No. 1 \$ 16,235.00 24.8 % of Original Contract Amount
 Change Order No. 2 \$ _____ % of Original Contract Amount
 Change Order No. 3 \$ _____ % of Original Contract Amount
 REVISED CONTRACT AMOUNT \$ 81,728.00

ORIGINAL CONTRACT TIME Days
 Change Order No. 1 Time Extension or Reduction Days
 Change Order No. 2 Time Extension or Reduction Days
 Change Order No. 3 Time Extension or Reduction Days
 REVISED CONTRACT TIME Days

ORIGINAL SUBSTANTIAL COMPLETION DATE 4/30/12
 REVISED SUBSTANTIAL COMPLETION DATE 4/30/13

APPROVED:

<u>N/A</u>	_____	Date	_____	Date
A/E CONTRACTOR			CHIEF FINANCIAL OFFICER	
CONSTRUCTION CONTRACTOR	_____	Date		_____
			CITY ATTORNEY	Date
PROJECT ENGINEER	<u>N/A</u>	_____	_____	Date
			CITY MANAGER	
CITY ENGINEER	<u>N/A</u>	_____	_____	Date
			MAYOR	
DEPARTMENT DIRECTOR/ADMINISTRATOR		11 April 2012	_____	Date
			CITY SECRETARY	Date

CHANGE ORDER NO. 1
 CONTRACT # 11-105
 PROJECT #

DATE: April 10, 2012
 PROJECT DESCRIPTION: Landscape Maint. Annual Contract

P.O.#110708

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

CONTRACTOR: Green Teams, Inc.
 731 Industrial Blvd.
 Bryan, TX 77803

Ph: (979) 823-7551
 Fax:

PURPOSE OF THIS CHANGE ORDER:
 Item 1: Add Thomas Park – Primary Cuts - to Landscape Maintenance Contract
 Item 2: Add Thomas Park - Hardscape to Landscape Maintenance Contract
 Item 3: Add W.A. Tarrow Park – Primary Cuts – to Landscape Maintenance Contract
 Item 4: Add W.A. Tarrow Park – Bed Maintenance – to Landscape Maintenance Contract
 Item 5: Add W.A. Tarrow Park – Color Planting – to Landscape Maintenance Contract

ITEM NO.	UNIT	DESCRIPTION	UNIT PRICE	ORIGINAL QUANTITY	REVISED QUANTITY	ADDED COST
1	18	Thomas Park – Primary Cuts	\$ 436.00	0	18	\$7,848.00
2	12	Thomas Park Hardscape	\$ 72.00	0	12	\$864.00
3	18	W.A. Tarrow Park – Primary Cuts	\$ 425.00	0	18	\$7,650.00
4	12	W.A. Tarrow Park – Bed Maint.	\$ 114	0	12	\$1,368.00
5	1	W.A. Tarrow Park – Color Planting	\$ 696.00	0	1	\$ 696.00

THE NET AFFECT OF THIS CHANGE ORDER IS A \$18,426.00 (Increase).

ORIGINAL CONTRACT AMOUNT	\$ 240,974.00	
Change Order No. 1	\$18,426.00	7.65% % of Original Contract Amount
Change Order No. 2	\$	% of Original Contract Amount
Change Order No. 3	\$	% of Original Contract Amount
REVISED CONTRACT AMOUNT	\$ 259,400.00	

ORIGINAL CONTRACT TIME Days

Change Order No. 1 Time Extension or Reduction Days

Change Order No. 2 Time Extension or Reduction Days

Change Order No. 3 Time Extension or Reduction Days

REVISED CONTRACT TIME N/A Days

ORIGINAL SUBSTANTIAL COMPLETION DATE 4/30/12

REVISED SUBSTANTIAL COMPLETION DATE 4/30/13

APPROVED:

<u>N/A</u>	_____	_____	_____
A/E CONTRACTOR	Date	CHIEF FINANCIAL OFFICER	Date
	4-11-12		_____
CONSTRUCTION CONTRACTOR	Date	CITY ATTORNEY	Date
<u>N/A</u>	_____	_____	_____
PROJECT ENGINEER	Date	CITY MANAGER	Date
<u>N/A</u>	_____	_____	_____
CITY ENGINEER	Date	MAYOR	Date
	11 April 2012	_____	_____
DEPARTMENT DIRECTOR/ ADMINISTRATOR	Date	CITY SECRETARY	Date

CHANGE ORDER NO. 1 DATE: 4/10/12
 CONTRACT # 11-105 (3) PROJECT DESCRIPTION: Landscape Maint. Annual Contract
 P.O.# 110693 PROJECT #

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

CONTRACTOR: Landscape USA
 3737 Old Reliance Rd
 Bryan, Texas 77808

Ph: (979) 778-2800
 Fax: (979) 778-2880

PURPOSE OF THIS CHANGE ORDER:
 Item 1: Mow outside perimeter of well sites
 Item 2: Mow outside perimeter of Sandy Point site
 Item 3: Mow outside perimeter of Dowling Rd. site

ITEM NO.	UNIT	DESCRIPTION	UNIT PRICE	ORIGINAL QUANTITY	REVISED QUANTITY	ADDED COST
1	Perimeter cut	Mowing of outside fence of 6 wells – 18 cuts per well	\$ 25.00	0	108	\$2,700.00
2	Perimeter cut	Mowing of outside fence of Sandy Point	\$ 85.00	0	18	\$1,530.00
3	Perimeter cut	Mowing of outside fence of Dowling Rd	\$ 175.00	0	18	\$3,150.00

THE NET AFFECT OF THIS CHANGE ORDER IS A \$7,380.00 (Increase).

ORIGINAL CONTRACT AMOUNT \$ 50,205.00
 Change Order No. 1 \$ 7,380.00 14.7 % of Original Contract Amount
 Change Order No. 2 \$ _____ % of Original Contract Amount
 Change Order No. 3 \$ _____ % of Original Contract Amount
 REVISED CONTRACT AMOUNT \$ 57,585.00

ORIGINAL CONTRACT TIME Days
 Change Order No. 1 Time Extension or Reduction Days
 Change Order No. 2 Time Extension or Reduction Days
 Change Order No. 3 Time Extension or Reduction Days
 REVISED CONTRACT TIME Days

ORIGINAL SUBSTANTIAL COMPLETION DATE 4/30/12
 REVISED SUBSTANTIAL COMPLETION DATE 4/30/13

APPROVED:

<u>N/A</u>	_____	Date	CHIEF FINANCIAL OFFICER	_____	Date
A/E CONTRACTOR	<u>x Ken Conrad</u>	_____	CITY ATTORNEY	<u>Melodonta</u>	_____
CONSTRUCTION CONTRACTOR		Date	CITY MANAGER		Date
<u>N/A</u>	_____	Date	MAYOR	_____	Date
PROJECT ENGINEER		Date	CITY SECRETARY		Date
<u>N/A</u>	_____	Date			
CITY ENGINEER	<u>Chala R. [Signature]</u>	11 April 2012			
DEPARTMENT DIRECTOR/ ADMINISTRATOR		Date			

April 26, 2012
Consent Agenda Item No. 2k
Pad-Mounted Distribution Transformers
Re-Award of Line Item #2

To: David Neeley, City Manager

From: Jeff Kersten, Executive Director Business Services

Agenda Caption: Presentation, possible action and discussion regarding the cancellation of award, of fifteen (15) 50 KVA Padmount Transformers, in the amount of \$31,650.00 to Texas Electric Cooperatives, and approval of new award to HD Supply Utilities in the amount of \$31,755.00.

Recommendation(s): Staff recommends that line item 2, fifteen (15) 50 KVA Padmount Transformers be awarded to the next lowest bidder, HD Supply in the amount of \$31,755.00.

Summary: On April 12, 2012 Council approved the award of line item 2 of Bid #12-050 for Padmounted Distribution Transformers, to Texas Electric Cooperatives in the amount of \$31,650.00. After council award, during the process of issuing purchase orders, it was discovered that Texas Electric Cooperatives had included an exception to liquidated damages in a location that was separate from their bid proposal. By taking exception to the liquidated damages, per the bid documents, Texas Electric Cooperative's bid was subject to a five (5) percent unit price increase.

After including the five (5) percent price increase Texas Electric Cooperatives was no longer the lowest bidder. The next lowest bidder was HD Supply Utilities, in the amount of \$31,755.00. This will increase the total amount of award from \$90,495.00 to \$90,600.00.

Budget & Financial Summary: Six (6) sealed bids were received and opened on March 22, 2012. Funds are budgeted and available in the Electrical Fund. Various projects may be expensed as supplies are pulled from inventory and issued.

Attachments: Revised Bid Tabulation #12-050

ITEM NUMBER: 1

ITEM DESCRIPTION: 25 KVA Padmount Transformer 240/120

Order Quantity: 6

INVENTORY #: 285-086-00031

BIDDER	MANUFACTURER	UNIT PRICE	EXTENDED PRICE	Total Owning Cost (TOC)	DELIVERY (weeks)
HD Supply #1	GE Prolec	\$1,934.00	\$11,604.00	\$2,416.06	8
HD Supply #2	Cental Maloney	\$1,771.00	\$10,626.00	\$2,260.24	10
HD Supply #3	ERMCO	\$1,843.00	\$11,058.00	\$2,337.84	8-10
KBS #1	Cooper	\$2,364.00	\$14,184.00	\$2,848.60	16-18
KBS #2	ERMCO	\$1,829.00	\$10,974.00	\$2,323.84	8-10
Priester-Mell & Nicholson	Cental Maloney	\$1,776.00	\$10,656.00	\$2,265.24	10
Techline #1	Howard	\$1,814.00	\$10,884.00	\$2,302.59	8-10
Techline #2	Howard	\$1,825.00	\$10,950.00	\$2,309.04	10-12
TEC #1	GE	\$1,945.00	\$11,670.00	\$2,427.06	7
TEC #2	ERMCO	\$1,804.00	\$10,824.00	\$2,298.84	8-10
Wesco #1	ABB	\$1,866.00	\$11,196.00	\$2,381.00	8-10
Wesco #1	ABB	\$1,997.00	\$11,982.00	\$2,494.75	10-12

Low Bid

ITEM NUMBER : 2

ITEM DESCRIPTION: 50 KVA Padmount Transformer 240/120

Order Quantity: 15

INVENTORY #: 285-086-00032

BIDDER	MANUFACTURER	UNIT PRICE	EXTENDED PRICE	Total Owning Cost (TOC)	DELIVERY (weeks)
HD Supply #1	GE Prolec	\$2,164.00	\$32,460.00	\$2,998.09	8
HD Supply #2	Central Maloney	\$2,117.00	\$31,755.00	\$2,939.85	10
HD Supply #3	ERMCO	\$2,156.00	\$32,340.00	\$2,982.26	8-10
KBS #1	Cooper	\$2,845.00	\$42,675.00	\$3,677.93	16-18
KBS #2	ERMCO	\$2,162.00	\$32,430.00	\$2,988.26	8-10
Priester-Mell & Nicholson	Central Maloney	\$2,123.00	\$31,845.00	\$2,945.85	10
Techline #1	Howard	\$2,186.00	\$32,790.00	\$2,997.31	8-10
Techline #2	Howard	\$2,258.00	\$33,870.00	\$3,015.34	10-12
TEC #1	GE	\$2,123.00	\$31,845.00	\$2,957.09	7
TEC #2	ERMCO	\$2,215.50	\$33,232.50	\$3,041.76	8-10
Wesco #1	ABB	\$2,215.50	\$33,232.50	\$3,091.24	8-10
Wesco #2	ABB	\$2,642.00	\$39,630.00	\$3,287.27	10-12

Low bid

Wesco #1 originally had tying low bid of \$2110 but took exception to "liquidated damages and shipping liquidated damages". Per bid specifications, 5% was added to the unit cost and recalculated to \$2215.50. TOC was recalculated to \$3091.24.

TEC #2 originally had tying low bid of \$2110 but took exception to "liquidated damages and shipping liquidated damages". Per bid specifications, 5% was added to the unit cost and recalculated to \$2215.50. TOC was recalculated to \$3041.76.

ITEM NUMBER : 3

ITEM DESCRIPTION: 75 KVA Padmount Transformer 240/120

Order Quantity: 6

INVENTORY #: 285-086-00033

BIDDER	MANUFACTURER	UNIT PRICE	EXTENDED PRICE	Total Owning Cost (TOC)	DELIVERY (weeks)
HD Supply #1	GE Prolec	\$2,676.00	\$16,056.00	\$3,785.47	8
HD Supply #2	Central Maloney	\$2,513.00	\$15,078.00	\$3,662.96	10
HD Supply #3	No bid	\$0.00	\$0.00	\$0.00	0
KBS #1	Cooper	\$3,208.00	\$19,248.00	\$4,325.24	22-24
KBS #2	ERMCO	\$2,648.00	\$15,888.00	\$3,790.82	8-10
Priester-Mell & Nicholson	Central Maloney	\$2,520.00	\$15,120.00	\$3,669.96	8
Techline #1	Howard	\$2,835.00	\$17,010.00	\$3,930.08	8-10
Techline #2	Howard	\$2,904.00	\$17,424.00	\$3,903.51	10-12
TEC #1	GE	\$2,590.00	\$15,540.00	\$3,699.47	7
TEC #2	ERMCO	\$2,613.00	\$15,678.00	\$3,755.82	8-10
Wesco #1	ABB	\$2,574.60	\$15,447.60	\$3,812.39	8-10
Wesco #2	ABB	\$2,843.00	\$17,058.00	\$4,013.18	10-12

Low bid

Wesco #1 originally had low bid of \$2452 but took exception to "liquidated damages and shipping liquidated damages". Per bid specifications, 5% was added to the unit cost and recalculated to \$2574.60. TOC was recalculated to \$3812.69.

ITEM NUMBER : 4

ITEM DESCRIPTION: 100 KVA Padmount Transformer 240/120

Order Quantity: 6

INVENTORY #: 285-086-00034

BIDDER	MANUFACTURER	UNIT PRICE	EXTENDED PRICE	Total Owning Cost (TOC)	DELIVERY (weeks)
HD Supply #1	GE Prolec	\$3,108.00	\$18,648.00	\$4,479.48	8
HD Supply #2	Central Maloney	\$2,998.00	\$17,988.00	\$4,328.08	10
HD Supply #3	ERMCO	\$3,206.00	\$19,236.00	\$4,567.54	8-10
KBS #1	Cooper	\$3,516.00	\$21,096.00	\$4,878.10	22-24
KBS #2	ERMCO	\$3,181.00	\$19,086.00	\$4,542.54	8-10
Priester-Mell & Nicholson	Central Maloney	\$3,006.00	\$18,036.00	\$4,336.08	10
Techline #1	Howard	\$3,320.00	\$19,920.00	\$4,662.46	8-10
Techline #2	Howard	\$3,350.00	\$20,100.00	\$4,491.09	10-12
TEC #1	GE	\$3,035.00	\$18,210.00	\$4,401.21	7
TEC #2	ERMCO	\$3,140.00	\$18,840.00	\$4,501.54	8-10
Wesco #1	ABB	\$3,073.35	\$18,440.10	\$4,516.98	8-10
Wesco #2	ABB	\$3,455.00	\$20,730.00	\$4,601.44	10-12

Low bid

Wesco #1 originally had low bid of \$2927 but took exception to "liquidated damages and shipping liquidated damages". Per bid specifications, 5% was added to the unit cost and recalculated to \$3073.35. TOC was recalculated to \$4516.98.

ITEM NUMBER : 5

ITEM DESCRIPTION: 250 KVA Padmount Transformer 240/120

Order Quantity: 3

INVENTORY #: 285-086-00036

BIDDER	MANUFACTURER	UNIT PRICE	EXTENDED PRICE	Total Owning Cost (TOC)	DELIVERY (weeks)
HD Supply #1	No bid	\$0.00	\$0.00	\$0.00	0
HD Supply #2	Central Maloney	\$5,708.00	\$17,124.00	\$8,595.14	10
HD Supply #3	ERMCO	\$6,145.00	\$18,435.00	\$9,215.07	8-10
KBS #1	No bid	\$0.00	\$0.00	\$0.00	0
KBS #2	ERMCO	\$6,096.00	\$18,288.00	\$9,166.07	8-10
Priester Mell & Nicholson	Central Maloney	\$5,723.00	\$17,169.00	\$8,610.14	10
Techline #1	Howard	\$6,715.00	\$20,145.00	\$9,666.91	8-10
Techline #2	Howard	\$6,920.00	\$20,760.00	\$9,392.15	10-12
TEC #1	No bid	\$0.00	\$0.00	\$0.00	0
TEC #2	ERMCO	\$6,015.00	\$18,045.00	\$9,085.07	7-10
Wesco #1	ABB	\$5,051.00	\$15,153.00	\$8,092.13	8-10
Wesco #2	ABB	\$5,985.00	\$17,955.00	\$8,732.50	10-12

Low bid

SUMMARY

	Vendor	Manufacturer	Quantity	Unit Price	Total	Delivery
Item #1 25 KVA Padmount Transformer 240/120 Inventory #285-086-00031	HD Supply	Central Maloney	6	\$1,771	\$10,626	10 weeks
Item #2 50 KVA Padmount Transformer 240/120 Inventory #285-086-00032	HD Supply	Central Maloney	15	\$2,117	\$31,755	8-10 weeks
Item #3 75 KVA Padmount Transformer 240/120 Inventory #285-086-00033	HD Supply	Central Maloney	6	\$2,513	\$15,078	10 weeks
Item #4 100 KVA Padmount Transformer 240/120 Inventory #285-086-00034	HD Supply	Central Maloney	6	\$2,998	\$17,988	10 weeks
Total				HD Supply	\$75,447	
Item #5 250 KVA Padmount Transformer 240/120 Inventory #285-086-00036	Wesco	ABB	3	\$5,051	\$15,153	8-10 weeks
Total				Wesco	\$15,153	

April 26, 2012
Consent Agenda Item No. 2L
East Side Sewer Service Design Contract Award

To: David Neeley, City Manager

From: Chuck Gilman, P.E., PMP, Public Works Director

Agenda Caption: Presentation, possible action, and discussion regarding a design contract with Jones & Carter, Inc., in the amount of \$204,000, for design of the East Side Sewer Service Project.

Relationship to Strategic Goals: Financially Sustainable City Providing Response to Core Services and Infrastructure – The infrastructure will provide sewer service and support development within our CCN.

Recommendation(s): Staff recommends award of the professional services contract to Jones & Carter, Inc. in the amount of \$204,000.

Summary: Design and construction phase services for the East Side Sewer Service Project arises out of the Interlocal Cooperation and Joint Development Agreement between the City of College Station and the City of Bryan and relates to the sanitary sewer Certificate of Convenience and Necessity (CCN) swap. As part of the CCN swap, the East Side Project will provide sewer service to the service area within the City of Bryan corporate limits.

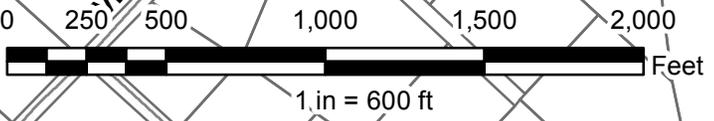
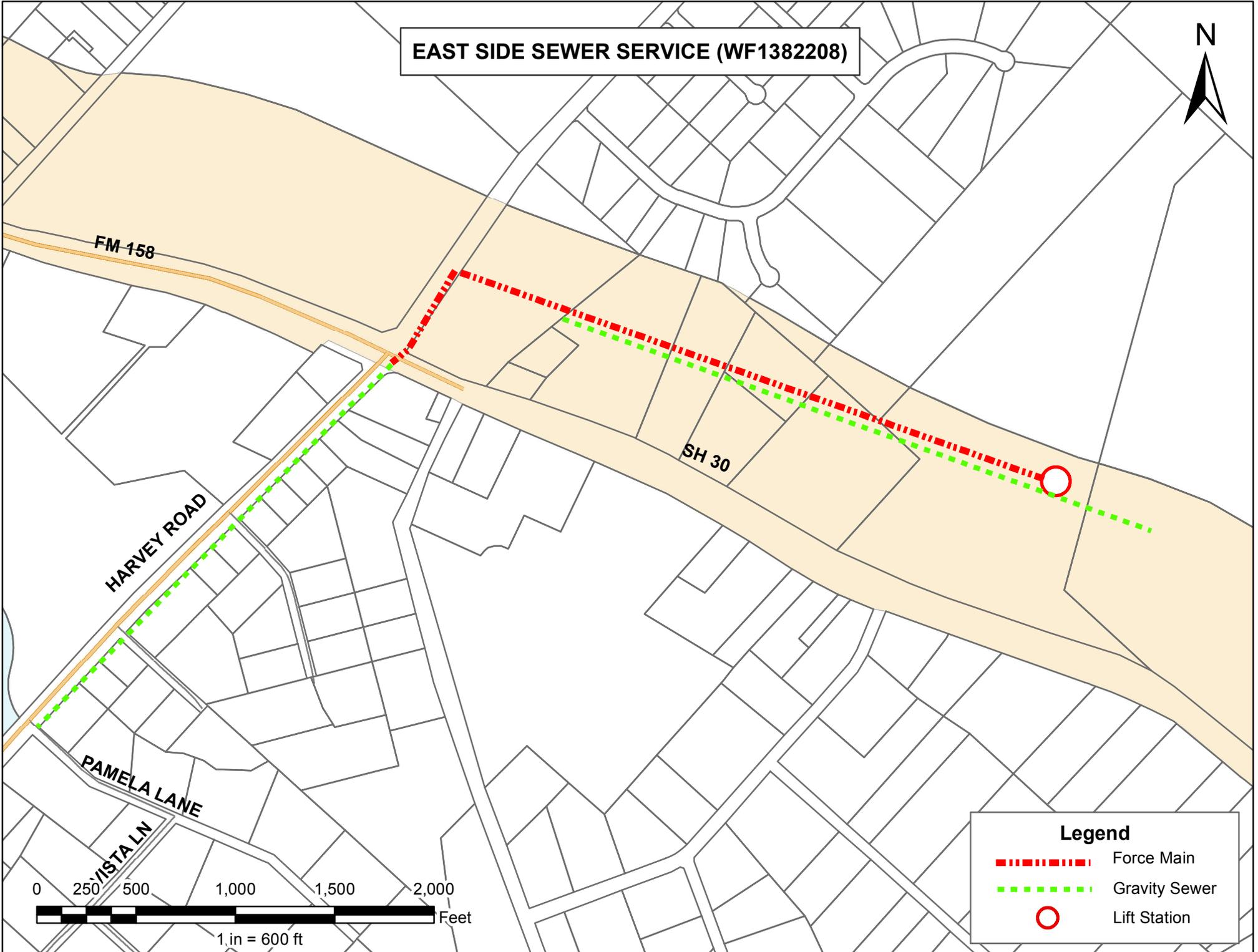
The project includes construction of approximately 3,100 linear feet of new gravity sewer, a lift station, and approximately 3,800 linear feet of force main to serve properties along SH 30 southeast of the intersection with FM 158. Approximately 2,500 linear feet of existing sanitary sewer along SH 30 in the College Station corporate limits will also be upsized in order to convey flows to the Carters Creek Wastewater Treatment Plant.

Budget & Financial Summary: Funds in the amount of \$1,538,000 are currently budgeted for this project in the Wastewater Capital Improvement Projects Fund. The City of College Station will be reimbursed by the City of Bryan for half of the project cost.

Attachments:

1. Non Standard Form of Architects & Engineering Professional Services Contract (On File in the City Secretary's Office)
2. Project Map

EAST SIDE SEWER SERVICE (WF1382208)



Legend

- Force Main
- Gravity Sewer
- Lift Station

April 26, 2012
Consent Agenda Item No. 2m
Medical Waste Hauling Franchise
with Waste Management Health Care Solutions, Inc.

To: David Neeley, City Manager

From: Jason Stuebe, Assistant to the City Manager

Agenda Caption: Presentation, possible action and discussion on the third and final of three readings of a non-exclusive franchise agreement with Waste Management Health Care Solutions, Inc. for the purpose of collecting and disposing treated and untreated medical waste from various health care related facilities.

Recommendation(s): Staff recommends approval.

Summary: 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." The second reading was approved at the April 12, 2012 Council Meeting.

This proposed non-exclusive five (5) year franchise agreement allows for the collection, hauling, and disposal of treated and untreated medical waste from various health care facilities within the city limits. The disposal of medical waste, a State mandated service, was privatized in 2005 because untreated medical waste cannot be depositing in any BVSWMA landfill. Staff maintains that continuing this practice is the most cost-effective way to offer this service to our community.

This is the first Franchise sought by Waste Management, Inc. for this service. Once approved, it will be the second active non-exclusive franchise granted to provide Medical Waste disposal services.

Budget & Financial Summary: The franchisee agrees and shall pay to the City five percent (5%) of the franchisee's monthly gross delivery and hauling revenues generated from the collection services provided for in the Franchise Agreement.

Attachments:

1. Franchise Ordinance is on file with the City Secretary

April 26, 2012
Consent Agenda Item No. 2n
Justice Assistance Grant (JAG) Inter-local Agreement

To: David Neeley, City Manager

From: Jeff Capps, Chief of Police

Agenda Caption: Presentation, possible action, and discussion on an inter-local agreement (ILA) with Brazos County and the City of Bryan for the purpose of application and acceptance of a U.S. Department of Justice, 2012 Justice Assistance Grant (JAG).

Relationship to Strategic Goals: Financially Sustainable City

Recommendation(s): Staff recommends Council approval.

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

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

Budget & Financial Summary: This 2012 JAG allocation for Brazos County is \$55,643. This amount is based upon a statutory JAG formula that considers the jurisdiction's share of state population and reported part 1 violent crime statistics. The grant has no match requirement.

Individual recommended allocations designated by the Department of Justice are: Brazos County- \$0; Bryan- \$39,472; College Station- \$16,171 for a total of \$55,643. Brazos County has been certified as a disparate jurisdiction. As such, all jurisdictions must enter into an Inter-Local Agreement to specify an award distribution to each unit of local government in a manner that will address disparity and furthermore, must apply for funding jointly.

College Station and Bryan Police Departments have agreed to provide 15% of their recommended funding to Brazos County Sheriff's office in an effort to address disparity. After providing 15% to the Brazos County Sheriff's office, the allocations are as follows: Brazos County - \$8,346.45; Bryan - \$33,551.20; College Station - \$13,745.35 for a total of \$55,643.

Bryan Police Department will serve as the administering agency.

Attachments:

1. Inter-local Agreement

INTERLOCAL AGREEMENT BETWEEN BRAZOS COUNTY, THE CITY OF COLLEGE STATION, AND THE CITY OF BRYAN FOR THE 2012 BYRNE JUSTICE ASSISTANCE GRANT (JAG) PROGRAM AWARD

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

WHEREAS, the County, College Station, and Bryan wish to submit a joint application for grant funds under the U.S. Department of Justice's 2012 Edward Byrne Memorial Justice Assistance Grant (JAG) Program; and

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

WHEREAS, Bryan will serve as the applicant/fiscal agent; and

WHEREAS, Chapter 791 of the TEXAS GOVERNMENT CODE, also known as the INTERLOCAL COOPERATION ACT, authorizes all local governments to contract with each other to perform governmental functions or services; and

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

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

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

WHEREAS, Bryan agrees to provide the County \$8,346.45 from the JAG award for the purpose of supporting local initiatives, technical assistance, training, personnel, equipment, supplies, contractual support, information technology, research and evaluation activities that will improve or enhance law enforcement programs; and

WHEREAS, Bryan agrees to provide College Station \$13,745.35 from the JAG award for the purpose of supporting local initiatives, technical assistance, training, personnel, equipment, supplies, contractual support, information technology, research and evaluation activities that will improve or enhance law enforcement programs; and

WHEREAS, Bryan shall use their \$33,551.20 from the JAG award for the purpose of supporting local initiatives, technical assistance, training, personnel, equipment, supplies, contractual support, information technology, research and evaluation activities that will improve or enhance law enforcement programs; and

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

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

1. Bryan agrees to pay the County a total of \$8,346.45 of JAG funds.
2. The County agrees to use the \$8,346.45 for the purpose of supporting local initiatives, technical assistance, training, personnel, equipment, supplies, contractual support, information technology, research and evaluation activities that will improve or enhance law enforcement programs.
3. Bryan agrees to pay College Station a total of \$13,745.35 of JAG funds.
4. College Station agrees to use \$13,745.35 for the purpose of supporting local initiatives, technical assistance, training, personnel, equipment, supplies, contractual support, information technology, research and evaluation activities that will improve or enhance law enforcement programs.
5. Bryan agrees to retain a total of \$33,551.20 of the JAG funds.
6. Bryan agrees to use \$33,551.20 for the purpose of supporting local initiatives, technical assistance, training, personnel, equipment, supplies, contractual support, information technology, research and evaluation activities that will improve or enhance law enforcement programs.
7. The parties to this Agreement do not intend for any third party to obtain a right by virtue of this Agreement.
8. By entering into this Agreement, the parties do not intend to create any obligations express or implied other than those set out herein; further, this Agreement shall not create any rights in any party not a signatory hereto.
9. No party shall have the right to direct or control the conduct of the other parties with respect to the duties and obligations of each party under the terms of this Agreement.
10. Each entity shall ensure that all applicable laws and ordinances have been satisfied.
11. **Effective Date and Term.** This Agreement shall be effective when signed by the last party who's signing makes the Agreement fully executed and will remain in full force and effect until September 30, 2016.
12. **INDEMNIFICATION.** Subject to the limitations as to damages and liability under the Texas Tort Claims Act, and without waiving its governmental immunity, each party to this Agreement agrees to hold harmless each other, its governing board, officers, agents and employees for any liability, loss, damages, claims or causes of action caused, or asserted to be caused, directly or indirectly by any other party to this Agreement, or any of its officers, agents or employees as a result of its performance under this Agreement.
13. **CONSENT TO SUIT.** Nothing in this Agreement will be construed as a waiver or relinquishment by any party of its right to claim such exemptions, privileges and immunities as may be provided by law.

14. **Invalidity:** If any provision of this Agreement shall be held to be invalid, illegal, or unenforceable by a court or other tribunal of competent jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The parties shall use their best efforts to replace the respective provision or provisions of this Agreement with legal terms and conditions approximating the original intent of the parties.
15. **Written Notice.** Unless otherwise specified, written notice shall be deemed to have been duly served if delivered in person or sent by certified mail to the business address as listed herein.

CITY OF COLLEGE STATION:

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

CITY OF BRYAN:

City Manager
City of Bryan
P.O. Box 1000
300 South Texas Avenue
Bryan, Texas 77803

BRAZOS COUNTY:

County Judge
Brazos County
300 East 29th Street, Suite 114
Bryan, Texas 77803

16. **Entire Agreement.** It is understood that this Agreement contains the entire agreement between the parties and supersedes any and all prior agreements, arrangements, or understandings between the parties relating to the subject matter. Nor oral understandings, statements, promises, or inducements contrary to the terms of this Agreement exist. This Agreement cannot be changed or terminated orally. No verbal agreement or conversation with any officer, agent, or employee of any party before or after the execution of this Agreement shall affect or modify any of the terms or obligations hereunder.
17. **Amendment.** No Amendment to this Agreement shall be effective and binding unless and until it is reduced to writing and signed by duly authorized representatives of both parties.
18. **Texas Law.** This Agreement has been made under and shall be governed by the laws of the State of Texas.
19. **Place of Performance.** Performance and all matters related thereto shall be in Brazos County, Texas, United States of America.

20. **Authority to Enter Contract.** Each party has the full power and authority to enter into and perform this Agreement and the person signing this Agreement on behalf of each party has been properly authorized and empowered to enter into this Agreement. The persons executing this Agreement hereby represent that they have authorization to sign on behalf of their respective corporations.
21. **Waiver.** Failure of any party, at any time, to enforce a provision of this Agreement, shall in no way constitute a waiver of that provision, nor in anyway affect the validity of this Agreement, any part hereof, or the right of either party thereafter to enforce each and every provision hereof. No term of this Agreement shall be deemed waived or breach excused unless the waiver shall be in writing and signed by the party claimed to have waived. Furthermore, any consent to or waiver of a breach will not constitute consent to or waiver of or excuse any other different or subsequent breach.
22. **Agreement Read.** The parties acknowledge that they have read, understand and intend to be bound by the terms and conditions of this Agreement.
23. **Assignment.** This Agreement and the rights and obligations contained herein may not be assigned by any party without the prior written approval of the other parties to this Agreement.
24. **Multiple Originals.** It is understood and agreed that this Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes.

EXECUTED this the _____ day of _____, 2012 by CITY OF BRYAN.

CITY OF BRYAN

By: _____
JASON P. BIENSKI
Mayor

ATTEST:

APPROVED AS TO FORM:

Mary Lynn Stratta
City Secretary

Janis Hampton
City Attorney

ACKNOWLEDGEMENT

STATE OF TEXAS §
 §
COUNTY OF BRAZOS §

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

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____, A.D. 2012.

Notary Public, State of Texas
My Commission Expires: _____

EXECUTED this the _____ day of _____, 2012 by CITY OF COLLEGE STATION.

CITY OF COLLEGE STATION

By: _____
Mayor

ATTEST:

APPROVED:

City Secretary

City Manager
Adrian C. Fabela

City Attorney

Executive Director Business Services

ACKNOWLEDGEMENT

STATE OF TEXAS §
 §
COUNTY OF BRAZOS §

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

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____, A.D. 2012.

Notary Public, State of Texas
My Commission Expires: _____

EXECUTED this the _____ day of _____, 2012 by BRAZOS COUNTY.

COUNTY OF BRAZOS

By: _____
DUANE PETERS
County Judge

ATTEST:

APPROVED AS TO FORM:

Karen McQueen
County Clerk

Counsel for Brazos County

ACKNOWLEDGEMENT

STATE OF TEXAS §
 §
COUNTY OF BRAZOS §

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

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____, A.D. 2012.

Notary Public, State of Texas
My Commission Expires: _____

April 26, 2012
Regular Agenda Item No. 1
Old Arrington Road Right-of-Way Abandonment

To: David Neeley, City Manager

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

Agenda Caption: Public Hearing, presentation, possible action, and discussion approving an ordinance vacating and abandoning a 1.18 Acre portion of Old Arrington Road Right-of-Way, extending 1,000 feet, more or less, from the northwest corner of a 5.53 acre tract in the SW Robertson League, A-202 recorded in Volume 8361, Page 279 to the northwest corner of a 2.445 acre tract in the SW Robertson League, A-202 recorded in Volume 9338, Page 178 of the Official Records of Brazos County, Texas.

Relationship to Strategic Initiatives: N/A

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

Summary: This proposed abandonment of a portion of old Arrington Road as presented in the ordinance proposes to vacate and abandon both improved and unimproved portions along the length of property owned by Brazos Texas Land Development, LLC. Because of currently existing utilities and because of the future need for placement of water facilities within this old right-of-way, the ordinance requires dedication of a public utility easement by separate instrument before abandonment may occur. Also, the ordinance requires turnarounds and signage where the paved portion will end to address safety concerns.

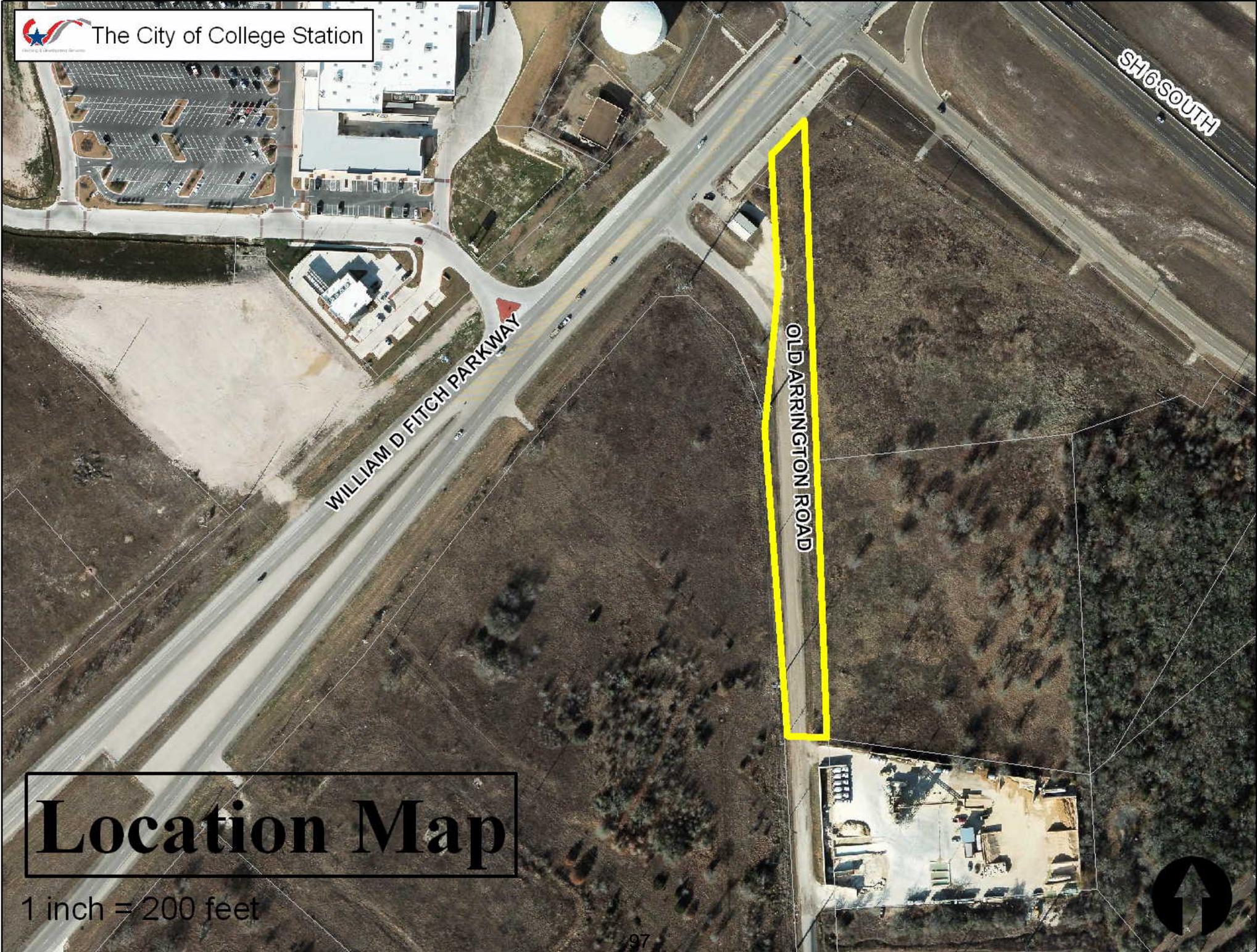
Budget & Financial Summary: N/A

Attachments:

1. Attachment 1 - Vicinity Map
2. Attachment 2 - Location Map
3. Attachment 3 - Ordinance
Ordinance Exhibit "A"
Ordinance Exhibit "B"
4. Attachment 4 - Application for Abandonment (On file at the City Engineer's Office)



The City of College Station



WILLIAM D FITCH PARKWAY

OLD ARRINGTON ROAD

SH 6 SOUTH

Location Map

1 inch = 200 feet



ORDINANCE NO. _____

AN ORDINANCE MAKING CERTAIN AFFIRMATIVE FINDINGS AND VACATING AND ABANDONING A PORTION OF RIGHT OF WAY OF OLD ARRINGTON ROAD LOCATED IN THE CITY OF COLLEGE STATION, TEXAS.

WHEREAS, the City of College Station, Texas, has received an application for the vacation and abandonment of a 1.18 acre portion of Old Arrington Road variable width right-of-way, extending 1,000 feet more or less from the northwest corner of a 5.53 acre tract in the SW Robertson League, A-202 recorded in Volume 8361, Page 279 to the northwest corner of a 2.445 acre tract in the SW Robertson League, A-202 recorded in Volume 9338, Page 178 of the Official Records of Brazos County, Texas as described in Exhibit "A" attached hereto (such portion hereinafter referred to as the "Right-of-Way"); and

WHEREAS, in order for the Right-of-Way to be vacated and abandoned by the City Council of the City of College Station, Texas, the City Council must make certain affirmative findings; now therefore,

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

PART 1: That after opening and closing a public hearing, the City Council finds the following pertaining to the vacating and abandoning of the Right-of-Way described in Exhibit "A" attached hereto and made a part of this ordinance for all purposes.

1. Abandonment of the Right-of-Way will not result in property that does not have access to public roadways or utilities;
2. Other than is set forth herein, there is no public need or use for the Right-of-Way;
3. Except as may be provided for in this ordinance, there is no anticipated future public need or use for the Right-of-Way;
4. As set forth in this ordinance, abandonment of the Right-of-Way will not impact access for all public utilities to serve current and future customers;
5. Utility infrastructure exists within the Right-of-way and the City has a continuing need for current as well as future public utilities to be located within the Right-of-way, and said uses are expressly not abandoned herein except in those geographic areas where a Public Utility Easement as substantially set forth in Exhibit "B" attached hereto has been properly executed and recorded; and

6. Notwithstanding anything to the contrary in this ordinance, the currently existing improved roadway within the portion of Old Arrington Road as described in Exhibit "A" to be abandoned shall remain until turnarounds are constructed and signage is installed near where such improved roadway ends.

PART 2: That the Right-of-Way of the portion of Old Arrington Road as described in Exhibit "A" be abandoned and vacated by the City under the terms and conditions as set forth in this ordinance.

PART 3: That this ordinance shall not go into effect until the proper execution and filing in the deed records of Brazos County, Texas, of the Public Utility Easement in the form as substantially set forth in Exhibit "B" attached hereto and made a part hereof for all purposes occurs.

PASSED, ADOPTED and APPROVED this _____ day of _____, 2012.

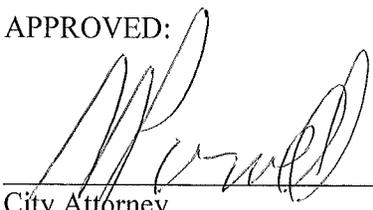
APPROVED:

Mayor

ATTEST:

City Secretary

APPROVED:



City Attorney

EXHIBIT A TO ORDINANCE NO. _____

**METES AND BOUNDS DESCRIPTION
OF A
1.18 ACRE TRACT
AUGUSTUS BABILLE SURVEY, A-75
S. W. ROBERTSON LEAGUE, A-202
COLLEGE STATION, BRAZOS COUNTY, TEXAS**

METES AND BOUNDS DESCRIPTION OF ALL THAT CERTAIN TRACT OR PARCEL OF LAND LYING AND BEING SITUATED IN THE AUGUSTUS BABILLE SURVEY, ABSTRACT NO. 75, AND THE S. W. ROBERTSON LEAGUE, ABSTRACT NO. 202, COLLEGE STATION, BRAZOS COUNTY, TEXAS. SAID TRACT BEING A PORTION OF OLD ARRINGTON ROAD AND APPEARING TO BE A PORTION OF THE REMAINDER OF A CALLED 100 ACRE TRACT AS DESCRIBED BY A DEED TO MILTON D. WILLIAMS RECORDED IN VOLUME 277, PAGE 389 OF THE DEED RECORDS OF BRAZOS COUNTY, TEXAS, AND A PORTION OF THE REMAINDER OF A CALLED 185.2 ACRE TRACT AS DESCRIBED BY A DEED TO J. H. BINNEY AND LLOYD D. SMITH RECORDED IN VOLUME 103, PAGE 444 OF THE DEED RECORDS OF BRAZOS COUNTY, TEXAS.

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

BEGINNING AT A 5/8 INCH IRON ROD FOUND ON THE SOUTHEAST LINE OF W. D. FITCH PARKWAY (VARIABLE WIDTH R.O.W.) MARKING THE NORTHWEST CORNER OF A CALLED 5.53 ACRE TRACT AS DESCRIBED BY A DEED TO BRAZOS TEXAS LAND DEVELOPMENT, LLC RECORDED IN VOLUME 8361, PAGE 279 OF THE OFFICIAL PUBLIC RECORDS OF BRAZOS COUNTY, TEXAS;

THENCE: S 02° 22' 33" E ALONG THE WEST LINE OF SAID 5.53 ACRE TRACT, SAME BEING CALLED THE EAST LINE OF OLD ARRINGTON ROAD, FOR A DISTANCE OF 525.05 FEET TO A 5/8 INCH IRON ROD FOUND MARKING THE SOUTHWEST CORNER OF SAID 5.53 ACRE TRACT AND THE NORTHWEST CORNER OF A CALLED 5.46 ACRE TRACT AS DESCRIBED BY SAID DEED TO BRAZOS TEXAS LAND DEVELOPMENT, LLC (8361/279);

THENCE: S 02° 26' 17" E ALONG THE WEST LINE OF SAID 5.46 ACRE TRACT, SAME BEING CALLED THE EAST LINE OF OLD ARRINGTON ROAD, FOR A DISTANCE OF 474.97 FEET TO A 1/4 INCH IRON ROD FOUND MARKING THE SOUTHWEST CORNER OF SAID 5.46 ACRE TRACT AND THE NORTHWEST CORNER OF A CALLED 2.445 ACRE TRACT AS DESCRIBED BY A DEED TO RONALD CALVIN RECORDED IN VOLUME 9338, PAGE 178 OF THE OFFICIAL PUBLIC RECORDS OF BRAZOS COUNTY, TEXAS, FOR REFERENCE A 1/2 INCH IRON ROD FOUND MARKING THE NORTHEAST CORNER OF SAID 2.445 ACRE TRACT BEARS: S 81° 04' 26" E FOR A DISTANCE OF 448.40 FEET;

THENCE: N 81° 04' 26" W THROUGH OLD ARRINGTON ROAD AND ALONG THE EXTENSION OF THE COMMON LINE OF SAID 5.46 ACRE TRACT AND SAID 2.445 ACRE TRACT FOR A DISTANCE OF 54.71 FEET TO THE EAST LINE OF A CALLED 22.565 ACRE TRACT AS DESCRIBED BY SAID DEED TO BRAZOS TEXAS LAND DEVELOPMENT, LLC (8361/279), SAME BEING CALLED THE WEST LINE OF OLD ARRINGTON ROAD, FOR REFERENCE A 5/8 INCH IRON ROD FOUND ON THE WEST LINE OF OLD ARRINGTON ROAD MARKING THE SOUTH CORNER OF SAID 22.565 ACRE TRACT BEARS: S 02° 53' 34" E FOR A DISTANCE OF 1065.79 FEET;

THENCE: N 02° 53' 34" W ALONG THE EAST LINE OF SAID 22.565 ACRE TRACT, SAME BEING CALLED THE WEST LINE OF OLD ARRINGTON ROAD, FOR A DISTANCE OF 555.44 FEET TO A 5/8 INCH IRON ROD FOUND MARKING THE SOUTH CORNER OF THE REMAINDER OF A CALLED 0.5187 ACRE TRACT AS DESCRIBED BY A DEED TO THE STATE OF TEXAS RECORDED IN VOLUME 863, PAGE 231 OF THE OFFICIAL RECORDS OF BRAZOS COUNTY, TEXAS;

THENCE: N 00° 53' 16" E CONTINUING ALONG THE CALLED WEST LINE OF OLD ARRINGTON ROAD FOR A DISTANCE OF 227.20 FEET TO A CONCRETE RIGHT-OF-WAY MARKER FOUND MARKING A COMMON CORNER OF SAID REMAINDER OF 0.5187 ACRE TRACT AND A CALLED 0.187 ACRE TRACT AS DESCRIBED BY A LEASE TO THE VOLUNTEER FIRE DEPARTMENT, PRECINCT 1, RECORDED IN VOLUME 478, PAGE 86 OF THE DEED RECORDS OF BRAZOS COUNTY, TEXAS;

THENCE: N 00° 58' 34" W ALONG THE EAST LINE OF SAID 0.187 ACRE TRACT FOR A DISTANCE OF 145.14 FEET TO A TXDOT BRASS DISC FOUND MARKING THE NORTHEAST CORNER OF SAID 0.187 ACRE TRACT AND THE SOUTHEAST CORNER OF A CALLED 0.029 ACRE TRACT AS DESCRIBED BY A DEED TO WELLBORN SPECIAL UTILITY DISTRICT RECORDED IN VOLUME 3991, PAGE 197 OF THE OFFICIAL PUBLIC RECORDS OF BRAZOS

EXHIBIT A TO ORDINANCE NO. _____

COUNTY, TEXAS;

THENCE: N 01° 10' 59" W ALONG THE EAST LINE OF SAID 0.029 ACRE TRACT FOR A DISTANCE OF 44.25 FEET TO A 5/8 INCH IRON ROD FOUND ON THE SOUTHEAST LINE OF W. D. FITCH PARKWAY MARKING THE NORTH CORNER OF SAID 0.029 ACRE TRACT;

THENCE: N 64° 08' 38" E ALONG THE SOUTHEAST LINE OF W. D. FITCH PARKWAY FOR A DISTANCE OF 44.42 FEET TO THE POINT OF BEGINNING CONTAINING 1.18 ACRES OF LAND, MORE OR LESS, AS SURVEYED ON THE GROUND. BEARING SYSTEM SHOWN HEREIN IS BASED ON GRID NORTH AS ESTABLISHED FROM GPS OBSERVATION. SEE PLAT PREPARED OCTOBER 2011 FOR MORE DESCRIPTIVE INFORMATION.

BRAD KERR
REGISTERED PROFESSIONAL
LAND SURVEYOR No. 4502

D:/WORK/MAB/11-560A.MAB

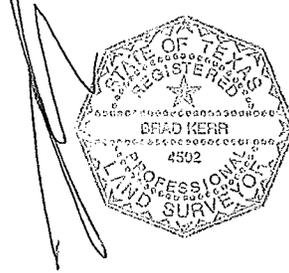
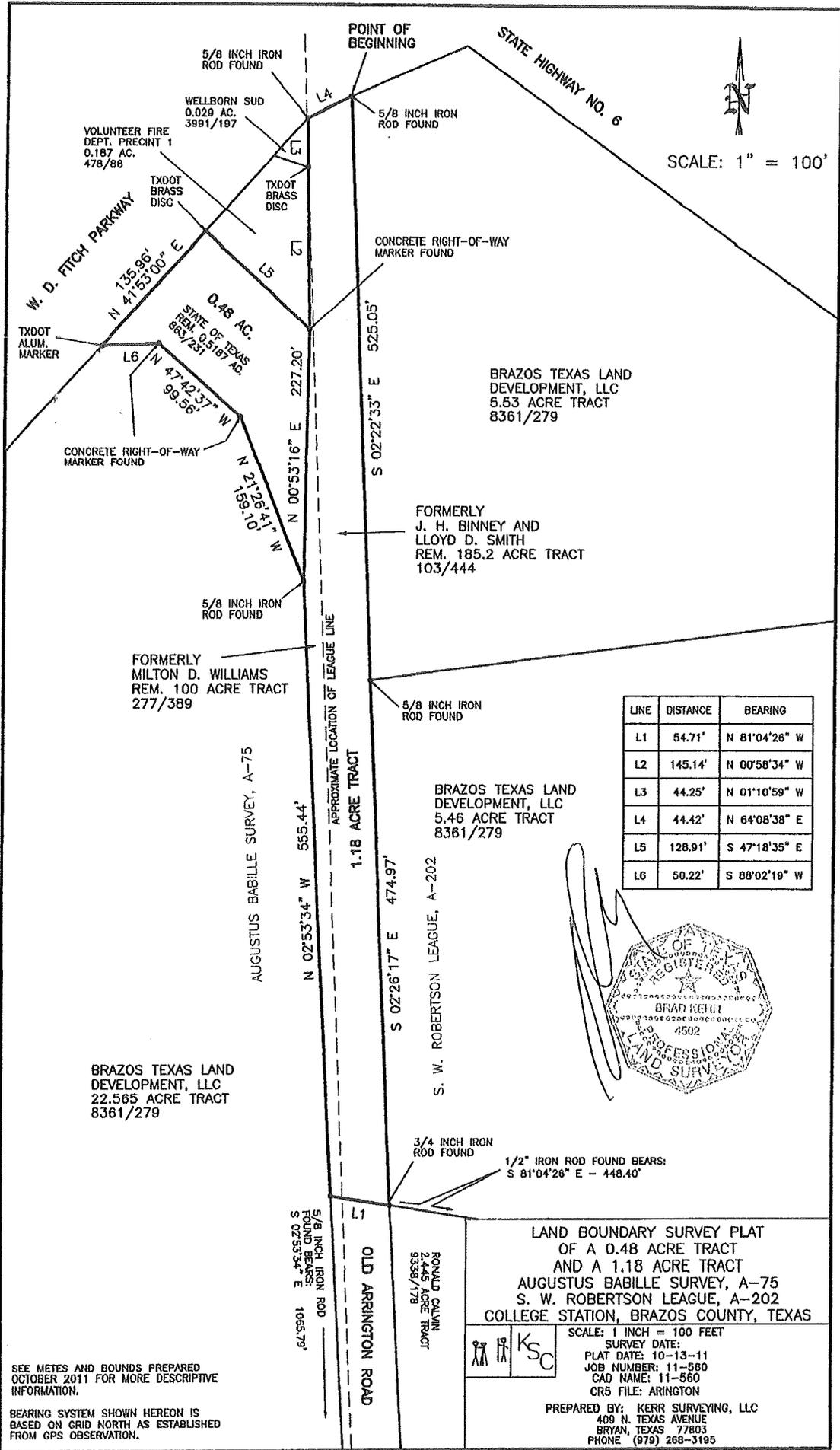
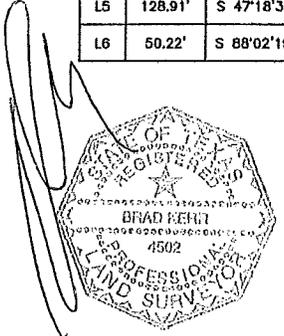


EXHIBIT A TO ORDINANCE NO. _____



SCALE: 1" = 100'

LINE	DISTANCE	BEARING
L1	54.71'	N 81°04'26" W
L2	145.14'	N 00°58'34" W
L3	44.25'	N 01°10'59" W
L4	44.42'	N 64°08'38" E
L5	128.91'	S 47°18'35" E
L6	50.22'	S 88°02'19" W



LAND BOUNDARY SURVEY PLAT
OF A 0.48 ACRE TRACT
AND A 1.18 ACRE TRACT
AUGUSTUS BABILLE SURVEY, A-75
S. W. ROBERTSON LEAGUE, A-202
COLLEGE STATION, BRAZOS COUNTY, TEXAS

SCALE: 1 INCH = 100 FEET
 SURVEY DATE:
 PLAT DATE: 10-13-11
 JOB NUMBER: 11-680
 CAD NAME: 11-560
 CRS FILE: ARINGTON
 PREPARED BY: KERR SURVEYING, LLC
 409 N. TEXAS AVENUE
 BRYAN, TEXAS 77803
 PHONE (979) 268-3195

SEE METES AND BOUNDS PREPARED
OCTOBER 2011 FOR MORE DESCRIPTIVE
INFORMATION.

BEARING SYSTEM SHOWN HEREON IS
BASED ON GRID NORTH AS ESTABLISHED
FROM GPS OBSERVATION.

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

PUBLIC UTILITY EASEMENT

DATE: _____, 2012

GRANTORS AND GRANTORS' MAILING ADDRESSES: (including County)

BRAZOS TEXAS LAND
DEVELOPMENT, LLC,
A Texas Limited Liability Company
1203 University Drive East
Brazos County
College Station, Texas 77840

WELLBORN SPECIAL UTILITY
DISTRICT OF BRAZOS COUNTY
P.O. Box 250
Brazos County
Wellborn, Texas 77881

GRANTEE: CITY OF COLLEGE STATION, TEXAS

GRANTEE'S MAILING ADDRESS:
(including County)

P. O. Box 9962
Brazos County
College Station, Texas 77842

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

PROPERTY:

All that certain tract or parcel of land containing 1.18 acres, more or less, lying and being situated in the Augustus Babilie Survey, Abstract No. 75, and the S. W. Robertson League, Abstract No. 202, College Station, Brazos County, Texas; said tract being a portion of Old Arrington Road and appearing to be a portion of the remainder of a called 100 acre tract as described by a deed to Milton D. Williams

EXHIBIT B TO ORDINANCE NO. _____

recorded in Volume 277, Page 389 of the Deed Records of Brazos County, Texas, and a portion of the remainder of a called 185.2 acre tract as described by a deed to J. H. Binney and Lloyd D. Smith recorded in Volume 103, Page 444 of the Deed Records of Brazos County, Texas; said 1.18 acre tract being more particularly described by metes and bounds on Exhibit "A" attached hereto and made a part hereof for all intents and purposes.

This conveyance shall grant the rights herein specified only as to that portion of the above-described Property more particularly described on the attached Exhibit "A" known as the "Easement Area," and any additional area outside the Easement Area necessary to install and attach equipment, guy wires, and anchors necessary and incident to the uses of the Easement Area to erect, construct, install, and thereafter use, operate, inspect, repair, maintain, reconstruct, modify and remove the following:

Electric transmission and distribution lines;
Water lines and sanitary sewer lines, connecting lines,
access facilities, and related equipment;
Storm sewers and collection facilities;
Television, telephone, and communications lines;
Drainage ditches, drainage pipes and all other
drainage structures, surface and subsurface;

upon, over, and across the said Property as described and any ways, streets, roads, or alleys abutting same; and to cut, trim, and control the growth of trees and other vegetation on and in the Easement Area or on adjoining property of Grantors, which might interfere with or threaten the operation and maintenance of any public utility equipment, accessories, or operations. It being understood and agreed that any and all equipment and facilities placed upon said Property shall remain the property of Grantee.

Grantors hereby expressly acknowledge that they are the owners of this property.

Grantors expressly subordinate all rights of surface use, incident to the mineral estate owned by Grantors, to the above-described uses of said surface by Grantee. Grantors will provide Grantee with the names and addresses of all lenders, if any, and agrees to lender's subordinations on behalf of Grantee, if any.

RESERVATIONS AND RESTRICTIONS: NONE

TO HAVE AND TO HOLD, the rights and interests herein described unto the CITY OF COLLEGE STATION, TEXAS, and its successors and assigns, forever, and Grantors do hereby bind themselves and their respective successors and assigns to warrant and forever defend, all and singular, these rights and interests unto the CITY OF COLLEGE STATION, TEXAS, and its

successors and assigns, against every person whomsoever lawfully claiming, or to claim same, or any part thereof.

BRAZOS TEXAS LAND DEVELOPMENT, LLC,
A Texas Limited Liability Company

By: _____
Salim M. Ismail, Partner and Director

WELLBORN SPECIAL UTILITY DISTRICT
OF BRAZOS COUNTY

By: _____
Printed Name: _____
Title: _____

**APPROVED AS TO FORM.
THIS DOCUMENT MAY NOT
BE CHANGED WITHOUT
RE-SUBMISSION FOR APPROVAL.**

City Attorney

THE STATE OF TEXAS

ACKNOWLEDGMENT

COUNTY OF BRAZOS

This instrument was acknowledged before me on this _____ day of _____, 2012, by SALIM M. ISMAIL, Partner and Director of BRAZOS TEXAS LAND DEVELOPMENT, LLC, a Texas Limited Liability Company, on behalf of said BRAZOS TEXAS LAND DEVELOPMENT, LLC, a Texas Limited Liability Company.

Notary Public in and for the State of Texas

THE STATE OF TEXAS

ACKNOWLEDGMENT

COUNTY OF BRAZOS

This instrument was acknowledged before me on this _____ day of _____, 2012, by _____, _____ of WELLBORN SPECIAL UTILITY DISTRICT OF BRAZOS COUNTY, on behalf of said WELLBORN SPECIAL UTILITY DISTRICT OF BRAZOS COUNTY.

Notary Public in and for the State of Texas

PREPARED IN THE OFFICE OF:

City of College Station
Legal Department
P.O. Box 9960
College Station, TX 77842-9960

AFTER RECORDING, RETURN TO:

City of College Station
Legal Department
P.O. Box 9960
College Station, TX 77842-9960

EXHIBIT B TO ORDINANCE NO. _____

**METES AND BOUNDS DESCRIPTION
OF A
1.18 ACRE TRACT
AUGUSTUS BABILLE SURVEY, A-75
S. W. ROBERTSON LEAGUE, A-202
COLLEGE STATION, BRAZOS COUNTY, TEXAS**

METES AND BOUNDS DESCRIPTION OF ALL THAT CERTAIN TRACT OR PARCEL OF LAND LYING AND BEING SITUATED IN THE AUGUSTUS BABILLE SURVEY, ABSTRACT NO. 75, AND THE S. W. ROBERTSON LEAGUE, ABSTRACT NO. 202, COLLEGE STATION, BRAZOS COUNTY, TEXAS. SAID TRACT BEING A PORTION OF OLD ARRINGTON ROAD AND APPEARING TO BE A PORTION OF THE REMAINDER OF A CALLED 100 ACRE TRACT AS DESCRIBED BY A DEED TO MILTON D. WILLIAMS RECORDED IN VOLUME 277, PAGE 389 OF THE DEED RECORDS OF BRAZOS COUNTY, TEXAS, AND A PORTION OF THE REMAINDER OF A CALLED 185.2 ACRE TRACT AS DESCRIBED BY A DEED TO J. H. BINNEY AND LLOYD D. SMITH RECORDED IN VOLUME 103, PAGE 444 OF THE DEED RECORDS OF BRAZOS COUNTY, TEXAS.

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

BEGINNING AT A 5/8 INCH IRON ROD FOUND ON THE SOUTHEAST LINE OF W. D. FITCH PARKWAY (VARIABLE WIDTH R.O.W.) MARKING THE NORTHWEST CORNER OF A CALLED 5.53 ACRE TRACT AS DESCRIBED BY A DEED TO BRAZOS TEXAS LAND DEVELOPMENT, LLC RECORDED IN VOLUME 8361, PAGE 279 OF THE OFFICIAL PUBLIC RECORDS OF BRAZOS COUNTY, TEXAS;

THENCE: S 02° 22' 33" E ALONG THE WEST LINE OF SAID 5.53 ACRE TRACT, SAME BEING CALLED THE EAST LINE OF OLD ARRINGTON ROAD, FOR A DISTANCE OF 525.05 FEET TO A 5/8 INCH IRON ROD FOUND MARKING THE SOUTHWEST CORNER OF SAID 5.53 ACRE TRACT AND THE NORTHWEST CORNER OF A CALLED 5.46 ACRE TRACT AS DESCRIBED BY SAID DEED TO BRAZOS TEXAS LAND DEVELOPMENT, LLC (8361/279);

THENCE: S 02° 26' 17" E ALONG THE WEST LINE OF SAID 5.46 ACRE TRACT, SAME BEING CALLED THE EAST LINE OF OLD ARRINGTON ROAD, FOR A DISTANCE OF 474.97 FEET TO A 1/4 INCH IRON ROD FOUND MARKING THE SOUTHWEST CORNER OF SAID 5.46 ACRE TRACT AND THE NORTHWEST CORNER OF A CALLED 2.445 ACRE TRACT AS DESCRIBED BY A DEED TO RONALD CALVIN RECORDED IN VOLUME 9338, PAGE 178 OF THE OFFICIAL PUBLIC RECORDS OF BRAZOS COUNTY, TEXAS, FOR REFERENCE A 1/2 INCH IRON ROD FOUND MARKING THE NORTHEAST CORNER OF SAID 2.445 ACRE TRACT BEARS: S 81° 04' 26" E FOR A DISTANCE OF 448.40 FEET;

THENCE: N 81° 04' 26" W THROUGH OLD ARRINGTON ROAD AND ALONG THE EXTENSION OF THE COMMON LINE OF SAID 5.46 ACRE TRACT AND SAID 2.445 ACRE TRACT FOR A DISTANCE OF 54.71 FEET TO THE EAST LINE OF A CALLED 22.565 ACRE TRACT AS DESCRIBED BY SAID DEED TO BRAZOS TEXAS LAND DEVELOPMENT, LLC (8361/279), SAME BEING CALLED THE WEST LINE OF OLD ARRINGTON ROAD, FOR REFERENCE A 5/8 INCH IRON ROD FOUND ON THE WEST LINE OF OLD ARRINGTON ROAD MARKING THE SOUTH CORNER OF SAID 22.565 ACRE TRACT BEARS: S 02° 53' 34" E FOR A DISTANCE OF 1065.79 FEET;

THENCE: N 02° 53' 34" W ALONG THE EAST LINE OF SAID 22.565 ACRE TRACT, SAME BEING CALLED THE WEST LINE OF OLD ARRINGTON ROAD, FOR A DISTANCE OF 555.44 FEET TO A 5/8 INCH IRON ROD FOUND MARKING THE SOUTH CORNER OF THE REMAINDER OF A CALLED 0.5187 ACRE TRACT AS DESCRIBED BY A DEED TO THE STATE OF TEXAS RECORDED IN VOLUME 863, PAGE 231 OF THE OFFICIAL RECORDS OF BRAZOS COUNTY, TEXAS;

THENCE: N 00° 53' 16" E CONTINUING ALONG THE CALLED WEST LINE OF OLD ARRINGTON ROAD FOR A DISTANCE OF 227.20 FEET TO A CONCRETE RIGHT-OF-WAY MARKER FOUND MARKING A COMMON CORNER OF SAID REMAINDER OF 0.5187 ACRE TRACT AND A CALLED 0.187 ACRE TRACT AS DESCRIBED BY A LEASE TO THE VOLUNTEER FIRE DEPARTMENT, PRECINCT 1, RECORDED IN VOLUME 478, PAGE 86 OF THE DEED RECORDS OF BRAZOS COUNTY, TEXAS;

THENCE: N 00° 58' 34" W ALONG THE EAST LINE OF SAID 0.187 ACRE TRACT FOR A DISTANCE OF 145.14 FEET TO A TXDOT BRASS DISC FOUND MARKING THE NORTHEAST CORNER OF SAID 0.187 ACRE TRACT AND THE SOUTHEAST CORNER OF A CALLED 0.029 ACRE TRACT AS DESCRIBED BY A DEED TO WELLBORN SPECIAL UTILITY DISTRICT RECORDED IN VOLUME 3991, PAGE 197 OF THE OFFICIAL PUBLIC RECORDS OF BRAZOS

EXHIBIT B TO ORDINANCE NO. _____

COUNTY, TEXAS;

THENCE: N 01° 10' 59" W ALONG THE EAST LINE OF SAID 0.029 ACRE TRACT FOR A DISTANCE OF 44.25 FEET TO A 5/8 INCH IRON ROD FOUND ON THE SOUTHEAST LINE OF W. D. FITCH PARKWAY MARKING THE NORTH CORNER OF SAID 0.029 ACRE TRACT;

THENCE: N 64° 08' 38" E ALONG THE SOUTHEAST LINE OF W. D. FITCH PARKWAY FOR A DISTANCE OF 44.42 FEET TO THE POINT OF BEGINNING CONTAINING 1.18 ACRES OF LAND, MORE OR LESS, AS SURVEYED ON THE GROUND. BEARING SYSTEM SHOWN HEREIN IS BASED ON GRID NORTH AS ESTABLISHED FROM GPS OBSERVATION. SEE PLAT PREPARED OCTOBER 2011 FOR MORE DESCRIPTIVE INFORMATION.

BRAD KERR
REGISTERED PROFESSIONAL
LAND SURVEYOR No. 4502

D:/WORK/MAB/11-560A.MAB

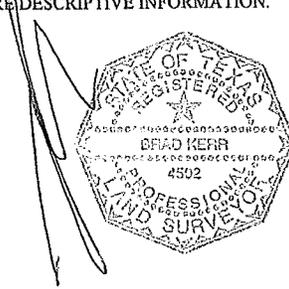
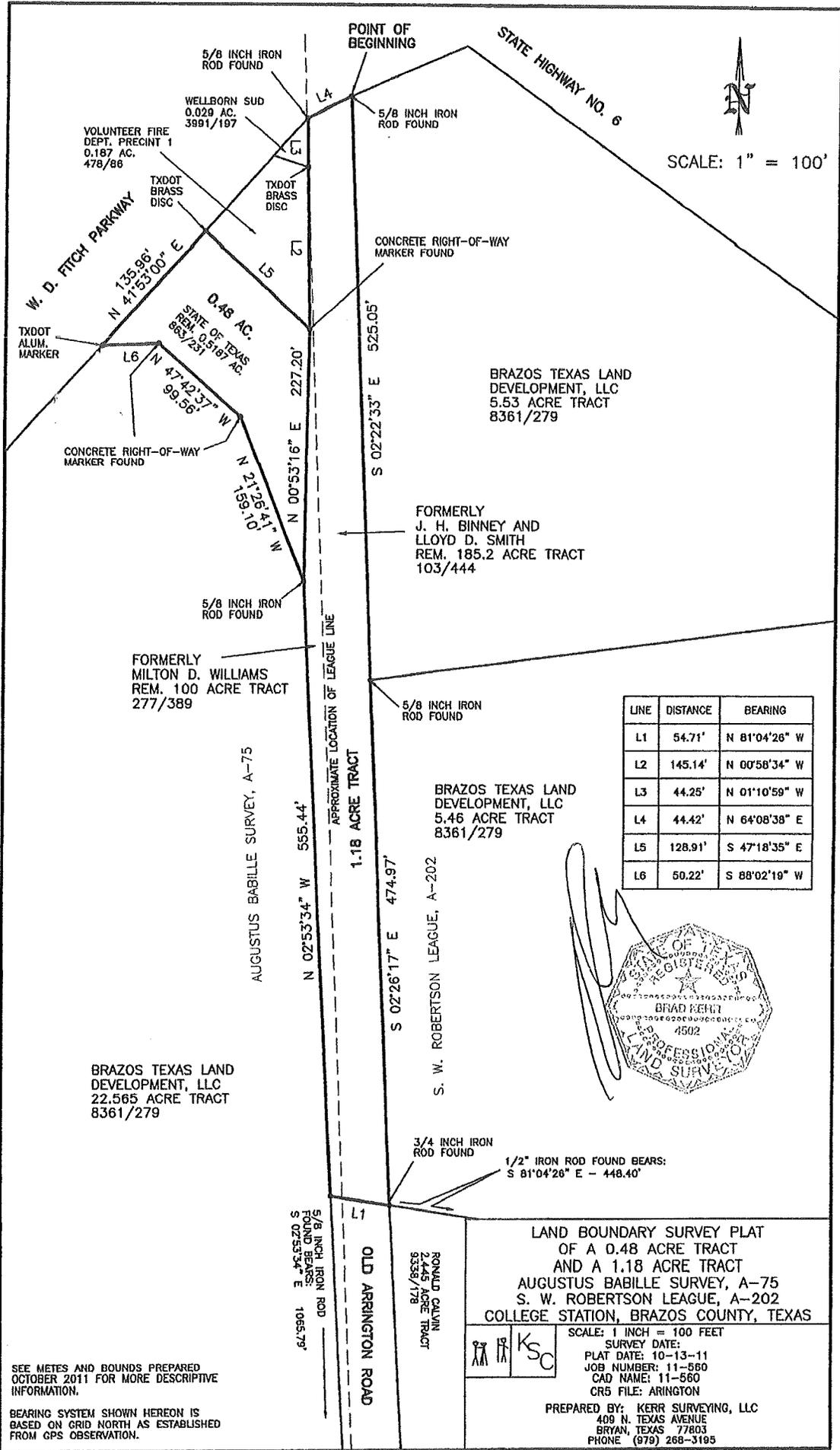
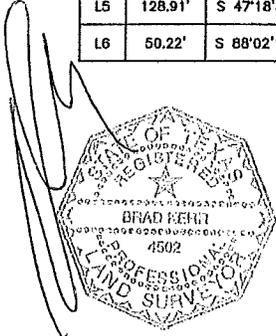


EXHIBIT B TO ORDINANCE NO. _____



SCALE: 1" = 100'

LINE	DISTANCE	BEARING
L1	54.71'	N 81°04'26" W
L2	145.14'	N 00°58'34" W
L3	44.25'	N 01°10'59" W
L4	44.42'	N 64°08'38" E
L5	128.91'	S 47°18'35" E
L6	50.22'	S 88°02'19" W



LAND BOUNDARY SURVEY PLAT
OF A 0.48 ACRE TRACT
AND A 1.18 ACRE TRACT
AUGUSTUS BABILLE SURVEY, A-75
S. W. ROBERTSON LEAGUE, A-202
COLLEGE STATION, BRAZOS COUNTY, TEXAS

SCALE: 1 INCH = 100 FEET
SURVEY DATE:
PLAT DATE: 10-13-11
JOB NUMBER: 11-680
CAD NAME: 11-560
CRS FILE: ARINGTON
PREPARED BY: KERR SURVEYING, LLC
409 N. TEXAS AVENUE
BRYAN, TEXAS 77803
PHONE (979) 268-3195

SEE METES AND BOUNDS PREPARED OCTOBER 2011 FOR MORE DESCRIPTIVE INFORMATION.

BEARING SYSTEM SHOWN HEREON IS BASED ON GRID NORTH AS ESTABLISHED FROM GPS OBSERVATION.



SCALE: 1" = 100'

CURRENT OWNER:
BRAZOS TEXAS LAND
DEVELOPMENT, LLC
99 YEAR LEASE TO:
VOLUNTEER FIRE
DEPT. PRECINT 1
0.187 AC.
478/86

5/8 INCH IRON
ROD FOUND
WELLBORN SUD
0.029 AC.
3991/197

POINT OF
BEGINNING

STATE HIGHWAY NO. 6

5/8 INCH IRON
ROD FOUND

TXDOT
BRASS
DISC

TXDOT
BRASS
DISC

CONCRETE RIGHT-OF-WAY
MARKER FOUND

W. D. FITCH PARKWAY

N 135.96'
E 47.53'00" E

0.48 AC.
STATE OF TEXAS
REM. 0.5187 AC.
863/231

TXDOT
ALUM.
MARKER

POINT OF
BEGINNING

CONCRETE RIGHT-OF-WAY
MARKER FOUND

L6

N 47.42'37"
W 99.56'

N 21.28'41"
W 159.10'

N 00'53'16" E 227.20'

S 02'22'33" E 525.05'

BRAZOS TEXAS LAND
DEVELOPMENT, LLC
5.53 ACRE TRACT
8361/279

FORMERLY
J. H. BINNEY AND
LLOYD D. SMITH
REM. 185.2 ACRE TRACT
103/444

5/8 INCH IRON
ROD FOUND

FORMERLY
MILTON D. WILLIAMS
REM. 100 ACRE TRACT
277/389

AUGUSTUS BABILLE SURVEY, A-75

N 02'53'34" W 555.44'

APPROXIMATE LOCATION OF LEAGUE LINE

1.18 ACRE TRACT

S 02'26'17" E 474.97'

5/8 INCH IRON
ROD FOUND

S. W. ROBERTSON LEAGUE, A-202

BRAZOS TEXAS LAND
DEVELOPMENT, LLC
5.46 ACRE TRACT
8361/279

LINE	DISTANCE	BEARING
L1	54.71'	N 81°04'26" W
L2	145.14'	N 00°58'34" W
L3	44.25'	N 01°10'59" W
L4	44.42'	N 64°08'38" E
L5	128.91'	S 47°18'35" E
L6	50.22'	S 88°02'19" W

BRAZOS TEXAS LAND
DEVELOPMENT, LLC
22.565 ACRE TRACT
8361/279



3/4 INCH IRON
ROD FOUND

1/2" IRON ROD FOUND BEARS:
S 81°04'26" E - 448.40'

REVISED: 01-17-12 - OWNERSHIP OF
FIRE DEPARTMENT LEASED TRACT

5/8 INCH IRON ROD
FOUND BEARS:
S 02'53'34" E 1065.79'

OLD ARRINGTON ROAD

RONALD GALVIN
2.445 ACRE TRACT
9358/178

LAND BOUNDARY SURVEY PLAT
OF A 0.48 ACRE TRACT
AND A 1.18 ACRE TRACT
AUGUSTUS BABILLE SURVEY, A-75
S. W. ROBERTSON LEAGUE, A-202
COLLEGE STATION, BRAZOS COUNTY, TEXAS



SCALE: 1 INCH = 100 FEET
SURVEY DATE:
PLAT DATE: 10-13-11
JOB NUMBER: 11-560
CAD NAME: 11-560
CRS FILE: ARRINGTON

PREPARED BY: KERR SURVEYING, LLC
409 N. TEXAS AVENUE
BRYAN, TEXAS 77803
PHONE (979) 268-3195

SEE METES AND BOUNDS PREPARED
OCTOBER 2011 FOR MORE DESCRIPTIVE
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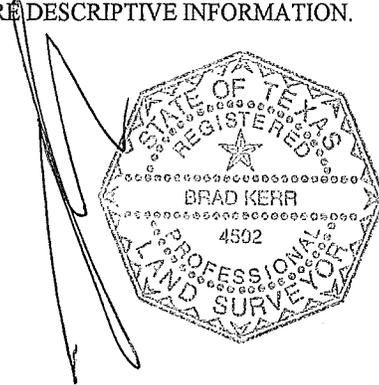
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BRAD KERR
REGISTERED PROFESSIONAL
LAND SURVEYOR No. 4502

D:/WORK/MAB/11-560A.MAB



April 26, 2012
Regular Agenda Item No. 2
Rezoning for 2849 Barron Road

To: David Neeley, City Manager

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

Agenda Caption: Public Hearing, presentation, possible action, and discussion on 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 for a rezoning from PDD to PDD on 3.19 acres located at 2849 Barron Road, generally located at the corner of Barron Road and SH 40, North of the Sonoma Subdivision.

Relationship to Strategic Goals: Core Services and Infrastructure, Diverse Growing Economy

Recommendation(s): The Planning and Zoning Commission considered this item at their April 5, 2012 meeting and recommended that the rezoning be granted and that the requirement for the applicant to construct the multi-use path be waived, but require the use of a Public Access Easement inside of the Public Utility Easement to accommodate future construction of the multi-use path (4-3) with a recommendation of approval of the rezoning request (7-0). Staff had recommended approval of the rezoning but denial of the request to not construct the multi-use path as required by the UDO.

Summary: The amendment will change the zoning on 3.19 acres from PDD Planned Development District to PDD Planned Development District. The proposed PDD rezoning request is an amendment to the existing PDD zoning in order to reorient buildings, adjust building sizes and to seek a waiver to the multi-use path requirement along SH 40.

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

REVIEW CRITERIA

1. Consistency with the Comprehensive Plan: The Comprehensive Plan in this area calls for Suburban Commercial. This designation is intended for "concentrations of commercial activities that cater primarily to nearby residents versus the larger community or region." As a result, design of these structures are intended to be compatible in size, roof type and pitch, architecture, and lot coverage with the surrounding single-family residential uses.

The current zoning of the property is PDD, Planned Development District with a base C-3, Light Commercial zoning. The proposed rezoning is adjusting the layout from the previously approved PDD Concept Plan, with no additional uses being proposed.

2. Compatibility with the present zoning and conforming uses of nearby property and with the character of the neighborhood: The uses requested for the PDD are those allowed under the C-3 zoning designation, with the addition of drive-thrus that are presently excluded in C-3 districts. Given the proposed layout of the Concept Plan, drive-thrus could not be accommodated on the site without a revised rezoning and Concept Plan. The proposed uses are compatible with the surrounding R-1 zoned properties. A 15-foot buffer yard with a 6-foot wall is being provided along the property line of the R-1 properties. This is the minimum buffer requirement for commercial uses against single-family and would be the

standard buffer required were this to develop in a C-1 or C-3 district where such uses are allowed.

3. **Suitability of the property affected by the amendment for uses permitted by the district that would be made applicable by the proposed amendment:** The property is located at the intersection of a minor arterial and a highway. This is a suitable location for a small scale commercial development that could serve the existing Sonoma and Southern Trace residential subdivisions, other existing larger lot residential in the area, as well as future residential planned for in the area.
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 size and location of the property is suitable for light commercial uses. With its proximity to single-family lots, the uses allowed under the C-3 Light Commercial zoning district are suitable for this property.
5. **Marketability of the property affected by the amendment for uses permitted by the district applicable to the property at the time of the proposed amendment:** The property is currently marketable for small scale commercial and office uses. The purpose of the request is to reorient the buildings on the site and adjust the building square footages.
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 along Barron and a 24-inch water main along SH 40. The subject tract is located adjacent to an 8-inch sanitary sewer main which is located near the northeast property corner. The subject tract is located adjacent to and may take access to either Barron Road (Minor Arterial) and/or SH 40 (Freeway); however, access to SH 40 will require TxDOT approval and permitting. TxDOT has indicated in their comments that a deceleration lane would be required for a driveway along SH 40.

Construction of the Barron Road widening has been completed and this minor arterial is capable of carrying up to 30,000 daily trips.

The subject tract is located in the Spring Creek Drainage Basin. There is no FEMA regulated Special Flood Hazard Area located on this tract. Development of this tract will be required to meet the City's Storm Water Design Guidelines. The subject tract is located in the Spring Creek Sanitary Sewer Impact Fee Area.

CONCEPT PLAN REVIEW CRITERIA

1. **The proposal will constitute an environment of sustained stability and will be in harmony with the character of the surrounding area:** The rural character in the area has been changing with the construction of the new College Station ISD High School, continued build out of the Sonoma Subdivision, and future planned single-family residential across Barron Road. The proposed concept plan revises the previously approved concept plan and would provide suburban commercial uses for the existing and proposed residential in the area.

Changes from the previously approved concept plan include reorientation of buildings, adjustment of building sizes and a request for a waiver to the multi-use path requirement along SH 40.

2. **The proposal is in conformity with the policies, goals, and objectives of the Comprehensive Plan, and any subsequently adopted Plans, and will be consistent with the intent and purpose of this Section:** The proposed uses are in conformance with the Comprehensive Plan goals and policies to provide neighborhood-focused retail in proximity to residential areas. The proposal includes buildings that incorporate residential components such as covered porches, single windows, and the use of timber and glass as architectural accents.
3. **The proposal is compatible with existing or permitted uses on abutting sites and will not adversely affect adjacent development:** The proposed layout meets the minimum buffer standards between commercial and residential uses. This buffer consists of 15-foot buffer yard and a 6-foot masonry wall. But given the proximity to single-family homes, there should be greater consideration for reconfiguration to decrease the impact it will have on the existing and future residential uses on the surrounding lots.
4. **Every dwelling unit need not front on a public street but shall have access to a public street directly or via a court, walkway, public area, or area owned by a homeowners association:** All structures in the concept plan front on either SH 40 or Barron Road.
5. **The development includes provision of adequate public improvements, including, but not limited to, parks, schools, and other public facilities:** No public open space is being dedicated with this proposal. The concept plan does incorporate a detention area for stormwater management on the east side of the property. No parkland dedication is required for commercial projects, and no voluntary dedications are proposed. The applicant has requested a waiver to the multi-use path requirement along SH 40. This multi-use path is identified on the Bicycle, Pedestrian and Greenways Master Plan and is planned to extend along SH 40 from SH6 to FM 2154. Staff is not supportive of the waiver request as it is vital to provide the multi-use path when the property develops so that adequate room is given and that the future multi-use path connection is not lost.
6. **The development will not be detrimental to the public health, safety, welfare, or materially injurious to properties or improvements in the vicinity:** Staff does not believe that the improvements will be materially injurious to properties in the vicinity. Although, it may have an impact on the resale value of homes directly adjacent to the commercial site.
7. **The development will not adversely affect the safety and convenience of vehicular bicycle, or pedestrian circulation in the vicinity, including traffic reasonably expected to be generated by the proposed use and other uses reasonably anticipated in the area considering existing zoning and land uses in the area:** The proposed development was not required to submit a traffic impact analysis because it did not generate enough traffic to surpass the 150 vehicles per the peak hour threshold. This development will take access on SH 40 and on Barron Road.

Construction on Barron Road has been recently completed. With this construction, Barron Road has been upgraded from a two-lane rural collector to a four-lane minor arterial to include bike lanes and sidewalks on both sides of the street. The Barron Road project also included a traffic signal at the intersection of Barron Road and SH 40. This development will not affect the safety and convenience of vehicular, bicycle and pedestrian circulation on Barron Road.

The driveway accessing SH 40 will include the extension of the right turn lane to Barron Road, this will in effect create a right turn deceleration lane onto the proposed driveway.

This requirement was at the direction of TxDOT and will be part of the permitting process. This development will not affect the safety and convenience of vehicular, bicycle and pedestrian circulation on SH 40.

Budget & Financial Summary: N/A

Attachments:

1. Background Information
2. Aerial & Small Area Map (SAM)
3. Draft Planning & Zoning Commission Minutes – April 5, 2012
4. Ordinance

NOTIFICATIONS

Advertised Commission Hearing Date: April 5, 2012
 Advertised Council Hearing Dates: April 26, 2012

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:

Sonoma Homeowners Association

Property owner notices mailed: 34
 Contacts in support: None at the time of Staff Report
 Contacts in opposition: None at the time of Staff Report
 Inquiry contacts: 1

ADJACENT LAND USES

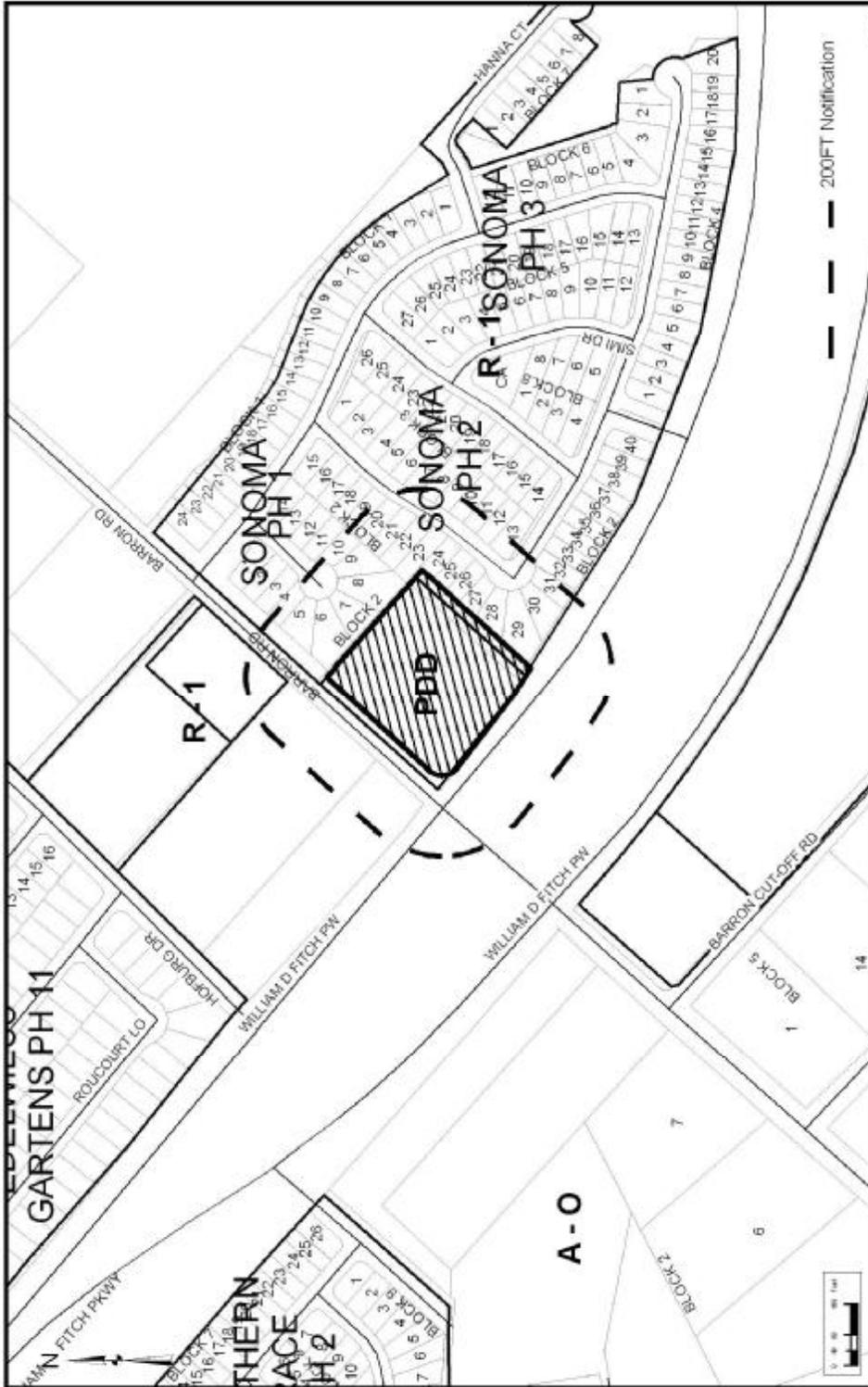
Direction	Comprehensive Plan	Zoning	Land Use
North (across Barron Rd)	Minor Arterial / Suburban Commercial	A-O, Agricultural Open	Single-family
South	General Suburban	R-1, Single-Family Residential	Single-family
East	General Suburban	R-1, Single-Family Residential	Single-family
West (across SH 40)	Highway / Suburban Commercial	C-3, Light-Commercial	Single-family

DEVELOPMENT HISTORY

Annexation: 1995
Zoning: A-O, Agricultural Open to C-3, Light Commercial (2006)
 C-3, Light Commercial to PDD, Planned Development (2008)
Final Plat: Unplatted
Site development: Vacant



DEVELOPMENT REVIEW	2849 BARRON RD.	Case: 12-041	REZONING
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Zoning Districts	WPC	Wolf Pen Creek Dev. Corridor
A-O Agricultural Open	NG-1	Core Northgate
A-OR Rural Residential Subdivision	NG-2	Transitional Northgate
R-1 Single Family Residential	NG-3	Residential Northgate
R-1B Single Family Residential	OV	Corridor Overlay
R-2 Duplex Residential	RDD	Redevelopment District
	KO	Krenek Tap Overlay
R-3 Townhouse		
R-4 Multi-Family		
R-6 High Density Multi-Family		
R-7 Manufactured Home Park		
A-P Administrative/Professional		
C-1 General Commercial		
C-2 Commercial-Industrial		
C-3		
M-1 Light Commercial		
M-2 Heavy Industrial		
C-U College and University		
R-D Research and Development		
P-MJD Planned Mixed-Use Development		
FDD Planned Development District		



DEVELOPMENT REVIEW

REZONING

2849 BARRON RD.

Case: 12-041

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" through "C" attached hereto and made a part of this ordinance for all purposes.

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

PASSED, ADOPTED and APPROVED this ___ day of April, 2012

APPROVED:

MAYOR

ATTEST:

City Secretary

APPROVED:



City Attorney

EXHIBIT "A"

That Chapter 12, "Unified Development Ordinance," Section 4.2, "Official Zoning Map," of the Code of Ordinances of the City of College Station, Texas, is hereby amended as follows:

The following property is rezoned from PDD Planned Development District to PDD Planned Development District:

3.19 Acres
 Robert Stevenson Survey, A-54
 College Station, Brazos County, Texas

Jill Mary Dunlap
 Beverly J. Furrer
 Patricia J. Vogel
 Thomas L. Brown, Jr.
 3.19 Acre Tract
 Robert Stevenson Survey, A-54
 College Station, Brazos County, Texas

Field notes of a 3.19 acre tract or parcel of land, lying and being situated in the Robert Stevenson Survey, Abstract No. 54, College Station, Brazos County, Texas, and being part of the called 154 acre (net) tract described in the deed from Florence A. Brown to Beverly J. Furrer, Patricia J. Vogel and Thomas L. Brown, Jr., as recorded in Volume 854, Page 57, of the Official Records of Brazos County, Texas, and being also described as 158 acres in the deed from D. Briggs Coffey, Jr. and Don Dillon to Wayne A. Dunlap and Thomas L. Brown as recorded in Volume 263, Page 382, of the Deed Records of Brazos County, Texas, and said 3.19 acre tract being more particularly described as follows:

COMMENCING at the north corner of the beforementioned 158 acre tract in the center of Barron Road (County Road now in College Station - formerly known as Wellborn - Rock Prairie Public Road), from which a cross-tie fence corner at the intersection of the northeast line of the 158 acre tract with the southeast line of Barron Road bears S 40° 02' 00" E - 20.21 feet, and a cross-tie fence corner marking the east corner of the 158 acre tract bears S 46° 02' 00" E - 3422.41 feet;

THENCE S 44° 02' 45" W along the northwest line of the beforementioned 158 acre tract, same being along the centerline of the existing pavement (September, 2008), of Barron Road for a distance of 733.33 feet;

THENCE S 45° 57' 15" E through the interior of the beforementioned 158 acre tract, and across Barron Road, for a distance of 51.55 feet to a 5/8" iron rod found in the existing southeast right-of-way line of Barron Road (90' wide right-of-way), for the PLACE OF BEGINNING of this description, same being the northerly west-corner of Block 2 of Sonoma - Phase 1, according to the plat recorded in Volume 8305, Page 233, of the Official Records of Brazos County, Texas;

THENCE through the interior of the beforementioned 158 acre tract, and along the lines of the beforementioned Sonoma - Phase 1, and Sonoma - Phase 2, as platted in Volume 8302, Page 226, of the Official Records of Brazos County, Texas, as follows:

S 46° 57' 15" E	at a distance of 10.8 feet, a wood fence post corner bears northeast - 0.4 feet, continue on, adjacent to a fence, for a total distance of 348.45 feet to a 3/4" iron rod found at a wood fence post corner,
S 44° 02' 45" W	adjacent to a fence, for a distance of 301.55 feet to a 3/2" iron rod found in the northeast right of way line of State Highway No. 40, from which a concrete monument with brass disc found bears S 55° 10' 58" E - 532.93 feet;

THENCE along the northeast right of way line of the beforementioned State Highway No. 40, adjacent to a fence, as follows:

N 55° 10' 58" W	for a distance of 58.96 feet to a concrete monument with brass disc found,
N 49° 04' 54" W	for a distance of 124.23 feet to a concrete monument with a brass disc found,

EXHIBIT "A" CONTINUED

N 50° 01' 33" W for a distance of 116.85 feet to a 1/2" iron rod found marking the south corner of a called 661 square foot tract taken for Barron Road right-of-way described in the deed recorded in Volume 9626, Page 258, of the Official Records of Brazos County, Texas, same being the beginning of a transition curve to Barron Road, concave to the east, having a radius of 50.00 feet, from which a concrete monument found bears N 60° 01' 33" W - 14.56 feet;

THENCE along the southeast right-of-way line of Barron Road, as follows:

Northerly along said curve, for an arc length of 82.64 feet to a 1/4" iron rod found at the end of this curve, the deed bears N 02° 40' 27" W - 73.55 feet,

N 44° 40' 39" E for a distance of 355.81 feet to the PLACE OF BEGINNING, containing 3.19 acres of land, more or less.



Surveyed: September 2010

By: 
S. M. Kling
R.P.L.S. No. 2503

Prepared 09/02/10
kcc 03-20/2010/303.1/Sec. 01/1

EXHIBIT "B" CONTINUED

CONCEPT PLAN NOTES:

1. THE BASE ZONING DISTRICT IS C-3 AND THE LAND USES PROPOSED FOR THIS PROPERTY ARE AS FOLLOWS:

- EDUCATIONAL FACILITY, INDOOR INSTRUCTION
- EDUCATIONAL FACILITY, PRIMARY & SECONDARY
- GOVERNMENT FACILITIES
- HEALTH CARE, MEDICAL CLINICS
- PARKS
- PLACES OF WORSHIP
- ANIMAL CARE FACILITY, INDOOR
- ART STUDIO/GALLERY
- DAY CARE, COMMERCIAL
- DRY CLEANERS & LAUNDRY*
- DRIVE-IN/DRIVE-THRU WINDOW
- FUEL SALES*
- OFFICES
- PERSONAL SERVICE SHOP
- PRINTING/COPY SHOP
- RADIO/TV STATION/STUDIO
- RESTAURANT*
- RETAIL SALES & SERVICE
- STORAGE, SELF STORAGE
- UTILITY*
- WIRELESS TELECOMMUNICATIONS FACILITIES -- INTERMEDIATE*
- WIRELESS TELECOMMUNICATIONS FACILITIES -- MAJOR (CUP REQUIRED)

*USES HAVE SPECIFIC USE STANDARDS PER UNIFIED DEVELOPMENT ORDINANCE, ARTICLE 6.3, SPECIFIC USE STANDARDS

CONDITIONS: DRIVE-IN/DRIVE-THRU NOT ALLOWED IN CONJUNCTION WITH RESTAURANT USE.

2. THE RANGE OF BUILDING HEIGHTS IS ANTICIPATED TO BE FROM 12' TO 30'.
3. THE STORM WATER DRAINAGE FROM THIS SITE WILL BE TAKEN TO THE BARRON ROAD STORM SEWER SYSTEM. STORM WATER REQUIREMENTS WILL BE IN ACCORDANCE WITH THE UDO.
4. THE DETENTION POND FOR THIS SITE WILL BE GENERALLY LOCATED AS SHOWN ON THIS PLAN.
5. THE GENERAL BULK OR DIMENSIONAL VARIATIONS (MERITORIOUS MODIFICATIONS) SOUGHT ARE AS FOLLOWS.

UDO SECTION 8.2 & 8.4 - WAIVER OF THE MULTI-USE PATH REQUIREMENT ALONG SH 40, WILLIAM D. FITCH PARKWAY.

6. A 15' WIDE BUFFER WILL BE PROVIDED IN PHASES AS SHOWN ON THE CONCEPT PLAN.

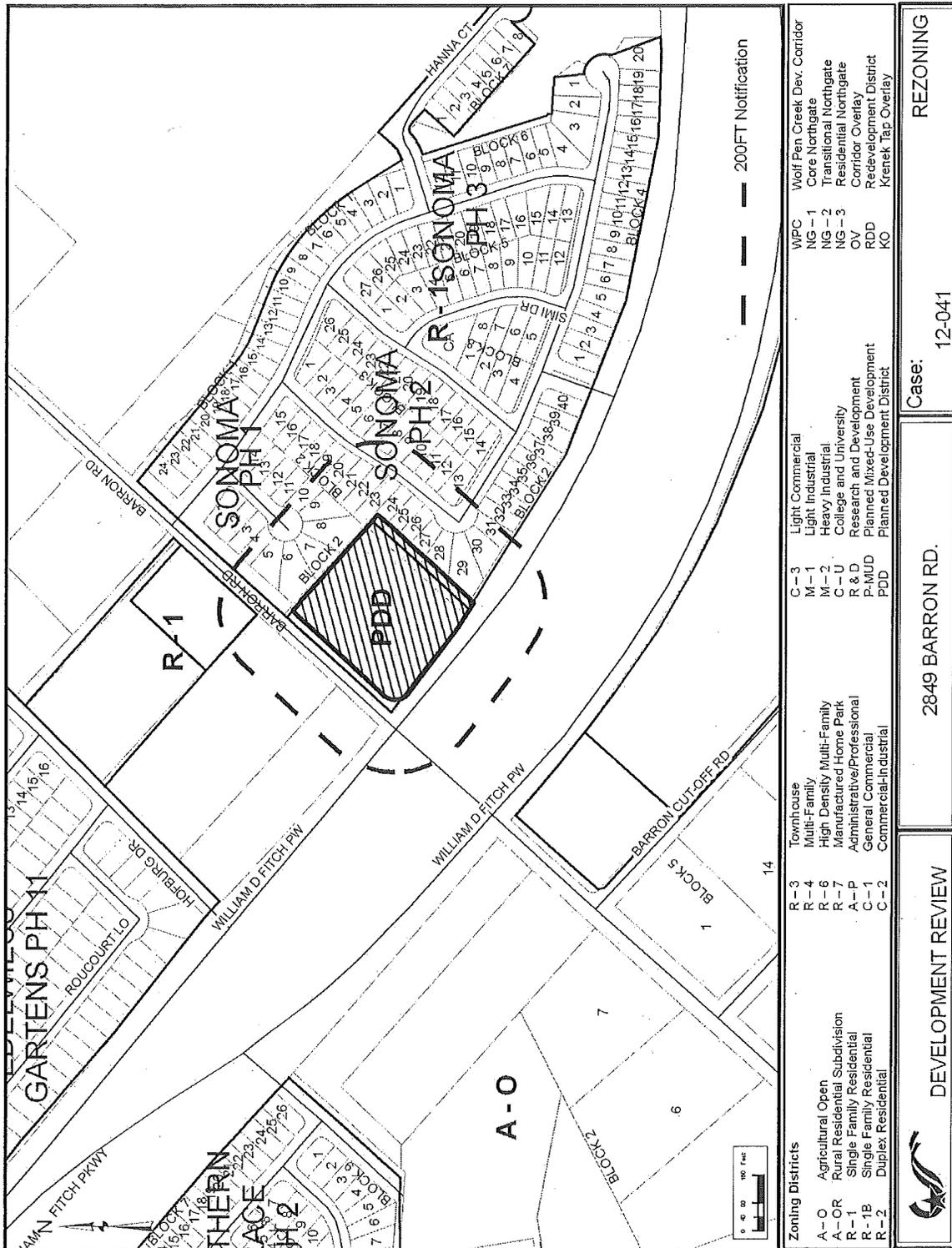
THE BUFFER WILL MEET THE UDO REQUIREMENTS WITH THE PHASE 1 BUFFER AREA HAVING THE LANDSCAPE POINTS INCREASED BY 50% (45 POINTS/1000 SF IN LIEU OF 30 POINTS/1000 SF OR BUFFER AREA.

7. ARCHITECTURE FOR THE SITE WILL MEET AND EXCEED ALL NRA STANDARDS. THE PHASE 1 BUILDING WILL BE CONSTRUCTED IN A MANNER WHICH REDUCES THE AMOUNT OF EXPOSED METAL ROOFING. METAL ROOFING THAT IS EXPOSED WILL BE ANGLED IN A MANNER THAT REDUCES THE PROFILE OF THE METAL. MOSTLY FLAT AND/OR SINGLE-SLOPED ROOFING MAY BE USED ON PHASE 1 IN CONJUNCTION WITH OTHER RESIDENTIAL DESIGN ELEMENTS, LIKE COVERED PORCHES, SINGLE WINDOWS, SCALE- AND NEIGHBORHOOD APPROPRIATE ENTRY FEATURES, VARIOUS PARAPET HEIGHTS, AND AWNINGS. IN ADDITION, THE USE OF NEIGHBORHOOD-APPROPRIATE STUCCO/EIFS, TIMBER, AND GLASS AS ARCHITECTURAL ACCENTS WILL FURTHER SUPPORT TRANSITION FROM SH 40 INTO THE NEARBY RESIDENTIAL ZONES.

8. SITE LIGHTING WILL BE PROVIDED AS REQUIRED IN THE UDO.

9. PHASE 1 BUILDING SIZE WILL RANGE FROM 4,500-6,000 SF. PHASE 2 BUILDING SIZE WILL RANGE FROM 8,000-13,000 SF. THE PHASE 2 IMPROVEMENTS MAY BE CONSTRUCTED AS ONE OR TWO BUILDINGS.

EXHIBIT "C" CONTINUED



Zoning Districts	R-3 R-4 R-6 R-7 A-P C-1 C-2	Townhouse Multi-Family High Density Multi-Family Manufactured Home Park Administrative/Professional General Commercial Commercial-Industrial	C-3 M-1 M-2 C-U R & D P-MUD PDD	Light Commercial Light Industrial Heavy Industrial College and University Research and Development Planned Mixed-Use Development Planned Development District	WPC NG-1 NG-2 NG-3 OV RDD KO	Wolf Pen Creek Dev. Corridor Core Northgate Transitional Northgate Residential Northgate Corridor Overlay Redevelopment District Krenek Tap Overlay
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DEVELOPMENT REVIEW

2849 BARRON RD.

Case: 12-041

REZONING

MINUTES
PLANNING & ZONING COMMISSION
Regular Meeting
April 5, 2012, 7:00 p.m.
City Hall Council Chambers
College Station, Texas

COMMISSIONERS PRESENT: Mike Ashfield, Craig Hall, Bo Miles, Jodi Warner, Jim Ross, James Benham, and Jerome Rektorik

COMMISSIONERS ABSENT: None

CITY COUNCIL MEMBERS PRESENT: Jess Fields

CITY STAFF PRESENT: Bob Cowell, Lance Simms, Alan Gibbs, Carol Cotter, Jason Schubert, Teresa Rogers, Venessa Garza, Joe Guerra, Erika Bridges, Mary Ann Powell, Matt Robinson, Lauren Hovde, Brittany Caldwell, and Carrie McHugh

1. **Call meeting to order**

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

2. Public hearing, presentation, possible action, and discussion on a Rezoning from PDD Planned Development District to PDD Planned Development District, for 3.19 acres located at 2849 Barron Road, generally located at the corner of Barron Road and SH 40, North of the Sonoma Subdivision. **Case #12-00500041 (MR) (Note: Final action on this item is scheduled for the April 26, 2012 City Council Meeting - subject to change)**

Senior Planner Robinson presented the rezoning and recommended approval with the condition that the request of the waiver to the multi-use path be removed.

There was general discussion amongst the Commission regarding the multi-use path.

Greenways Program Manager Garza stated that this project is not one that the City currently has funding for.

Jesse Durden, applicant, gave an overview of the project and stated the reason for the waiver request is because the multi-use path connects to nowhere, there are safety concerns, and the location of the path is not feasible.

Ms. Garza explained to the Commission why the path was included on the Bike, Pedestrian, and Greenways Master Plan map.

There was general discussion amongst the applicant and the Commission regarding the multi-use path.

Joe Schultz, applicant's engineer, said that the applicant is not against the multi-use path being built, but they do not feel it is appropriate to be built at this time since it will not connect to another multi-use path.

Commissioner Benham suggested not requiring the construction of the multi-use path by the applicant, but requiring the applicant to set aside land for the City to build the multi-use path when the funds were available.

Chairman Ashfield opened the public hearing.

Sherry Ellison, representing the Bicycle, Pedestrian, and Greenways Advisory Board, said that the Board reviewed the waiver and felt that it was important that the multi-use path be built.

Chairman Ashfield closed the public hearing.

There was general discussion amongst the Commission regarding the multi-use path.

Commissioner Benham motioned to recommend that the waiver be granted that waives the requirement for the applicant to construct the multi-use path, but require the use of a Public Access Easement inside of the Public Utility Easement. Commissioner Miles seconded the motion, motion passed (4-3). Chairman Ashfield and Commissioners Warner and Ross were in opposition.

Commissioner Warner motioned to recommend approval of the rezoning. Commissioner Rektorik seconded the motion, motion passed (7-0).

The meeting was adjourned at 9:40 p.m.

Approved:

Mike Ashfield, Chairman
Planning & Zoning Commission

Attest:

Brittany Caldwell, Admin. Support Specialist
Planning & Development Services

April 26, 2012
Regular Agenda Item No. 3
Rezoning for Foster Avenue Apartments

To: David Neeley, City Manager

From: Bob Cowell, AICP, CNU-A, Executive 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 for a rezoning from R-6 to PDD for 0.73 acre on Lots 9 and 10, Block 3 of the College Hills Estates Subdivision located at 1024 and 1026 Foster Avenue, generally located at the intersection of Foster Avenue and Francis Drive.

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

Recommendation(s): The Planning and Zoning Commission considered this item at their April 5, 2012 meeting and voted 6-0 to recommended approval of the rezoning request. Staff also recommended approval.

Summary: The amendment will change the zoning on 0.73 acre from R-6 High-Density Multi-Family Residential to PDD Planned Development District This request is to use the PDD Planned Development District to strive toward the creation of an Urban environment for a multi-family development, while seeking compatibility with the existing residential neighborhood.

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

REVIEW CRITERIA

- 1. Consistency with the Comprehensive Plan:** The proposed zoning is consistent with the Urban Redevelopment land use designation found in the Comprehensive Plan Future Land Use and Character Map. The designation language of the Community Character Chapter states that such a designation should be used to accommodate intense development activity including townhouses, duplexes, and high-density apartments. As part of the Redevelopment designation, the Comprehensive Plan requires careful site planning and building design to complement the existing neighborhood. The Eastgate Neighborhood Plan specifies that there is a need to "promote redevelopment around the perimeter of the neighborhood that meets community needs and is complimentary to the neighborhood." The Plan also describes that the purpose of a PDD Planned Development District is to promote and encourage innovative development that is sensitive to surrounding land uses. In addition, the Plan discusses increasing the density in the core or College Station to reduce pressure on greenfield development for apartments and other student-oriented rentals toward the fringe of the City.

- 2. Compatibility with the present zoning and conforming uses of nearby property and with the character of the neighborhood:** Most of the properties that abut Foster Avenue on the east and west side, including the subject lots, are zoned R-6 High-Density Multi-Family. The properties along this portion of the west side of Foster Avenue are designated as Urban Redevelopment in the Comprehensive Plan Land Use and Character Map. As described above, this designation specifically promotes multi-family development. The east

side of Foster Avenue is designated as Neighborhood Conservation. The lot directly across Foster Avenue from the subject lots is zoned R-1 Single-Family Residential. This indicates the City and resident's desire for the character and integrity of the neighborhood to be continued in the current or an improved fashion. Redevelopment activity proposed along the west side of Foster Avenue must taken into consideration the existing neighborhood and special attention is required to ensure compatibility between the different land uses and densities.

- 3. Suitability of the property affected by the amendment for uses permitted by the district that would be made applicable by the proposed amendment:** The Unified Development Ordinance states that dense multi-family development should occur within close proximity to the Texas A&M University campus. Being located across from campus and within the first block off of Texas Avenue, the intensity of development in this location is anticipated to be higher. This is contrasted by the need for appropriate development that abuts the existing single-family neighborhood. The proposed PDD Planned Development District allows for the density which is appropriate for the location while incorporating additional elements, discussed in the later portion of this report, that increase the compatibility with the neighborhood.
- 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 PDD Planned Development District will allow for the development of high-density multi-family housing. The same use is permitted under the current R-6 High-Density Multi-Family zoning district. The existing use on the property is an apartment complex developed at 12.3 units per acre.
- 5. Marketability of the property affected by the amendment for uses permitted by the district applicable to the property at the time of the proposed amendment:** The current zoning district of R-6 High-Density Multi-Family allows for a viable use that has been in operation for several decades. The apartment building currently has 9 units. As visible from the number of registered rental units in the Eastgate neighborhood, there is a market for student rentals in this area due to the convenient distance to campus. The marketability is increased by the proposed PDD Planned Development District, due to the requested meritorious modifications, because of a higher achievable unit count than with a R-6 High-Density Multi-Family district.
- 6. Availability of water, wastewater, stormwater, and transportation facilities generally suitable and adequate for the proposed use:** There are existing 2-inch, 6-inch, and 8-inch water lines available to serve this property. At site development, further analysis of existing water line capacity will be required and improvements to the existing water system may be necessary to support domestic and fire flow demands. There is also an existing 12-inch sanitary sewer line along Foster Ave. which may provide service to this site. Drainage is mainly to the south within the Wolf Pen Creek Drainage Basin. Drainage and other public infrastructure improvements required with site development shall be designed and constructed in accordance with the BCS Unified Design Guidelines. Existing infrastructure, with the possible exception of the current water system, appears to be adequate for the proposed use. The proposed development will be allowed a single point of access from Foster Avenue.

REVIEW OF CONCEPT PLAN

The applicant has provided the following information related to the purpose and intent of the proposed zoning district:

“To provide a sustainable, pedestrian and bicycle-friendly multi-family development that responds to demands for the College Station community and that meets the intent of the Comprehensive Plan and the Eastgate Neighborhood Plan. The PDD zoning will encourage responsible redevelopment of the site in a manner that is compatible with the existing character of the Eastgate neighborhood and one that sets the tone for future redevelopment nearby.”

Base Zoning and Meritorious Modifications

The applicant is proposing to develop using the R-6 High-Density Multi-Family zoning classification standards for the requested PDD. At the time of site plan, the project will need to meet all applicable site development standards of the UDO for the R-6 High-Density Multi-Family zoning classification, except where meritorious modifications are granted with the PDD zoning. The applicant is requesting the following meritorious modifications:

1. UDO Section 5.2 “Residential Dimensional Standards”:

A reduction in the building setbacks will promote an Urban environment and allows the parking to be placed in a less obtrusive locations to enable the development to be more compatible with the neighborhood.

	Standard R-6 Dimension	Requested Dimension
Front Setback (Foster)	15 feet	10 feet
Street Side Setback (Francis)	15 feet	10 feet
Rear Setback (Chili’s)	20 feet	1.5 feet

2. UDO Section 7.2.I “Number of Off-Street Parking Spaces Required”

The number of parking spaces required by the Unified Development Ordinance is determined by the number of bedrooms per dwelling unit and the size of said bedrooms. **The applicant is requesting to supply 75% of the parking requirement found in Section 7.2.I of the Unified Development Ordinance.** The development will consist primarily of 1-bedroom and 2-bedroom units which require additional parking per bedroom than 3-bedroom or 4-bedroom units. The reduction in parking allows the development to achieve a high number of units while reducing the visibility of cars.

The Unified Development Ordinance provides the following review criteria for PDD Concept Plans:

1. The proposal will constitute an environment of sustained stability and will be in harmony with the character of the surrounding area: An increase in density on the subject property will broaden the housing choices for renters in the Eastgate Area. By placing the development within close proximity to campus, the resident dependency on vehicles to access the University will decrease. Residents may instead utilize alternative means of transportation such as biking and walking. In addition, the College Hills Estates Homeowners Association was consulted on the site layout and building design. The tallest portion of the building will be located at the core, defined as 30 feet from the abutting rights-of-way, of the lot and will be a

maximum of 50-feet in height (four stories). The perimeter of the building will be a maximum of 35-feet in height (three stories).

2. The proposal is in conformity with the policies, goals, and objectives of the Comprehensive Plan, and any subsequently adopted Plans, and will be consistent with the intent and purpose of this Section: The Concept Plan reflects the policies, goals and objectives of the Comprehensive Plan as it relates to land use and character, connectivity, and neighborhood integrity. The Urban designation in the Comprehensive Plan Future Land Use Map is intended for areas that include multi-family residential housing, as proposed with this PDD. The Bicycle, Pedestrian, Greenways Master Plan is being followed with the proposed sidewalks along Foster Avenue and Francis Drive. Bicycle parking facilities are also proposed at a ratio of one space per bedroom which is not a requirement for multi-family development. In addition, several components are proposed to promote and protect neighborhood integrity.

- a) Utilize architectural materials of hardi-board and brick to mimic existing architecture.
- b) Provide one bicycle parking space per bedroom.
- c) Limit apartment signage to the low-profile option.
- d) Provide 8-foot wide sidewalks along Foster Avenue and Francis Drive.

3. The proposal is compatible with existing or permitted uses on abutting sites and will not adversely affect adjacent development: The redevelopment of this tract will encourage future development within the area designated as Redevelopment in the Comprehensive Plan Future Land Use and Character Map. There is a potential to relieve some rental pressure from the area designated as Neighborhood Conservation, which could encourage a potential increase in owner-occupied units within the Eastgate neighborhood by providing alternative rental options in the area.

The lessened parking requirement and the location of parking to the side and rear of the building will reduce the visible impact of a parking lot on the adjacent land uses and pass-by traffic.

4. Every dwelling unit need not front on a public street but shall have access to a public street directly or via a court, walkway, public area, or area owned by a homeowners association: The development will have a single point of access to Foster Avenue. Sidewalks will be provided along Foster Avenue and Francis Drive.

5. The development includes provision of adequate public improvements, including, but not limited to, parks, schools, and other public facilities: New public infrastructure is limited to the addition of 8-foot wide sidewalks along both Foster Avenue and Francis Drive within the bounds of the subject property.

6. The development will not be detrimental to the public health, safety, welfare, or materially injurious to properties or improvements in the vicinity: The proposed development has the potential of promoting public health by encourage walking and bicycling as a means of transportation among its residents. This encouragement is in the form of ample bicycle parking, and the addition of sidewalks along Foster Avenue and Francis Drive.

7. The development will not adversely affect the safety and convenience of vehicular, bicycle, or pedestrian circulation in the vicinity, including traffic reasonably expected to be generated by the proposed use and other uses reasonably anticipated in the area considering existing zoning and land uses in the area: The intent of providing walking and bicycle facilities within the property is to reduce the number of vehicular trips necessary for residents. The availability of campus, retail shopping, and dining within a close proximity of the site helps alternative means of transportation more likely.

Budget & Financial Summary: N/A

Attachments:

1. Background Information
2. Aerial & Small Area Map (SAM)
3. Draft Planning & Zoning Commission Minutes – April 5, 2012
4. Ordinance

NOTIFICATIONS

Advertised Commission Hearing Date: April 5, 2012
Advertised Council Hearing Dates: April 26, 2012

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:

College Hills Estates Homeowners Association was consulted during the creation of the proposed zoning district. The Association had the opportunity to comment on the architecture of the building and layout of the site.

Property owner notices mailed: 15
Contacts in support: None.
Contacts in opposition: Two, both calls were in general opposition to the density which is allowed by right under the existing R-6 High-Density Multi-Family Residential zoning.
Inquiry contacts: One for a general inquiry of what the project involved.

ADJACENT LAND USES

Direction	Comprehensive Plan	Zoning	Land Use
East	Neighborhood Conservation	R-1 Single-Family Residential and R-6 High-Density Multi-Family	Single-family residential
West	Urban and Redevelopment	C-1 General Commercial	Chili's Restaurant
South	Urban and Redevelopment	R-1 Single-Family Residential and C-1 General Commercial	College Station City Hall
North	Urban and Redevelopment	R-6 High-Density Multi-Family	vacant

DEVELOPMENT HISTORY

Annexation: March 1939
Zoning: R-1 Single-Family Residential
R-6 High Density Multi-Family
Final Plat: College Hills Subdivision
Site development: The site is currently developed with three housing structures including one-single-family house and two apartment buildings.



REZONING

Case: 11-135

FOSTER AVENUE APARTMENTS

DEVELOPMENT REVIEW





Zoning Districts	R-3	Townhouse	C-3	Light Commercial	MPC
A-O	R-3	Multi-Family	M-1	Light Industrial	Wolf Pen Creek Dev. Corridor
A-OR	R-4	High Density Multi-Family	M-2	Heavy Industrial	Core Northgate
R-1	R-6	Manufactured Home Park	C-U	College and University	Transitional Northgate
R-1B	R-7	Administrative/Professional	R & D	Research and Development	Residential Northgate
R-2	A-P	General Commercial	P-MID	Planned Mixed-Use Development	Corridor Overlay
	C-1	Commercial-Industrial	POD	Planned Development District	Redevelopment District
	C-2				Krenk Tap Overlay

DEVELOPMENT REVIEW

FOSTER AVENUE APARTMENTS

REZONING

Case: 11-135

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 12, "UNIFIED DEVELOPMENT ORDINANCE," SECTION 4.2, "OFFICIAL ZONING MAP," OF THE CODE OF ORDINANCES OF THE CITY OF COLLEGE STATION, TEXAS, BY CHANGING THE ZONING DISTRICT BOUNDARIES AFFECTING CERTAIN PROPERTIES AS DESCRIBED BELOW; DECLARING A PENALTY; AND PROVIDING AN EFFECTIVE DATE.

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

PART 1: That Chapter 12, "Unified Development Ordinance," Section 4.2, "Official Zoning Map," of the Code of Ordinances of the City of College Station, Texas, be amended as set out in Exhibit "A", attached hereto and made a part of this ordinance for all purposes.

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

PASSED, ADOPTED and APPROVED this 26^h day of April, 2012.

APPROVED:

MAYOR

ATTEST:

City Secretary

APPROVED:

Carla A. Robinson

City Attorney

EXHIBIT "A"

That Chapter 12, "Unified Development Ordinance," Section 4.2, "Official Zoning Map," of the Code of Ordinances of the City of College Station, Texas, is hereby amended as follows:

The following property is rezoned from R-6 High-Density Multi-Family Residential to PDD Planned Development District for the development of high-density multi-family housing, with the restrictions listed in Exhibit "B", described in Exhibit "C", and graphically described in Exhibit "D", and in accordance with the Concept Plan shown in Exhibit "E" and as shown graphically in Exhibit "F":

EXHIBIT "B"

Purpose & Intent:

"To provide a sustainable, pedestrian and bicycle-friendly multi-family development that responds to demands for the College Station community and that meets the intent of the Comprehensive Plan and the Eastgate Neighborhood Plan. The PDD zoning will encourage responsible redevelopment of the site in a manner that is compatible with the existing character of the Eastgate neighborhood and one that sets the tone for future redevelopment nearby."

Permitted Uses:

High-Density Multi-Family Housing

Architectural Design

- Building height will be limited to 35 feet within 30 feet of rights-of-way.
- Maximum building height past 35 feet from the rights-of-way will be 50 feet.
- Architecture will mimic that of the surrounding neighborhood housing stock.
- Exterior building materials will consist of hardi-board and brick to mimic the neighborhood housing stock.

Signs

Freestanding/Apartment signage will be limited to a low-profile option.

Base Zoning and Meritorious Modifications

The base zoning is R-6 High-Density Multi-Family Residential. At the time of plat and site plan, the project will need to meet all applicable site development standards and platting requirements of the UDO for the R-6 High-Density Multi-Family Residential zoning classification, except where the following meritorious modifications are granted with the PDD zoning.

1. UDO Section 5.2 "Residential Dimensional Standards":

A modification of 5 feet to the front and side street setback will create a setback to Foster Avenue of 10 feet and Francis Drive of 10 feet from the right-of-way.

2. UDO Section 7.2.1 "Number of Off-Street Parking Spaces Required"

The developer will supply 75% of the parking requirement found in Section 7.2.1 of the Unified Development Ordinance.

Additional Features

- 8-foot wide sidewalks are to be installed along the property perimeter abutting Francis Street and Foster Avenue.
- One bicycle parking space per bedroom will be provided.

EXHIBIT "C"

Field Notes
0.48 Acres

Being all of that certain tract or parcel of land, lying and being situated in College Station, Brazos County, Texas and being Lot 10 and the adjoining 10.00 feet off the Southeast side of Lot 9, Block 3, College Hills Estates, plat recorded in Volume 96, Page 498, Deed Records of Brazos County, Texas and being more particularly Described as follows:

BEGINNING: at a 1/ 2" iron rod found for the most northerly common corner of this tract and JHW Family Limited Partnership, Remainder of Lot 9, Block 3, (8703/206); same being in the southwesterly right-of-way line of Foster Road;

THENCE: S 50° 52' 48" E – 71.00 feet along said Foster Avenue line to a 5/ 8" iron rod set with cap for the beginning of the curve to the right;

THENCE: 71.32 feet along said line of Foster Avenue around the curve to the right, with a central angle of 81° 43' 51" right, a radius of 50.00 feet and whose chord bears S 02° 00' 45" W – 65.43 feet to a 5/ 8" iron rod set with cap at the end of said curve; same being in the northwesterly right-of way line of Francis Street;

THENCE: S 44° 50' 00" W – 140.00 feet along said Francis Street line to a 5/ 8" iron rod set with cap at the most southerly corner of this tract; same being in the northeast line of an alley;

THENCE: N 46° 53' 01" W – 115.17 feet along said alley line to a 5/ 8" iron rod found for the southwesterly corner of this tract;

THENCE: N 44° 50' 00" E – 184.37 feet across said Lot 9 along the common line between this tract and said JHW Family Limited Partnership tract to the PLACE OF BEGINNING; and containing 0.48 acres of land, more or less, according to a survey made on the ground under the supervision of Donald D. Garrett, Registered Professional Land Surveyor, No. 2972 on March 26, 2010.



EXHIBIT "C" CONTINUED

Field Notes
0.25 Acres

Being all of that certain tract or parcel of land, lying and being situated in College Station, Brazos County, Texas and being the northwest 60.00 feet of lot 9, Block 3 of the College Hills Estates, plat recorded in Volume 96, page 498, Deed Records of Brazos County, Texas and being more particularly described as follows:

BEGINNING; at a 1/4" iron rod found at the most northerly common corner of lots 8 & 9 of said Block 3, same being in the southwest right-of-way line of Foster Avenue;

THENCE: S 50° 58' 29" E - 60.11 feet along said Foster Avenue line to a 1/2" iron rod found at the most northerly common corner of this tract and the Sidney Parker tract (1069/7171);

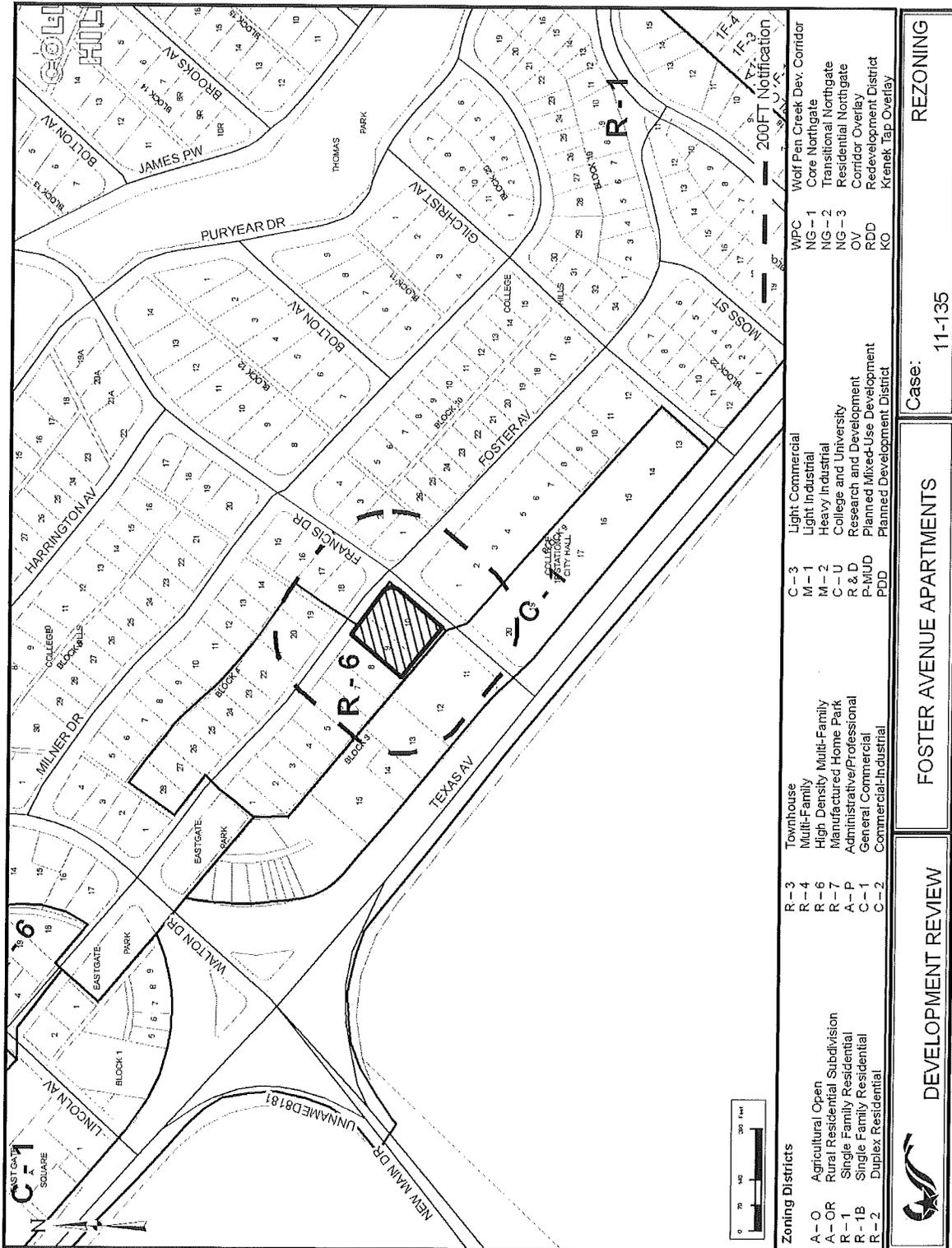
THENCE: S 44° 50' 00" W - 184.29 feet across said lot 9 along the common line between this tract and said Parker tract to a 5/8" iron rod with cap set at the most southerly common corner of said tracts, same being in the northeast line of an alley;

THENCE: N 46° 53' 01" W - 59.83 feet along said alley line to a 5/8" iron rod with cap set at the most southerly common corner of said lots 8 & 9;

THENCE: N 44° 50' 00" E - 180.00 feet along the common line between said lots 8 & 9 to the PLACE OF BEGINNING; and containing 0.25 acres of land, more or less, according to a survey made on the ground under the supervision of Donald D. Garrett, Registered Professional Land Surveyor, No. 2972 on December 13, 2007.



EXHIBIT "F"



Zoning Districts	
A-O	Agricultural Open
A-OR	Rural Residential Subdivision
R-1	Single Family Residential
R-1B	Single Family Residential
R-2	Duplex Residential
R-3	Townhouse
R-4	Multi-Family
R-6	High Density Multi-Family
R-7	Manufactured Home Park
A-P	Administrative/Professional
C-1	General Commercial
C-2	Commercial-Industrial
C-3	Light Commercial
M-1	Light Industrial
M-2	Heavy Industrial
C-U	College and University
R & D	Research and Development
P-MUD	Planned Mixed-Use Development
PDD	Planned Development District
WPC	Wolf Pen Creek Dev. Corridor
NG-1	Core Northgate
NG-2	Transitional Northgate
NG-3	Residential Northgate
OV	Corridor Overlay
RDD	Redevelopment District
KO	Krenak Tap Overlay

Case: 11-135

FOSTER AVENUE APARTMENTS

DEVELOPMENT REVIEW



REZONING



MINUTES
PLANNING & ZONING COMMISSION
Regular Meeting
April 5, 2012, 7:00 p.m.
City Hall Council Chambers
College Station, Texas

COMMISSIONERS PRESENT: Mike Ashfield, Craig Hall, Bo Miles, Jodi Warner, Jim Ross, James Benham, and Jerome Rektorik

COMMISSIONERS ABSENT: None

CITY COUNCIL MEMBERS PRESENT: Jess Fields

CITY STAFF PRESENT: Bob Cowell, Lance Simms, Alan Gibbs, Carol Cotter, Jason Schubert, Teresa Rogers, Venessa Garza, Joe Guerra, Erika Bridges, Mary Ann Powell, Matt Robinson, Lauren Hovde, Brittany Caldwell, and Carrie McHugh

1. **Call meeting to order**

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

Regular Agenda

2. Public hearing, presentation, possible action, and discussion regarding a zoning amendment request from R-6 High-Density Multi-Family Residential to PDD Planned Development District for 0.73 acres on Lots 9 and 10, Block 3 of the College Hills Estates Subdivision located at 1024 and 1026 Foster Avenue, generally located at the intersection of Foster Avenue and Francis Drive. **Case # 11-00500135 (LH) (Note: Final action on this item is scheduled for the April 26, 2012 City Council Meeting - subject to change)**

Staff Planner Hovde presented the rezoning and recommended approval.

There was general discussion amongst the Commission regarding the rezoning and parking within the development.

Clint Cooper, Caldwell Company, stated that there would be more than one parking space per bedroom provided.

Jesse Durden, CapRock Texas, stated that the proposed use is the same as the current zoning and matches the Comprehensive Plan and the Eastgate Plan. He said that the plan is to do more one and two bedroom units.

Chairman Ashfield opened the public hearing.

Harriette Andreadis, 200 Francis Drive, College Station, Texas, expressed concern about there not being enough parking provided and also inquired about the timeline for the project.

Mr. Cooper said that the development should be complete by the Fall of 2013.

Chairman Ashfield closed the public hearing.

There was general discussion amongst the Commission regarding parking.

Commissioner Benham motioned to recommend approval of the rezoning with the meritorious modifications, including the front and side street setbacks of ten feet and a 75 percent parking requirement. Commissioner Hall seconded the motion, motion passed (7-0).

The meeting was adjourned at 9:40 p.m.

Approved:

Mike Ashfield, Chairman
Planning & Zoning Commission

Attest:

Brittany Caldwell, Admin. Support Specialist
Planning & Development Services

April 26, 2012
Regular Agenda Item No. 4
Rezoning for 3182 Holleman Drive South

To: David Neeley, City Manager

From: Bob Cowell, AICP, CNU-A, Executive 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 for a rezoning from A-O to R-4 for 5.379 acres within University Heights Subdivision Phase 5 located at 3182 Holleman Drive South, generally located north of Las Palomas Subdivision.

Relationship to Strategic Goals: Core Services and Infrastructure, Diverse Growing Economy

Recommendation(s): The Planning and Zoning Commission considered this item at their April 5, 2012 meeting and voted 6-0 to recommend approval of the rezoning request. Staff also recommended approval.

Summary: The request is for a zoning amendment for 5.379 from A-O Agricultural-Open to R-4 Multi-Family Residential. The zoning request is for the remaining portion of the University Heights Subdivision that was not included in the 2008 rezoning of the subdivision.

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

REVIEW CRITERIA

1. Consistency with the Comprehensive Plan:

The R-4 Multi-Family Residential zoning request is consistent with the Future Land Use and Character Map that designates this property as Urban. An Urban land use designation is for areas intended for intense development activities such as townhomes, duplexes, and apartments, all of which are allowed in the R-4 zoning district. The subject tract and all abutting properties are designated as Urban on the Comprehensive Plan Future Land Use and Character Map. In addition, the subject tract is bordered on the east side by Holleman Drive South, designated as a future 4-Lane Major Collector, though it is currently built as a 2-lane rural roadway.

2. Compatibility with the present zoning and conforming uses of nearby property and with the character of the neighborhood:

Surrounding development includes future townhouse and detached single-family, existing duplex housing, and several existing single-family residential uses. The property immediately south of the subject tract is designated as Urban, and is currently developed as Las Palomas Subdivision, a duplex development.

The land use to the east (across Holleman Drive South) is vacant property and a single-family house with an A-O Agricultural-Open zoning. To the south, the Las Palomas duplex subdivision is also zoned A-O Agricultural-Open. The property to the west, was zoned R-4 Multi-Family Residential in 2008 at the same time the property north of the subject tract was zoned R-3 Townhouse. Also in the area are duplexes along Cain Road and future townhouses as part of the planned Barracks development. In general, the zoning request is compatible with the existing and planned developments in the area.

The proposed R-4 zoning district, which allows townhomes, duplexes, and apartments, will allow a maximum of 20 dwelling units per acre. This will expand the abutting R-4 zoning in the preliminary platted University Oaks Subdivision.

3. Suitability of the property affected by the amendment for uses permitted by the district that would be made applicable by the proposed amendment:

The suitability of the proposed R-4 zoning linked to the surrounding land uses being of a similar nature, both multi-family and duplex housing. The surrounding area is anticipated to have development for student and rental housing, which is consistent with the plans for this portion of the University Heights Subdivision.

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 current zoning of the property, A-O Agricultural-Open, is not suitable for the subject tract. It is not in compliance with the Comprehensive Plan land use designation of Urban, and is not compatible with the surrounding zoning districts. Due to its size, the subject tract development is limited to one single-family residential lot or a variety of agricultural related land uses. This type of development is not suitable for the property due to the intensity of the adjacent land uses.

5. Marketability of the property affected by the amendment for uses permitted by the district applicable to the property at the time of the proposed amendment:

The marketability of the subject tract is broad due to its location and access to Holleman Drive South. Development in the immediate vicinity ranges from an estate scale to multi-family residential. Staff does not believe the marketability of the subject tract is limited to multi-family residential, but is aware that an A-O Agricultural-Open zoning is not a viable zoning for the development of the subject tract due to its size and surrounding uses.

6. Availability of water, wastewater, stormwater, and transportation facilities generally suitable and adequate for the proposed use:

The subject tract is located within the Wellborn Special Utility District water service area. Future platting and development of the tract will have to provide adequate fire flow to support the proposed use.

The subject tract is located just north of a 12-inch sanitary sewer main as it crosses Holleman Drive South and heads east, this line gravity flows into the Bee Creek Trunk Line. This respective trunk line's sub-basin currently serves many developments along Harvey Mitchell Parkway, from areas east of Wellborn Road, to the Carters Creek Wastewater Treatment Plant. Much of the existing trunk line was constructed in 1973 and was shown to have several surcharging line segments in the 2011 HDR Sanitary Sewer Collection System Master Plan Update. The City is currently in the process of initializing a Capital Improvement Project in anticipation of the ultimate build-out demand anticipated for the subject sewer shed area. The subject tract is not located within a FEMA regulated Special Flood Hazard Area. Development of the subject tract requires mitigation of post development flows and follows the BCS Storm Water Design Guidelines. The subject tract is located adjacent to Holleman Drive, a 4-Lane Major Collector - Suburban Context, on the City's Thoroughfare Plan. The tract is also located adjacent to Kenyon Drive and the future extension of Los Portales Drive, both of which are local streets.

Budget & Financial Summary: N/A

Attachments:

1. Background Information
2. Aerial & Small Area Map (SAM)
3. Draft Planning & Zoning Commission Minutes – April 5, 2012
4. Ordinance

NOTIFICATIONS

Advertised Commission Hearing Date: April 5, 2012
 Advertised Council Hearing Dates: April 26, 2012

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: 22
 Contacts in support: None
 Contacts in opposition: None
 Inquiry contacts: None

ADJACENT LAND USES

Direction	Comprehensive Plan	Zoning	Land Use
North	Urban	R-3 Townhouse	townhouses (under construction)
South	Urban	A-O Agricultural-Open	Las Palomas Subdivision (duplexes)
East	Urban	A-O Agricultural-Open	Vacant and single-family residential
West	Urban	R-4 Multi-Family	Vacant and stormwater detention

DEVELOPMENT HISTORY

Annexation: March 2008
Zoning: A-O Agricultural-Open upon Annexation
Preliminary Plan: A Preliminary Plan for the University Heights Subdivision was approved in 2011. A Preliminary Plat was originally approved on the subject property for Oakland Ridge Subdivision in 2007.
Final Plat: This phase of University Height has not been final platted.
Site development: Vacant.

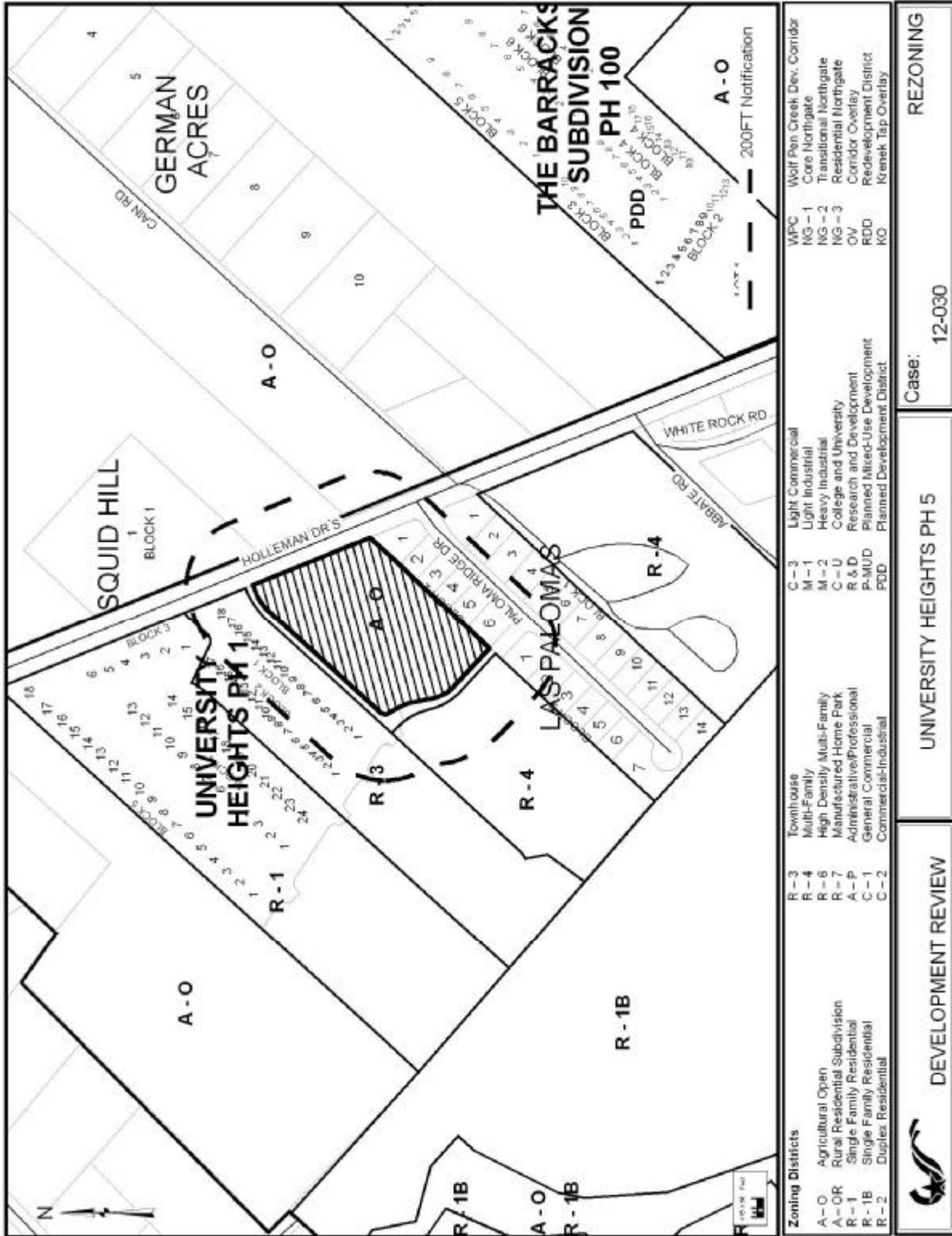


REZONING
Case: 12-030

UNIVERSITY HEIGHTS PH 5

DEVELOPMENT REVIEW





Zoning Districts	Light Commercial	WPC	Wolf Pen Creek Dev. Corridor
A-O	M-1	NG-1	Core Northgate
A-OR	M-2	NG-2	Transitional Northgate
R-1	C-U	NG-3	Residential Northgate
R-1B	R&D	OV	Corridor Overlay
R-2	P-MUD	RDD	Redevelopment District
	C-3	KO	Krenek Twp Overlay
	M-1		
	M-2		
	C-3		
	R&D		
	P-MUD		
	PDD		
	Townhouse		
	Multi-Family		
	High Density Multi-Family		
	Manufactured Home Park		
	Administrative/Professional		
	General Commercial		
	Commercial-Industrial		
	R-3		
	R-4		
	R-6		
	R-7		
	A-P		
	C-1		
	C-2		

Case: 12-030

UNIVERSITY HEIGHTS PH 5

REZONING



ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 12, "UNIFIED DEVELOPMENT ORDINANCE," SECTION 4.2, "OFFICIAL ZONING MAP," OF THE CODE OF ORDINANCES OF THE CITY OF COLLEGE STATION, TEXAS, BY CHANGING THE ZONING DISTRICT BOUNDARIES AFFECTING CERTAIN PROPERTIES AS DESCRIBED BELOW; DECLARING A PENALTY; AND PROVIDING AN EFFECTIVE DATE.

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

PART 1: That Chapter 12, "Unified Development Ordinance," Section 4.2, "Official Zoning Map," of the Code of Ordinances of the City of College Station, Texas, be amended as set out in Exhibit "A", 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 26th day of April, 2012

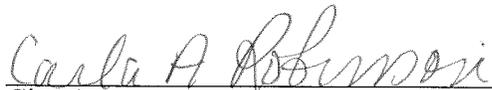
APPROVED:

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 5.379 acres of property is rezoned from A-O Agricultural-Open to R-4 Multi-Family Residential, as described Exhibit "B" and shown graphically in Exhibit "C":

EXHIBIT "B"

**METES AND BOUNDS DESCRIPTION
OF A
5.379 TRACT
CRAWFORD BURNETT SURVEY, A-7
COLLEGE STATION, BRAZOS COUNTY, TEXAS**

METES AND BOUNDS DESCRIPTION OF ALL THAT CERTAIN TRACT OF LAND LYING AND BEING SITUATED IN THE CRAWFORD BURNETT SURVEY, ABSTRACT NO. 7, COLLEGE STATION, BRAZOS COUNTY, TEXAS. SAID TRACT BEING A PORTION OF THE REMAINDER OF A CALLED 39.873 ACRE TRACT AS DESCRIBED BY A DEED TO MJBS HOLLEMAN, LTD. RECORDED IN VOLUME 10052, PAGE 256 OF THE OFFICIAL PUBLIC RECORDS OF BRAZOS COUNTY, TEXAS.

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

BEGINNING AT A ½ INCH IRON ROD FOUND ON THE SOUTHWEST LINE OF HOLLEMAN DRIVE MARKING THE EAST CORNER OF SAID REMAINDER OF 39.873 ACRE TRACT AND THE NORTH CORNER OF LAS PALOMAS SUBDIVISION ACCORDING TO THE PLAT RECORDED IN VOLUME 7367, PAGE 53 OF THE OFFICIAL PUBLIC RECORDS OF BRAZOS COUNTY, TEXAS;

THENCE: S 42° 51' 42" W ALONG THE COMMON LINE OF SAID REMAINDER OF 39.873 ACRE TRACT AND SAID LAS PALOMAS SUBDIVISION FOR A DISTANCE OF 542.54 FEET TO THE SOUTH CORNER OF THIS HEREIN DESCRIBED TRACT, FOR REFERENCE A ½ INCH IRON ROD FOUND MARKING THE SOUTH CORNER OF SAID REMAINDER OF 39.873 ACRE TRACT BEARS: S 42° 51' 42" W FOR A DISTANCE OF 687.47 FEET;

THENCE: THROUGH SAID REMAINDER OF 39.873 ACRE TRACT FOR THE FOLLOWING CALLS:

N 47° 07' 29" W FOR A DISTANCE OF 161.66 FEET TO THE BEGINNING OF A CLOCKWISE CURVE HAVING A RADIUS OF 200.00 FEET;

ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 34° 05' 25" FOR AN ARC DISTANCE OF 119.00 FEET (CHORD BEARS: N 30° 05' 11" W – 117.25 FEET) TO THE END OF SAID CURVE AND THE BEGINNING OF A COUNTERCLOCKWISE CURVE HAVING A RADIUS OF 200.00 FEET;

ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 23° 38' 05" FOR AN ARC DISTANCE OF 82.50 FEET (CHORD BEARS: N 24° 51' 28" W – 81.92 FEET) TO THE END OF SAID CURVE AT THE END OF THE PLATTED RIGHT-OF-WAY OF LOS PORTALES DRIVE (50' R.O.W.) ACCORDING TO THE PLAT OF UNIVERSITY HEIGHTS, PHASE 1, RECORDED IN VOLUME 10517, PAGE 276 OF THE OFFICIAL PUBLIC RECORDS OF BRAZOS COUNTY, TEXAS;

THENCE: N 64° 35' 45" E ACROSS THE END OF LOS PORTALES DRIVE FOR A DISTANCE OF 46.72 FEET TO THE BEGINNING OF A COUNTERCLOCKWISE CURVE HAVING A RADIUS OF 175.00 FEET;

THENCE: ALONG THE NORTHEASTERLY LINE OF LOS PORTALES DRIVE AND ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 11° 17' 45" FOR AN ARC DISTANCE OF 34.50 FEET (CHORD BEARS: N 31° 03' 08" W – 34.45 FEET) TO THE END OF SAID CURVE AND THE BEGINNING OF A TRANSITIONAL CURVE HAVING A RADIUS OF 25.00 FEET;

THENCE: ALONG SAID TRANSITIONAL CURVE THROUGH A CENTRAL ANGLE OF 79° 07' 23" FOR AN ARC DISTANCE OF 34.52 FEET (CHORD BEARS: N 02° 51' 41" E – 31.85 FEET) TO THE END OF SAID CURVE ON THE SOUTHEAST LINE OF KENYON DRIVE (50' R.O.W.);

EXHIBIT "B" CONTINUED

THENCE: ALONG THE SOUTHEAST LINE OF KENYON DRIVE FOR THE FOLLOWING CALLS:

N 42° 25' 22" E FOR A DISTANCE OF 474.28 FEET TO THE BEGINNING OF A CLOCKWISE CURVE HAVING A RADIUS OF 175.00 FEET;

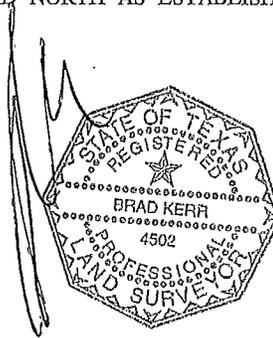
ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 25° 30' 13" FOR AN ARC DISTANCE OF 77.90 FEET (CHORD BEARS: N 55° 10' 29" E - 77.25 FEET) TO THE END OF SAID CURVE;

N 67° 55' 35" E FOR A DISTANCE OF 22.12 FEET TO THE SOUTHWEST LINE OF HOLLEMAN DRIVE MARKING THE NORTH CORNER OF THIS HEREIN DESCRIBED TRACT;

THENCE: S 22° 04' 25" E ALONG THE SOUTHWEST LINE OF HOLLEMAN DRIVE FOR A DISTANCE OF 401.42 FEET TO THE POINT OF BEGINNING CONTAINING 5.379 ACRES OF LAND, MORE OF LESS. BEARING SYSTEM SHOWN HEREIN IS BASED ON GRID NORTH AS ESTABLISHED FROM GPS OBSERVATION.

BRAD KERR
REGISTERED PROFESSIONAL
LAND SURVEYOR No. 4502

D:/WORK/MAB/12-062.MAB





MINUTES
PLANNING & ZONING COMMISSION
Regular Meeting
April 5, 2012, 7:00 p.m.
City Hall Council Chambers
College Station, Texas

COMMISSIONERS PRESENT: Mike Ashfield, Craig Hall, Bo Miles, Jodi Warner, Jim Ross, James Benham, and Jerome Rektorik

COMMISSIONERS ABSENT: None

CITY COUNCIL MEMBERS PRESENT: Jess Fields

CITY STAFF PRESENT: Bob Cowell, Lance Simms, Alan Gibbs, Carol Cotter, Jason Schubert, Teresa Rogers, Venessa Garza, Joe Guerra, Erika Bridges, Mary Ann Powell, Matt Robinson, Lauren Hovde, Brittany Caldwell, and Carrie McHugh

1. **Call meeting to order**

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

Regular Agenda

2. Public hearing, presentation, possible action, and discussion regarding a zoning amendment request from A-O Agricultural-Open to R-4 Multi-Family Residential for 5.379 acres within University Heights Subdivision Phase 5 located at 3182 Holleman Drive South, generally located north of Las Palomas Subdivision. **Case # 12-00500030 (LH) (Note: Final action on this item is scheduled for the April 26, 2012 City Council Meeting - subject to change)**

Staff Planner Hovde presented the rezoning and recommended approval.

There was no discussion regarding the item.

Joe Schultz, applicant, stated that he was available for questions and said that the previous developer tried to rezone this piece of property commercial.

Chairman Ashfield opened the public hearing.

No one spoke during the public hearing.

Chairman Ashfield closed the public hearing.

Commissioner Miles motioned to recommend approval of the rezoning. Commissioner Rektorik seconded the motion, motion passed (7-0).

The meeting was adjourned at 9:40 p.m.

Approved:

Mike Ashfield, Chairman
Planning & Zoning Commission

Attest:

Brittany Caldwell, Admin. Support Specialist
Planning & Development Services

April 26, 2012
Regular Agenda Item No. 5
Rezoning for The Barracks II

To: David Neeley, City Manager

From: Bob Cowell, AICP, CNU-A, Executive 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 for a rezoning from PDD to PDD for 108.88 acres located at 3100 Haupt Road, generally located between Old Wellborn Road and Holleman Drive South, North of the Buena Vida Subdivision.

Relationship to Strategic Goals: Core Services and Infrastructure, Diverse Growing Economy

Recommendation(s): The Planning and Zoning Commission considered this item at their April 5, 2012 meeting and recommend approval of the rezoning and to accept the water park and commercial amusement use, but limit the water park to having two, two tower cable systems with a recommendation of approval of the request (7-0).

Summary: The amendment will change the zoning on 108.88 acres from PDD Planned Development District to PDD Planned Development District to add an additional land use. The proposed rezoning is an amendment to the previously approved PDD zoning to add additional uses. Staff recommends approval of the rezoning with the condition that the commercial amusement/water recreation uses are removed from the concept plan and the list of permitted uses

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

REVIEW CRITERIA

- 1. Consistency with the Comprehensive Plan:**
- 2. Compatibility with the present zoning and conforming uses of nearby property and with the character of the neighborhood:**
- 3. Suitability of the property affected by the amendment for uses permitted by the district that would be made applicable by the proposed amendment:**
- 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:**
- 5. Marketability of the property affected by the amendment for uses permitted by the district applicable to the property at the time of the proposed amendment:**

The Comprehensive Plan designates the subject property as General Suburban and is located in Growth Area 5. It states that the area between Cain Road and Rock Prairie Road should be used for General Suburban activities, including high-density single-family lots (minimum 5,000

square feet), townhomes, duplexes, as well as suburban or neighborhood commercial and office uses.

The property is currently zoned PDD Planned Development District, allowing for a mixture of single-family residences, offices and commercial development. Residential uses are capped at a proposed density of 8.45 units per acre and will continue the type of residential development immediately to the south of the subject property, which are zoned and developed for single-family residences and townhomes. These properties include The Barracks, a townhome development, as well as the Williamsgate and Buena Vida subdivisions that are zoned R-1 Single-Family Residential.

Commercial uses are primarily proposed to be located along Old Wellborn Road, which is parallel to the existing railroad tracks. Through the PDD, additional controls are being applied that address issues related to architectural design, size, scale, and buffering as well other specific items.

Additional uses beyond what are currently allowed under the C-3 Neighborhood Commercial designation were approved with the original rezoning. These uses include a shooting range-indoor, car wash, commercial garden/greenhouse/landscape maintenance, commercial amusement, office and retail sales/service with storage areas being greater than 50% of the space, and self-storage allowing the storage of equipment, materials, recreational vehicles, or boats in buildings with at least three enclosed sides. As mentioned previously, additional standards have been included to address issues of design, size, scale and buffering. Additionally, a couple of the proposed uses are presently allowed to some degree under a general C-3 Neighborhood Commercial zoning district. This includes commercial amusement, which is allowed under a Conditional Use Permit, and self-storage without the storage of equipment and vehicles outside.

The proposed revised PDD zoning includes the addition of commercial amusement uses and water recreation activities that include a commercial wakeboard ski facility, administrative offices, a maximum 3,500 square foot restaurant, and retail sales related to the wakeboard facility. The applicant has stated that the proposed additional uses are to increase the marketability of the property. A landscaped buffer between the recreation center and property to the north is proposed and includes plantings that shall provide 100% opacity to a height of at least 8-feet. Lighting will be in accordance with the Unified Development Standards. The proposed hours of operation for the wakeboard ski facility are from no earlier than 8 a.m. to 10 p.m.

6. Availability of water, wastewater, storm water, and transportation facilities generally suitable and adequate for the proposed use:

The subject tract is located in Wellborn Water's service area. Future development of the tract will have to meet the City's minimum fire flow requirements. The subject tract is located adjacent to a 12-inch sanitary sewer main which runs along the south and east property boundaries. The tract is located in the Steeplechase Sanitary Sewer Impact Fee Area that gravity flows into the Bee Creek Trunk Line. This respective trunk line's sub-basin currently serves many developments along FM2818, from areas east of Wellborn Road, to the Carters Creek Wastewater Treatment Plant. Much of the existing trunk line was constructed in 1973 and was shown to have several surcharging line segments in the 2011 HDR Sanitary Sewer Collection System Master Plan Update. The City is currently in the process of initializing a capital improvement project entitled the 'Bee Creek Relief Line' that will install a larger diameter gravity line to increase the system capacity of the overall sub-basin in order to accept the ultimate build-out demand anticipated in this respective area. This trunk line capacity increase is

necessary to proactively prevent surcharge events, possible fines from TCEQ, and customer service disruptions. Preliminary analysis of this area has identified that the existing sanitary sewer capacity can support the increased sanitary sewer demand from the proposed development, however, future demands in this respective sub-basin will need to be evaluated as development occurs.

The subject tract is in the Bee Creek Tributary “B” drainage basin. The subject tract is not located within a FEMA regulated Special Flood Hazard Area per FEMA FIRM panel 182C. Future development of the tract will have to meet the requirements of the City Storm Water Design Guidelines. The subject tract is located adjacent to Old Wellborn Road (local) to the east and Holleman Drive West (4 Lane Major Collector – Suburban Context) to the west. Three future thoroughfares bi-sect the property: Deacon Drive (2-Lane Major Collector – Urban Context), General Parkway (2-Lane Minor Collector – Suburban/Urban Context) & Towers Parkway a 2-Lane Minor Collector – Suburban/Urban Context adjacent to the school district owned property.

REVIEW OF CONCEPT PLAN

Modifications from the previously approved concept plan include the addition of uses, rearrangement of streets/alleys and the addition of a waterway/drainage easement. Additional uses consist of commercial amusement with water recreation activities, that includes a commercial wakeboard ski facility, administrative offices, a maximum 3,500 square foot restaurant, and retail sales related to the wakeboard facility.

The applicant has provided the following information related to the purpose and intent of the proposed zoning district:

“The Barracks II Subdivision was previously granted PDD Zoning to develop a residential community for students in the 18-30 year age range. The planned development includes a mixture of housing options and commercial businesses that cater to the student population. The intent has not changed. This rezoning request merely adds another allowable use to the existing PDD Zoning. The Recreation Center and ski facility are intended to enhance the marketability of this mixed use development to buyers in the target demographic.”

In accordance with this purpose statement, the Concept Plan includes a mixture of residential, commercial and office uses. Commercial uses are proposed primarily along Old Wellborn Road, with an additional commercial tract located at the future intersection of Deacon Drive and Holleman Drive South. These areas will be limited to C-3 Neighborhood Commercial uses, with additional allowed uses consisting of a shooting range –indoor, car wash, commercial garden/greenhouse/landscaping, commercial amusement, office and retail sales/service with storage areas being greater than 50%, and self-storage allowing equipment, materials, recreational vehicles and boats in a building enclosed on three sides. These uses would be limited to commercial tracts 2, 3 and 4, which are located along Old Wellborn Road. Additionally, commercial tract 4 is the only commercial tract where self-storage units would be permitted. As proposed, restaurants would not be a permitted use in Commercial Tracts 2 through 4. All commercial structures will be required to be in compliance with the Non-Residential Architectural Standards as well as being compatible in size, roof type and pitch, materials, and architecture with the surrounding residential uses. A recreation center that includes a Wake Board Ski Park is proposed to utilize two of the three detention ponds that are necessary to serve the development. The recreation center, which includes offices, a pro shop, a 3,500 square foot restaurant and other amenities, will be required to meet all UDO requirements.

Residential uses consisting of single-family detached residences and townhomes are proposed for the remainder of the site. Residential density is proposed at a max of 8.45 dwelling units per acre. The townhomes are proposed to be located around a 1.62 acre park at the center of the development with an additional 2.25 acres of park land located around the perimeter of the townhomes. Single-family detached residences are proposed to be located nearest the school district owned property, located along Holleman Drive South that could potentially be the location of a new school.

As mentioned previously, the layout of the development has changed some from the previously approved concept plan. Layout changes have been made in order to incorporate an open waterway/drainage easement through the center of the development. This waterway/drainage easement is in response to correspondence between the developer and the US Army Corp of Engineers as the developer is proposing to preserve additional stretches of the existing natural channel. As a result, a number of townhome units have been removed and the layout now has more townhomes taking direct access to local streets as opposed to access via alleys.

At time of site plan and plat, the project will need to meet all applicable standards required by the UDO except those discussed below. Staff is currently undertaking an effort to create new zoning districts to implement the different character areas envisioned by the Comprehensive Plan. In the absence of a defined General Suburban zoning district, the applicant and staff have negotiated through various standards to seek to attain a general suburban style that is appropriate for this portion of the City, while seeking to retain flexibility for both parties.

Base Zoning and Meritorious Modifications

The existing zoning was approved with the following base zoning and meritorious modifications listed below. There are no new modifications being requested with the rezoning amendment.

The applicant has proposed to utilize R-1 Single-Family Residential; R-3 Townhouse; and C-3 Light Commercial as the base, underlying zoning districts for standards not identified in the PDD. At the time of site plan and plat, the project will need to meet all applicable site, architectural and platting standards required by the Unified Development Ordinance except where meritorious modifications are granted with the PDD zoning. The applicant has requested the following meritorious modifications:

1. Section 6.3 “Specific Use Standards”

The applicant has requested that the following uses be permitted within the Commercial Tracts shown on the concept plan in addition to the uses currently allowed under the C-3 zoning district:

- Shooting Range – Indoor
- Car Wash
- Commercial garden/greenhouse/landscape maintenance
- Commercial Amusement
- Office and retail sales/services with storage areas being greater than 50% of the space (i.e., office/warehouse with overhead doors)
- Self-storage – equipment, materials, recreational vehicles, or boats in buildings with at least three enclosed sides

2. Section 5.2. “Residential Dimensional Standards” of the Unified Development Ordinance

The applicant has proposed the following modified setback requirements (UDO requirements are in parentheses):

Use	R-1	R-3
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Min. Front Setback	20' (25')	20' (25')
Min. Side Setback	5' (7.5')	5' (7.5')

The applicant states that the purpose is to allow slightly larger buildings and slightly more units within the same space, while maintaining a density that is compatible with the Comprehensive Plan.

3. Section 5.4 “Non-Residential Dimensional Standards”

The applicant has requested that the minimum rear setback for self storage structures adjacent to a public alley be five feet. Current UDO requirements for commercial buildings located within a C-3 zoning district is 15 feet. The applicant’s justification is that the alley will have a 24-foot right-of-way that provides adequate separation distance and that the rear wall of these units will have no openings or vehicular or pedestrian traffic on that side of the storage facility. Additionally, the intent is to utilize the rear wall of the self-storage building to act as the buffer wall between land uses as requested in modification number 5 listed below.

4. Section 7.6 “Buffer Standards” of the Unified Development Ordinance

The applicant is requesting the ability to count the rear wall of a self-storage building that is adjacent to an alley serving residential units as meeting the buffering requirement for commercial uses abutting single-family uses. The wall height would be a maximum of 15 feet and constructed of stone. The applicant’s justification is that the maximum height for a buffer wall is 8-feet and that the buffer requirements produce a 15-foot buffer yard that would be hidden from view.

5. Section 7.4 “Signs”

The applicant is requesting that Commercial Tracts 2, 3, and 4 each be permitted to erect a freestanding sign that is no taller than 20 feet in height. Current, UDO requirements limit signage in C-3 zoning districts to low profile signs, which are a max of 4 feet in height and 60 square feet in area. The applicant’s justification for the request is that the commercial tracts are situated next to elevated railroad tracks and that the view to the commercial businesses will be obstructed from view.

6. Section 8.2 “Blocks” of the Unified Development Ordinance

- a) The applicant is requesting that block lengths of up to 1000 feet be permitted on designated single-family and townhome blocks. Specifically, these blocks are noted as SF Block 4, SF Block 9, and TH Block 7. Current UDO requirements limit block lengths to 900 feet in areas designated as General Suburban. The applicant’s justification for the longer block lengths is to limit the number of street connections between single-family and townhome areas in an effort to eliminate the occurrence of townhome residents parking in front of single-family homes. A 15-foot wide common area is proposed along TH Block 7 to allow for future pedestrian traffic through the block.
- b) The applicant is requesting a 1250-foot block length along Deacon Drive for the Ski Park (WBP Block 1). The Ski Park is comprised of two ponds that serve as detention areas. Combined with the third detention area adjacent to Commercial Tract 2, these ponds are necessary to accommodate the drainage needs for the development and are located at the point where the natural drainage system exits the site. With the proposal to utilize two of these ponds as a Ski Park, a long block without an intermediate break in it is necessary.

7. Section 8.2.E.6 “Dead-End Streets” and Section 8.2.F “Alleys” of the Unified Development Ordinance

The applicant is requesting that dead end streets in residential areas (single-family and townhome) be allowed to extend a maximum of 100 feet in length and that the dead-end alley adjacent to Commercial Tract 4 be allowed to extend to the property line (approximately 110 feet). Current subdivision requirements limit dead-end streets and dead-end alleys to 100 feet in length or the depth of one lot, whichever is less. This affects the areas near Commercial Tract 1 and the Ski Park as the proposed lot width of the townhome lots are 30 feet wide along the right-of-way. Additionally, the alley adjacent to Commercial Tract 4 exceeds 100 feet in width, which is longer than the proposed townhome lot width. In this instance it would leave a small strip of privately-owned land between the alley and the property line. In both instances, future extension of the street/alley would be sought when the adjoining properties developed.

8. Section 6.3.Q “Specific Use Standards – Storage (Self-Service)” of the Unified Development Ordinance

The applicant is requesting that accessory uses of an office and living quarters be allowed in the self-storage facility. Each of these uses would be limited to no more than 1000 square feet in size. Additionally, the selling, renting, leasing of trucks or trailers would not be permitted. Current UDO requirements prohibit accessory uses for self-storage businesses located within a C-3 zoning designation. The applicant’s justification is that due to the large concentration of townhomes, they anticipate moving to be a common occurrence and that the need for the sale of related materials for moving and extended hours may be needed.

9. Section 7.5 “Landscaping” and Section 7.8 “Drainage and Stormwater Management”

The applicant is requesting that the landscaping requirements for the Ski Park development be limited to the building, parking and amenity areas of the Ski Park. The ponds themselves would be removed from the landscaping point calculations, but would still be subject to streetscaping requirements along the rights-of-way. UDO requirements for landscaping point calculations are based on the overall size of the site and require that detention ponds be incorporated into the landscape design. Given that the majority of the Ski Park area is comprised of the ponds, it would be difficult, if not impossible to meet the landscaping requirements.

10. Section 8.2.E.4 “Adequate Street Access”

The applicant is requesting that a Remote Emergency Access be permitted to serve as a connection to the requirement that when there are more than 30 lots to be served by external street connections, a minimum of two connections to external paved public streets be provided. Current UDO subdivision requirements state that the Commission may allow a Remote Emergency Access when the development is being phased or when the constraints of the land prevent the provision of a second street connection. The applicant is requesting this modification in an effort to phase subsequent streets accordingly. The requirement for two street connections to external paved public streets would still be required when 100 or more lots are served.

Budget & Financial Summary: N/A

Attachments:

1. Background Information
2. Aerial & Small Area Map (SAM)
3. Draft Planning & Zoning Commission Minutes – April 5, 2012
4. Ordinance

NOTIFICATIONS

Advertised Commission Hearing Date: February 16, 2012
 Advertised Council Hearing Dates: March 8, 2012

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:
 Barracks at Rock Prairie Owner's Association

Property owner notices mailed: 26
 Contacts in support: None at time of staff report
 Contacts in opposition: 1
 Inquiry contacts: None at time of staff report

ADJACENT LAND USES

Direction	Comprehensive Plan	Zoning	Land Use
North	Urban – Growth Area 5	A-O Agricultural Open	Vacant
South	General Suburban – Growth Area 5	R-1 Single-Family Residential; R-3 Townhouse; A-O Agricultural Open	Vacant, townhomes (The Barracks), single-family residences (Williamsgate Subdivision and future Buena Vida Subdivision)
East	6-lane major arterial on Thoroughfare Plan		Old Wellborn Road, Railroad tracks and FM 2154
West	General Suburban – Growth Area 5, Major Collector on Thoroughfare Plan	A-O Agricultural Open	Vacant, Holleman Drive South

DEVELOPMENT HISTORY

Annexation: 2002
Zoning: A-O Agricultural Open upon annexation (2002)
 A-O Agricultural Open to PDD Planned Development District (2011)
Final Plat: Barracks II Section 100 (2012)
Site development: The first phase of the development is currently under construction.

ZONING HISTORY

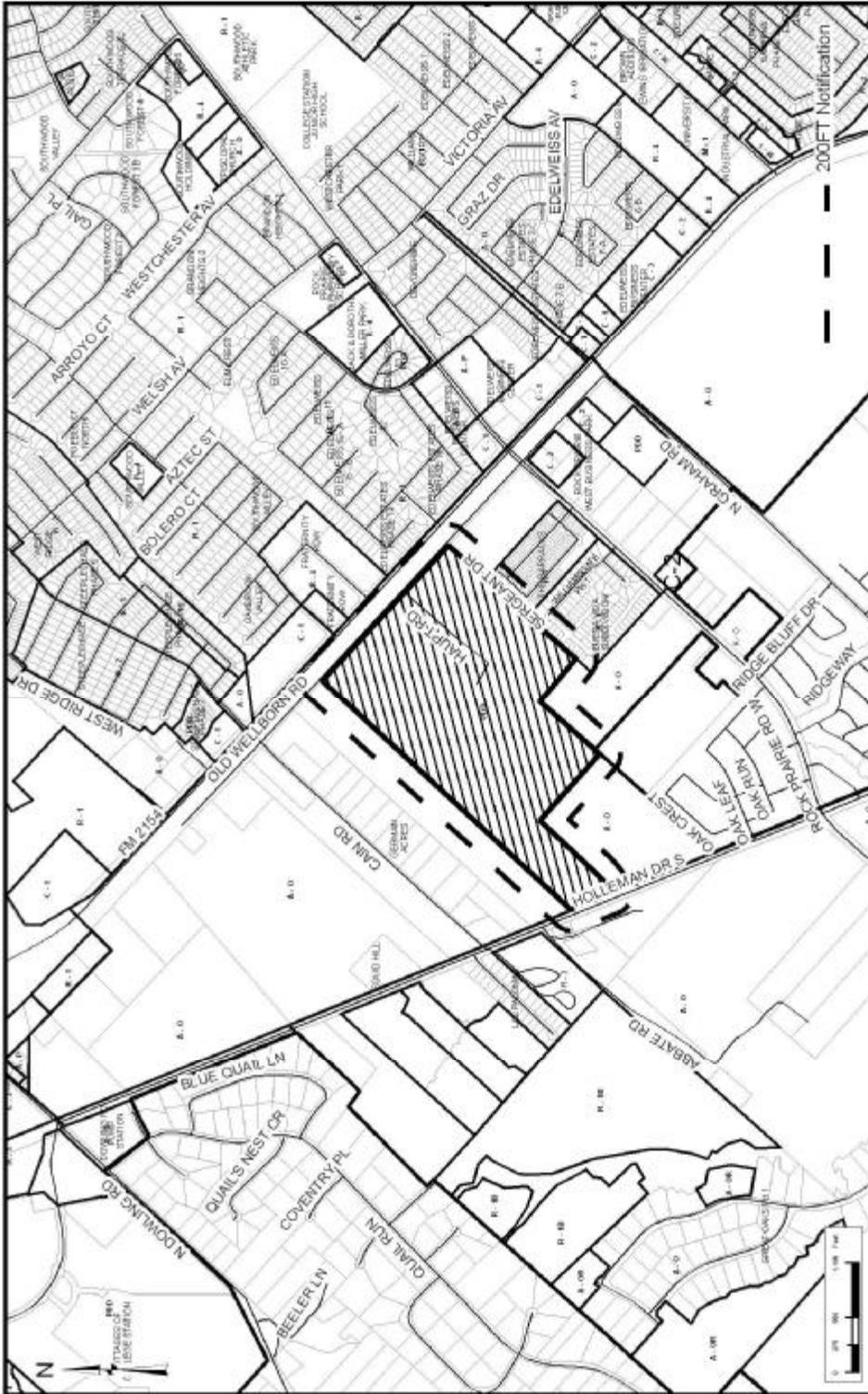
In June 2011, the property was rezoned from A-O Agricultural Open to PDD Planned Development District and included a mix of commercial and single-family attached (townhome) and single-family detached residences. The original proposal included a wake board ski facility within two of the detention pond areas. At the Planning & Zoning Commission and City Council meetings concerns were expressed about the proposed wake board facilities, specifically regarding light, noise, buffers and whether the use was appropriate for the area. City Council approved the rezoning with the condition that the wakeboard use be removed. Since that time, a Preliminary Plan has been approved for the development along with a Final Plat for the first phase of the development.

The developer is requesting the rezoning amendment to provide additional uses, which include a recreational center with a commercial wake board ski facility, administrative offices, a maximum 3,500 square foot restaurant, and retail sales related to the wakeboard facility. Additionally, the rezoning revises

the original approved layout to incorporate an open waterway/drainage easement through the center of the development, which results in the loss of townhomes from the original proposal and some rearrangement of streets and alleys. Some aspects of the site layout modifications are due in part to correspondence between the developer and the US Army Corp of Engineers, as the developer is proposing to preserve additional stretches of the existing natural channel.



<p>REZONING</p> <p>Case: 12-006</p>	<p>THE BARRACKS II</p>	<p>DEVELOPMENT REVIEW</p> 
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Zoning Districts

A-0	Agricultural Open	R-3	Townhouse	C-3	Light Commercial	WFC	Wolf Pen Creek Dev. Corridor
A-OR	Rural Residential Subdivision	R-4	Multi-Family	M-1	Light Industrial	MG-1	Core Northgate
R-1	Single Family Residential	R-6	High Density Multi-Family	M-2	Heavy Industrial	MG-2	Transitional Northgate
R-1B	Single Family Residential	R-7	Manufactured Home Park	C-U	College and University	MG-3	Residential Northgate
R-2	Duplex Residential	A-P	Administrative/Professional	R&D	Research and Development	OV	Corridor Overlay
		C-1	General Commercial	P-MUD	Planned Mixed-Use Development	RDD	Redevelopment District
		C-2	Commercial-Industrial	PDD	Planned Development District	KO	Kriemek Tap Overlay

DEVELOPMENT REVIEW **THE BARRACKS II** **REZONING**

Case: 12-006

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" through "D" attached hereto and made a part of this ordinance for all purposes.

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

PASSED, ADOPTED and APPROVED this ____ day of April, 2012

APPROVED:

MAYOR

ATTEST:

City Secretary

APPROVED:



City Attorney

EXHIBIT "A"

That Chapter 12, "Unified Development Ordinance," Section 4.2, "Official Zoning Map," of the Code of Ordinances of the City of College Station, Texas, is hereby amended as follows:

The following property is rezoned from PDD Planned Development District to PDD Planned Development District:

108.88 Acre Tract
Crawford Burnett League, A-7
College Station, Brazos County, Texas

**METES AND BOUNDS DESCRIPTION
OF A
108.88 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 THE REMAINDER OF A CALLED 136.063 ACRE TRACT AS DESCRIBED BY A DEED TO L. M. HAUPT, JR. AND WIFE, STELLA GERENHAUPT RECORDED IN VOLUME 171, PAGE 392 OF THE DEED RECORDS OF BRAZOS COUNTY, TEXAS, AND THE REMAINDER OF A CALLED 3.3 ACRE TRACT AS DESCRIBED BY A DEED TO LEWIS M. HAUPT, JR. RECORDED IN VOLUME 293, PAGE 788 OF THE DEED RECORDS OF BRAZOS COUNTY, TEXAS.

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

BEGINNING AT A ½ INCH IRON ROD FOUND ON THE SOUTHWEST LINE OF OLD WELLBORN ROAD MARKING THE EAST CORNER OF SAID REMAINDER OF 136.063 ACRE TRACT AND THE NORTH CORNER OF A CALLED 12.40 ACRE TRACT AS DESCRIBED BY A DEED TO OSAGE, LTD. RECORDED IN VOLUME 1130, PAGE 570 OF THE OFFICIAL RECORDS OF BRAZOS COUNTY, TEXAS;

THENCE; S 41° 12' 34" W ALONG THE COMMON LINE OF SAID REMAINDER OF 136.063 ACRE TRACT AND SAID 12.40 ACRE TRACT FOR A DISTANCE OF 517.37 FEET TO A 3/8 INCH IRON ROD FOUND MARKING THE WEST CORNER OF SAID 12.40 ACRE TRACT AND THE NORTH CORNER OF THE REMAINDER OF A CALLED 8.833 ACRE TRACT AS DESCRIBED BY A DEED TO GREENS PRAIRIE INVESTORS, LTD. RECORDED IN VOLUME 8413, PAGE 22 OF THE OFFICIAL PUBLIC RECORDS OF BRAZOS COUNTY, TEXAS;

THENCE: S 41° 55' 50" W ALONG THE COMMON LINE OF SAID REMAINDER OF 136.063 ACRE TRACT AND SAID REMAINDER OF 8.833 ACRE TRACT FOR A DISTANCE OF 429.64 FEET TO A ½ INCH IRON ROD FOUND MARKING THE COMMON CORNER OF SAID REMAINDER OF 8.833 ACRE TRACT AND THE REMAINDER OF A CALLED 3.0 ACRE TRACT AS DESCRIBED BY A DEED TO GREENS PRAIRIE INVESTORS, LTD. RECORDED IN VOLUME 8513, PAGE 276 OF THE OFFICIAL PUBLIC RECORDS OF BRAZOS COUNTY, TEXAS;

THENCE: S 41° 18' 46" W ALONG THE COMMON LINE OF SAID REMAINDER OF 136.063 ACRE TRACT AND SAID REMAINDER OF 3.0 ACRE TRACT FOR A DISTANCE OF 124.14 FEET TO A ½ INCH IRON ROD FOUND MARKING THE NORTH CORNER OF WILLIAMSGATE SUBDIVISION, PHASE 1, ACCORDING TO THE PLAT RECORDED IN VOLUME 7705, PAGE 206 OF THE OFFICIAL PUBLIC RECORDS OF BRAZOS COUNTY, TEXAS;

THENCE: S 41° 30' 18" W ALONG THE COMMON LINE OF SAID REMAINDER OF 136.063 ACRE TRACT AND WILLIAMSGATE SUBDIVISION, PHASE 1, AND THE REMAINDER OF A CALLED 20.25 ACRE TRACT AS DESCRIBED BY A DEED TO ROBBIE ROBINSON, LTD. RECORDED IN VOLUME 6446, PAGE 92 OF THE OFFICIAL PUBLIC RECORDS OF BRAZOS COUNTY, TEXAS, FOR A DISTANCE OF 637.46 FEET TO A ½ INCH IRON ROD FOUND MARKING AN EASTERLY CORNER OF A CALLED 22.97 ACRE TRACT AS DESCRIBED BY A DEED TO CHARLES I. TURNER AND MARY E. TURNER RECORDED IN VOLUME 3331, PAGE 61 OF THE OFFICIAL PUBLIC RECORDS OF BRAZOS COUNTY, TEXAS;

THENCE: N 49° 58' 35" W ALONG THE COMMON LINE OF SAID REMAINDER OF 136.063 ACRE TRACT AND SAID 22.97 ACRE TRACT FOR A DISTANCE OF 562.09 FEET TO A ½ INCH IRON ROD FOUND MARKING THE NORTH CORNER OF SAID 22.97 ACRE TRACT;

THENCE: S 41° 21' 39" W CONTINUING ALONG THE COMMON LINE OF SAID REMAINDER OF 136.063 ACRE TRACT AND SAID 22.97 ACRE TRACT FOR A DISTANCE OF 801.59 FEET TO A ½ INCH IRON ROD FOUND ON THE NORTHWEST LINE OF A CALLED 23.00 ACRE TRACT DESCRIBED AS TRACT 2 BY A

EXHIBIT "A" CONTINUED

DEED TO HENRY P. MAYO AND WIFE, SANDRA K. MAYO RECORDED IN VOLUME 1253, PAGE 878 OF THE OFFICIAL PUBLIC RECORDS OF BRAZOS COUNTY, TEXAS, MARKING THE EAST CORNER OF A CALLED 27.017 ACRE TRACT DIVIDED OUT OF SAID REMAINDER OF 136.063 ACRE TRACT, SAID 27.017 ACRE TRACT NOT YET FILED OF RECORD AT THE TIME OF THIS DESCRIPTION;

THENCE: THROUGH SAID REMAINDER OF 136.063 ACRE TRACT AND ALONG THE NORTHEAST AND NORTHWEST LINES OF SAID 27.017 ACRE TRACT FOR THE FOLLOWING CALLS:

N 47° 43' 18" W FOR A DISTANCE OF 898.64 FEET TO A ½ INCH IRON ROD FOUND;

S 42° 56' 01" W FOR A DISTANCE OF 803.33 FEET TO A ½ INCH IRON ROD FOUND MARKING THE BEGINNING OF A CLOCKWISE CURVE HAVING A RADIUS OF 468.50 FEET;

ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 25° 02' 43" FOR AN ARC DISTANCE OF 204.79 FEET (CHORD BEARS: S 55° 26' 04" W = 203.17 FEET) TO A ½ INCH IRON ROD FOUND MARKING THE ENDING POINT OF SAID CURVE;

S 67° 52' 33" W FOR A DISTANCE OF 30.24 FEET TO A ½ INCH IRON ROD FOUND ON THE NORTHEAST LINE OF JONES BUTLER ROAD MARKING THE SOUTHWEST CORNER OF THIS HEREIN DESCRIBED TRACT;

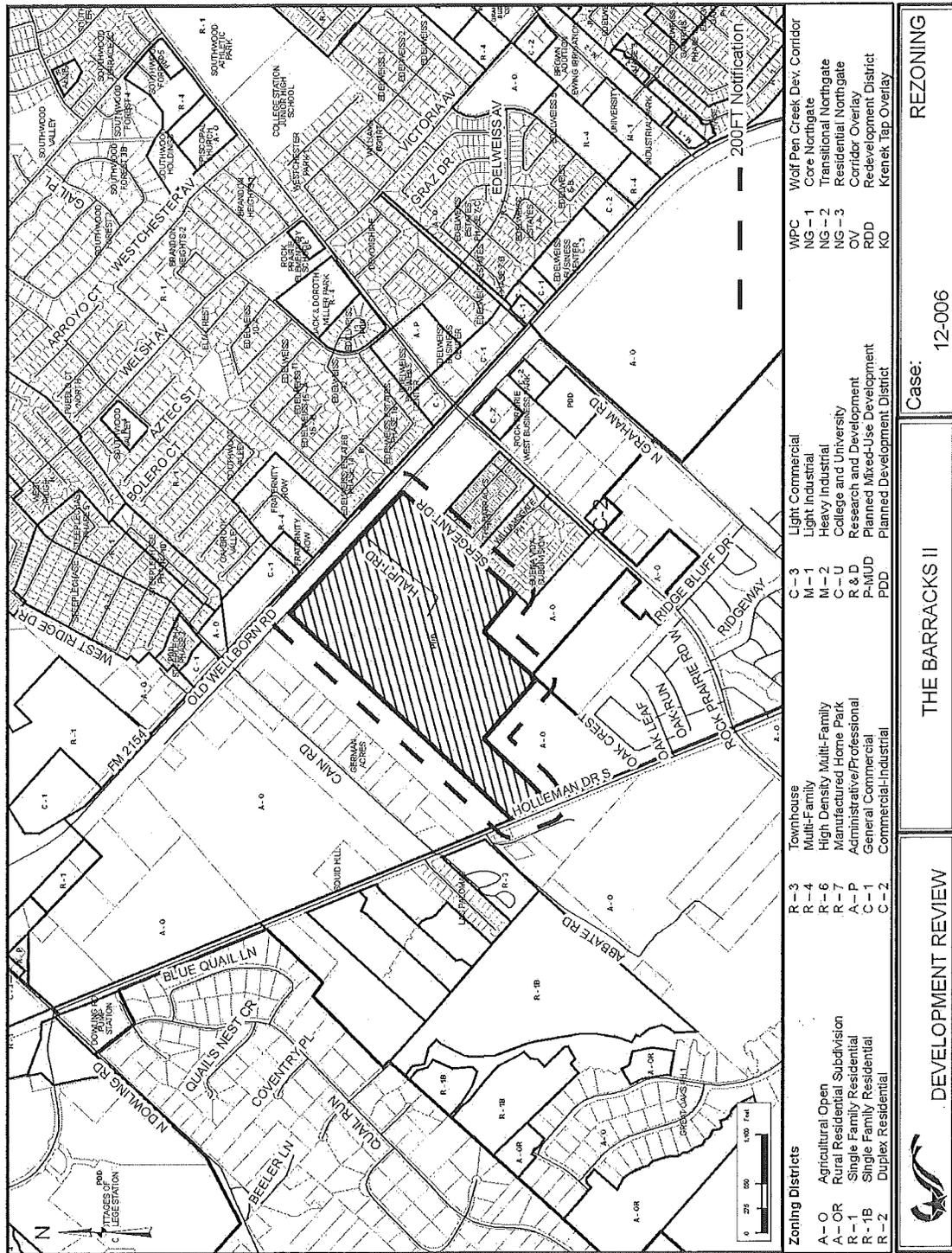
THENCE: N 22° 02' 42" W ALONG THE NORTHEAST LINE OF JONES BUTLER ROAD, SAME BEING THE SOUTHWEST LINE OF SAID REMAINDER OF 3.3 ACRE TRACT, FOR A DISTANCE OF 412.84 FEET TO A ½ INCH IRON ROD FOUND MARKING THE COMMON CORNER OF SAID REMAINDER OF 3.3 ACRE TRACT AND A CALLED 29.175 ACRE TRACT AS DESCRIBED BY A DEED TO JOHN WHEELER BARGER, TRUSTEE, RECORDED IN VOLUME 7583, PAGE 90 OF THE OFFICIAL PUBLIC RECORDS OF BRAZOS COUNTY, TEXAS;

THENCE: N 42° 14' 17" E ALONG THE COMMON LINE OF SAID REMAINDER OF 3.3 ACRE TRACT AND SAID REMAINDER OF 136.063 ACRE TRACT AND SAID 29.175 ACRE TRACT FOR A DISTANCE OF 3402.74 FEET TO A 6 INCH FENCE CORNER POST FOUND ON THE SOUTHWEST LINE OF OLD WELLBORN ROAD MARKING THE NORTH CORNER OF THIS HEREIN DESCRIBED TRACT;

THENCE: S 47° 04' 17" E ALONG THE SOUTHWEST LINE OF OLD WELLBORN ROAD FOR A DISTANCE OF 1867.58 FEET TO THE **POINT OF BEGINNING** CONTAINING 108.88 ACRES OF LAND, MORE OR LESS, AS SURVEYED ON THE GROUND MARCH 2010. SEE PLAT PREPARED MARCH 2010, FOR MORE DESCRIPTIVE INFORMATION. BEARING SYSTEM SHOWN HEREIN IS BASED ON GRID NORTH AS ESTABLISHED FROM GPS OBSERVATION.

BRAD KERR
REGISTERED PROFESSIONAL
LAND SURVEYOR No. 4502

EXHIBIT "B"



REZONING

Case: 12-006

THE BARRACKS II

DEVELOPMENT REVIEW



EXHIBIT "D" GENERAL NOTES

1. The land uses proposed for this property are as listed on this plan.
 - a. Single Family (SF) meeting R-1 zoning requirements with variances as noted below.
 - b. Townhomes (TH) meeting R-3 zoning requirements with variances as noted below.
 - c. Commercial (COM) meeting C-3 zoning requirements with variances noted below. The following additional uses are permitted in Commercial Tracts 2, 3, and 4 only:
 - Shooting Range – Indoor
 - Car Wash subject to supplemental standards contained within the UDO
 - Commercial garden/greenhouse/landscape maintenance subject to supplemental standards contained within the UDO
 - Commercial amusement subject to supplemental standards contained in the UDO
 - Office and retail sales/services with storage areas being greater than 30% of the space (i.e. office/warehouse with overhead doors)
 - Self Storage – equipment, materials, recreational vehicles, or boats – in buildings with at least 3 enclosed sides.
 - d. Recreation Facility (RF) including commercial amusement activities, cable wake board ski facility, administrative offices, pool, exercise room, jogging track, food & beverage service and similar recreational offerings for members of the HOA and the general public. Retail sales of equipment, clothing, and necessities related to these uses are permitted in conjunction with normal operations of the Recreation Facility.
2. General bulk or dimensional variations (meritorious modifications) are as follows:
 - a. Single Family (SF) residential development (variations from R-1 Zoning)
 - Front setback distance – 20 ft without rear access, 15' with rear access
 - Rear setback distance – 20 ft
 - Side setback distance – 5 ft
 - Street side setback distance – 15 ft
 - b. Townhome (TH) development (variations from R-3 Zoning)
 - Front setback distance – 20 ft without rear access, 15' with rear access
 - Rear setback distance – 20 ft
 - Street side setback distance – 15 ft
 - Side setback distance – 5 ft
 - Common area side setback distance – 5 ft
 - c. Commercial (COM) development (variations from C-3 Zoning)
 - Restaurants shall not be permitted in Commercial Tracts 2, 3 or 4.
 - The rear setback for self storage structures adjacent to a public alley or common area will be 5 feet.
 - In locations where the rear wall of self storage building is adjacent to an alley serving residential units, the rear wall may serve as the buffering wall between land uses. The wall shall be constructed of stone.
 - d. Commercial Tracts 2, 3, and 4 shall each be permitted to erect a freestanding sign in accordance with Section 7.4.N of the UDO. These signs may be raised to a maximum height of 20 feet.
 - e. Block Lengths of up to 1000 feet will be permitted on designated Single Family (SF) and Townhome (TH) blocks. These blocks are noted as SF Block 4 and TH Block 7.
 - f. Dead-end streets in residential areas are permitted up to maximum of 100 feet in length. The dead-end alley adjacent to Commercial Tract 4 shall extend to the property line (approximately 310 feet).
3. Special conditions for Townhome (TH) development:
 - a. The townhome structures shall not exceed 9,000 sf.
4. Special conditions for Commercial (COM) development:
 - a. The total building area of all commercial buildings shall not exceed 240,000 sf. This figure excludes self storage units and buildings associated with the Recreation Facility.
 - b. Self storage units shall be allowed in Commercial Tract 4 only. The total leasable area of all self storage units shall not exceed 100,000 sf.
 - c. No openings to self storage buildings are allowed on the sides adjacent to any street right-of-way or alley that is associated with residential development.
 - d. The self storage facility will be permitted to incorporate an office on the premises for management and security. The office shall be permitted to sell equipment or materials related to storage and moving, but shall not sell/truck or trailers. The office will be limited to a maximum of 1,000 sf. Living quarters for the managers of the facility will also be permitted within the premises. These quarters shall be no larger than 1,000 sf.
 - e. Individual commercial buildings shall not exceed 10,000 sf with the following exception:
 - One commercial building will be allowed up to a maximum of 15,000 sf. The building may be located on Commercial Tracts 3 or 4.
 - f. Unless otherwise noted herein, commercial buildings and related parking areas shall comply with the Non-Residential Architectural Standards in the UDO. Design of these structures shall be compatible in size, roof type and pitch, architecture, and lot coverage with the surrounding single-family residential uses.
 - g. All commercial tracts shall provide cross access in accordance with the UDO.
5. Special conditions for the Recreation Facility (RF) are as follows:
 - a. Food and beverage services are permitted within the Recreation Facility. Maximum size of the restaurant shall be 3500 sf, inclusive of all indoor seating, kitchen, office and storage spaces.
 - b. Commercial amusement activities, including water recreation and associated equipment, shall be allowed within Recreation Facility boundary shown on the Concept Plan. Motorized vehicles such as boats and jetskis are not allowed except for rescue or maintenance purposes.
 - c. Any buildings and parking areas associated with the Recreation Facility shall comply with the Non-Residential Architectural Standards in the UDO.
 - d. Landscaping requirements in the LIDO will be applied to the building, parking, and adjacent amenity areas of the Recreation Facility. The remainder of the Recreation Facility is excluded from these requirements.
 - e. A block length of up to 1250 feet is allowed along Deacon Drive in front of the Recreation Facility (RC Block 1).
 - f. The Recreation Facility will be platted as a single commercial building lot that encompasses Detention Ponds 1 and 3. Drainage and access easements shall be granted to the Homeowners Association for maintenance purposes associated with the detention ponds and their related appurtenances.
 - g. The following operational restrictions shall be imposed on the Recreation Facility and its related facilities:
 - Hours of operation for the cable wake board ski facility shall be no earlier than 8:30 a.m. and no later than 10:00 p.m. All other recreational amenities may be open for use between the hours of 7:00 a.m. and 12:00 midnight. The restaurant will be allowed to set its own hours of operation.
 - Lighting shall be designed in accordance with the Unified Development Ordinance. Lights used for the ski facility shall be turned off no later than 1 hour following the closing times noted above except when necessary for maintenance purposes that cannot be undertaken during daylight hours.
 - A landscaped buffer shall be established between the Recreation Facility and the property immediately north in accordance with the Unified Development Ordinance. Plantings shall include shrubs and trees that, when fully mature, shall be of sufficient density to provide 100% opacity to a height of at least 6 feet as measured from the adjoining property line.
6. Density for the residential development portions of this tract shall not exceed 8.15 dwelling units per acre. This figure is computed by dividing the total number of dwelling units by the sum total of open space areas (parks, detention pond, common areas) plus the privately owned properties inside the residential areas. Detention ponds used in conjunction with the Recreation Facility are excluded from this computation as long commercial operations are offered at the facility.
7. All commercial and residential buildings shall be limited to 2.5 stories (35 feet). Unless otherwise noted herein, all non-residential buildings shall meet the single-family height setback requirements of the UDO where they adjoin townhome or single family homes.
8. When there are more than 30 lots to be served by external street connections, a minimum of two connections to external paved public streets shall be required. A Remote Emergency Access is permitted to serve as one of these connections. Two street connections to external paved public streets shall be required when 100 or more lots are served.
9. Unless otherwise noted herein, buffer areas will be provided in accordance with the UDO.
10. Driveway access from residential lots shall not be permitted onto streets designated as minor collector or larger.
11. Right-of-way and pavement widths shown on this plan reflect the widths that are required along the majority length of each street. These widths can be increased at intersections of collector streets as needed to accommodate turning lanes, medians or other traffic controls.
12. The minor collector streets currently shown on the College Station ISD property must be constructed by the developer of this subdivision unless the streets are needed sooner by the school district. The developer is not required to provide additional capacity in the drainage, water, sewer or other utility systems to accommodate development of the CSISD property in excess of what is required by the UDO.
13. The portion of Deacon Drive shown on this Concept Plan across the College Station ISD property must be constructed with the initial phase of this subdivision.
14. All stormwater requirements (including detention) shall be designed to comply with the DCS Drainage Design Guidelines. The detention pond adjacent to Commercial Tract 2 shall also meet commercial standards including landscaping and treatment of concrete structures.
15. If the City of College Station or another entity constructs a regional detention facility in the drainage basin encompassing this tract of land that has capacity to serve this development, one or more of the detention facilities shown here may be eliminated upon approval by the City Engineer. Any land released from use as a detention facility may be developed for other uses pending approval of revised PDD zoning.
16. Pedestrian and bicycle circulation will be provided throughout the project as required by the UDO. Location and details of these facilities will be determined at platting or site plan submittal.



MINUTES
PLANNING & ZONING COMMISSION
Regular Meeting
April 5, 2012, 7:00 p.m.
City Hall Council Chambers
College Station, Texas

COMMISSIONERS PRESENT: Mike Ashfield, Craig Hall, Bo Miles, Jodi Warner, Jim Ross, James Benham, and Jerome Rektorik

COMMISSIONERS ABSENT: None

CITY COUNCIL MEMBERS PRESENT: Jess Fields

CITY STAFF PRESENT: Bob Cowell, Lance Simms, Alan Gibbs, Carol Cotter, Jason Schubert, Teresa Rogers, Venessa Garza, Joe Guerra, Erika Bridges, Mary Ann Powell, Matt Robinson, Lauren Hovde, Brittany Caldwell, and Carrie McHugh

1. **Call meeting to order**

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

Regular Agenda

2. Public hearing, presentation, possible action, and discussion on a Rezoning from PDD Planned Development District to PDD Planned Development District to add an additional use, for 108.88 acres located at 3100 Haupt Road, generally located between Old Wellborn Road and Holleman Drive South, North of the Buena Vida Subdivision. **Case #12-00500006 (MR) (Note: Final action on this item is scheduled for the April 26, 2012 City Council Meeting - subject to change)**

Senior Planner Robinson presented the rezoning and recommended approval with the condition that the commercial amusement/water recreation uses are removed from the concept plan and the list of permitted uses.

Heath Phillips, applicant, reviewed the project and the changes that were being requested.

Chairman Ashfield opened the public hearing.

Ken Tripp, 1393 Seamist, College Station, Texas, stated that there are flooding issues on Cain Road and requested that something be done to prevent flooding in the future.

City Councilman Fields clarified what happened at the City Council meeting when the item was heard the first time.

Kent Laza, applicant's engineer, stated that the development had not increased the stormwater flow. He said that there is a detention pond on the property that is working properly.

City Engineer Gibbs stated that the drainage had been designed to meet City standards and the City does not believe that this development is contributing to the existing problem of flooding on Cain Road.

There was general discussion amongst the Commission regarding drainage.

Charles Rutledge, 3033 Cain Road, College Station, Texas, opposed the rezoning due to flooding concerns on Cain Road.

Hartzel Elkins, mentioned the corner of Cain and Old Wellborn Road and stated that the drainage has gotten worse since houses have been built along Rock Prairie Road.

Chairman Ashfield closed the public hearing.

There was general discussion amongst the Commission regarding the rezoning.

Chairman Ashfield reopened the public hearing.

Chuck Ellison stated that he represents the Barger Trust that owns the property to the north and said that they are still in the process of trying to work through an agreement with the applicant.

Chairman Ashfield closed the public hearing.

Commissioner Miles motioned to recommend approval of the rezoning and to accept the water park and commercial amusement use, but limit the water park to having two, two tower cable systems. Commissioner Warner seconded the motion.

There was general discussion amongst the Commission regarding the rezoning.

The motion passed (7-0).

The meeting was adjourned at 9:40 p.m.

Approved:

Mike Ashfield, Chairman
Planning & Zoning Commission

Attest:

Brittany Caldwell, Admin. Support Specialist
Planning & Development Services

April 26, 2012
Regular Agenda Item No. 6
Mobile Food Vendor Ordinance Revisions

To: David Neeley, City Manager

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

Agenda Caption: Public Hearing, presentation, possible action, and discussion regarding an ordinance amending Chapter 4, "Business Regulations" By Amending Section 20 "Mobile Food Vendors", of the Code of Ordinances of the City of College Station.

Relationship to Strategic Goals: Core Services and Infrastructure, Diverse Growing Economy

Summary: The Code of Ordinances, Chapter 4 "Business Regulations," was expanded by Council action on February 24, 2011 to include Section 20 "Mobile Food Vending". This ordinance allows permitted Mobile Food Vendors to operate legally in College Station continuously throughout the year. Prior to this amendment, City ordinance restricted such vending to the Itinerant Vendor permitting process which allows mobile sales for a maximum of twenty-one (21) days per year. At the time of adoption, City Council directed Staff to revisit the ordinance after one year to evaluate possible revisions.

Since the ordinance adoption in 2011, twelve Mobile Food Vendors have submitted applications and have been approved to operate. Time and application have enabled City Staff and permitted Vendors an opportunity to discover pieces of the ordinance that may be improved. The following is a brief summary of the revisions proposed with this ordinance amendment:

1. Each mobile unit will require a separate permit. This was due to the number of requests to have multiple units on a single permit application.
2. Language is being revised for better clarification on what on-street sales are permitted.
3. The required buffer to Food Service Establishment is being reduced from 300 feet to 100 feet. This was in an attempt to lessen the number of possible conflicts for Mobile Food Vendors.
4. Hours of operation per location is being changed from everyday for three hours per visit to five hours per visit. This is to allow a greater presence while the Mobile Food Vendor operates in a location.
5. An exemption to ordinance requirements is proposed for the sale of fresh produce. This is to encourage this type of sales activities, and reduce the cost associated with it.

During the review process, two stakeholder groups were engaged. The first involved a meeting with currently permitted vendors and representatives from the City and Brazos County Health Department to identify areas that needed attention. The second involved the re-engagement of the 2011 stakeholder group that consisted of restaurant operators and interested parties. Both groups were given the opportunity to review the ordinance prior to Council hearing. Communication from these groups is attached.

Attachments:

1. Redlined Code of Ordinances Chapter 4 "Business Regulations" Section 20 "Mobile Food Vendors"
2. Chapter 4 "Business Regulations" Section 20 "Mobile Food Vendors" Ordinance
3. Stakeholder letters

EXHIBIT “A”

That CHAPTER 4, “BUSINESS REGULATIONS” be amended BY ADDING SECTION 20 “MOBILE FOOD VENDORS”, be added to the Code of Ordinances of the City of College Station, Texas and is to read as follows:

SECTION 20 MOBILE FOOD VENDORS

A. DEFINITIONS

- (1) **Edible Goods** shall include, but are not limited to:
 - (a) Prepackaged food including, but not limited candy, beverages, and ice cream.
 - (b) Prepared food including, but not limited to hot dogs, deserts, and pizza.
 - (c) On-site prepared food including, but not limited to shaved ice, sandwiches, and tacos)
- (2) **Food Service Establishment** shall mean businesses that Sell Edible Goods and have been inspected and approved by the Brazos County Health Department, including commercial kitchens and commissaries, and shall specifically exclude accessory or self-serve retail food sales.
- (3) **Mobile** shall mean the state of being in active, but not necessarily continuous, movement.
- (4) **Mobile Food Vendors** shall mean any business which Sells Edible Goods from a non-Stationary Location within the City of College Station. The term shall include, but not be limited to:
 - (a) Mobile food trucks: A self-contained motorized unit Selling items defined as Edible Goods.
 - (b) Concessions carts: Mobile vending units that must be moved by non-motorized means
 - (c) Concession trailers: A vending unit which is pulled by a motorized unit and has no power to move on its own.
- (5) **Non-refrigerated** shall mean Edible Goods that are not required to be kept at a temperature below forty-one (41) degrees Fahrenheit according to the federal Food and Drug Administration and the Texas Food Establishment Rules.
- (6) **Sell** shall mean the act of exchanging a good for a profit or in return for a donation.
- (7) **Stationary Location** shall mean the position of the Mobile Food Vendor when not in motion and addressing the public for the purpose of sales.

B. PERMIT AND APPLICATION

- (1) **Permit** - Every Mobile Food Vendor shall have a permit issued by the City of College Station Planning and Development Services Department to conduct business in the City.
- (2) **Application**- An applicant shall apply for a permit on a form promulgated by the City of College Station Planning and Development Services Department.
- (3) The application shall be processed through the following method:
 - (a) Application submitted to the City of College Station,
 - (b) Application shall be reviewed by designated City Staff,
 - (c) City Staff shall inform the Brazos County Health Department when the application is eligible for approval by the City,
 - (d) Brazos County Health Department may then accept an application from a Mobile Food Vendor,
 - (e) Following notification from the City, Brazos County Health department may issue a permit when their application is eligible for approval,
 - (f) Applicant shall submit their Brazos County Health Department permit to City of College Station
 - (g) The City of College Station may then, and only then, approve a Mobile Food Vendor permit.
- (3) **Permit Form** - A complete application shall require the following information from the applicant to be considered:
 - (a) Name of applicant,
 - (b) Legal name of business or entity,
 - (c) State of Incorporation or filing of a partnership or articles of association,
 - (d) If applicable, Copy of Chapter or Articles of Incorporation and current listing of directors, partners, or principles (publicly traded companies are exempted),
 - (e) Sales tax number with a copy of sales tax permit,
 - (f) Signed permission from the private property owner,
 - (g) Name, phone number, and driver's license number of business owner,
 - (h) Contact name and phone number for Mobile food vending unit while in route,
 - (i) Copy of permits to do business in Texas for foreign companies,
 - (j) Description of product being sold,
 - (k) Description of attached signage,
 - (l) Vehicle Identification Number and description of Mobile food vending unit,
 - (m)
 - (n) A signed affidavit under oath with photo identification that each individual applicant:

- (i) Has no unpaid civil judgments against him or her in any State or U.S. possession which arise from a business activity which would have been covered by this Section if in effect at the time in the jurisdiction where such judgments are of record.
 - (ii) A statement of all convictions in any state, the United States or U.S. possession within the last ten (10) years.
- (o) A bond in the sum of not less than One Thousand and No/100 (\$1,000.00) Dollars, executed by the Mobile Food Vendor with two or more good and sufficient sureties satisfactory to the Finance Director, which bond shall be payable to the Mayor of the City of College Station, and his successors in office, for the use and benefit of any person or persons entitled thereto, and conditioned that the principal and sureties will pay all damages to persons caused by or arising from or growing out of any action of the Mobile Food Vendor while conducting business in the City of College Station, Texas. The bond shall remain in full force and effect for the entire duration of the permit provided herein and for two full years after such permit expires. The bond shall not be required for the sale of goods in interstate commerce.
 - (p) Copy of the Brazos County Health Department permit issued to the Food Service Establishment.
 - (q) Copy of written permission to utilize the private facilities of the Food Service Establishment.

(4) Permit Fee

- (a) The application for a Mobile Food Vendor permit shall be \$500.00. Each Mobile Food Vendor Unit shall be permitted separately.
- (b) Mobile Food Vendor permits shall be valid for one (1) year from the date of permit issuance.
- (c) Upon renewal the applicant must provide a new application, payment of a \$250.00 renewal fee, and new permitting documentation upon permit renewal. The applicant must submit the application and renewal fee within thirty (30) days after expiration of the permit or must reapply as a new applicant.
- (d) Concession carts shall apply under a reduced fee of \$250 for initial application, and \$125 for a renewal.

(5) Permit Denial - A permit may be denied where:

- (a) An applicant is found to have an unpaid civil judgment(s) against him which relates to the duties and responsibilities of the permitted occupation which shall be determined by the nature and the amount of the judgment, the relationship of the judgment to the purpose of the permit and the extent that the permit would allow someone to engage in further activity that would lead to unsatisfied civil judgments, or
- (b) An applicant has been convicted of a crime which directly relates to the duties and responsibilities of the licensed occupation which shall be determined by the

nature and seriousness of the crime, the relationship of the crime to the purpose of the permit and the extent that the permit would allow someone to engage in further criminal activity, or;

- (c) The required information is incomplete or incorrect or shows that a person is not otherwise entitled to conduct business as a Mobile Food Vendor.
- (d) The opportunity to reissue a permit has been denied due to previous violations as described in this Section.

- (6) **Display of Permit** - Every permit, including those from the City of College Station and Brazos County Health Department, shall be displayed at all times in a conspicuous place where it can be read by the general public on the Mobile Food Vendor's truck, concession cart, or concession trailer.

(7) **Permit Revocation or Suspension**

- (a) A permit may be revoked upon conviction of any offense committed by an individual operating as a Mobile Food Vendor in the City of College Station while engaged in the permitted business, or if a final conviction occurs or is found to have existed at the time of application, or if civil judgments, as set forth above, are placed or found of record against an applicant. A permit may be suspended in the event of pending charges of a crime, as set forth above, upon a magistrate's determination of probable cause in connection with such charges.
- (b) A permit may be revoked for non-conformity to the application location specifications or requirements as well as to non-conformity to an approved location plan or diagram.
- (c) Any employee working for an applicant permitted as an employer under this Section above may be denied the right to solicit under such permit, or such rights may be suspended or terminated, under the same circumstances and procedures which apply to the holder of the permit. Revocation or suspension of an employer's permit terminates all employee permits.
- (d) A permit may be suspended or revoked for not complying with the requirements of this Section, or any other ordinances, or laws.

(8) **Appeal of Permit Revocation, Suspension, or Denial**

- (a) The notice of revocation, suspension, or denial of a permit shall include the procedure for appealing the suspension, revocation, or denial.
- (b) If a City official revokes, suspends or denies a Mobile Food Vendor permit, the holder or applicant of the permit which has been revoked, suspended, or denied shall have the right of appeal to the City of College Station Planning and Development Services Director or designee by submitting an appeal in writing to the Director within ten (10) business days of the revocation, suspension, or denial.
- (c) Pending action on the appeal, a permit which has been revoked or suspended shall be considered revoked or suspended.

- (d) If a written appeal is not submitted within ten (10) business day of revocation, suspension, or denial, or if the appeal is denied, the permit shall hence be considered revoked, suspended, or denied.

(9) Reapplication After Revocation, Suspension, or Denial of Permit

If a Mobile Food Vendor or applicant is not in compliance with this section or any other ordinances, laws, or the approved vendor application, the following actions will be taken:

- (a) 1st violation- A warning may be issued, or the permit may be revoked or suspended and the vendor may become ineligible for new or reissued permit for three (3) months.
- (b) 2nd violation- Permit will be revoke and the vendor may become ineligible for new or reissued permit for three (3) months.
- (c) 3rd violation- Permit will be revoke and the vendor will become ineligible for new or reissued permit for one (1) year.
- (d) If an applicant's permit has been denied and the appeal is denied the applicant may not reapply for three (3) months.

C. ZONING AND LOCATION RESTRICTIONS

(1) Distance Regulations

- (a) No Mobile Food Vendor shall conduct business within any single-family residential or agricultural zoning district, including townhouse districts, but may be located in such districts when serving and within one hundred (100) feet to a property with an active building permit or located within a public park facility.
- (b) A Mobile Food Vendor may not be located within one hundred (100) feet of the primary entrance of an open and operating fixed-location Food Service Establishments outside of Northgate. This buffer may be reduced upon receiving written permission from said establishments.
- (c) **Northgate Only**- A Mobile Food Vendor may not be located within one hundred (100) feet of an existing business lawfully operating as a restaurant as defined by the Unified Development Ordinance within Northgate. This buffer may be reduced upon written permission from said restaurants.

(2) A Mobile Food Vendor shall not conduct sales at a Stationary Location:

- a) For a duration exceeding five (5) hours per location for more than two (2) consecutive days.
- b) **Northgate Only** - For a duration exceeding three (3) hours per location, except from 10:00 pm to 2:00 am in the NG-1 Northgate Core zoning district.
- c) For a duration exceeding thirty (30) minutes on any public street designated on the City of College Station's Thoroughfare Plan as a Minor Collector or lesser.

- d) On any public street designated on the City of College Station's Thoroughfare Plan as a Major Collector or greater.
- e) In congested areas where the operation impedes vehicular or pedestrian traffic.
- f) In a designated bike lane.
- g) Between the hours of 2:00 am and 5:00 am.

(3) Northgate and Wolf Pen Creek District

- (a) Concession carts, permitted as a Mobile Food Vendor, may be located only within the Northgate zoning districts and Wolf Pen Creek district when operating at a mixed-use development. Carts must be positioned as to not disrupt pedestrian traffic and must maintain an abutting five-foot (5) clear space.
- (b) A Mobile Food Vendor may not be located within twenty (20) feet of another Mobile Food Vendor.

(4) Location Regulations

- (a) No Mobile Food Vendor shall locate on any private property without written permission to do so and must comply if asked to leave by the property owner or City official. A copy of the written permission to operate in a specific location, signed by the private property owner, shall be kept within the Mobile vending unit at all times.
- (b) No person shall distribute, deposit, place, throw, scatter or cast any commercial handbill in or upon any motor vehicle without permission of the owner.
- (c) No person shall distribute, deposit, place, throw, scatter or cast any commercial handbill upon any premises if requested by the property owner or City official not to do so, or if there is placed near or at the entrance thereof a sign bearing the words "no advertisement".
- (d) No person shall Sell or offer for sale any item upon any premises if requested by the property owner or City official not to do so, or if there is placed at or near the entrance thereof a sign bearing the words "no peddlers or vendors", "no trespassing", or "no solicitors."

D. MOBILE FOOD VENDOR REQUIREMENTS

The following regulations shall apply to Mobile Food Vendors within any zoning district:

- (1) Each unit shall be equipped with a portable trash receptacle, and shall be responsible for proper disposal of solid waste and waste water in the sanitation facility legally accessed by the Food Service Establishment. All disturbed areas must be cleaned following each stop at a minimum of twenty (20) feet of the sales location.
- (2) Continuous music or repetitive sounds shall not project from the Mobile unit.
- (3) A five-foot (5) clear space can be maintained around the Mobile food vending unit.
- (4) The Mobile unit will be subject to inspection upon permit application through the Building Division of the Planning and Development Services Department and the Fire Marshal, and may be subject to random inspection and upon reissuance of the permit.

- (5) No sales are allowed within public park facilities while park concession units are operating.
- (6) A “No Smoking” sign must be posted next to the order window or area.
- (7) A tagged fire extinguisher shall be kept accessible as directed by the City of College Station Fire Marshal or designee.
- (8) An extinguishing vent hood, Type 1 or other if approved by the City of College Station Fire Marshal, shall be required when the cooking process produces grease laden particles within the Mobile unit. Said hood shall require testing in the presence of a College Station Fire Marshal designee.

E. OFFENSES AND REGULATIONS

- (1) It shall be unlawful for any individual as the agent or employee of another regulated under this Section to Sell Edible Goods in the City unless its principal or employer has received a permit under this Section.
- (2) A permit issued under this Section is not transferable.
- (3) It shall be unlawful for an individual to Sell Edible Goods while displaying a valid permit issued by the City of College Station in the name of another individual, organization, or entity.
- (4) It shall be unlawful for any individual directly or through an agent or employee to Sell goods within the corporate limits of the City after the expiration of the permit issued by the City of College Station under this Section.
- (5) It shall be unlawful for an individual directly or through an agent or employee to misrepresent on the permit affidavit any acts that are regulated under this Section.
- (6) It shall be unlawful for any individual directly or through his agents or employees to represent that the issuance of a permit by the City of College Station constitutes the City’s endorsement or approval of the product for sale.
- (7) It shall be unlawful to operate a Mobile Food Vendor operation that is not in compliance with the Texas Food Establishment Rules as amended from time to time.
- (8) A Mobile Food Vendor permit may only be granted to a business that is associated with a Food Service Establishment, as defined by this ordinance, unless the Mobile Food Vendor is not required to obtain a permit from the Brazos County Health Department
- (9) A violation of this Section is a Class C misdemeanor and shall be punished by a fine pursuant to the General Penalty set out in Chapter 1, Section 5, of this Code of Ordinances.

F. EXEMPTIONS

Individuals Selling only Non-Refrigerated farm products in an unrefined state shall be considered as a Mobile Food Vendor, as defined by this ordinance, but shall be exempt from the requirements of this Section.

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 4, "BUSINESS REGULATIONS" BY AMENDING SECTION 20 "MOBILE FOOD VENDORS", TO THE CODE OF ORDINANCES OF THE CITY OF COLLEGE STATION, TEXAS, 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 4, "BUSINESS REGULATIONS" be amended BY AMENDING SECTION 20 "MOBILE FOOD VENDORS", to the Code of Ordinances of the City of College Station, Texas, 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 affect 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) or more than Two Thousand Dollars (\$2,000.00). Each day such violation shall continue or be permitted to continue, shall be deemed a separate offense. Said Ordinance, being a penal ordinance, becomes effective ten (10) days after its date of passage by the City Council, as provided by Section 35 of the Charter of the City of College Station.

PASSED, ADOPTED and APPROVED this _____ day of _____, 2012.

APPROVED:

Mayor

ATTEST:

City Secretary

APPROVED:

Carla A. Robinson

City Attorney

EXHIBIT "A"

That **CHAPTER 4, "BUSINESS REGULATIONS"** be amended **BY AMENDING SECTION 20 "MOBILE FOOD VENDORS"**, be added to the Code of Ordinances of the City of College Station, Texas and is to read as follows:

SECTION 20 MOBILE FOOD VENDORS

A. DEFINITIONS

- (1) **Edible Goods** shall include, but are not limited to:
 - (a) Prepackaged food including, but not limited candy, beverages, and ice cream.
 - (b) Prepared food including, but not limited to hot dogs, deserts, and pizza.
 - (c) On-site prepared food including, but not limited to shaved ice, sandwiches, and tacos)

- (2) **Food Service Establishment** shall mean businesses that Sell Edible Goods and have been inspected and approved by the Brazos County Health Department, including commercial kitchens and commissaries, and shall specifically exclude accessory or self-serve retail food sales.

- (3) **Mobile** shall mean the state of being in active, but not necessarily continuous, movement.

- (4) **Mobile Food Vendors** shall mean any business which Sells Edible Goods from a non-Stationary Location within the City of College Station. The term shall include, but not be limited to:
 - (a) Mobile food trucks: A self-contained motorized unit Selling items defined as Edible Goods.
 - (b) Concessions carts: Mobile vending units that must be moved by non-motorized means
 - (c) Concession trailers: A vending unit which is pulled by a motorized unit and has no power to move on its own.

- (5) **Non-refrigerated** shall mean Edible Goods that are not required to be kept at a temperature below forty-one (41) degrees Fahrenheit according to the federal Food and Drug Administration and the Texas Food Establishment Rules.

- (6) **Sell** shall mean the act of exchanging a good for a profit or in return for a donation.

- (7) **Stationary Location** shall mean the position of the Mobile Food Vendor when not in motion and addressing the public for the purpose of sales.

B. PERMIT AND APPLICATION

- (1) **Permit** - Every Mobile Food Vendor shall have a permit issued by the City of College Station Planning and Development Services Department to conduct business in the City.
- (2) **Application**- An applicant shall apply for a permit on a form promulgated by the City of College Station Planning and Development Services Department.
- (3) The application shall be processed through the following method:
 - (a) Application submitted to the City of College Station,
 - (b) Application shall be reviewed by designated City Staff,
 - (c) City Staff shall inform the Brazos County Health Department when the application is eligible for approval by the City,
 - (d) Brazos County Health Department may then accept an application from a Mobile Food Vendor,
 - (e) Following notification from the City, Brazos County Health department may issue a permit when their application is eligible for approval,
 - (f) Applicant shall submit their Brazos County Health Department permit to City of College Station
 - (g) The City of College Station may then, and only then, approve a Mobile Food Vendor permit.
- (4) **Permit Form** - A complete application shall require the following information from the applicant to be considered:
 - (a) Name of applicant,
 - (b) Legal name of business or entity,
 - (c) State of Incorporation or filing of a partnership or articles of association,
 - (d) If applicable, Copy of Chapter or Articles of Incorporation and current listing of directors, partners, or principles (publicly traded companies are exempted),
 - (e) Sales tax number with a copy of sales tax permit,
 - (f) Signed permission from the private property owner,
 - (g) Name, phone number, and driver's license number of business owner,
 - (h) Contact name and phone number for Mobile food vending unit while in route,
 - (i) Copy of permits to do business in Texas for foreign companies,
 - (j) Description of product being sold,
 - (k) Description of attached signage,
 - (l) Vehicle Identification Number and description of Mobile food vending unit,
 - (m) A signed affidavit under oath with photo identification that each individual applicant:
 - (i) Has no unpaid civil judgments against him or her in any State or U.S. possession which arise from a business activity which would have been covered by this Section if in effect at the time in the jurisdiction where such judgments are of record.

- (ii) A statement of all convictions in any state, the United States or U.S. possession within the last ten (10) years.
 - (n) A bond in the sum of not less than One Thousand and No/100 (\$1,000.00) Dollars, executed by the Mobile Food Vendor with two or more good and sufficient sureties satisfactory to the Finance Director, which bond shall be payable to the Mayor of the City of College Station, and his successors in office, for the use and benefit of any person or persons entitled thereto, and conditioned that the principal and sureties will pay all damages to persons caused by or arising from or growing out of any action of the Mobile Food Vendor while conducting business in the City of College Station, Texas. The bond shall remain in full force and effect for the entire duration of the permit provided herein and for two full years after such permit expires. The bond shall not be required for the sale of goods in interstate commerce.
 - (o) Copy of the Brazos County Health Department permit issued to the Food Service Establishment.
 - (p) Copy of written permission to utilize the private facilities of the Food Service Establishment.
- (5) Permit Fee**
- (a) The application for a Mobile Food Vendor permit shall be \$500.00. Each Mobile Food Vendor Unit shall be permitted separately.
 - (b) Mobile Food Vendor permits shall be valid for one (1) year from the date of permit issuance.
 - (c) Upon renewal the applicant must provide a new application, payment of a \$250.00 renewal fee, and new permitting documentation upon permit renewal. The applicant must submit the application and renewal fee within thirty (30) days after expiration of the permit or must reapply as a new applicant.
 - (d) Concession carts shall apply under a reduced fee of \$250 for initial application, and \$125 for a renewal.
- (6) Permit Denial - A permit may be denied where:**
- (a) An applicant is found to have an unpaid civil judgment(s) against him which relates to the duties and responsibilities of the permitted occupation which shall be determined by the nature and the amount of the judgment, the relationship of the judgment to the purpose of the permit and the extent that the permit would allow someone to engage in further activity that would lead to unsatisfied civil judgments, or
 - (b) An applicant has been convicted of a crime which directly relates to the duties and responsibilities of the licensed occupation which shall be determined by the nature and seriousness of the crime, the relationship of the crime to the purpose of the permit and the extent that the permit would allow someone to engage in further criminal activity, or;

- (c) The required information is incomplete or incorrect or shows that a person is not otherwise entitled to conduct business as a Mobile Food Vendor.
 - (d) The opportunity to reissue a permit has been denied due to previous violations as described in this Section.
- (7) **Display of Permit** - Every permit, including those from the City of College Station and Brazos County Health Department, shall be displayed at all times in a conspicuous place where it can be read by the general public on the Mobile Food Vendor's truck, concession cart, or concession trailer.
- (8) **Permit Revocation or Suspension**
- (a) A permit may be revoked upon conviction of any offense committed by an individual operating as a Mobile Food Vendor in the City of College Station while engaged in the permitted business, or if a final conviction occurs or is found to have existed at the time of application, or if civil judgments, as set forth above, are placed or found of record against an applicant. A permit may be suspended in the event of pending charges of a crime, as set forth above, upon a magistrate's determination of probable cause in connection with such charges.
 - (b) A permit may be revoked for non-conformity to the application location specifications or requirements as well as to non-conformity to an approved location plan or diagram.
 - (c) Any employee working for an applicant permitted as an employer under this Section above may be denied the right to solicit under such permit, or such rights may be suspended or terminated, under the same circumstances and procedures which apply to the holder of the permit. Revocation or suspension of an employer's permit terminates all employee permits.
 - (d) A permit may be suspended or revoked for not complying with the requirements of this Section, or any other ordinances, or laws.
- (9) **Appeal of Permit Revocation, Suspension, or Denial**
- (a) The notice of revocation, suspension, or denial of a permit shall include the procedure for appealing the suspension, revocation, or denial.
 - (b) If a City official revokes, suspends or denies a Mobile Food Vendor permit, the holder or applicant of the permit which has been revoked, suspended, or denied shall have the right of appeal to the City of College Station Planning and Development Services Director or designee by submitting an appeal in writing to the Director within ten (10) business days of the revocation, suspension, or denial.
 - (c) Pending action on the appeal, a permit which has been revoked or suspended shall be considered revoked or suspended.
 - (d) If a written appeal is not submitted within ten (10) business day of revocation, suspension, or denial, or if the appeal is denied, the permit shall hence be considered revoked, suspended, or denied.

(10) Reapplication After Revocation, Suspension, or Denial of Permit

If a Mobile Food Vendor or applicant is not in compliance with this section or any other ordinances, laws, or the approved vendor application, the following actions will be taken:

- (a) 1st violation- A warning may be issued, or the permit may be revoked or suspended and the vendor may become ineligible for new or reissued permit for three (3) months.
- (b) 2nd violation- Permit will be revoke and the vendor may become ineligible for new or reissued permit for three (3) months.
- (c) 3rd violation- Permit will be revoke and the vendor will become ineligible for new or reissued permit for one (1) year.
- (d) If an applicant's permit has been denied and the appeal is denied the applicant may not reapply for three (3) months.

C. ZONING AND LOCATION RESTRICTIONS**(1) Distance Regulations**

- (a) No Mobile Food Vendor shall conduct business within any single-family residential or agricultural zoning district, including townhouse districts, but may be located in such districts when serving and within one hundred (100) feet to a property with an active building permit or located within a public park facility.
- (b) A Mobile Food Vendor may not be located within one hundred (100) feet of the primary entrance of an open and operating fixed-location Food Service Establishments outside of Northgate. This buffer may be reduced upon receiving written permission from said establishments.
- (c) **Northgate Only**- A Mobile Food Vendor may not be located within one hundred (100) feet of an existing business lawfully operating as a restaurant as defined by the Unified Development Ordinance within Northgate. This buffer may be reduced upon written permission from said restaurants.

(2) A Mobile Food Vendor shall not conduct sales at a Stationary Location:

- (a) For a duration exceeding five (5) hours per location per day.
- (b) **Northgate Only** - For a duration exceeding five (5) hours per location, except from 10:00 pm to 2:00 am in the NG-1 Northgate Core zoning district.
- (c) For a duration exceeding thirty (30) minutes on any public street designated on the City of College Station's Thoroughfare Plan as a Minor Collector or lesser.
- (d) On any public street designated on the City of College Station's Thoroughfare Plan as a Major Collector or greater.
- (e) In congested areas where the operation impedes vehicular or pedestrian traffic.
- (f) In a designated bike lane.
- (g) Between the hours of 2:00 am and 5:00 am.

(3) Northgate and Wolf Pen Creek District

- (a) Concession carts, permitted as a Mobile Food Vendor, may be located only within the Northgate zoning districts and Wolf Pen Creek district when operating at a mixed-use development. Carts must be positioned as to not disrupt pedestrian traffic and must maintain an abutting five-foot (5) clear space.
- (b) A Mobile Food Vendor may not be located within twenty (20) feet of another Mobile Food Vendor.

(4) Location Regulations

- (a) No Mobile Food Vendor shall locate on any private property without written permission to do so and must comply if asked to leave by the property owner or City official. A copy of the written permission to operate in a specific location, signed by the private property owner, shall be kept within the Mobile vending unit at all times.
- (b) No person shall distribute, deposit, place, throw, scatter or cast any commercial handbill in or upon any motor vehicle without permission of the owner.
- (c) No person shall distribute, deposit, place, throw, scatter or cast any commercial handbill upon any premises if requested by the property owner or City official not to do so, or if there is placed near or at the entrance thereof a sign bearing the words "no advertisement".
- (d) No person shall Sell or offer for sale any item upon any premises if requested by the property owner or City official not to do so, or if there is placed at or near the entrance thereof a sign bearing the words "no peddlers or vendors", "no trespassing", or "no solicitors."

D. MOBILE FOOD VENDOR REQUIREMENTS

The following regulations shall apply to Mobile Food Vendors within any zoning district:

- (1) Each unit shall be equipped with a portable trash receptacle, and shall be responsible for proper disposal of solid waste and waste water in the sanitation facility legally accessed by the Food Service Establishment. All disturbed areas must be cleaned following each stop at a minimum of twenty (20) feet of the sales location.
- (2) Continuous music or repetitive sounds shall not project from the Mobile unit.
- (3) A five-foot (5) clear space can be maintained around the Mobile food vending unit.
- (4) The Mobile unit will be subject to inspection upon permit application through the Building Division of the Planning and Development Services Department and the Fire Marshal, and may be subject to random inspection and upon reissuance of the permit.
- (5) No sales are allowed within public park facilities while park concession units are operating.
- (6) A "No Smoking" sign must be posted next to the order window or area.
- (7) A tagged fire extinguisher shall be kept accessible as directed by the City of College Station Fire Marshal or designee.

- (8) An extinguishing vent hood, Type 1 or other if approved by the City of College Station Fire Marshal, shall be required when the cooking process produces grease laden particles within the Mobile unit. Said hood shall require testing in the presence of a College Station Fire Marshal designee.

E. OFFENSES AND REGULATIONS

- (1) It shall be unlawful for any individual as the agent or employee of another regulated under this Section to Sell Edible Goods in the City unless its principal or employer has received a permit under this Section.
- (2) A permit issued under this Section is not transferable.
- (3) It shall be unlawful for an individual to Sell Edible Goods while displaying a valid permit issued by the City of College Station in the name of another individual, organization, or entity.
- (4) It shall be unlawful for any individual directly or through an agent or employee to Sell goods within the corporate limits of the City after the expiration of the permit issued by the City of College Station under this Section.
- (5) It shall be unlawful for an individual directly or through an agent or employee to misrepresent on the permit affidavit any acts that are regulated under this Section.
- (6) It shall be unlawful for any individual directly or through his agents or employees to represent that the issuance of a permit by the City of College Station constitutes the City's endorsement or approval of the product for sale.
- (7) It shall be unlawful to operate a Mobile Food Vendor operation that is not in compliance with the Texas Food Establishment Rules as amended from time to time.
- (8) A Mobile Food Vendor permit may only be granted to a business that is associated with a Food Service Establishment, as defined by this ordinance, unless the Mobile Food Vendor is not required to obtain a permit from the Brazos County Health Department
- (9) A violation of this Section is a Class C misdemeanor and shall be punished by a fine pursuant to the General Penalty set out in Chapter 1, Section 5, of this Code of Ordinances.

F. EXEMPTIONS

Individuals selling only Non-Refrigerated farm products in an unrefined state shall be considered as a Mobile Food Vendor, as defined by this ordinance, but shall be exempt from the requirements of this Section.

Stakeholder Communication after April 12, 2012

Lauren,

Thank you for working so hard on revising our current regulation. I am so thankful for some positive changes. I was talking with Mr. Craig Hall and shared the concern on "Out of Town" vendors coming into town to set up under the "I-Vendor" permit. We thought putting a 300ft buffer on Out of Town Vendor under the "i-vendor" permit would be a possible solution for Brick & Mortar restaurateurs who fear all of these food trucks from Houston may try to come into town during the SEC Ball games. Just a thought.

Hopefully the existing Food Truck Operators have been behaving good and will continue to behave good so we can make a positive changes to the regulation and for the food loving community.

Thank you again for proposing the revision. We really appreciate it.

Chef Tai

Hi Lauren, thanks for the update. I still question why there needs to be a distance requirement. The city obviously allows food establishments to exist side by side. Can you please tell me(sorry if you already did)what is the reasoning behind this? (other than the obvious which is that existing places don't want the competition). I will still not be able to have a vendor at Notes-n-Quotes and that would be a perfect spot for one. Lots of foot traffic at a big intersection, a grassy area for a cart and even for seating. The sad thing about Veritas being at Citibank is that there are no tables to sit at. I would prefer the ordinance to drop altogether the distance requirement. Thanks for soliciting my input. I really appreciate it.

Sara Lyford
Notes-n-Quotes

Hi Lauren,

I appreciate you keeping us in the loop on the ordinance. I have spoken to a number of restaurateurs regarding the 300 to 100 foot change. They are worried this could have a potential impact on our businesses from upstarts that may not be as sensitive as the existing mobile food truck operators are at considering where to park for business. Is there a compelling reason for the change? We want to be as cooperative as possible to any legitimate competition in this market. But freestanding restaurants have a huge investment in this wonderful community and would like to be able to protect that investment without unbridled interference.

Thanks for your consideration,

John Welsh

Lauren, I have an issue with section C,2,A. I believe extending the time from three hours to five hours is beneficial to several of us. I believe the limiting it to two consecutive days is not. In my business, my customers expect me to be at the same location every day around the same time.

If this is changed in the ordinance, it will be harder for people to keep up with where I am. I request that this be dropped from the ordinance. If being in the same spot every day becomes

an issue, I suggest we address this at a later time for possible addition of this clause. Thanks for your help.

Jeff Harris
Owner
Frost Bites Shaved Ice

April 26, 2012
Regular Agenda Item No. 7
Northgate Outdoor Dining and Entertainment

To: David Neeley, City Manager

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

Agenda Caption: Public Hearing, presentation, possible action, and discussion regarding an ordinance amending Chapter 12, “Unified Development Ordinance”, Section 5.6 “Design Districts”, B “Northgate Districts”, 13 “ Outside Storage And Display Standards”, of the Code of Ordinances of the City of College Station.

- Public Hearing, presentation, possible action, and discussion regarding an ordinance amending Chapter 4, “Business Regulations” By adding Section 21 “Northgate Outdoor Dining And Entertainment”, to the Code of Ordinances of the City of College Station.
- Public Hearing, presentation, possible action, and discussion regarding an ordinance amending Chapter 1, “General Provisions” By Amending Section 13 “Alcoholic Beverages”, B. “Possession And Consumption Of Alcoholic Beverages In Northgate Central Business District”, of the Code of Ordinances of the City of College Station.
- Public Hearing, presentation, possible action, and discussion regarding an ordinance amending Chapter 4, “Business Regulations” By Amending Section 4 “Carnivals, Circuses, Menageries, Sideshows, Concession, And Special Events”, of the Code of Ordinances of the City of College Station.

Relationship to Strategic Goals: Core Services and Infrastructure, Diverse Growing Economy

Recommendation(s): The Planning and Zoning Commission considered the amendment To Code of Ordinances Chapter 12 “Unified Development Ordinance” Section 5.6.B “Northgate Districts (NG)” during their April 19th meeting and recommended approval (7-0).

Summary: As part of the University Drive and College Main pedestrian improvements currently under construction in the Northgate District, the City of College Station entered into negotiations with the Northgate business owners and Northgate District Association during early 2011 to acquire necessary construction easements along the affected rights-of-way. Several business owners were interested in the opportunity to create a sidewalk dining and entertainment opportunity that would include the consumption of alcohol adjacent to their structure to accommodate the pedestrian activity. In response to this request, Staff is proposing four amendments to the Code of Ordinances to offer an outdoor dining and entertainment option. A brief summary of each amendment is provided below.

Code of Ordinances Chapter 12, “Unified Development Ordinance”, Section 5.6 “Design Districts”, B “Northgate Districts”, 13 “ Outside Storage and Display Standards”:

This ordinance amendment includes the removal of the location limitation of outdoor sales and display for businesses permitted through Code of Ordinance Chapter 4 “Business Regulations” Section 21 “Northgate Outdoor Dining and Entertainment.”

Code of Ordinances Chapter 4, “Business Regulations” Section 21 “Northgate Outdoor Dining and Entertainment”:

This ordinance creates the opportunity for businesses with frontage along College Main, University Drive, and Patricia Street Promenade to extend specific business operations into the public sidewalks. Business opportunities will be dependent on the time of day, being either Peak or Non-Peak Period. This means that a business adjacent to College Main may be permitted to use the space between its façade and a twenty-six foot (26’) wide fire lane during Peak or Non-Peak Periods. Businesses adjacent to University Drive may use the area between their building façade and a ten foot (10’) sidewalk during Non-Peak Periods only. Buildings with frontage on the Promenade may use the space between their property line and a minimum thirteen foot (13’) clear zone measured between the property line and the edge of the pavilion supports during Non-Peak Periods only. This clear zone is in addition to the remainder of the Promenade Pedestrian area. The space available to businesses is referred to as Permitted Area within the proposed ordinance. The fee associated with the Peak Period permit is \$350.00 plus \$2.00 per square feet of Permitted Area, as defined by the ordinance.

Code of Ordinances Chapter 1, “General Provisions” Section 13 “Alcoholic Beverages”, B. “Possession and Consumption Of Alcoholic Beverages in Northgate Central Business District”:

This ordinance amendment includes the exemption of businesses permitted through Code of Ordinance Chapter 4 “Business Regulations” Section 21 “Northgate Outdoor Dining and Entertainment.” This will allow business operating under this ordinance to serve alcoholic beverages outside of their building but within their Permitted Area.

Code of Ordinances Chapter 4 “Business Regulations” Section 4 “Carnivals, Circuses, Menageries, Sideshows, Concession, and Special Events”:

This ordinance amendment includes the removal of the limitation on the number of days a Special Event may be operated for businesses permitted through Code of Ordinance Chapter 4 “Business Regulations” Section 21 “Northgate Outdoor Dining and Entertainment.”

Attachments:

1. Redlined Code of Ordinances Chapter 12, “Unified Development Ordinance”, Section 5.6 “Design Districts”, B “Northgate Districts”, 13 “ Outside Storage and Display Standards”
2. Code of Ordinances Chapter 12, “Unified Development Ordinance”, Section 5.6 “Design Districts”, B “Northgate Districts”, 13 “ Outside Storage and Display Standards” Ordinance
3. Chapter 4 “Business Regulations” Section 21 “Northgate Outdoor Dining and Entertainment” Ordinance
4. Redlined Code of Ordinances Chapter 1, “General Provisions” Section 13 “Alcoholic Beverages”, B. “Possession and Consumption Of Alcoholic Beverages in Northgate Central Business District”:
5. Code of Ordinances Chapter 1, “General Provisions” Section 13 “Alcoholic Beverages”, B. “Possession and Consumption of Alcoholic Beverages in Northgate Central Business District” Ordinance
6. Redlined Code of Ordinances Chapter 4 “Business Regulations” Section 4 “Carnivals, Circuses, Menageries, Sideshows, Concession, and Special Events”
7. Code of Ordinances Chapter 4 “Business Regulations” Section 4 “Carnivals, Circuses, Menageries, Sideshows, Concession, and Special Events” Ordinance

Section 5.6.B.13. Outside Storage and Display Standards

The following standards are in lieu of Section 7.11 Outdoor Storage and Display.

- a) Outdoor storage of materials or commodities is prohibited.
- b) Temporary or portable buildings of any kind are prohibited except during construction of site-planned facilities.
- c) Outside sales/outside display areas shall be located within five (5) feet of a required entrance façade and shall only be located in front of the property/business that is selling the item(s), with the exception of businesses permitted through Code of Ordinance Chapter 4 “Business Regulations” Section 21 “Northgate Outdoor Dining and Entertainment”; A four-foot minimum clear space on sidewalks shall be maintained.
- d) All merchandise and/or seasonal items used for outside sales or display shall be moved indoors at the end of business each day.

B. POSSESSION AND CONSUMPTION OF ALCOHOLIC BEVERAGES IN NORTHGATE CENTRAL BUSINESS DISTRICT.

(1) Regulations Related to Alcohol.

- (a) **Public Safety.** On October 21, 2004, the City Council adopted and declared that open containers and public consumption in the Northgate Central Business District was a risk to the health and safety of the citizens of the City.
- (b) **TABC Order.** On December 20, 2004, the Texas Alcoholic Beverage Commission granted an order giving the City the authority to approve an ordinance regulating open containers and public consumption of alcoholic beverages in the Northgate Central Business District.
- (c) **Permit for Consumption.** On April 26, 2012, the City Council established a process for a business of the Northgate Central Business District to obtain a permit for its customers to publicly consume alcoholic beverages in a specifically defined and permitted public space.
- (d) **District Defined.** The Northgate Central Business District is hereby defined as the area set out on the attached map that was approved by the Texas Alcoholic Beverage Commission Order of December 20, 2004.

(2) Public Consumption and Possession

In the Northgate Central Business District, it shall be unlawful to possess an open container or publicly consume an alcoholic beverage.(3)This ordinance shall not be applicable to buildings not owned or controlled by the City of College Station, residential structures, or licensed premises located in the Northgate Central Business District or the possession of open containers or consumption of alcoholic beverages in motor vehicles.

(4) Exceptions.

- (a) **Non-City Property.** This ordinance shall not be applicable to buildings not owned or controlled by the City of College Station, residential structures, or licensed premises located in the Northgate Central Business District or the possession of open containers or consumption of alcoholic beverages in motor vehicles.
- (b) **Permitted Areas.** This ordinance shall not apply to:

- (i) Special Events Permits granted pursuant to Chapter 4 “Business Regulations”, Section 4 “Special Events” of the Code of Ordinances of the City of College Station, or
- (ii) Permitted Areas granted pursuant to Chapter 4 “Business Regulations”, Section 21 “Northgate Outdoor Dining and Entertainment” of the Code of Ordinances of the City of College Station.

(5) If a person possesses or has in his or her possession an open container specifically made for the purpose of containing an alcoholic beverage or is labeled as containing an alcoholic beverage, it shall be presumed that any content therein is an alcoholic beverage.

CHAPTER 4 BUSINESS REGULATIONS
SECTION 4 CARNIVALS, CIRCUSES, MENAGERIES, SIDESHOWS, COCESSION,
AND SPECIAL EVENTS

C. Fifteen-day operation.

No event shall be operated under a permit authorized herein for more than the greater of fifteen (15) calendar days or one hundred fifty (150) hours during a calendar year, with the exception of businesses permitted through Code of Ordinance Chapter 4 “Business Regulations” Section 21 “Northgate Outdoor Dining and Entertainment”. Operation of such an event for more than the referenced length of time shall be considered a permanent business for which site plan approval is required under the City of College Station Unified Development Ordinance. If the event is not operated on consecutive calendar days, an inspection as provided under subsection H. herein shall be required each time before the event resumes.

D. Northgate Central Business District.

An event in the Northgate Central Business District providing for alcohol sales and/or consumption shall have a valid permit or license to sell or serve alcoholic beverages issued by the Texas Alcoholic Beverage Commission.

An event in the Northgate Central Business District involving the sale and/or consumption of alcohol shall not be operated under a permit authorized herein for more than three (3) consecutive days.

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 1, "GENERAL PROVISIONS" BY AMENDING SECTION 13 "ALCOHOLIC BEVERAGES", B. "POSSESSION AND CONSUMPTION OF ALCOHOLIC BEVERAGES IN NORTHGATE CENTRAL BUSINESS DISTRICT", OF THE CODE OF ORDINANCES OF THE CITY OF COLLEGE STATION, TEXAS, 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 1, "GENERAL PROVISIONS" be amended by amending SECTION 13 "ALCOHOLIC BEVERAGES", B. "POSSESSION AND CONSUMPTION OF ALCOHOLIC BEVERAGES IN NORTHGATE CENTRAL BUSINESS DISTRICT" of the Code of Ordinances of the City of College Station, Texas, 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 _____ day of _____, 2012.

APPROVED:

Mayor

ATTEST:

City Secretary

APPROVED:



City Attorney

EXHIBIT "A"

That **CHAPTER 1, "GENERAL PROVISIONS"** be amended by amending **SECTION 13 "ALCOHOLIC BEVERAGES"**, **B. "POSSESSION AND CONSUMPTION OF ALCOHOLIC BEVERAGES IN NORTHGATE CENTRAL BUSINESS DISTRICT"** of the Code of Ordinances of the City of College Station, Texas and is to read as follows:

B. POSSESSION AND CONSUMPTION OF ALCOHOLIC BEVERAGES IN NORTHGATE CENTRAL BUSINESS DISTRICT.

(1) Regulations Related to Alcohol.

(a) Public Safety. On October 21, 2004, the City Council adopted and declared that open containers and public consumption in the Northgate Central Business District was a risk to the health and safety of the citizens of the City.

(b) TABC Order. On December 20, 2004, the Texas Alcoholic Beverage Commission granted an order giving the City the authority to approve an ordinance regulating open containers and public consumption of alcoholic beverages in the Northgate Central Business District.

(c) Permit for Consumption. On April 26, 2012, the City Council passed ordinance in Chapter 4 "Business Regulations", Section 21 Northgate Outdoor Dining and Entertainment", for a business of the Northgate Central Business District to obtain a permit for its customers to publicly consume alcoholic beverages in a specifically defined and permitted public space.

(d) District Defined. The Northgate Central Business District is hereby defined as the area set out on the attached map that was approved by the Texas Alcoholic Beverage Commission Order of December 20, 2004.

(2) Public Consumption and Possession. In the Northgate Central Business District, it shall be unlawful to possess an open container or publicly consume an alcoholic beverage.

(3) A special event providing for alcohol sales and consumption or any area that is an exception to this ordinance shall have a valid permit or license to sell or serve alcoholic beverages issued by the Texas Alcoholic Beverage Commission.

(4) Exceptions.

- (a) Non-City Property.** This ordinance shall not be applicable to buildings not owned or controlled by the City of College Station, residential structures, or licensed premises located in the Northgate Central Business District or the possession of open containers or consumption of alcoholic beverages in motor vehicles.
- (b) Permitted Areas.** This ordinance shall not apply to:
- (i)** Special Events Permits granted pursuant to Chapter 4 “Business Regulations”, Section 4 “Special Events” of the Code of Ordinances of the City of College Station, or
 - (ii)** Permitted Areas granted pursuant to Chapter 4 “Business Regulations”, Section 21 “Northgate Outdoor Dining and Entertainment” of the Code of Ordinances of the City of College Station.
- (5)** If a person possesses or has in his or her possession an open container specifically made for the purpose of containing an alcoholic beverage or is labeled as containing an alcoholic beverage, it shall be presumed that any content therein is an alcoholic beverage.

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 4, "BUSINESS REGULATIONS" BY ADDING SECTION 21 "NORTHGATE OUTDOOR DINING AND ENTERTAINMENT", TO THE CODE OF ORDINANCES OF THE CITY OF COLLEGE STATION, TEXAS, 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 4, "BUSINESS REGULATIONS" be amended BY ADDING SECTION 21 "NORTHGATE OUTDOOR DINING AND ENTERTAINMENT", to the Code of Ordinances of the City of College Station, Texas, 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 _____ day of _____, 2012.

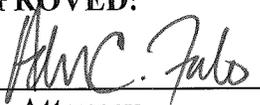
APPROVED:

Mayor

ATTEST:

City Secretary

APPROVED:



City Attorney

EXHIBIT "A"

That **CHAPTER 4, "BUSINESS REGULATIONS"** be amended **BY ADDING SECTION 21 "NORTHGATE OUTDOOR DINING AND ENTERTAINMENT"**, be added to the Code of Ordinances of the City of College Station, Texas and is to read as follows:

SECTION 21 NORTHGATE OUTDOOR DINING AND ENTERTAINMENT**A. . DEFINITIONS**

- (1) **Administrator** means the Executive Director Business Services or designee.
- (2) **Application or Permit Application** means the requirements under this section to submit to the City to obtain a permit approval.
- (3) **Establishment** means a business in the Northgate Central Business District that has a Permit or is seeking Permit approval.
- (4) **Non-Peak Period** means the hours between 2:30 AM and 9:00 PM,
 - a. The Non-Peak Period will not apply on the days of Texas A&M University Home Football Games, Graduation, Parents Weekend and City sponsored or co-sponsored events.
- (5) **Non-Permitted Area** means the remainder of the public sidewalk that is not considered to be a Permitted Area as determined by the City. No consumption of alcoholic beverages is permitted in the Non Permitted Area.
- (6) **Peak Period** means the hours between 9:00 PM and 2:30 AM.
- (7) **Permit** means a Northgate Outdoor Dining Permit issued by the City under this section.
- (8) **Permitted Area** means any street level portion of public sidewalks in the Northgate Central Business District, defined by the City, that is in front of and parallel to an establishment, which only tables and chairs are placed on for the sole purpose of patrons consuming food or beverages at the tables, including alcoholic beverages, following authorization from the City by obtaining a Permit under this ordinance.

B. OPERATION

The duration of a Permit issued under this section is for one year. Before the expiration of the Permit, the establishment must resubmit a Permit Application and fee at least sixty (60) days before the expiration of the current Permit.

C. SPECIAL EVENTS

Special events in the Northgate Central Business District involving the sale or consumption of alcohol are not required to obtain a permit pursuant to Chapter 4,

Section 4, of the Code of Ordinances of the City of College Station. A special event providing for alcohol sales and consumption shall have a valid permit or license to sell or serve alcoholic beverages issued by the Texas Alcoholic Beverage Commission.

D. APPLICATION REQUIREMENTS

The Administrator will have thirty (30) days to deny or approve a Permit Application. The Application must be in writing on a form provided by the City and may include the following information:

- (1) Application fee
- (2) Completed Application
- (3) One copy of a site plan including the following information:
 - a. North Arrow
 - b. Site plan with clearly identified measurements
 - c. Name of adjoining street(s)
 - d. Outdoor seating plan (e.g. tables, chairs)
 - e. Dimensions and Area (SF) of proposed improvement
 - f. Width of adjacent sidewalk(s)
 - g. Sidewalk width remaining for clear path of travel
 - h. Location of property lines
 - i. Location of building entrances
- (4) Copy of Texas Alcoholic Beverage Commission license or permit
- (5) Notarized authorization from the property owner of establishment location

E. APPROVAL OF APPLICATION

Applications will be processed in accordance with the following requirements:

- (1) **Pre-application Conference.** Prior to the submission of an application and site plan for a permitted area, applicants are encouraged to schedule and attend an optional pre-application conference in accordance with and for the purposes as set forth in Chapter 12 Unified Development Ordinance, of the College Station Code of Ordinances, for pre-application conferences.
- (2) **Final Action by the Administrator**
 - a. **Approval.** If the proposed site plan is determined to be consistent with all applicable provisions of this section, the Administrator shall approve the site plan.
 - b. **Denial.** If a determination that all such requirements and provisions have not been satisfied, then the application and site plan will be denied and notice of such disapproval shall be given to the applicant in writing.

F. CONDITIONS OF PERMIT

In addition to other requirements in this section, the applicant shall comply with the following conditions:

- (1) **Physical Barrier.** During Peak Periods, a Permitted Area must be equipped with a physical barrier that separates the Permitted Area from the public area or Non-Permitted Area. The physical barrier, tables, and chairs utilized shall be as identified in the City of College Station Design Standards: Northgate in Chapter 12 Unified Development Ordinance, of the College Station Code of Ordinances. In the event that such barrier is removed from the Permitted Area, all damaged or affected public infrastructures must be repaired to a pre-barrier condition by applicant.
- (2) **Surface.** The surface of the Permitted Area may not be altered and must remain standard brick pavers on the exterior layer as specified in the City of College Station Design Standards: Northgate in Chapter 12 Unified Development Ordinance, of the College Station Code of Ordinances. The permitted establishment shall keep the Permitted Area and adjacent sidewalk free of litter, trash, paper, and other waste at all times.
- (3) **Location.** A Permitted Area may be located on College Main, along University Drive, and along the Promenade. At all times, the permitted establishment is responsible for ensuring the sidewalks maintain compliance with the Americans with Disabilities Act Accessibility Guidelines.
 - a. **College Main.** An establishment adjacent to College Main may be permitted to use the balance of space between its façade and a twenty six (26') foot clear zone as determined by the Fire Department during Peak or Non-Peak Periods.
 - b. **University Drive.** An establishment adjacent to University Drive may use the balance of space between its façade and a ten (10') foot clear zone for a Permitted Area during Non-Peak Periods.
 - c. **Promenade.** An establishment adjacent to the Promenade may use the balance of the space between its property line and a minimum thirteen (13') foot clear zone measured between the property line and the edge of the pavilion supports during Non-Peak Periods. This clear zone is in addition to the remainder of the Promenade Pedestrian area.
- (4) **Time and Service.** The Permitted Area may only operate during the permitted establishment's business hours. While not in operation the tables and chairs must be stored within the business establishment and may not be stored in the Permitted Area. Service in the Permitted Area shall be limited to persons seated at tables and chairs.

- (5) **Alcohol.** If alcohol is to be present in the permitted area, then the Permitted Area must adhere to Chapter 1, Section 13 of the City's Code of Ordinances and all laws, rules, and regulations identified by the Texas Alcoholic Beverage Commission.
- (6) **Display.** The Permit must be placed in a conspicuous place at the entrance of the establishment.

The Permitted Area must have at least two (2) signs in a conspicuous place stating it is "UNLAWFUL TO POSSESS AN OPEN CONTAINER OR PUBLICLY CONSUME AN ALCOHOLIC BEVERAGE OUTSIDE THIS ESTABLISHMENT AND THE PERMITTED AREA".

- (7) A Permit may not be assigned or transferred.

G. AMENDED APPLICATION

- (1) All outdoor dining must take place according to the approved Permit. Any changes made in the permit must be submitted for approval to the Administrator as an Amended Permit Application. Failure to submit an application for an Amended Permit may result in denial or revocation of any Permit.
- (2) The applicant must pay a non-refundable Amended Permit Application fee of \$175.00 when the amended permit application is submitted to the City.

H. APPLICATION FEE

Applicants for Peak Period must pay a non-refundable permit application fee of \$350.00 plus \$2.00 per square feet of Permitted Area when the original permit application is submitted to the City and a non-refundable Permit Application fee of \$175.00 plus \$2.00 per square feet of Permitted Area for an annual renewal. Non-Peak Period only permits shall not be assessed a permit fee.

I. INSURANCE INDEMNIFICATION AND RELEASE

- (1) No permit shall be issued under this section until the applicant has filed with the Administrator a Certificate or Certificates of Insurance, indicating that there is in effect public liability insurance covering any damages arising out of the use and operation of any and all devices and facilities operated in connection with the permitted area. A public liability insurance policy shall be issued by a company authorized to do business in the state of Texas. The policy shall be accompanied by a certificate from such company that such policy will be in force and effect during the full duration of the valid permit. Such policy shall be in an amount not less than One Million Dollars (\$1,000,000.00) for the death or injury of one person, and not less than Two Million Dollars (\$2,000,000.00) for death or injury in any one accident. The applicant should have the City named as an additional insured.

- (2) The applicant must indemnify and release the City in connection and use of the Permitted Area before receiving a valid Permit.

J. INSPECTION

Upon receiving a valid permit from the City, the applicant will allow any City Official to inspect the Permitted Area for the purpose of maintaining and assuring the health, safety, and welfare of the City of College Station. Inspections may occur at any time and may be without notice.

K. DENIAL OR REVOCATION OF PERMIT

A Permit issued pursuant to this section may be revoked or denied if:

- (1) The applicant or establishment does not comply with this section, City ordinance, or any other applicable law.
- (2) The application contains a false statement of material fact.
- (3) The Administrator finds the applicant has not met all the requirements established in this section or if the Administrator deems the requested area to be in conflict with any City service, goal, or objective.
- (4) The applicant or any other person responsible for the Permit will be notified of such revocation and shall immediately cease and dismantle operations in the Permitted Area.

L. APPEAL OF PERMIT DENIAL OR REVOCATION

- (1) The notice of denial or revocation of a Permit shall include the procedure for appealing the denial or revocation.
- (2) If a City official denies an application or revokes a permit, the Permit holder or applicant of the Permit which was denied or revoked shall have the right of appeal to the Administrator by submitting an appeal in writing to the Administrator within ten (10) business days of the denial or revocation.
- (3) Pending action on the appeal, a Permit which has been revoked shall be considered revoked and an application, which has been denied, shall be considered denied.
- (4) If a written appeal is not submitted within ten (10) business days of denial or revocation, the application or permit will be considered denied or revoked.

M. OFFENSES

- (1) It shall be unlawful for any person to violate any section of this ordinance.
- (2) It shall be unlawful to sell, possess, or consume alcoholic beverages in a Non Permitted Area.
- (3) It shall be unlawful for a person to use the Permitted Area for purposes not identified in the permit.

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 12, "UNIFIED DEVELOPMENT ORDINANCE", SECTION 5.6 "DESIGN DISTRICTS", B "NORTHGATE DISTRICTS", 13 " OUTSIDE STORAGE AND DISPLAY STANDARDS", OF THE CODE OF ORDINANCES OF THE CITY OF COLLEGE STATION, TEXAS, BY AMENDING CERTAIN SECTIONS AS SET OUT BELOW; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE. BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COLLEGE STATION, TEXAS:

PART 1: That CHAPTER 12, "UNIFIED DEVELOPMENT ORDINANCE", be amended by amending, SECTION 5.6 "DESIGN DISTRICTS", B "NORTHGATE DISTRICTS", 13 " OUTSIDE STORAGE AND DISPLAY STANDARDS", of the Code of Ordinances of the City of College Station, Texas, be amended as set out in Exhibit "A", attached hereto and made a part of this ordinance for all purposes.

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

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

PASSED, ADOPTED and APPROVED this _____ day of _____, 2012.

APPROVED:

Mayor

ATTEST:

City Secretary

APPROVED:



City Attorney

Exhibit "A"

That **CHAPTER 12, "UNIFIED DEVELOPMENT ORDINANCE", SECTION 5.6 "DESIGN DISTRICTS", B "NORTHGATE DISTRICTS", 13 " OUTSIDE STORAGE AND DISPLAY STANDARDS"**, of the Code of Ordinances of the City of College Station, Texas, is hereby amended by amending said Section:

13. Outside Storage and Display Standards

The following standards are in lieu of Section 7.11 Outdoor Storage and Display.

- a) Outdoor storage of materials or commodities is prohibited.
- b) Temporary or portable buildings of any kind are prohibited except during construction of site-planned facilities.
- c) Outside sales/outside display areas shall be located within five (5) feet of a required entrance façade and shall only be located in front of the property/business that is selling item(s). A four-foot minimum clear space on sidewalks shall be maintained.
 - 1) **Exception** –Subsection c will not apply if a business is has a valid Permit issued under Code of Ordinance Chapter 4 "Business Regulations" Section 21 "Northgate Outdoor Dining and Entertainment.
- d) All merchandise and/or seasonal items used for outside sales or display shall be moved indoors at the end of business each day.

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 4, "BUSINESS REGULATIONS" BY AMENDING SECTION 4 "CARNIVALS, CIRCUSES, MENAGERIES, SIDESHOWS, CONCESSION, AND SPECIAL EVENTS", SECTIONS C AND D OF THE CODE OF ORDINANCES OF THE CITY OF COLLEGE STATION, TEXAS, 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 4, "BUSINESS REGULATIONS" be amended BY AMENDING SECTION 4 "CARNIVALS, CIRCUSES, MENAGERIES, SIDESHOWS, CONCESSION, AND SPECIAL EVENTS", SECTIONS C AND D of the Code of Ordinances of the City of College Station, Texas, 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 _____ day of _____, 2012.

APPROVED:

Mayor

ATTEST:

City Secretary

APPROVED: 

City Attorney

EXHIBIT “A”

That **CHAPTER 4, “BUSINESS REGULATIONS”** be amended **BY AMENDING SECTION 4 “CARNIVALS, CIRCUSES, MENAGERIES, SIDESHOWS, CONCESSION, AND SPECIAL EVENTS”, SECTIONS C AND D,** of the Code of Ordinances of the City of College Station, Texas and is to read as follows:

SECTION 4 CARNIVALS, CIRCUSES, MENAGERIES, SIDESHOWS, CONCESSION, AND SPECIAL EVENTS

C. Fifteen-day operation.

(1) No event shall be operated under a permit authorized herein for more than the greater of fifteen (15) calendar days or one hundred fifty (150) hours during a calendar year, with the exception of businesses permitted through Code of Ordinance Chapter 4 “Business Regulations” Section 21 “Northgate Outdoor Dining and Entertainment.”

(2) Operation of such an event for more than the referenced length of time shall be considered a permanent business for which site plan approval is required under the City of College Station Unified Development Ordinance. If the event is not operated on consecutive calendar days, an inspection as provided under subsection H. herein shall be required each time before the event resumes.

D. Northgate Central Business District.

(1) An event in the Northgate Central Business District providing for alcohol sales or consumption shall have a valid permit or license to sell or serve alcoholic beverages issued by the Texas Alcoholic Beverage Commission.

(2) An event in the Northgate Central Business District involving the sale or consumption of alcohol shall not be operated under a permit authorized herein for more than three (3) consecutive days.

**April 26, 2012
Regular Agenda Item No. 8**

Consider Ordinance Issuing General Obligation Improvement and Refunding Bonds

To: David Neeley, City Manager

From: Jeff Kersten, Executive Director of Business Services

Agenda Caption: Presentation, possible action and discussion on an ordinance authorizing the issuance and sale of up to \$38,000,000 in "City of College Station, Texas General Obligation Improvement and Refunding Bonds, Series 2012"; delegating the authority to certain City Officials to execute certain documents relating to the sale of the Bonds; approving and authorizing instruments and other procedures relating to said bonds; and enacting other provisions relating to the subject.

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

Recommendation(s): Council move to approve the ordinance authorizing the issuance and sale of up to \$38,000,000 in "General Obligation Improvement and Refunding Bonds, Series 2012"; delegating the authority to certain City Officials to execute certain documents relating to the sale of the Bonds; approving and authorizing instruments and other procedures relating to said bonds; and enacting other provisions relating to the subject.

Summary: The City has the opportunity to refund a portion of its General Obligation and Utility Revenue Bonds in order to achieve savings due to lower interest rates that are currently available. The City's Financial Advisor, Drew Masterson with First Southwest Company has presented the City with an opportunity to issue refunding bonds for several of our outstanding General Obligation and Utility Revenue Bond issues. Refunding is issuing new debt to replace and pay off existing debt. Refunding can be done for a number of reasons; however, most often are used to accrue a savings against the current debt.

The bonds that are proposed to be refunded are:

Certificates of Obligation, Series 2003A	\$ 480,000
Utility System Revenue Bonds, Series 2003A	\$ 2,985,000
General Obligation Bonds, Series 2003	\$ 2,960,000
Utility System Revenue Bonds, Series 2003	\$ 1,800,000
Certificates of Obligation, Series 2004	\$ 5,965,000
General Obligation Bonds, Series 2004	\$ 4,680,000
Certificates of Obligation, Series 2005	\$ 2,320,000
General Obligation Bonds, Series 2005	\$ 3,580,000
Utility System Revenue Bonds, Series 2005	<u>\$ 5,530,000</u>
	\$30,300,000

The City Council's Finance and Budgetary Policies allow for the City to "refund" debt when there is a net present value savings of at least 5%. The opportunity that is currently before the City Council will save the City approximately 7.51% over the remaining life of the issues. The net present value savings includes the debt issuance costs. **If this ordinance is approved, the City Council will be delegating to the Mayor, City Manager and the Executive Director of Business Services the authority to effect the refunding and the bond sale when the net present value savings on the refunding achieves at least the 5% threshold through October 26, 2012. Currently, the net present value savings is above the 5% threshold, however, if the net present value**

savings should fall below the 5%, this will provide an opportunity to reach the 5% threshold over the next 6 months in order to generate as much savings as possible for the City.

Refundings are typically done as negotiated sales rather than our normal bidding process. In a negotiated sale, a consortium of investment firms is selected with one firm named as the managing partner for the sale. The sale is negotiated and pricing is verified against pricing for similar instruments within a few days of the actual sale date to make sure that the City is getting good pricing for its debt.

The City Council is authorized to approve the issuance of General Obligation Improvement Bonds which have been authorized by a vote of the citizens. The Citizens approved a total of \$38,405,000 on November 4, 2003 and \$76,950,000 on November 4, 2008. By approving the ordinance, the Council will issue the remaining \$440,000 from the 2003 authorization and \$3,995,000 from the 2008 authorization. This is the fourth bond sale from the 2008 bond authorization. The 2008 authorization provides for a 7 year capital plan.

The City of College Station typically issues debt to fund various capital projects identified and approved as a part of the annual budget. This particular debt issue is planned to provide resources for street and transportation projects, sidewalk improvements, hike and bike trails, and parks and park facilities improvements and oversize participation.

Budget & Financial Summary: Based on current estimates, the refunding will reduce the overall cost of the refunded bonds by at least 7.51% over the remaining life of the existing bonds. Total net present value savings will be at least \$2,274,035. The average annual savings will range between \$209,229 and \$215.253 per year. The savings will help the City by providing an additional margin that Council may choose to use for projects not currently funded by an identified source.

Staff reviewed the impact of the general obligation improvement bonds will have on City's ability to meet debt service requirements and the effect they may have on the ad valorem tax rate. The recommendation to move forward with this issue will not impact the ad valorem tax rate.

Attachments:

1. Ordinance
2. Preliminary Official Statement – A copy will be place in the City Secretary's Office
3. Debt Issuance 2012.

ORDINANCE NO. _____

AUTHORIZING THE ISSUANCE OF UP TO \$38,000,000 IN PRINCIPAL AMOUNT OF "CITY OF COLLEGE STATION, TEXAS GENERAL OBLIGATION IMPROVEMENT AND REFUNDING BONDS, SERIES 2012"; DELEGATING THE AUTHORITY TO CERTAIN CITY OFFICIALS TO EXECUTE CERTAIN DOCUMENTS RELATING TO THE SALE OF THE BONDS; APPROVING AND AUTHORIZING INSTRUMENTS AND PROCEDURES RELATING TO SAID BONDS; AND ENACTING OTHER PROVISIONS RELATING TO THE SUBJECT

WHEREAS, it is deemed advisable and to be in the best interest of the City of College Station (the "City") that certain bonds authorized at elections previously held in the City be combined in a single issue and sold at this time, the dates of election, amount of bonds authorized thereat, purpose, amount of bonds previously sold, and the amount now to be sold being as follows as may be modified by the Pricing Officer (defined below):

<u>DATE OF ELECTION</u>	<u>AMOUNT AUTHORIZED</u>	<u>PURPOSE</u>	<u>AMOUNT PREVIOUSLY SOLD</u>	<u>AMOUNT ISSUED HEREIN</u>
November 4, 2003	\$17,980,000	Street & transportation improvements	\$17,540,000	\$440,000
November 4, 2003	7,610,000	Municipal complex improvements	3,955,000	0
November 4, 2008	48,785,000	Street & transportation improvements	12,540,000	3,820,000
November 4, 2008	8,385,000	City library improvements	0	0
November 4, 2008	12,790,000	Park & recreation improvements	3,665,000	\$175,000
Total	\$95,550,000		\$37,700,000	\$4,435,000__

WHEREAS, this City Council finds and determines that it is necessary and proper to order the issuance, sale and delivery of such voted bonds;

WHEREAS, the City has previously issued, and there are presently outstanding, revenue bonds of the City secured by a pledge of revenues derived by the City from the ownership and operation of the City's Utility System (consisting of the City's combined municipal electric light and power, waterworks and sewer system), and general obligation bonds and certificates of obligation which are secured by the full faith and credit of the City and a pledge by the City to levy ad valorem taxes sufficient to pay principal of and interest on the bonds and certificates of obligation as they become due and a pledge of surplus revenues of the Utility System to further secure the certificates of obligation;

WHEREAS, the City now desires to refund all or part of the outstanding revenue bonds, general obligation bonds and certificates of obligation described in Schedule I attached hereto and incorporated herein (collectively, the "Eligible Obligations"), and those Eligible Obligations designated by the Pricing Officer, as defined below, to be refunded are herein referred to as the "Refunded Obligations";

WHEREAS, Chapter 1207, Texas Government Code, authorizes the City to issue refunding bonds and to deposit the proceeds from the sale thereof, together with any other

available funds or resources, directly with a paying agent for the Refunded Obligations or a trust company or commercial bank that does not act as a depository for the City and is named in these proceedings, and such deposit, if made before the payment dates of the Refunded Obligations, shall constitute the making of firm banking and financial arrangements for the discharge and final payment of the Refunded Obligations;

WHEREAS, Chapter 1207, Texas Government Code, further authorizes the City to enter into an escrow or similar agreement with such paying agent for the Refunded Obligations or trust company or commercial bank with respect to the safekeeping, investment, reinvestment, administration and disposition of any such deposit, upon such terms and conditions as the City and such paying agent or trust company or commercial bank may agree;

WHEREAS, the City Council hereby finds and declares a public purpose and it is in the best interests of the City to refund the Refunded Obligations in order to achieve a debt service savings, with such savings, among other information and terms to be included in the Purchase Agreement described in Section 18 of this Ordinance to be executed by the Pricing Officer (hereinafter designated), all in accordance with the provisions of Section 1207.007, Texas Government Code;

WHEREAS, all the Refunded Obligations mature or are subject to redemption prior to maturity within 20 years of the date of the bonds hereinafter authorized;

WHEREAS, the City is an "Issuer" within the meaning of Section 1371.001(4)(P), Texas Government Code, having (i) a principal amount of at least \$100 million in outstanding long-term indebtedness, in long-term indebtedness proposed to be issued, or in a combination of outstanding or proposed long-term indebtedness and (ii) some amount of long-term indebtedness outstanding or proposed to be issued that is rated in one of the four highest rating categories for long-term debt instruments by a nationally recognized rating agency for municipal securities, without regard to the effect of any credit agreement or other form of credit enhancement entered into in connection with the obligation;

WHEREAS, the bonds hereinafter authorized to be issued were voted and are to be issued, sold and delivered pursuant to the general laws of the State of Texas, including Texas Government Code Chapters 1207, 1331 and 1371, as amended, and the City's Home Rule Charter; and

WHEREAS, it is officially found, determined, and declared that the meeting at which this Ordinance has been adopted was open to the public and public notice of the time, place and subject matter of the public business to be considered and acted upon at said meeting, including this Ordinance, was given, all as required by the applicable provisions of Texas Government Code Chapter 551;

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

Section 1. AUTHORIZATION OF BONDS. That said City's General Obligation Improvement and Refunding Bonds, to be designated the "City of College Station, Texas General Obligation Improvement and Refunding Bonds, Series 2012", are hereby authorized to

be issued and delivered in the principal amount not to exceed \$38,000,000 for the purpose of (i) refunding the Refunded Obligations; (ii) acquiring property and making improvements for public purposes in said City, to wit: street improvements, park and park facilities improvements, and the payment of fiscal, engineering and legal fees incurred in connection therewith all in accordance with and subject to the election propositions authorizing such bonds; and (iii) to pay the costs incurred in connection with the issuance of the Bonds (collectively, the "Projects").

Section 2. DELEGATION TO PRICING OFFICER.

(a) As authorized by Sections 1207.007 and 1371.053, Texas Government Code, as amended, the Mayor, the City Manager and the Executive Director of Business Services of the City (each the "Pricing Officer") are each hereby authorized to act severally on behalf of the City in selling and delivering the Bonds, carrying out the other procedures specified in this Ordinance, including, determining the date of the Bonds, any additional or different designation or title by which the Bonds shall be known, whether the Bond shall be sold and delivered in one or more series and the date and sale and delivery of each such series, the price at which the Bonds will be sold, the years in which the Bonds will mature, the principal amount to mature in each of such years, the rate of interest to be borne by each such maturity, the interest payment and record dates, the price and terms upon and at which the Bonds shall be subject to redemption prior to maturity at the option of the City, as well as any mandatory sinking fund redemption provisions, and all other matters relating to the issuance, sale, and delivery of the Bonds and obtaining municipal insurance for all or any portion of the Bonds and providing for the terms and provisions thereof applicable to the Bonds, all of which shall be specified in the Pricing Certificate; provided that:

(i) the aggregate original principal amount of the Bonds shall not exceed \$38,000,000, with no more than \$33,000,000 of such amount to be issued for the purposes described in Section 1(i) and (iii) hereof, and no more than \$5,000,000 of such amount issued for the purposes described in Section 1(ii) and (iii) hereof;

(ii) the true interest cost of the Bonds shall not exceed 3.250% per annum;

(iii) the refunding must produce present value debt service savings of at least 5.000%, net of any City contribution;

(iv) the net effective interest rate on the Bonds shall not exceed the maximum rate set forth in Chapter 1204, Texas Government Code, as amended;

(v) the final maturity of the Bonds shall not exceed February 15, 2032;

(vi) the delegation made hereby shall expire if not exercised by the Pricing Officer on or prior to October 26, 2012; and

(vii) on or prior to delivery, the Bonds shall be rated by a nationally recognized rating agency for municipal securities in one of the four highest categories for long-term obligations.

(b) In establishing the aggregate principal amount of the Bonds, the Pricing Officer shall establish an amount not exceeding the amount authorized in Subsection (a) of this Section, which shall be sufficient in amount to provide for the purposes for which the Bonds are authorized and to pay costs of issuing the Bonds. The Bonds shall be sold with and subject to such terms as set forth in the Purchase Agreement as described in Section 18 herein.

Section 3. CHARACTERISTICS OF THE BONDS. (a) The City shall keep or cause to be kept at the corporate trust office in Dallas, Texas (the "Designated Trust Office") of The Bank of New York Mellon Trust Company, N.A., or such other bank, trust company, financial institution, or other agency named in accordance with the provisions of (g) below (the "Paying Agent/Registrar"), books or records for the registration and transfer of the Bonds (the "Registration Books"), and the City hereby appoints the Paying Agent/Registrar as its registrar and transfer agent to keep such books or records and make such transfers and registrations under such reasonable regulations as the City and Paying Agent/Registrar may prescribe; and the Paying Agent/Registrar shall make such transfers and registrations as herein provided. It shall be the duty of the Paying Agent/Registrar to obtain from the registered owner and record in the Registration Books the address of the registered owner of each Bond to which payments with respect to the Bonds shall be mailed, as herein provided. The City or its designee shall have the right to inspect the Registration Books during regular business hours of the Paying Agent/Registrar at its Designated Trust Office, but otherwise the Paying Agent/Registrar shall keep the Registration Books confidential and, unless otherwise required by law, shall not permit their inspection by any other entity. Registration of each Bond may be transferred in the Registration Books only upon presentation and surrender thereof to the Paying Agent/Registrar at its Designated Trust Office for transfer of registration and cancellation, together with proper written instruments of assignment, in form and with guarantee of signatures satisfactory to the Paying Agent/Registrar, evidencing the assignment of such Bond, or any portion thereof in any Authorized Denomination, to the assignee or assignees thereof, and the right of such assignee or assignees to have such Bond or any such portion thereof registered in the name of such assignee or assignees. Upon the assignment and transfer of any Bond or any portion thereof, a new substitute Bond or Bonds shall be issued in exchange therefor in the manner herein provided.

(b) The entity in whose name any Bond shall be registered in the Registration Books at any time shall be treated as the absolute owner thereof for all purposes of this Ordinance, whether or not such Bond shall be overdue, and the City and the Paying Agent/Registrar shall not be affected by any notice to the contrary; and payment of, or on account of, the principal of, premium, if any, and interest on any such Bond shall be made only to such registered owner. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid.

(c) The City hereby further appoints the Paying Agent/Registrar to act as the paying agent for paying the principal of and interest on the Bonds, and to act as its agent to exchange or replace Bonds, all as provided in this Ordinance. The Paying Agent/Registrar shall keep proper records of all payments made by the City and the Paying Agent/Registrar with respect to the Bonds, and of all exchanges thereof, and all replacements thereof, as provided in this Ordinance.

(d) Each Bond may be exchanged for fully registered Bonds in the manner set forth herein. Each Bond issued and delivered pursuant to this Ordinance may, upon surrender thereof

at the Designated Trust Office of the Paying Agent/Registrar, together with a written request therefor duly executed by the registered owner or the assignee or assignees thereof, or its or their duly authorized attorneys or representatives, with guarantee of signatures satisfactory to the Paying Agent/Registrar, at the option of the registered owner or such assignee or assignees, as appropriate, be exchanged for fully registered Bonds, without interest coupons, in the form prescribed in the FORM OF BOND, in an Authorized Denomination (subject to the requirement hereinafter stated that each substitute Bond shall have a single stated maturity date), as requested in writing by such registered owner or such assignee or assignees, in an aggregate principal amount equal to the principal amount of any Bond or Bonds so surrendered, and payable to the appropriate registered owner, assignee, or assignees, as the case may be. If any Bond or portion thereof is assigned and transferred, each Bond issued in exchange therefor shall have the same principal maturity date and bear interest at the same rate as the Bond for which it is being exchanged. Each substitute Bond shall bear a letter and/or number to distinguish it from each other Bond. The Paying Agent/Registrar shall exchange or replace Bonds as provided herein, and each fully registered Bond or Bonds delivered in exchange for or replacement of any Bond or portion thereof as permitted or required by any provision of this Ordinance shall constitute one of the Bonds for all purposes of this Ordinance, and may again be exchanged or replaced. It is specifically provided, however, that any Bond delivered in exchange for or replacement of another Bond prior to the first scheduled interest payment date on the Bonds (as stated on the face thereof) shall be dated the same date as such Bond, but each substitute Bond so delivered on or after such first scheduled interest payment date shall be dated as of the interest payment date preceding the date on which such substitute Bond is delivered, unless such substitute Bond is delivered on an interest payment date, in which case it shall be dated as of such date of delivery; provided, however, that if at the time of delivery of any substitute Bond the interest on the Bond for which it is being exchanged has not been paid, then such substitute Bond shall be dated as of the date to which such interest has been paid in full. On each substitute Bond issued in exchange for or replacement of any Bond or Bonds issued under this Ordinance there shall be printed thereon a Paying Agent/Registrar's Authentication Certificate, in the form hereinafter set forth in the FORM OF BOND (the "Authentication Certificate"). An authorized representative of the Paying Agent/Registrar shall, before the delivery of any such substitute Bond, date such substitute Bond in the manner set forth above, and manually sign and date the Authentication Certificate, and no such substitute Bond shall be deemed to be issued or outstanding unless the Authentication Certificate is so executed. The Paying Agent/Registrar promptly shall cancel all Bonds surrendered for exchange or replacement. No additional ordinances, orders, or resolutions need be passed or adopted by the City Council or any other body or person so as to accomplish the foregoing exchange or replacement of any Bonds or portion thereof, and the Paying Agent/Registrar shall provide for the printing, execution, and delivery of the substitute Bond in the manner prescribed herein. Pursuant to Chapter 1206, Texas Government Code, the duty of exchange or replacement of any Bonds as aforesaid is hereby imposed upon the Paying Agent/Registrar, and, upon the execution of Authentication Certificate, the exchanged or replaced Bond shall be valid, incontestable, and enforceable in the same manner and with the same effect as the Bonds which originally were delivered pursuant to this Ordinance, approved by the Attorney General, and registered by the Comptroller of Public Accounts. Neither the City nor the Paying Agent/Registrar shall be required to transfer or exchange any Bond so selected for redemption, in whole or in part, within 45 calendar days of the date fixed for redemption;

provided, however, such limitation of transfer shall not be applicable to an exchange by the registered owner of the uncalled principal of a Bond.

(e) All Bonds issued in exchange or replacement of any other Bond or portion thereof, (i) shall be issued in fully registered form, without interest coupons, with the principal of and interest on such Bonds to be payable only to the registered owners thereof, (ii) may be redeemed prior to their scheduled maturities, (iii) may be transferred and assigned, (iv) may be exchanged for other Bonds, (v) shall have the characteristics, (vi) shall be signed and sealed, and (vii) the principal of and interest on the Bonds shall be payable, all as provided, and in the manner required or indicated, in the FORM OF BOND.

(f) The City shall pay the Paying Agent/Registrar's reasonable and customary fees and charges for making transfers of Bonds, but the registered owner of any Bond requesting such transfer shall pay any taxes or other governmental charges required to be paid with respect thereto. The registered owner of any Bonds requesting any exchange shall pay the Paying Agent/Registrar's reasonable and standard or customary fees and charges for exchanging any such Bond or portion thereof, together with any taxes or governmental charges required to be paid with respect thereto, all as a condition precedent to the exercise of such privilege of exchange, except, however, that in the case of the exchange of an assigned and transferred Bond or Bonds or any portion or portions thereof in an Authorized Denomination, as provided in this Ordinance, such fees and charges will be paid by the City. In addition, the City hereby covenants with the registered owners of the Bonds that it will (i) pay the reasonable and standard or customary fees and charges of the Paying Agent/Registrar for its services with respect to the payment of the principal of and interest on Bonds, when due, and (ii) pay the fees and charges of the Paying Agent/Registrar for services with respect to the transfer or registration of Bonds solely to the extent above provided, and with respect to the exchange of Bonds solely to the extent above provided.

(g) The City covenants with the registered owners of the Bonds that at all times while the Bonds are outstanding the City will provide a competent and legally qualified bank, trust company, financial institution, or other agency to act as and perform the services of Paying Agent/Registrar for the Bonds under this Ordinance, and that the Paying Agent/Registrar will be one entity. The City reserves the right to, and may, at its option, change the Paying Agent/Registrar upon not less than 60 days written notice to the Paying Agent/Registrar. In the event that the entity at any time acting as Paying Agent/Registrar (or its successor by merger, acquisition, or other method) should resign or otherwise cease to act as such, the City covenants that it will promptly appoint a competent and legally qualified national or state banking institution which shall be a corporation organized and doing business under the laws of the United States of America or of any state, authorized under such laws to exercise trust powers, subject to supervision or examination by federal or state authority, and whose qualifications substantially are similar to the previous Paying Agent/Registrar to act as Paying Agent/Registrar under this Ordinance. Upon any change in the Paying Agent/Registrar, the previous Paying Agent/Registrar promptly shall transfer and deliver the Registration Books (or a copy thereof), along with all other pertinent books and records relating to the Bonds, to the new Paying Agent/Registrar designated and appointed by the City. Upon any change in the Paying Agent/Registrar, the City promptly will cause a written notice thereof to be sent by the new Paying Agent/Registrar to each registered owner of the Bonds, by United States mail, first-class

postage prepaid, which notice also shall give the address of the new Paying Agent/Registrar. By accepting the position and performing as such, each Paying Agent/Registrar shall be deemed to have agreed to the provisions of this Ordinance, and a certified copy of this Ordinance shall be delivered to each Paying Agent/Registrar.

Section 4. FORM OF BONDS. The form of the Bonds, including the form of the Authentication Certificate, the form of Assignment and the form of Registration Certificate of the Comptroller of Public Accounts of the State of Texas to be attached to the Bonds initially issued and delivered pursuant to this Ordinance, shall be in substantially the form as set forth in *Exhibit A* to this Ordinance, with such appropriate variations, omissions, or insertions as are permitted or required by this Ordinance, and with the FORM OF BOND to be modified pursuant to, and completed with information set forth in the Pricing Certificate. The printer of the Bonds is hereby authorized to print on the Bonds (i) the form of bond counsel's opinion relating to the Bonds, and (ii) an appropriate statement of insurance furnished by a municipal bond insurance company providing municipal bond insurance, if any, covering all or any part of the Bonds.

Section 5. DEFINITIONS. That the term "*Authorized Denomination*" shall mean a denomination of \$5,000 of principal amount of a Bond or any integral multiple thereof; the term "*Bonds*" shall mean the City of College Station, Texas General Obligation Improvement and Refunding Bonds, Series 2012; the term "*Business Day*" means a Saturday, Sunday, a legal holiday, or a day on which banking institutions in the City are authorized by law or executive order to close; the term "*MSRB*" means the Municipal Securities Rulemaking Board; the term "*Rule*" means SEC Rule 15c2 12, as amended from time to time; and the term "*SEC*" means the United States Securities and Exchange Commission.

Section 6. LEVY OF TAX; INTEREST AND SINKING FUND.

(a) That a special fund or account, to be designated the "City of College Station, Texas Series 2012 Improvement and Refunding Bond Interest and Sinking Fund" (the "Interest and Sinking Fund") is hereby created and shall be established and maintained by the City. The Interest and Sinking Fund shall be kept separate and apart from all other funds and accounts of the City, and shall be used only for paying the interest on and principal of the Bonds. All ad valorem taxes levied and collected for and on account of the Bonds shall be deposited, as collected, to the credit of the Interest and Sinking Fund. During each year while any of the Bonds are outstanding and unpaid, the governing body of the City shall compute and ascertain the rate and amount of ad valorem tax, based on the latest approved tax rolls of the City, with full allowances being made for tax delinquencies and the cost of tax collections, which will be sufficient to raise and produce the money required to pay the interest on the Bonds as such interest comes due, and to provide a sinking fund to pay the principal (including mandatory sinking fund redemption payments, if any) of the Bonds as such principal matures or comes due through operation of the mandatory sinking fund redemption, if any, but never less than 2% of the original amount of the Bonds as a sinking fund each year. The rate and amount of ad valorem tax is hereby ordered to be levied against all taxable property in the City for each year while any of the Bonds is outstanding and unpaid, and the ad valorem tax shall be assessed and collected each such year and deposited to the credit of the Interest and Sinking Fund. Ad valorem taxes necessary to pay the interest on and principal of the Bonds, as such interest comes

due and such principal matures, are hereby pledged for such payment, within the limit prescribed by law.

(b) There shall be appropriated from the General Fund of the City for deposit into the Interest and Sinking Fund moneys as may be necessary to pay the principal and interest payments on the Bonds scheduled to occur on or before August 15, 2012.

Section 7. TRANSFER. That the City shall do any and all things necessary to accomplish the transfer of monies to the Interest and Sinking Fund of this issue in ample time to pay such items of principal and interest due on the Bonds.

Section 8. SECURITY FOR FUNDS. That the Interest and Sinking Fund created by this Ordinance shall be secured in the manner and to the fullest extent permitted or required by law for the security of public funds, and such Interest and Sinking Fund shall be used only for the purposes and in the manner permitted or required by this Ordinance.

Section 9. DAMAGED, MUTILATED, LOST, STOLEN, OR DESTROYED BONDS.

(a) *Replacement Bonds.* That in the event any outstanding Bond is damaged, mutilated, lost, stolen, or destroyed, the Paying Agent/Registrar shall cause to be printed, executed, and delivered, a new Bond of the same principal amount, maturity, and interest rate, as the damaged, mutilated, lost, stolen, or destroyed Bond, in replacement for such Bond in the manner hereinafter provided.

(b) *Application for Replacement Bonds.* That application for replacement of damaged, mutilated, lost, stolen, or destroyed Bonds shall be made by the registered owner thereof to the Paying Agent/Registrar. In every case of loss, theft, or destruction of a Bond, the registered owner applying for a replacement Bond shall furnish to the City and to the Paying Agent/Registrar such security or indemnity as may be required by them to save each of them harmless from any loss or damage with respect thereto. Also, in every case of loss, theft, or destruction of a Bond, the registered owner shall furnish to the City and to the Paying Agent/Registrar evidence to their satisfaction of the loss, theft, or destruction of such Bond, as the case may be. In every case of damage or mutilation of a Bond, the registered owner shall surrender to the Paying Agent/Registrar for cancellation the Bond so damaged or mutilated.

(c) *No Default Occurred.* That notwithstanding the foregoing provisions of this Section, in the event any such Bond shall have matured, and no default has occurred which is then continuing in the payment of the principal of, redemption premium, if any, or interest on the Bond, the City may authorize the payment of the same (without surrender thereof except in the case of a damaged or mutilated Bond) instead of issuing a replacement Bond, provided security or indemnity is furnished as above provided in this Section.

(d) *Charge for Issuing Replacement Bonds.* That prior to the issuance of any replacement Bond, the Paying Agent/Registrar shall charge the registered owner of such Bond with all legal, printing, and other expenses in connection therewith. Every replacement Bond issued pursuant to the provisions of this Section by virtue of the fact that any Bond is lost, stolen, or destroyed shall constitute a contractual obligation of the City whether or not the lost, stolen, or destroyed Bond shall be found at any time, or be enforceable by anyone, and shall be entitled to

all the benefits of this Ordinance equally and proportionately with any and all other Bonds duly issued under this Ordinance.

(e) *Authority for Issuing Replacement Bonds.* That in accordance with Section 1201.067, Texas Government Code, this Section of this Ordinance shall constitute authority for the issuance of any such replacement Bond without necessity of further action by the City or any other body or person, and the duty of the replacement of such Bonds is hereby authorized and imposed upon the Paying Agent/Registrar, and the Paying Agent/Registrar shall authenticate and deliver such Bonds in the form and manner and with the effect, as provided in Section 5(d) of this Ordinance for Bonds issued in conversion and exchange of other Bonds.

Section 10. FEDERAL INCOME TAX MATTERS. That the City covenants to refrain from any action which would adversely affect, or to take such action as to ensure, the treatment of the Bonds as obligations described in section 103 of the Code, the interest on which is not includable in the "gross income" of the holder for purposes of federal income taxation. In furtherance thereof, the City covenants as follows:

(a) to take any action to assure that no more than 10 percent of the proceeds of the Bonds (less amounts deposited to a reserve fund, if any) are used for any "private business use," as defined in section 141(b)(6) of the Code or, if more than 10 percent of the proceeds are so used, that amounts, whether or not received by the City, with respect to such private business use, do not, under the terms of this Ordinance or any underlying arrangement, directly or indirectly, secure or provide for the payment of more than 10 percent of the debt service on the Bonds, in contravention of section 141(b)(2) of the Code;

(b) to take any action to assure that in the event that the "private business use" described in subsection (a) hereof exceeds five percent of the proceeds of the Bonds (less amounts deposited into a reserve fund, if any) then the amount in excess of five percent is used for a "private business use" which is "related" and not "disproportionate", within the meaning of section 141(b)(3) of the Code, to the governmental use;

(c) to take any action to assure that no amount which is greater than the lesser of \$5,000,000, or five percent of the proceeds of the Bonds (less amounts deposited into a reserve fund, if any) is directly or indirectly used to finance loans to persons, other than state or local governmental units, in contravention of section 141(c) of the Code;

(d) to refrain from taking any action which would otherwise result in the Bonds being treated as "private activity bonds" within the meaning of section 141(b) of the Code;

(e) to refrain from taking any action that would result in the Bonds being "federally guaranteed" within the meaning of section 149(b) of the Code;

(f) to refrain from using any portion of the proceeds of the Bonds, directly or indirectly, to acquire or to replace funds which were used, directly or indirectly, to acquire investment property (as defined in section 148(b)(2) of the Code) which produces a materially higher yield over the term of the Bonds, other than investment property acquired with –

(1) proceeds of the Bonds invested for a reasonable temporary period until such proceeds are needed for the purpose for which the Bonds are issued,

(2) amounts invested in a bona fide debt service fund, within the meaning of section 1.148-1(b) of the Treasury Regulations, and

(3) amounts deposited in any reasonably required reserve or replacement fund to the extent such amounts do not exceed 10 percent of the proceeds of the Bonds;

(g) to otherwise restrict the use of the proceeds of the Bonds or amounts treated as proceeds of the Bonds, as may be necessary, so that the Bonds do not otherwise contravene the requirements of section 148 of the Code (relating to arbitrage) and, to the extent applicable, section 149(d) of the Code (relating to advance refundings); and

(h) to pay to the United States of America at least once during each five-year period (beginning on the date of delivery of the Bonds) an amount that is at least equal to 90 percent of the "Excess Earnings," within the meaning of section 148(f) of the Code and to pay to the United States of America, not later than 60 days after the Bonds have been paid in full, 100 percent of the amount then required to be paid as a result of Excess Earnings under section 148(f) of the Code.

For purposes of the foregoing (a) and (b), the City understands that the term "proceeds" includes "disposition proceeds" as defined in the Treasury Regulations and, in the case of refunding bonds, transferred proceeds (if any) and proceeds of the refunded bonds expended prior to the date of issuance of the Bonds. It is the understanding of the City that the covenants contained herein are intended to assure compliance with the Code and any regulations or rulings promulgated by the U.S. Department of the Treasury pursuant thereto. In the event that regulations or rulings are hereafter promulgated which modify or expand provisions of the Code, as applicable to the Bonds, the City will not be required to comply with any covenant contained herein to the extent that such failure to comply, in the opinion of nationally-recognized bond counsel, will not adversely affect the exemption from federal income taxation of interest on the Bonds under section 103 of the Code. In the event that regulations or rulings are hereafter promulgated which impose additional requirements which are applicable to the Bonds, the City agrees to comply with the additional requirements to the extent necessary, in the opinion of nationally-recognized bond counsel, to preserve the exemption from federal income taxation of interest on the Bonds under section 103 of the Code. In furtherance of such intention, the City hereby authorizes and directs the Mayor, the City Manager, any Assistant City Manager and the Executive Director of Business Services to execute any documents, certificates or reports required by the Code, and to make such elections on behalf of the City which may be permitted by the Code as are consistent with the purpose for the issuance of the Bonds.

In order to facilitate compliance with clause (h) above, a "Rebate Fund" is hereby established by the City for the sole benefit of the United States of America, and such Fund shall not be subject to the claim of any other person, including without limitation the bondholders. The Rebate Fund is established for the additional purpose of compliance with section 148 of the Code.

Section 11. ALLOCATION OF, AND LIMITATION ON, EXPENDITURES FOR THE PROJECT. That the City covenants to account for the expenditure of proceeds from the sale of the Bonds and any investment earnings thereon to be used for the purposes described in Section 1 of this Ordinance (such purpose referred to in this Section and Section 12 as a "Project") on its books and records by allocating proceeds to expenditures within 18 months of the later of the date that (a) the expenditure on a Project is made or (b) such Project is completed. The foregoing notwithstanding, the City shall not expend such proceeds or investment earnings more than 60 days after the earlier of (a) the fifth anniversary of the date of delivery of the Bonds or (b) the date the Bonds are retired, unless the City obtains an opinion of nationally-recognized bond counsel substantially to the effect that such expenditure will not adversely affect the tax-exempt status of the Bonds. For purposes hereof, the City shall not be obligated to comply with this covenant if it obtains an opinion that such failure to comply will not adversely affect the excludability for federal income tax purposes from gross income of the interest.

Section 12. DISPOSITION OF PROJECT. That the City covenants that the property constituting a Project will not be sold or otherwise disposed in a transaction resulting in the receipt by the City of cash or other compensation, unless the City obtains an opinion of nationally-recognized bond counsel substantially to the effect that such sale or other disposition will not adversely affect the tax-exempt status of the Bonds. For purposes of the foregoing, the portion of the property comprising personal property and disposed in the ordinary course shall not be treated as a transaction resulting in the receipt of cash or other compensation. For purposes hereof, the City shall not be obligated to comply with this covenant if it obtains an opinion that such failure to comply will not adversely affect the excludability for federal income tax purposes from gross income of the interest.

Section 13. PROCEDURES TO MONITOR COMPLIANCE WITH TAX COVENANTS. The City hereby adopts the procedures attached hereto as *Exhibit B* as a means of monitoring compliance with the federal tax covenants made by the City herein.

Section 14. CUSTODY, APPROVAL, AND REGISTRATION OF BONDS. That the Executive Director of Business Services of the City is hereby authorized to have control of the Bonds initially issued and delivered hereunder and all necessary records and proceedings pertaining to the Bonds pending their delivery and their investigation, examination, and approval by the Attorney General of the State of Texas, and their registration by the Comptroller of Public Accounts of the State of Texas. Upon registration of the Bonds said Comptroller of Public Accounts (or a deputy designated in writing to act for said Comptroller) shall manually sign the Comptroller's Registration Certificate attached to such Bonds, and the seal of said Comptroller shall be impressed, or placed in facsimile, on such certificate. The Bonds thus registered shall remain in the custody of the Executive Director of Business Services (or the designee thereof) until delivered to the Underwriter (as defined in Section 18 of this Ordinance).

Section 15. DTC REGISTRATION. That the Bonds initially shall be issued and delivered in such manner that no physical distribution of the Bonds will be made to the public, and The Depository Trust Company ("DTC"), New York, New York, initially will act as depository for the Bonds. DTC has represented that it is a limited purpose trust company incorporated under the laws of the State of New York, a member of the Federal Reserve System, a "clearing corporation" within the meaning of the New York Uniform Commercial Code, and a

"clearing agency" registered under Section 17A of the Securities Exchange Act of 1934, as amended, and the City accepts, but in no way verifies, such representations. The Bonds initially authorized by this Ordinance shall be delivered to and registered in the name of CEDE & CO., the nominee of DTC. It is expected that DTC will hold the Bonds on behalf of the Underwriter and its participants. So long as each Bond is registered in the name of CEDE & CO., the Paying Agent/Registrar shall treat and deal with DTC the same in all respects as if it were the actual and beneficial owner thereof. It is expected that DTC will maintain a book-entry system which will identify ownership of the Bonds in Authorized Denominations, with transfers of ownership being effected on the records of DTC and its participants pursuant to rules and regulations established by them, and that the Bonds initially deposited with DTC shall be immobilized and not be further exchanged for substitute Bonds except as hereinafter provided. The City is not responsible or liable for any functions of DTC, will not be responsible for paying any fees or charges with respect to its services, will not be responsible or liable for maintaining, supervising, or reviewing the records of DTC or its participants, or protecting any interests or rights of the beneficial owners of the Bonds. It shall be the duty of the DTC Participants, as defined in the Official Statement herein approved, to make all arrangements with DTC to establish this book-entry system, the beneficial ownership of the Bonds, and the method of paying the fees and charges of DTC. The City does not represent, nor does it in any way covenant that the initial book-entry system established with DTC will be maintained in the future. Notwithstanding the initial establishment of the foregoing book-entry system with DTC, if for any reason any of the originally delivered Bonds is duly filed with the Paying Agent/Registrar with proper request for transfer and substitution, as provided for in this Ordinance, substitute Bonds will be duly delivered as provided in this Ordinance, and there will be no assurance or representation that any book-entry system will be maintained for such Bonds. In connection with the initial establishment of the foregoing book-entry system with DTC, the City heretofore has executed a "Blanket Letter of Representations" prepared by DTC in order to implement the book-entry system described above.

Section 16. CONTINUING DISCLOSURE OBLIGATION.

(a) *Annual Reports.* (i) The City shall provide annually to the MSRB, in an electronic format as prescribed by the MSRB, within six months after the end of each fiscal year ending in or after 2012, financial information and operating data with respect to the City of the general type included in the final Official Statement authorized by Section 18 of this Ordinance, being the information described in Exhibit C hereto. Any financial statements so to be provided shall be (1) prepared in accordance with the accounting principles described in Exhibit C, or such other accounting principles as the City may be required to employ from time to time pursuant to state law or regulation, and (2) audited, if the City commissions an audit of such statements and the audit is completed within the period during which they must be provided. If the audit of such financial statements is not complete within such period, then the City shall provide unaudited financial statements by the required time, and shall provide audited financial statements for the applicable fiscal year to the MSRB, when and if the audit report on such statements become available.

(ii) If the City changes its fiscal year, it will notify the MSRB of the change (and of the date of the new fiscal year end) prior to the next date by which the City otherwise would be required to provide financial information and operating data pursuant

to this Section. The financial information and operating data to be provided pursuant to this Section may be set forth in full in one or more documents or may be included by specific reference to any document that is available to the public on the MSRB's internet website or filed with the SEC. All documents provided to the MSRB pursuant to this Section shall be accompanied by identifying information as prescribed by the MSRB.

(b) *Event Notices.* The City shall notify the MSRB in an electronic format as prescribed by the MSRB, in a timely manner (but not in excess of ten Business Days after the occurrence of the event) of any of the following events with respect to the Bonds:

1. Principal and interest payment delinquencies;
2. Non-payment related defaults, if material;
3. Unscheduled draws on debt service reserves reflecting financial difficulties;
4. Unscheduled draws on credit enhancements reflecting financial difficulties;
5. Substitution of credit or liquidity providers, or their failure to perform;
6. Adverse tax opinions or the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the Bonds, or other material events affecting the tax status of the Bonds;
7. Modifications to rights of Bondholders, if material;
8. Bond calls, if material, and tender offers;
9. Defeasances;
10. Release, substitution, or sale of property securing repayment of the Bonds, if material;
11. Rating changes;
12. Bankruptcy, insolvency, receivership or similar event of an obligated person (which is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent, or similar officer for the City in a proceeding under the United States Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the City, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority,

or the entry of an order confirming a plan of reorganization, arrangement, or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the City);

13. The consummation of a merger, consolidation, or acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;
14. Appointment of a successor or additional trustee or the change of name of a trustee, if material.

The City shall notify the MSRB, in a timely manner, of any failure by the City to provide financial information or operating data in accordance with subsection (b) of this Section by the time required by such subsection.

(c) *Limitations, Disclaimers, and Amendments.* (i) The City shall be obligated to observe and perform the covenants specified in this Section for so long as, but only for so long as, the City remains an "obligated person" with respect to the Bonds within the meaning of the Rule, except that the City in any event will give notice of any deposit made in accordance with this Ordinance or applicable law that causes Bonds no longer to be outstanding.

(ii) The provisions of this Section are for the sole benefit of the registered owners and beneficial owners of the Bonds, and nothing in this Section, express or implied, shall give any benefit or any legal or equitable right, remedy, or claim hereunder to any other person. The City undertakes to provide only the financial information, operating data, financial statements, and notices which it has expressly agreed to provide pursuant to this Section and does not hereby undertake to provide any other information that may be relevant or material to a complete presentation of the City's financial results, condition, or prospects or hereby undertake to update any information provided in accordance with this Section or otherwise, except as expressly provided herein. The City does not make any representation or warranty concerning such information or its usefulness to a decision to invest in or sell Bonds at any future date.

(iii) UNDER NO CIRCUMSTANCE SHALL THE CITY BE LIABLE TO THE REGISTERED OWNER OR BENEFICIAL OWNER OF ANY BOND OR ANY OTHER PERSON, IN CONTRACT OR TORT, FOR DAMAGES RESULTING IN WHOLE OR IN PART FROM ANY BREACH BY THE CITY, WHETHER NEGLIGENT OR WITHOUT FAULT ON ITS PART, OF ANY COVENANT SPECIFIED IN THIS SECTION, BUT EVERY RIGHT AND REMEDY OF ANY SUCH PERSON, IN CONTRACT OR TORT, FOR OR ON ACCOUNT OF ANY SUCH BREACH SHALL BE LIMITED TO AN ACTION FOR MANDAMUS OR SPECIFIC PERFORMANCE.

(iv) No default by the City in observing or performing its obligations under this Section shall comprise a breach of or default under this Ordinance for purposes of any other provision of this Ordinance. Nothing in this Section is intended or shall act to disclaim, waive, or otherwise limit the duties of the City under federal and state securities laws.

(v) Should the Rule be amended to obligate the City to make filings with or provide notices to entities other than the MSRB, the City hereby agrees to undertake such obligation with respect to the Bonds in accordance with the Rule as amended. The provisions of this Section may be amended by the City from time to time to adapt to changed circumstances that arise from a change in legal requirements, a change in law, or a change in the identity, nature, status, or type of operations of the City, but only if (1) the provisions of this Section, as so amended, would have permitted an underwriter to purchase or sell Bonds in the primary offering of the Bonds in compliance with the Rule, taking into account any amendments or interpretations of the Rule since such offering as well as such changed circumstances and (2) either (a) the registered owners of a majority in aggregate principal amount (or any greater amount required by any other provision of this Ordinance that authorizes such an amendment) of the outstanding Bonds consent to such amendment or (b) a person that is unaffiliated with the City (such as nationally recognized bond counsel) determined that such amendment will not materially impair the interest of the registered owners and beneficial owners of the Bonds. If the City so amends the provisions of this Section, it shall include with any amended financial information or operating data next provided in accordance with subsection (b) of this Section an explanation, in narrative form, of the reason for the amendment and of the impact of any change in the type of financial information or operating data so provided. The City may also amend or repeal the provisions of this continuing disclosure agreement if the SEC amends or repeals the applicable provision of the Rule or a court of final jurisdiction enters judgment that such provisions of the Rule are invalid, but only if and to the extent that the provisions of this sentence would not prevent an underwriter from lawfully purchasing or selling Bonds in the primary offering of the Bonds.

(d) *Procedures to Monitor Compliance with Continuing Disclosure Covenants.* The City hereby adopts the procedures attached hereto as **Exhibit B** as a means of monitoring compliance with the continuing disclosure covenants made by the City herein.

Section 17. DEFEASANCE. (a) *Deemed Paid.* Any Bond and the interest thereon shall be deemed to be paid, retired and no longer outstanding (a "Defeased Bond") within the meaning of this Ordinance, except to the extent provided in subsection (e) of this Section, when payment of the principal of such Bond, plus interest thereon to the due date (whether such due date be by reason of maturity or otherwise) either (i) shall have been made or caused to be made in accordance with the terms thereof, or (ii) shall have been provided for on or before such due date by irrevocably depositing with or making available to the Paying Agent/Registrar in accordance with an escrow agreement or other instrument (the "Future Escrow Agreement") for such payment (1) lawful money of the United States of America sufficient to make such payment or (2) Defeasance Securities that mature as to principal and interest in such amounts and at such times as will insure the availability, without reinvestment, of sufficient money to provide for such payment, and when proper arrangements have been made by the City with the Paying

Agent/Registrar for the payment of its services until all Defeased Bonds shall have become due and payable. At such time as a Bond shall be deemed to be a Defeased Bond hereunder, as aforesaid, such Bond and the interest thereon shall no longer be secured by, payable from, or entitled to the benefits of, the ad valorem taxes herein levied and pledged as provided in this Ordinance, and such principal and interest shall be payable solely from such money or Defeasance Securities.

(b) *Investments.* Any moneys so deposited with the Paying Agent/Registrar may at the written direction of the City be invested in Defeasance Securities, maturing in the amounts and times as hereinbefore set forth, and all income from such Defeasance Securities received by the Paying Agent/Registrar that is not required for the payment of the Bonds and interest thereon, with respect to which such money has been so deposited, shall be turned over to the City, or deposited as directed in writing by the City. Any Future Escrow Agreement pursuant to which the money and/or Defeasance Securities are held for the payment of Defeased Bonds may contain provisions permitting the investment or reinvestment of such moneys in Defeasance Securities or the substitution of other Defeasance Securities upon the satisfaction of the requirements specified in subsection (a)(i) or (ii) above. All income from such Defeasance Securities received by the Paying Agent/Registrar which is not required for the payment of the Defeased Securities, with respect to which such money has been so deposited, shall be remitted to the City or deposited as directed in writing by the City.

(c) *Selection of Defeased Bonds.* In the event that the City elects to defease less than all of the principal amount of Bonds of a maturity, the Paying Agent/Registrar shall select, or cause to be selected, such amount of Bonds by such random method as it deems fair and appropriate.

(d) *Defeasance Securities.* The term "Defeasance Securities" means (i) direct, noncallable obligations of the United States of America, including obligations that are unconditionally guaranteed by the United States of America, (ii) noncallable obligations of an agency or instrumentality of the United States, including obligations that are unconditionally guaranteed or insured by the agency or instrumentality and that, on the date the governing body of the City adopts or approves the proceedings authorizing the issuance of refunding bonds, are rated as to investment quality by a nationally recognized investment rating firm not less than AAA or its equivalent; (iii) noncallable obligations of a state or an agency or a county, municipality, or other political subdivision of a state that have been refunded and that, on the date the governing body of the City adopts or approves the proceedings authorizing the issuance of refunding bonds, are rated as to investment quality by a nationally recognized investment rating firm not less than AAA or its equivalent and (iv) any securities and obligations now or hereafter authorized by State law that are eligible to refund, retire or otherwise discharge obligations such as the Bonds.

(e) *Continuing Duty of Paying Agent/Registrar.* Until all Bonds defeased under this Section of this Ordinance shall become due and payable, the Paying Agent/Registrar for such Bonds shall perform the services of Paying Agent/Registrar for such Bonds the same as if they had not been defeased, and the City shall make proper arrangements to provide and pay for such services.

Section 18. SALE OF BONDS; OFFICIAL STATEMENT. (a) The Bonds shall be sold and delivered subject to the provisions of Section 1 and Section 2 hereof through a negotiated sale and pursuant to the terms and provisions of a purchase contract (the "Purchase Agreement"), the terms and provisions of which are to be determined by the Pricing Officer in accordance with Section 2 hereof, and in which the purchaser or purchasers of the Bonds (the "Underwriter") shall be designated. The Pricing Officer is hereby authorized to execute and deliver the Purchase Agreement for an on behalf of the City. The Bonds shall initially be registered in the name of the Underwriter or its designee.

(b) The City hereby approves the form and content of the draft preliminary official statement relating to the Bonds in the form attached hereto as *Exhibit D* and any addenda, supplement or amendment thereto, and approves the distribution of such preliminary official statement in the reoffering of the Bonds by the Underwriter in final form, with such changes therein or additions thereto as the Pricing Officer executing the same may deem advisable. The Pricing Officer is hereby authorized, in the name and on behalf of the City, to approve, distribute, and deliver a final preliminary official statement and a final official statement relating to the Bonds to be used by the Underwriter in the marketing of the Bonds.

(c) The Pricing Officer is authorized, in connection with effecting the sale of the Bonds, to obtain from a municipal bond insurance company so designated in the Purchase Agreement (the "Insurer") a municipal bond insurance policy (the "Insurance Policy") in support of the Bonds. To that end, should the Pricing Officer exercise such authority and commit the City to obtain a municipal bond insurance policy, for so long as the Insurance Policy is in effect, the requirements of the Insurer relating to the issuance of the Insurance Policy as set forth in the Pricing Certificate are incorporated by reference into this Ordinance and made a part hereof for all purposes, notwithstanding any other provision of this Ordinance to the contrary. The Pricing Officer shall have the authority to execute any documents to effect the issuance of the Insurance Policy by the Insurer.

(d) The Mayor and Mayor Pro Tem, the City Manager, the Executive Director of Business Services and City Secretary, shall be and they are hereby expressly authorized, empowered and directed from time to time and at any time to do and perform all such acts and things and to execute, acknowledge and deliver in the name and under the corporate seal and on behalf of the City a Paying Agent/Registrar Agreement with the Paying Agent/Registrar and all other instruments, whether or not herein mentioned, as may be necessary or desirable in order to carry out the terms and provisions of this Ordinance, the Pricing Certificate, the Bonds, the sale of the Bonds, any Purchase Agreement and the Official Statement. In case any officer whose signature shall appear on any Bond shall cease to be such officer before the delivery of such Bond, such signature shall nevertheless be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery.

Section 19. FURTHER PROCEDURES. That the Mayor, the City Secretary, the City Manager, the Executive Director of Business Services of the City, any Assistant City Manager, and all other officers, employees, and agents of the City, and each of them, shall be and they are hereby expressly authorized, empowered, and directed from time to time and at any time to do and perform all such acts and things and to execute, acknowledge, and deliver in the name and under the corporate seal and on behalf of the City all such instruments, whether or not herein

mentioned, as may be necessary or desirable in order to carry out the terms and provisions of this Ordinance, and the sale and delivery of the Bonds and fixing all details in connection therewith. The City Council hereby authorizes the payment of the fee of the Office of the Attorney General of the State of Texas for the examination of the proceedings relating to the issuance of the Bonds, in the amount determined in accordance with the provisions of Section 1202.004, Texas Government Code.

Section 20. CONSTRUCTION FUND; USE OF PROCEEDS.

(a) The City hereby creates and establishes and shall maintain on the books of the City a separate fund to be entitled the "Series 2012 Bond Construction Fund" (the "Construction Fund") for use by the City for payment of all lawful costs associated with the acquisition and construction of the projects described in the preambles to this Ordinance.

(b) The proceeds from the sale of the Bonds shall be deposited, on the date of closing, in the manner described in a letter of instructions prepared by the City or on behalf of the City by the City's financial advisor. The foregoing notwithstanding, proceeds representing accrued interest on the Bonds shall be deposited to the credit of the Interest and Sinking Fund. Any amounts remaining after completion of the improvements described in Section 1 hereof shall be transferred FIRST to the Rebate Fund, to the extent required by Section 10 hereof, and THEREAFTER to the Interest and Sinking Fund.

Section 21. INTEREST EARNINGS. That the interest earnings derived from the investment of proceeds from the sale of the Bonds may be used along with other proceeds for the construction of the permanent improvements set forth in Section 1 hereof for which the Bonds are issued; provided that after completion of such permanent improvements, if any of such interest earnings remain on hand, such interest earnings shall be deposited in the Interest and Sinking Fund. It is further provided, however, that any interest earnings on proceeds which are required to be rebated to the United States of America pursuant to this Ordinance hereof in order to prevent the Bonds from being arbitrage bonds shall be so rebated and not considered as interest earnings for the purposes of this Section.

Section 22. APPROVAL OF ESCROW AGREEMENT AND TRANSFER OF FUNDS. In furtherance of authority granted by Section 1207.007(b), Texas Government Code, the Pricing Officer is further authorized to enter into and execute on behalf of the City with the escrow agent named therein, an escrow or similar agreement, in the form and substance as shall be approved by the Pricing Officer, which agreement will provide for the payment in full of the Refunded Obligations. In addition, the Pricing Officer is authorized to purchase such securities, to execute such subscriptions for the purchase of the Escrowed Securities, (as defined in the agreement), if any, and to authorize such contributions to the escrow fund as provided in the agreement.

Section 23. REDEMPTION OF REFUNDED OBLIGATIONS.

(a) The City hereby directs that certain of the Refunded Obligations be called for redemption on the dates and as set forth in the Escrow Agreement. Each of such Refunded Obligations shall be redeemed at the redemption price of par plus accrued interest. The Pricing

Officer is hereby authorized and directed to issue or cause to be issued the Notices of Redemption of the Refunded Obligations.

(b) In addition, the paying agent/registrars for the Refunded Obligations are hereby directed to provide the appropriate notices of redemption and defeasance as specified by the ordinances authorizing the issuance of the Refunded Obligations and are hereby directed to make appropriate arrangements so that the Refunded Obligations may be redeemed on their redemption dates. The Refunded Obligations shall be presented for redemption at the paying agent/registrars therefore, and shall not bear interest after the date fixed for redemption.

(c) The source of funds for payment of the principal of and interest on the Refunded Obligations on their redemption date shall be from the funds placed in escrow with the Escrow Agent, pursuant to the Escrow Agreement approved in Section 22 of this Ordinance.

Section 24. DEFAULT AND REMEDIES.

(a) *Events of Default.* Each of the following occurrences or events for the purpose of this Ordinance is hereby declared to be an Event of Default:

(i) the failure to make payment of the principal of or interest on any of the Bonds when the same becomes due and payable; or

(ii) default in the performance or observance of any other covenant, agreement or obligation of the City, the failure to perform which materially, adversely affects the rights of the registered owners of the Bonds, including, but not limited to, their prospect or ability to be repaid in accordance with this Ordinance, and the continuation thereof for a period of 60 days after notice of such default is given by any registered owner to the City.

(b) *Remedies for Default.*

(i) Upon the happening of any Event of Default, then and in every case, any registered owner or an authorized representative thereof, including, but not limited to, a trustee or trustees therefor, may proceed against the City, or any official, officer or employee of the City in their official capacity, for the purpose of protecting and enforcing the rights of the registered owners under this Ordinance, by mandamus or other suit, action or special proceeding in equity or at law, in any court of competent jurisdiction, for any relief permitted by law, including the specific performance of any covenant or agreement contained herein, or thereby to enjoin any act or thing that may be unlawful or in violation of any right of the registered owners hereunder or any combination of such remedies.

(ii) It is provided that all such proceedings shall be instituted and maintained for the equal benefit of all registered owners of Bonds then outstanding.

(c) *Remedies Not Exclusive.*

(i) No remedy herein conferred or reserved is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or under the Bonds or now or hereafter existing at law or in equity; provided, however, that notwithstanding any other provision of this Ordinance, the right to accelerate the debt evidenced by the Bonds shall not be available as a remedy under this Ordinance.

(ii) The exercise of any remedy herein conferred or reserved shall not be deemed a waiver of any other available remedy.

(iii) By accepting the delivery of a Bond authorized under this Ordinance, such registered owner agrees that the certifications required to effectuate any covenants or representations contained in this Ordinance do not and shall never constitute or give rise to a personal or pecuniary liability or charge against the officers, employees or members of the City or the City Council.

(iv) None of the members of the City Council, nor any other official or officer, agent, or employee of the City, shall be charged personally by the registered owners with any liability, or be held personally liable to the registered owners under any term or provision of this Ordinance, or because of any Event of Default or alleged Event of Default under this Ordinance.

Section 25. MISCELLANEOUS PROVISIONS. (a) *Preamble.* The preamble to this Ordinance is incorporated by reference and made a part hereof for all purposes.

(b) *Titles Not Restrictive.* That the titles assigned to the various sections of this Ordinance are for convenience only and shall not be considered restrictive of the subject matter of any section or of any part of this Ordinance.

(c) *Rules of Construction.* The words "herein", "hereof" and "hereunder" and other words of similar import refer to this Ordinance as a whole and not to any particular Section or other subdivision. Except where the context otherwise requires, terms defined in this Ordinance to impart the singular number shall be considered to include the plural number and vice versa. References to any named person means that party and its successors and assigns. References to any constitutional, statutory or regulatory provision means such provision as it exists on the date this Ordinance is adopted by the City and any future amendments thereto or successor provisions thereof. Any reference to "FORM OF BOND" shall refer to the form of the Bonds set forth in *Exhibit A* to this Ordinance. Any reference to the payment of principal in this Ordinance shall be deemed to include the payment of any mandatory sinking fund redemption payments as may be described herein.

(d) *Inconsistent Provisions.* All ordinances, orders and resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Ordinance are hereby repealed and declared to be inapplicable, and the provisions of this Ordinance shall be and remain controlling as to the matters prescribed herein.

(e) *Severability.* If any word, phrase, clause, paragraph, sentence, part, portion, or provision of this Ordinance or the application thereof to any person or circumstance shall be held

to be invalid, the remainder of this Ordinance shall nevertheless be valid and the City hereby declares that this Ordinance would have been enacted without such invalid word, phrase, clause, paragraph, sentence, part, portion, or provisions.

(f) *Governing Law.* This Ordinance shall be construed and enforced in accordance with the laws of the State of Texas.

(g) *Open Meeting.* The City officially finds and determines that the meeting at which this Ordinance is adopted was open to the public; and that public notice of the time, place, and purpose of such meeting was given, all as required by Chapter 551, Texas Government Code.

(h) *Application of Chapter 1208, Government Code.* Chapter 1208, Texas Government Code, applies to the issuance of the Bonds and the pledge of ad valorem taxes granted by the City under Section 6, and such pledge is therefore valid, effective, and perfected. If Texas law is amended at any time while the Bonds are outstanding and unpaid such that the pledge of the ad valorem taxes granted by the City is to be subject to the filing requirements of Chapter 9, Texas Business & Commerce Code, then in order to preserve to the Registered Owners of the Bonds the perfection of the security interest in said pledge, the City agrees to take such measures as it determines are reasonable and necessary under Texas law to comply with the applicable provisions of Chapter 9, Texas Business & Commerce Code and enable a filing to perfect the security interest in said pledge to occur.

(i) *Immediate Effect.* In accordance with the provisions of Section 1201.028, Texas Government Code, this Ordinance shall be effective immediately upon its adoption by the City Council.

[Remainder of page intentionally left blank.]

PASSED, APPROVED AND EFFECTIVE THIS _____, 2012.

City Secretary, City of College Station, Texas

Mayor, City of College Station, Texas

(CITY SEAL)

APPROVED:

McCall, Parkhurst & Horton L.L.P., Dallas, Texas
Bond Counsel

Ordinance
City of College Station, Texas
Certificates of Obligation, Series 2012

SIGNATURE PAGE

SCHEDULE I
ELIGIBLE OBLIGATIONS

Paying Agent/Registrar, as hereinafter described. Any accrued interest due at maturity as provided herein shall be paid to the registered owner upon presentation and surrender of this Bond for payment at the Designated Trust Office of the Paying Agent/Registrar. The City covenants with the registered owner of this Bond that on or before each principal and interest payment date for this Bond it will make available to the Paying Agent/Registrar, from the "Interest and Sinking Fund" created by the Bond Ordinance, the amounts required to provide for the payment, in immediately available funds, of all principal of and interest on the Bonds, when due.

IN THE EVENT OF NON-PAYMENT of interest on a scheduled payment date, and for 30 days thereafter, a new record date for such interest payment (a "Special Record Date") will be established by the Paying Agent/Registrar, if and when funds for the payment of such interest have been received from the City. Notice of the Special Record Date and of the scheduled payment date of the past due interest ("Special Payment Date", which shall be 15 days after the Special Record Date) shall be sent at least five business days prior to the Special Record Date by United States mail, first-class postage prepaid, to the address of each registered owner of a Bond appearing on the Registration Books kept by the Paying Agent/Registrar at the close of business on the last business day next preceding the date of mailing of such notice.

IF THE DATE for the payment of the principal of or interest on this Bond shall be a Saturday, Sunday, a legal holiday, or a day on which banking institutions in the city where the Designated Trust Office of the Paying Agent/Registrar is located are authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not such a Saturday, Sunday, legal holiday, or day on which banking institutions are authorized to close; and payment on such date shall have the same force and effect as if made on the original date payment was due.

THIS BOND is one of a Series of Bonds dated as of _____, 2012, authorized in accordance with the Constitution and laws of the State of Texas in the principal amount of \$_____, for the purpose of paying contractual obligations to be incurred by the City, to-wit, the construction of improvements as described in the Bond Ordinance, and the payment of fiscal, engineering and legal fees incurred in connection therewith.

ON FEBRUARY 15, _____, or on any date thereafter, the Bonds of this Series maturing on February 15, _____ and thereafter may be redeemed prior to their scheduled maturities, at the option of the City, in whole, or in part, at par and accrued interest to the date fixed for redemption. The years of maturity of the Bonds called for redemption at the option of the City prior to stated maturity shall be selected by the City. The Bonds or portions thereof redeemed within a maturity shall be selected by lot or other method by the Paying Agent/Registrar; *provided*, that during any period in which ownership of the Bonds is determined only by a book entry at a securities depository for the Bonds, if fewer than all of the Bonds of the same maturity and bearing the same interest rate are to be redeemed, the particular Bonds of such maturity and bearing such interest rate shall be selected in accordance with the arrangements between the City and the securities depository.

AT LEAST 30 days prior to the date fixed for any such redemption, a written notice of such redemption shall be given to the registered owner of each Bond or a portion thereof being called for redemption by depositing such notice in the United States mail, first-class postage prepaid, addressed to each such registered owner at his address shown on the Registration Books of the Paying Agent/Registrar. By the date fixed for any such redemption due provision shall be made by the City with the Paying Agent/Registrar for the payment of the required redemption price for this Bond or the portion hereof which is to be so redeemed, plus accrued interest thereon to the date fixed for redemption. If such notice of redemption is given, and if due provision for such payment is made, all as provided above, this Bond, or the portion hereof which is to be so redeemed, thereby automatically shall be redeemed prior to its scheduled maturity, and shall not bear interest after the date fixed for its redemption, and shall not be regarded as being outstanding except for the right of the registered owner to receive the redemption price plus accrued interest to the date fixed for redemption from the Paying Agent/Registrar out of the funds provided for such payment. The Paying Agent/Registrar shall record in the Registration Books all such redemptions of principal of this Bond or any portion hereof. If a portion of any Bond shall be redeemed a substitute Bond or Bonds having the same maturity date, bearing interest at the same rate, in Authorized Denominations, at the written request of the registered owner, and in aggregate principal amount equal to the unredeemed portion thereof, will be issued to the registered owner upon the surrender thereof for cancellation, at the expense of the City, all as provided in the Ordinance.

ALL BONDS OF THIS SERIES are issuable solely as fully registered Bonds, without interest coupons, in Authorized Denominations. As provided in the Bond Ordinance, this Bond may, at the request of the registered owner or the assignee or assignees hereof, be assigned, transferred, and exchanged for a like aggregate principal amount of fully registered Bonds, without interest coupons, payable to the appropriate registered owner, assignee, or assignees, as the case may be, having the same maturity date, and bearing interest at the same rate, in Authorized Denominations as requested in writing by the appropriate registered owner, assignee, or assignees, as the case may be, upon surrender of this Bond to the Paying Agent/Registrar at its Designated Trust Office for cancellation, all in accordance with the form and procedures set forth in the Bond Ordinance. Among other requirements for such assignment and transfer, this Bond must be presented and surrendered to the Paying Agent/Registrar at its Designated Trust Office, together with proper instruments of assignment, in form and with guarantee of signatures satisfactory to the Paying Agent/Registrar, evidencing assignment of this Bond or any portion or portions hereof in an Authorized Denomination to the assignee or assignees in whose name or names this Bond or any such portion or portions hereof is or are to be transferred and registered. The form of Assignment printed or endorsed on this Bond may be executed by the registered owner to evidence the assignment hereof, but such method is not exclusive, and other instruments of assignment satisfactory to the Paying Agent/Registrar may be used to evidence the assignment of this Bond or any portion or portions hereof from time to time by the registered owner. The foregoing notwithstanding, in the case of the exchange of an assigned and transferred Bond or Bonds or any portion or portions thereof, such fees and charges of the Paying Agent/Registrar will be paid by the City. The one requesting such exchange shall pay the Paying Agent/Registrar's reasonable standard or customary fees and charges for exchanging any Bond or portion thereof. In any circumstance, any taxes or governmental charges required to be paid with respect thereto shall be paid by the one requesting such assignment, transfer, or exchange as a condition precedent to the exercise of such privilege. In any circumstance, neither

the City nor the Paying Agent/Registrar shall be required (1) to make any transfer or exchange during a period beginning at the opening of business 30 days before the day of the first mailing of a notice of redemption of Bonds and ending at the close of business on the day of such mailing, or (2) to transfer or exchange any Bonds so selected for redemption when such redemption is scheduled to occur within 45 calendar days.

WHENEVER the beneficial ownership of this Bond is determined by a book entry at a securities depository for the Bonds, the foregoing requirements of holding, delivering or transferring this Bond shall be modified to require the appropriate person or entity to meet the requirements of the securities depository as to registering or transferring the book entry to produce the same effect.

IN THE EVENT any Paying Agent/Registrar for the Bonds is changed by the City, resigns, or otherwise ceases to act as such, the City has covenanted in the Bond Ordinance that it promptly will appoint a competent and legally qualified substitute therefor, and promptly will cause written notice thereof to be mailed to the registered owners of the Bonds.

IT IS HEREBY certified, recited and covenanted that this Bond has been duly and validly authorized, issued, and delivered; that all acts, conditions, and things required or proper to be performed, exist, and be done precedent to or in the authorization, issuance, and delivery of this Bond have been performed, existed, and been done in accordance with law; that this Bond is a direct obligation of said City, issued on the full faith and credit thereof; and that in accordance with the terms of the Bond Ordinance, annual ad valorem taxes sufficient to provide for the payment of the interest on and principal of this Bond, as such interest comes due and such principal matures, have been levied and ordered to be levied against all taxable property in said City, and have been pledged for such payment, within the limit prescribed by law.

BY BECOMING the registered owner of this Bond, the registered owner thereby acknowledges all of the terms and provisions of the Bond Ordinance, agrees to be bound by such terms and provisions, acknowledges that the Bond Ordinance is duly recorded and available for inspection in the official minutes and records of the City, and agrees that the terms and provisions of this Bond and the Bond Ordinance constitute a contract between each registered owner hereof and the City.

IN WITNESS WHEREOF, this Bond has been signed with the manual or facsimile signature of the Mayor of the City, attested by the manual or facsimile signature of the City Secretary, and the official seal of the City has been duly affixed to, or impressed, or placed in facsimile, on this Bond.

XXXXX
City Secretary, City of College Station, Texas

XXXXX
Mayor, City of College Station, Texas

(SEAL)

FORM OF PAYING AGENT/REGISTRAR'S AUTHENTICATION CERTIFICATE

PAYING AGENT/REGISTRAR'S AUTHENTICATION CERTIFICATE

It is hereby certified that this Bond has been issued under the provisions of the proceedings adopted by the City as described in the text of this Bond; and that this Bond has been issued in exchange for or replacement of a Bond of an issue which originally was approved by the Attorney General of the State of Texas and registered by the Comptroller of Public Accounts of the State of Texas.

Dated: _____

The Bank of New York Mellon
Trust Company, N.A.
Paying Agent/Registrar

By: _____
Authorized Representative

FORM OF ASSIGNMENT

ASSIGNMENT

For value received, the undersigned hereby sells, assigns and transfers unto:

Please insert Social Security or Taxpayer Identification Number of Transferee

Please print or type name and address, including zip code of Transferee

the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints: _____, attorney, to register the transfer of the within Bond on the books kept for registration thereof, with full power of substitution in the premises.

Dated: _____.

Signature Guaranteed:

NOTICE: Signature(s) must be guaranteed by an eligible guarantor institution participating in a securities transfer association recognized signature guarantee program.

NOTICE: The signature above must correspond with the name of the registered owner as it appears upon the front of this Bond in every particular, without alteration or enlargement or any change whatsoever.

EXHIBIT B

. PROCEDURES REGARDING COMPLIANCE WITH FEDERAL TAX AND CONTINUING DISCLOSURE COVENANTS

This Exhibit is intended to assist the City of College Station (the "City") in complying with the federal income tax covenants and securities disclosure covenants as they apply to the issuance of tax-exempt debt securities such as the General Obligation Improvement and Refunding Bonds (the "Obligations"). These procedures should be read together with any federal tax certifications, bond covenants, letters or memoranda from bond counsel and any attachments thereto (collectively, the "Closing Documents"). Failure to comply with federal guidelines could have serious consequences for investors, the City and its officials.

These procedures shall apply to the Obligations, until they are superseded by a change in circumstances at which time the City's bond counsel will propose new procedures to be adopted.

I. FEDERAL TAX LAW

1. Arbitrage Compliance.

Arbitrage refers to the difference between the interest paid on tax-exempt Obligations and the interest earned by investing the proceeds of tax-exempt Obligations in higher-yielding investments. Such higher-yielding investments could take the form of loans, securities, real property, personal property, or other investments that could yield a profit to the City. Federal income tax laws generally restrict the ability to earn arbitrage utilizing the proceeds of tax-exempt Obligations. Generally, any profit from investing Obligation proceeds at a yield above the yield paid on the Obligations belongs to the federal government and must be rebated to the federal government. If the City fails to comply federal tax guidelines, Obligations could be deemed to be "arbitrage bonds" by the Internal Revenue Service (the "IRS"), which would expose the City to monetary liability from the City's investors.

The arbitrage yield on the Obligations is set forth on the IRS Form 8038-G.

The Executive Director of Business Services and the City Treasurer (including such other employees of the City who report to such officers) (collectively, the "Responsible Person") will review the Closing Documents periodically (at least once a year) to ascertain if an exception to arbitrage compliance applies.

- a. Procedures applicable to the Obligation. The Responsible Person shall undertake the following procedures.

- i. If the City plans to spend funds currently on hand for a future project with the intent to later repay such funds from a debt issue, the Responsible Person shall contact Bond Counsel to obtain advice regarding a reimbursement resolution. The Responsible Person shall maintain any official action of the City (such as a reimbursement resolution) stating the City's intent to reimburse with the proceeds of the Obligations any amount expended prior to the Issue Date for the acquisition, renovation or construction of the Project.
 - ii. The Responsible Person shall ensure that the applicable information return (e.g., U.S. Internal Revenue Service ("IRS") Form 8038-G, 8038-GC, or any successor forms) is timely filed with the IRS.
 - iii. If proceeds of the Obligations are to be invested in interest-earning investments, assure that, unless excepted from rebate and yield restriction under section 148(f) of the Code, excess investment earnings are computed and paid to the U.S. government at such time and in such manner as directed by the IRS (i) at least every 5 years after the Issue Date and (ii) within 30 days after the date the Obligations are retired. If proceeds of the Obligations are to be invested in interest-earning investments, the Responsible Person should contact the City's arbitrage consultant regarding such matters.
 - iv. The Responsible Person shall monitor all amounts deposited into a sinking fund or funds pledged (directly or indirectly) to the payment of the Obligations, such as the Interest and Sinking Fund (the "I&S Fund"), to assure that the maximum amount invested within such applicable fund at a yield higher than the yield on the Obligations does not exceed an amount equal to the debt service on the Obligations in the succeeding 12 month period plus a carryover amount equal to one-twelfth of the principal and interest payable on the Obligations for the immediately preceding 12-month period.

NOTE: the purpose of the I&S Fund is to achieve a proper matching of revenues with principal and interest payments within each fiscal year. The I&S Fund should be used a mechanism for payment of current debt service and not as a long-term investment fund for debt service many years in the future.
 - v. The Responsible Person shall ensure that no more than 50% of the proceeds of the Obligations are invested in an investment with a guaranteed yield for 4 years or more.
- b. With respect to the investment and expenditure of the proceeds of the Obligations that are issued to finance public improvements or to acquire land or personal property, the Responsible Person shall undertake the following.

- i. The Responsible Person shall instruct the persons who are primarily responsible for the construction, renovation or acquisition of the facilities financed with Obligations (the “Project”) that the Project must (i) proceed with due diligence toward completion and that (ii) binding contracts for the expenditure of at least 5% of the proceeds of the Obligations will be entered into within six (6) months of the date of closing of the Obligations (the “Issue Date”). The Responsible Person shall monitor that the above requirements are satisfied.
 - ii. The Responsible Person shall monitor that at least 85% of the proceeds of the Obligations to be used for the construction, renovation or acquisition of the Project are expended within three years of the Issue Date.
 - iii. The Responsible Person shall monitor investment of proceeds of the Obligations and restrict the yield of the investments to the yield on the Obligations after three years of the Issue Date.
 - iv. To the extent that there are any unspent proceeds of the Obligations at the time the Obligations are later refunded, or if there are unspent proceeds of the Obligations that are being refunded by a new issuance of Obligations, the Responsible Person shall continue monitoring the expenditure of such unspent proceeds to ensure compliance with federal tax law with respect to both the refunded Obligations and any Obligations being issued for refunding purposes, and shall contact Bond Counsel as necessary.
- c. *Procedures applicable to Escrow Accounts for the Obligations.* In addition to the foregoing, with respect to the proceeds of the Obligations deposited to the escrow fund to be administered pursuant to the terms of an escrow agreement, the Responsible Person shall undertake the following.
- i. The Responsible Person shall review invoices, reports and other notifications from the escrow agent to ensure compliance with the applicable provisions of the escrow agreement, including with respect to reinvestment of cash balances.
 - ii. The Responsible Person shall contact the escrow agent on the date of redemption of obligations being refunded to ensure that they were redeemed.
 - iii. The Responsible Person shall monitor any unspent proceeds of the refunded obligations to ensure that the yield on any investments applicable to such proceeds are invested at the yield on the applicable obligations or otherwise applied (see Closing Documents).

B. Private Business Use.

Generally, the proceeds of tax-exempt Obligations may not inure to the benefit of entities other than state or local governments (“private business use”). Private business use occurs whenever Obligation proceeds are used to benefit any entity other than a state or local government, *including nonprofit corporations and the federal government.*

A series of Obligations may lose their tax-exempt status if: (i) more than 10% of the proceeds of the Obligations are to be used for any private business use and the payment of the principal or interest on more than 10% of the proceeds of the Obligations is secured by or payable from property used for a private business use, or (ii) the amount of proceeds of the Obligations used to make loans to borrowers other than state and local governments exceeds the lesser of 5% of the proceeds or \$15 million.

With respect to the use of the facilities financed or refinanced with the proceeds of the Obligations, the Responsible Person shall undertake the following to ensure the Obligations do not violate private business use tests.

- a. The Responsible Person shall develop procedures or a “tracking system” to identify, log and record all property financed with tax-exempt debt and identify the issue of Obligations used to finance such property.
- b. The Responsible Person shall monitor and record the date on which the Project is substantially complete and available to be used for the purpose intended.
- c. The Responsible Person shall monitor and record whether, at any time the Obligations are outstanding, any person, other than the City, the employees of the City, the agents of the City or members of the general public has any contractual right (such as a lease, research contract, naming rights agreement, purchase contract, management agreement or other service agreement) with respect to any portion of the Project.
- d. Before entering into any private business use arrangement that involves the use of the Project, the Responsible Person must obtain a description of the proposed private business use arrangement and determine whether such arrangement, if put into effect, will be consistent with the restrictions on private business use of the Project. In connection with the evaluation of any proposed private business use arrangement, the Responsible Person should consult with Bond Counsel to discuss whether such arrangement, if put into effect, will be consistent with the restrictions on private business use of the Project, and, if not, whether any “remedial action” permitted under federal guidelines may be taken as a means of enabling such private business use without adversely affecting the tax-exempt status of the Obligations.
- e. The Responsible Person shall monitor and record whether, at any time the Obligations are outstanding, any person, other than the City, the employees of the

City, the agents of the City or members of the general public has a right to use the output of the Project (*e.g.*, water, gas, electricity, capacity) on any basis other than standard rates and charges.

- f. The Responsible Person shall monitor and record whether, at any time the Obligations are outstanding, any person, other than the City, has a naming right for the Project or any other contractual right granting an intangible benefit.
- g. Prior to any sale of property owned by the City (real or personal), the Responsible Person must confirm whether such property was financed with tax-exempt debt, and if so, determine whether the proposed disposition of the property could impact the tax-exempt status of the series of Obligations that financed the acquisition of such property.
- h. The Responsible Person shall take any action necessary to remediate any failure to maintain compliance with the covenants contained in the ordinance authorizing the issuance of the applicable series of Obligations.

C. Record Retention.

The Responsible Person will maintain or cause to be maintained all records relating to the investment and expenditure of the proceeds of the Obligations and the use of the Project financed or refinanced thereby for a period ending three (3) years after the complete extinguishment of the Obligations. If any portion of the Obligations is refunded with the proceeds of another series of Obligations, such records shall be maintained until the three (3) years after the refunding Obligations mature or are otherwise paid off. Such records can be maintained in paper or electronic format.

For purposes of these procedures, the Memorandum of Bond Counsel dated December 1, 2011 styled "Certain Federal Income Tax Considerations for Record Retention – Record Management Program and Periodic Compliance Review" is incorporated herein and should be reviewed periodically, at least once per year, by the Responsible Person.

D. Responsible Person & Continuity.

Each Responsible Person shall receive appropriate training regarding the City's accounting system, contract intake system, facilities management and other systems necessary to track the investment and expenditure of the proceeds and the use of the facilities financed with the proceeds of the Obligations. The foregoing notwithstanding, the Responsible Person is authorized and instructed to retain such experienced advisors and agents as may be necessary to carry out the purposes of these instructions.

Prior to cessation of employment with the City, the Responsible Person should identify their successor to maintain compliance with these procedures.

II. FEDERAL SECURITIES LAW

Obligations, whether taxable or tax-exempt, sold in a public offering in an amount of \$1 million or more are subject to Rule 15c2-12 (the “Rule”) of the United States Securities and Exchange Commission (the “SEC”). Additionally, the City may have covenanted to comply with the Rule even with respect to Obligations that would otherwise be exempt from the Rule (*e.g.*, Obligations sold in a private placement or Obligations sold in an amount less than \$1 million). Pursuant to the Rule, the City is required to make annual filings of certain information, as well as make filings upon the occurrence of certain specified events. All filings must be made with the Municipal Securities Rulemaking Board (the “MSRB”) through its Electronic Municipal Market Access System (“EMMA”) at emma.msrb.org.

A. Annual Filings.

The City must file the information listed below with EMMA within six (6) months of each fiscal year end for so long as the respective series of Obligations remains outstanding. The City’s fiscal year ends on September 30 of each year. Therefore, the City must provide updated information by March 31 of the subsequent year. If audited financial statements are not available by February 28, the City must provide unaudited financial information by such date and provide audited financial statements when such statements become available. The City must file each of the following items with EMMA:

- (1) The City’s audited financial statements; and
- (2) An update of the financial tables included in the Official Statement used in connection with the Obligations as described under the caption "Continuing Disclosure of Information". The information should be from the most recent fiscal year end.

The Responsible Person must compile, prepare and make such filings within the required time, or, alternatively, contract with a third-party, such as the City’s financial advisor, to make such filings on the City’s behalf.

B. Notices of Specified Events.

The City must provide notice of any of the following events with respect to the Obligations to the MSRB in a timely manner (but not in excess of ten business days after the occurrence of the event):

- (1) Principal and interest payment delinquencies;
- (2) Non-payment related defaults, if material;
- (3) Unscheduled draws on debt service reserves reflecting financial difficulties;
- (4) Unscheduled draws on credit enhancements reflecting financial difficulties;

- (5) Substitution of credit or liquidity providers, or their failure to perform;
- (6) Adverse tax opinions, the issuance by the IRS of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the Obligations, or other material events affecting the tax status of the Obligations;
- (7) Modifications to rights of Obligation holders, if material;
- (8) Obligations calls (includes redemptions and other early payments), if material, and tender offers;
- (9) Defeasances;
- (10) Release, substitution, or sale of property securing repayment of the Obligations, if material;
- (11) Rating changes;
- (12) Bankruptcy, insolvency, receivership or similar event of the City;
- (13) The consummation of a merger, consolidation, or acquisition involving the City or the sale of all or substantially all of the assets of the City, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;
- (14) Appointment of a successor or additional paying agent or the change of name of a paying agent, if material; and
- (15) In a timely manner, notice of a failure of the City to make the required annual filings listed in Subsection II(A) above.

The Responsible Person should review this list at regular intervals to determine whether any event has occurred that may require a filing with EMMA.

EXHIBIT C

DESCRIPTION OF ANNUAL FINANCIAL INFORMATION

The following information is referred to in Section 16 of this Ordinance.

Annual Financial Statements and Operating Data

The financial information and operating data with respect to the City to be provided annually in accordance with such Section are as specified below (and included in the Appendix or under the headings of the Official Statement referred to):

1. The "Annual Financial Report" for the most recently concluded fiscal year.
2. The information included in the Official Statement under the following tables, but for the most recently concluded fiscal year: Tables 1 through 6, 8 through 20.

Accounting Principles

The accounting principles referred to in such Section are the accounting principles described in the notes to the financial statements referred to in paragraph 1 described above, as such principles may be changed from time to time to comply with state law or regulation.

EXHIBIT D

PRELIMINARY OFFICIAL STATEMENT

2012 Proposed Bond Issue

General Obligation Bonds

2003 General Obligation Bonds	Amount
Streets and Transportation	
Oversize Participation	\$ 440,000
<hr/> Streets and Transportation Projects Total	<hr/> \$ 440,000
<hr/>2003 General Obligation Bond Total	<hr/>\$ 440,000
2008 General Obligation Bonds	
Streets and Transportation	
Penberthy Extension	\$ 500,000
Traffic Signals	650,000
Bird Bond Road Rehabilitation *	423,000
Rock Prairie Road Bridge Widening Design *	567,000
Health Science Center Parkway *	500,000
Lincoln Sidewalks	200,000
Rock Prairie Road West Right of Way	630,000
Lick Creek Hike and Bike Trail	100,000
University Drive Pedestrian Improvements Ph II	250,000
<hr/> Streets and Transportation Projects Total	<hr/> \$ 3,820,000
 Parks	
Lick Creek Park Trail Completion	\$ 100,000
Lincoln Center Addition	75,000
<hr/> Parks Projects Total	<hr/> \$ 175,000
 <hr/>2008 General Obligation Bond Total	 <hr/>\$ 3,995,000
 New General Obligation Bond Total	 \$ 4,435,000
 <hr/>Proposed Refunding	 <hr/>\$ 30,300,000
 <hr/><hr/>General Obligation Bonds and Refunding Total	 <hr/><hr/>\$ 34,735,000

*From remaining Barron Road Widening authorization.

April 26, 2012
Regular Agenda Item No. 9
Consider Ordinance Issuing Certificates of Obligation

To: David Neeley, City Manager

From: Jeff Kersten, Executive Director of Business Services

Agenda Caption: Presentation, possible action and discussion on an ordinance authorizing the issuance and sale of up to \$17,400,000 in "City of College Station, Texas Certificates of Obligation, Series 2012"; delegating the authority to certain City Officials to execute certain documents relating to the sale of the certificates; approving and authorizing instruments and procedures relating to the certificates; and enacting other provisions relating to the subject.

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

Recommendation(s): Council move to approve the attached ordinance authorizing the issuance of Certificates of Obligation, Series 2012; delegating the authority to certain City Officials to execute certain documents relating to the sale of the certificates; approving and authorizing instruments and procedures relating to the certificates; and enacting other provisions relating to the subject.

Summary: The City Council is authorized to approve the issuance of Certificates of Obligation (CO's) after approving a resolution directing notice to be published of the intent to issue the CO's. On March 22, 2012 Council approved a resolution directing staff to advertise the issuance of CO's. On March 25th and April 1st such notice was published.

The City of College Station typically issues debt to fund various capital projects identified and approved as a part of the annual budget. The City primarily uses three types of debt instruments to fulfill those requirements:

1. General Obligation Bonds (GOB's) are based on the full faith and credit of the City and are paid primarily through the debt service portion of the ad valorem tax rate. GOBs are authorized by the voters and therefore the notice is provided in the election process.
2. Utility Revenue Bonds (URB's) are backed by the revenues of the City's various utilities and are issued as a business activity. These are typically only issued for utility capital projects.
3. Certificates of Obligation (CO's) normally include at least one additional revenue stream such as utility revenues, but are considered to be much like GOBs and therefore normally receive a rating similar to GOB's. Our policy for issuing CO's allows more flexibility in their issue than GOB's, particularly when other revenues are anticipated to assist in debt service.

It is at the recommendation of the City's Financial Advisor, Mr. Drew Masterson with First Southwest and Company, that the City issue Certificates of Obligation for utility projects rather than Utility Revenue Bonds.

This particular issue will provide resources for electric, water and wastewater improvements, and debt issuance costs totaling \$17,300,000.

If this ordinance is approved, the City Council will be delegating to the Mayor, City Manager and the Executive Director of Business Services the authority to effect the sale of the certificates through October 26, 2012.

Budget & Financial Summary: Staff reviewed the impact of the Certificates have on the City's ability to meet debt service requirements and the effect they may have on the ad valorem tax rate and utility rates. The recommendation to move forward with this issue will not affect the ad valorem tax rate or the utility rates.

Attachments:

1. Ordinance
2. Preliminary Official Statement (Available in City Secretary Office)
3. Debt Issuance 2012.

ORDINANCE NO. _____

AUTHORIZING THE ISSUANCE OF UP TO \$17,400,000 IN PRINCIPAL AMOUNT OF "CITY OF COLLEGE STATION, TEXAS CERTIFICATES OF OBLIGATION, SERIES 2012"; DELEGATING THE AUTHORITY TO CERTAIN CITY OFFICIALS TO EXECUTE CERTAIN DOCUMENTS RELATING TO THE SALE OF THE CERTIFICATES; APPROVING AND AUTHORIZING INSTRUMENTS AND PROCEDURES RELATING TO SAID CERTIFICATES; AND ENACTING OTHER PROVISIONS RELATING TO THE SUBJECT

WHEREAS, on March 22, 2012, the City Council of the City of College Station (the "City") passed a resolution authorizing and directing notice of its intention to issue the Certificates of Obligation herein authorized, to be published in a newspaper as required by Section 271.049 of the Texas Local Government Code;

WHEREAS, said notice was published in the *Bryan-College Station Eagle*, a "newspaper" of the type described in Section 2051.044, Texas Government Code, as required by said Section 271.049 of the Texas Local Government Code, on March 25, 2012 and April 1, 2012;

WHEREAS, said notice provided that the ordinance authorizing the Certificates of Obligation may authorize an authorized officer of the City to effect the sale and delivery of the Certificates of Obligation on a date or dates subsequent to the adoption of the ordinance;

WHEREAS, no petition, signed by at least 5% of the qualified electors of said City as permitted by said Section 271.049 of the Texas Local Government Code protesting the issuance of such Certificates of Obligation, has been filed;

WHEREAS, the City is an "Issuer" within the meaning of Section 1371.001(4)(P), Texas Government Code, having (i) a principal amount of at least \$100 million in outstanding long-term indebtedness, in long-term indebtedness proposed to be issued, or a combination of outstanding or proposed long-term indebtedness and (ii) some amount of long-term indebtedness outstanding or proposed to be issued that is rated in one of the four highest rating categories for long-term debt instruments by a nationally recognized rating agency for municipal securities, without regard to the effect of any credit agreement or other form of credit enhancement entered into in connection with the obligation;

WHEREAS, the Certificates of Obligation hereinafter authorized are to be issued and delivered pursuant to Subchapter C of Chapter 271 of the Texas Local Government Code and Chapter 1371, Texas Government Code and the City's Home Rule Charter; and

WHEREAS, it is officially found, determined, and declared that the meeting at which this Ordinance has been adopted was open to the public and public notice of the time, place and subject matter of the public business to be considered and acted upon at said meeting, including

this Ordinance, was given, all as required by the applicable provisions of Texas Government Code, Chapter 551;

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

Section 1. AUTHORIZATION OF CERTIFICATES OF OBLIGATION. That said City's Certificates of Obligation, to be designated the "City of College Station, Texas Certificates of Obligation, Series 2012", are hereby authorized to be issued and delivered in the principal amount not to exceed \$17,400,000 for (i) the purpose of paying contractual obligations to be incurred by the City, to-wit, the construction of improvements and extensions to the City's combined waterworks, sewer and electric systems; and the payment of fiscal, engineering and legal fees incurred in connection therewith and (ii) to pay the costs of issuance of the Certificates.

Section 2. DELEGATION TO PRICING OFFICER.

(a) As authorized by Section 1371.053, Texas Government Code, the Mayor, the City Manager and the Executive Director of Business Services of the City (each the "Pricing Officer") are each hereby authorized to act severally on behalf of the City in selling and delivering the Certificates, carrying out the other procedures specified in this Ordinance, including, determining the date of the Certificates, any additional or different designation or title by which the Certificates shall be known, whether the Certificate shall be sold and delivered in one or more series and the date and sale and delivery of each such series, the price at which the Certificates will be sold, the years in which the Certificates will mature, the principal amount to mature in each of such years, the rate of interest to be borne by each such maturity, the interest payment and record dates, the price and terms upon and at which the Certificates shall be subject to redemption prior to maturity at the option of the City, as well as any mandatory sinking fund redemption provisions, and all other matters relating to the issuance, sale, and delivery of the Certificates and obtaining municipal insurance for all or any portion of the Certificates and providing for the terms and provisions thereof applicable to the Certificates, all of which shall be specified in the Pricing Certificate; provided that:

- (i) the aggregate principal amount of the Certificates shall not exceed \$17,400,000;
- (ii) the true interest cost of the Certificates shall not exceed 4.250% per annum;
- (iii) the net effective interest rate on the Certificates shall not exceed the maximum rate set forth in Chapter 1204, Texas Government Code, as amended;
- (iv) the final maturity of the Certificates shall not exceed February 15, 2032;
- (v) the delegation made hereby shall expire if not exercised by the Pricing Officer on or prior to October 26, 2012; and

(vi) on or prior to delivery, the Certificates shall be rated by a nationally recognized rating agency for municipal securities in one of the four highest categories for long-term obligations.

(b) In establishing the aggregate principal amount of the Certificates, the Pricing Officer shall establish an amount that, when combined with premium used for purposes other than the payment of costs of issuance, does not exceed the amount authorized in Subsection (a) hereof, which shall be sufficient in amount to provide for the purposes for which the Certificates are authorized and to pay costs of issuing the Certificates. The Certificates shall be sold with and subject to such terms as set forth in the Purchase Agreement as described in Section 19 herein.

Section 3. CHARACTERISTICS OF THE CERTIFICATES. (a) The City shall keep or cause to be kept at the corporate trust office in Dallas, Texas (the "Designated Trust Office") of The Bank of New York Mellon Trust Company, N.A., or such other bank, trust company, financial institution, or other agency named in accordance with the provisions of (g) below (the "Paying Agent/Registrar"), books or records for the registration and transfer of the Certificates (the "Registration Books"), and the City hereby appoints the Paying Agent/Registrar as its registrar and transfer agent to keep such books or records and make such transfers and registrations under such reasonable regulations as the City and the Paying Agent/Registrar may prescribe; and the Paying Agent/Registrar shall make such transfers and registrations as herein provided. It shall be the duty of the Paying Agent/Registrar to obtain from the registered owner and record in the Registration Books the address of the registered owner of each Certificate to which payments with respect to the Certificates shall be mailed, as herein provided. The City or its designee shall have the right to inspect the Registration Books during regular business hours of the Paying Agent/Registrar at its Designated Trust Office, but otherwise the Paying Agent/Registrar shall keep the Registration Books confidential and, unless otherwise required by law, shall not permit their inspection by any other entity. Registration of each Certificate may be transferred in the Registration Books only upon presentation and surrender thereof to the Paying Agent/Registrar at its Designated Trust Office for transfer of registration and cancellation, together with proper written instruments of assignment, in form and with guarantee of signatures satisfactory to the Paying Agent/Registrar, evidencing the assignment of such Certificate, or any portion thereof in any Authorized Denomination, to the assignee or assignees thereof, and the right of such assignee or assignees to have such Certificate or any such portion thereof registered in the name of such assignee or assignees. Upon the assignment and transfer of any Certificate or any portion thereof, a new substitute certificate or certificates shall be issued in exchange therefor in the manner herein provided.

(b) The entity in whose name any Certificate shall be registered in the Registration Books at any time shall be treated as the absolute owner thereof for all purposes of this Ordinance, whether or not such Certificate shall be overdue, and the City and the Paying Agent/Registrar shall not be affected by any notice to the contrary; and payment of, or on account of, the principal of, premium, if any, and interest on any such certificate shall be made only to such registered owner. All such payments shall be valid and effectual to satisfy and discharge the liability upon such certificate to the extent of the sum or sums so paid.

(c) The City hereby further appoints the Paying Agent/Registrar to act as the paying agent for paying the principal of and interest on the Certificates, and to act as its agent to

exchange or replace Certificates, all as provided in this Ordinance. The Paying Agent/Registrar shall keep proper records of all payments made by the City and the Paying Agent/Registrar with respect to the Certificates, and of all exchanges thereof, and all replacements thereof, as provided in this Ordinance.

(d) Each Certificate may be exchanged for fully registered certificates in the manner set forth herein. Each Certificate issued and delivered pursuant to this Ordinance may, upon surrender thereof at the Designated Trust Office of the Paying Agent/Registrar, together with a written request therefor duly executed by the registered owner or the assignee or assignees thereof, or its or their duly authorized attorneys or representatives, with guarantee of signatures satisfactory to the Paying Agent/Registrar, at the option of the registered owner or such assignee or assignees, as appropriate, be exchanged for fully registered Certificates, without interest coupons, in the form prescribed in the FORM OF CERTIFICATE, in an Authorized Denomination (subject to the requirement hereinafter stated that each substitute Certificate shall have a single stated maturity date), as requested in writing by such registered owner or such assignee or assignees, in an aggregate principal amount equal to the principal amount of any Certificate or Certificates so surrendered, and payable to the appropriate registered owner, assignee, or assignees, as the case may be. If any Certificate or portion thereof is assigned and transferred, each Certificate issued in exchange therefor shall have the same principal maturity date and bear interest at the same rate as the Certificate for which it is being exchanged. Each substitute Certificate shall bear a letter and/or number to distinguish it from each other Certificate. The Paying Agent/Registrar shall exchange or replace Certificates as provided herein, and each fully registered Certificate or Certificates delivered in exchange for or replacement of any Certificate or portion thereof as permitted or required by any provision of this Ordinance shall constitute one of the Certificates for all purposes of this Ordinance, and may again be exchanged or replaced. It is specifically provided, however, that any Certificate delivered in exchange for or replacement of another Certificate prior to the first scheduled interest payment date on the Certificates (as stated on the face thereof) shall be dated the same date as such Certificate, but each substitute Certificate so delivered on or after such first scheduled interest payment date shall be dated as of the interest payment date preceding the date on which such substitute Certificate is delivered, unless such substitute Certificate is delivered on an interest payment date, in which case it shall be dated as of such date of delivery; provided, however, that if at the time of delivery of any substitute Certificate the interest on the Certificate for which it is being exchanged has not been paid, then such substitute Certificate shall be dated as of the date to which such interest has been paid in full. On each substitute Certificate issued in exchange for or replacement of any Certificate or Certificates issued under this Ordinance there shall be printed thereon a Paying Agent/Registrar's Authentication Certificate, in the form hereinafter set forth in the FORM OF CERTIFICATE (the "Authentication Certificate"). An authorized representative of the Paying Agent/Registrar shall, before the delivery of any such substitute Certificate, date such substitute Certificate in the manner set forth above, and manually sign and date the Authentication Certificate, and no such substitute Certificate shall be deemed to be issued or outstanding unless the Authentication Certificate is so executed. The Paying Agent/Registrar promptly shall cancel all Certificates surrendered for exchange or replacement. No additional ordinances, orders, or resolutions need be passed or adopted by the City Council or any other body or person so as to accomplish the foregoing exchange or replacement of any Certificates or portion thereof, and the Paying Agent/Registrar shall provide for the printing, execution, and delivery of the substitute Certificate in the manner prescribed herein. Pursuant to

Chapter 1206, Texas Government Code, the duty of exchange or replacement of any Certificates as aforesaid is hereby imposed upon the Paying Agent/Registrar, and, upon the execution of Authentication Certificate, the exchanged or replaced Certificate shall be valid, incontestable, and enforceable in the same manner and with the same effect as the Certificates which originally were delivered pursuant to this Ordinance, approved by the Attorney General, and registered by the Comptroller of Public Accounts. Neither the City nor the Paying Agent/Registrar shall be required to transfer or exchange any Certificate so selected for redemption, in whole or in part, within 45 calendar days of the date fixed for redemption; *provided, however*, such limitation of transfer shall not be applicable to an exchange by the registered owner of the uncalled principal of a Certificate.

(e) All Certificates issued in exchange or replacement of any other Certificate or portion thereof, (i) shall be issued in fully registered form, without interest coupons, with the principal of and interest on such Certificates to be payable only to the registered owners thereof, (ii) may be redeemed prior to their scheduled maturities, (iii) may be transferred and assigned, (iv) may be exchanged for other Certificates, (v) shall have the characteristics, (vi) shall be signed and sealed, and (vii) the principal of and interest on the Certificates shall be payable, all as provided, and in the manner required or indicated, in the FORM OF CERTIFICATE.

(f) The City shall pay the Paying Agent/Registrar's reasonable and customary fees and charges for making transfers of Certificates, but the registered owner of any Certificate requesting such transfer shall pay any taxes or other governmental charges required to be paid with respect thereto. The registered owner of any Certificates requesting any exchange shall pay the Paying Agent/Registrar's reasonable and standard or customary fees and charges for exchanging any such certificate or portion thereof, together with any taxes or governmental charges required to be paid with respect thereto, all as a condition precedent to the exercise of such privilege of exchange, except, however, that in the case of the exchange of an assigned and transferred Certificate or Certificates or any portion or portions thereof in an Authorized Denomination, as provided in this Ordinance, such fees and charges will be paid by the City. In addition, the City hereby covenants with the registered owners of the Certificates that it will (i) pay the reasonable and standard or customary fees and charges of the Paying Agent/Registrar for its services with respect to the payment of the principal of and interest on Certificates, when due, and (ii) pay the fees and charges of the Paying Agent/Registrar for services with respect to the transfer or registration of Certificates solely to the extent above provided, and with respect to the exchange of Certificates solely to the extent above provided.

(g) The City covenants with the registered owners of the Certificates that at all times while the Certificates are outstanding the City will provide a competent and legally qualified bank, trust company, financial institution, or other agency to act as and perform the services of Paying Agent/Registrar for the Certificates under this Ordinance, and that the Paying Agent/Registrar will be one entity. The City reserves the right to, and may, at its option, change the Paying Agent/Registrar upon not less than 60 days written notice to the Paying Agent/Registrar. In the event that the entity at any time acting as Paying Agent/Registrar (or its successor by merger, acquisition, or other method) should resign or otherwise cease to act as such, the City covenants that it will promptly appoint a competent and legally qualified national or state banking institution which shall be a corporation organized and doing business under the laws of the United States of America or of any state, authorized under such laws to exercise trust

powers, subject to supervision or examination by federal or state authority, and whose qualifications substantially are similar to the previous Paying Agent/Registrar to act as Paying Agent/Registrar under this Ordinance. Upon any change in the Paying Agent/Registrar, the previous Paying Agent/Registrar promptly shall transfer and deliver the Registration Books (or a copy thereof), along with all other pertinent books and records relating to the Certificates, to the new Paying Agent/Registrar designated and appointed by the City. Upon any change in the Paying Agent/Registrar, the City promptly will cause a written notice thereof to be sent by the new Paying Agent/Registrar to each registered owner of the Certificates, by United States mail, first-class postage prepaid, which notice also shall give the address of the new Paying Agent/Registrar. By accepting the position and performing as such, each Paying Agent/Registrar shall be deemed to have agreed to the provisions of this Ordinance, and a certified copy of this Ordinance shall be delivered to each Paying Agent/Registrar.

Section 4. FORM OF CERTIFICATES. The form of the Certificates, including the form of the Authentication Certificate, the form of Assignment and the form of Registration Certificate of the Comptroller of Public Accounts of the State of Texas to be attached to the Certificates initially issued and delivered pursuant to this Ordinance, shall be in substantially the form as set forth in *Exhibit A* to this Ordinance, with such appropriate variations, omissions, or insertions as are permitted or required by this Ordinance and with the FORM OF CERTIFICATE to be modified pursuant to, and completed with information set forth in the Pricing Certificate. The printer of the Certificates is hereby authorized to print on the Certificates (i) the form of bond counsel's opinion relating to the Certificates, and (ii) an appropriate statement of insurance furnished by a municipal bond insurance company providing municipal bond insurance, if any, covering all or any part of the Certificates.

Section 5. DEFINITIONS. That the term "*Authorized Denomination*" shall mean a denomination of \$5,000 of principal amount of a Certificate or any integral multiple thereof; the term "*Business Day*" means a Saturday, Sunday, a legal holiday, or a day on which banking institutions in the City are, authorized by law or executive order to close; the term "*Certificates*" and "*Certificates of Obligation*" shall mean the City of College Station, Texas Certificates of Obligation, Series 2012, authorized to be issued and delivered by this Ordinance; the term "*MSRB*" means the Municipal Securities Rulemaking Board; the term "*Rule*" means SEC Rule 15c2 12, as amended from time to time; the term "*SEC*" means the United States Securities and Exchange Commission; and the term "*Surplus Revenues*" shall mean those revenues from the operation of the City's combined municipal electric light and power, waterworks and sewer system remaining after payment of all operation and maintenance expenses thereof and other obligations heretofore or hereafter incurred to which such revenues have been or shall be encumbered by a lien on and pledge of such revenues superior to the lien on and pledge of such revenues to the Certificates.

Section 6. LEVY OF TAX; INTEREST AND SINKING FUND.

(a) That a special fund or account, to be designated the "City of College Station, Texas Series 2012 Certificate of Obligation Interest and Sinking Fund" (the "Interest and Sinking Fund") is hereby created and shall be established and maintained by the City. The Interest and Sinking Fund shall be kept separate and apart from all other funds and accounts of the City, and shall be used only for paying the interest on and principal of the Certificates. All ad valorem

taxes levied and collected for and on account of the Certificates shall be deposited, as collected, to the credit of the Interest and Sinking Fund. During each year while any of the Certificates are outstanding and unpaid, the governing body of the City shall compute and ascertain the rate and amount of ad valorem tax, based on the latest approved tax rolls of the City, with full allowances being made for tax delinquencies and the cost of tax collections, which will be sufficient to raise and produce the money required to pay the interest on the Certificates as such interest comes due, and to provide a sinking fund to pay the principal (including mandatory sinking fund redemption payments, if any) of the Certificates as such principal matures or comes due through operation of the mandatory sinking fund redemption, if any, but never less than 2% of the original amount of the Certificates as a sinking fund each year. The rate and amount of ad valorem tax is hereby ordered to be levied against all taxable property in the City for each year while any of the Certificates is outstanding and unpaid, and the ad valorem tax shall be assessed and collected each such year and deposited to the credit of the Interest and Sinking Fund. Ad valorem taxes necessary to pay the interest on and principal of the Certificates, as such interest comes due and such principal matures, are hereby pledged for such payment, within the limit prescribed by law.

(b) There shall be appropriated from the General Fund of the City or other lawfully available funds of the City for deposit into the Interest and Sinking Fund moneys as may be necessary to pay the principal and interest payments on the Certificates scheduled to occur on or before August 15, 2012.

Section 7. REVENUES. That the Certificates are additionally secured by and shall be payable from the Surplus Revenues. The Surplus Revenues are pledged by the City pursuant to authority of Chapter 1502, Texas Government Code, specifically Section 1502.058 thereof. The City shall promptly deposit the Surplus Revenues upon their receipt to the credit of the Interest and Sinking Fund created pursuant to Section 6, to pay the principal and interest on the Certificates. The amount of Surplus Revenues pledged to the payment of the Certificates shall not exceed \$1,000. If Surplus Revenues or any other lawfully available revenues, income or resources of the City are deposited or budgeted to be deposited in the Interest and Sinking Fund in advance of the time when ad valorem taxes are scheduled to be levied for any year, then the amount of taxes that otherwise would have been required to be levied pursuant to Section 6 may be reduced to the extent and by the amount of the Surplus Revenues or other lawfully available revenues, income or resources then on deposit or budgeted to be deposited to the credit of the Interest and Sinking Fund.

Section 8. TRANSFER. That the City shall do any and all things necessary to accomplish the transfer of monies to the Interest and Sinking Fund of this issue in ample time to pay such items of principal and interest due on the Certificates.

Section 9. SECURITY FOR FUNDS. That the Interest and Sinking Fund created by this Ordinance shall be secured in the manner and to the fullest extent permitted or required by law for the security of public funds, and such Interest and Sinking Fund shall be used only for the purposes and in the manner permitted or required by this Ordinance.

Section 10. DAMAGED, MUTILATED, LOST, STOLEN, OR DESTROYED CERTIFICATES. (a) *Replacement Certificates*. That in the event any outstanding Certificate is

damaged, mutilated, lost, stolen, or destroyed, the Paying Agent/Registrar shall cause to be printed, executed, and delivered, a new Certificate of the same principal amount, maturity, and interest rate, as the damaged, mutilated, lost, stolen, or destroyed Certificate, in replacement for such Certificate in the manner hereinafter provided.

(b) *Application for Replacement Certificates.* That application for replacement of damaged, mutilated, lost, stolen, or destroyed Certificates shall be made by the registered owner thereof to the Paying Agent/Registrar. In every case of loss, theft, or destruction of a Certificate, the registered owner applying for a replacement Certificate shall furnish to the City and to the Paying Agent/Registrar such security or indemnity as may be required by them to save each of them harmless from any loss or damage with respect thereto. Also, in every case of loss, theft, or destruction of a Certificate, the registered owner shall furnish to the City and to the Paying Agent/Registrar evidence to their satisfaction of the loss, theft, or destruction of such Certificate, as the case may be. In every case of damage or mutilation of a Certificate, the registered owner shall surrender to the Paying Agent/Registrar for cancellation the Certificate so damaged or mutilated.

(c) *No Default Occurred.* That notwithstanding the foregoing provisions of this Section, in the event any such Certificate shall have matured, and no default has occurred which is then continuing in the payment of the principal of, redemption premium, if any, or interest on the Certificate, the City may authorize the payment of the same (without surrender thereof except in the case of a damaged or mutilated Certificate) instead of issuing a replacement certificate, provided security or indemnity is furnished as above provided in this Section.

(d) *Charge for Issuing Replacement Certificates.* That prior to the issuance of any replacement Certificate, the Paying Agent/Registrar shall charge the registered owner of such Certificate with all legal, printing, and other expenses in connection therewith. Every replacement Certificate issued pursuant to the provisions of this Section by virtue of the fact that any Certificate is lost, stolen, or destroyed shall constitute a contractual obligation of the City whether or not the lost, stolen, or destroyed Certificate shall be found at any time, or be enforceable by anyone, and shall be entitled to all the benefits of this Ordinance equally and proportionately with any and all other Certificates duly issued under this Ordinance.

(e) *Authority for Issuing Replacement Certificates.* That in accordance with Section 1201.067, Texas Government Code, this Section of this Ordinance shall constitute authority for the issuance of any such replacement Certificate without necessity of further action by the City or any other body or person, and the duty of the replacement of such Certificates is hereby authorized and imposed upon the Paying Agent/Registrar, and the Paying Agent/Registrar shall authenticate and deliver such Certificates in the form and manner and with the effect, as provided in Section 5(d) of this Ordinance for Certificates issued in conversion and exchange of other Certificates.

Section 11. FEDERAL INCOME TAX MATTERS. That the City covenants to refrain from any action which would adversely affect, or to take such action as to ensure, the treatment of the Certificates as obligations described in section 103 of the Code, the interest on which is not includable in the "gross income" of the holder for purposes of federal income taxation. In furtherance thereof, the City covenants as follows:

(a) to take any action to assure that no more than 10 percent of the proceeds of the Certificates (less amounts deposited to a reserve fund, if any) are used for any "private business use," as defined in section 141(b)(6) of the Code or, if more than 10 percent of the proceeds are so used, that amounts, whether or not received by the City, with respect to such private business use, do not, under the terms of this Ordinance or any underlying arrangement, directly or indirectly, secure or provide for the payment of more than 10 percent of the debt service on the Certificates, in contravention of section 141(b)(2) of the Code;

(b) to take any action to assure that in the event that the "private business use" described in subsection (a) hereof exceeds five percent of the proceeds of the Certificates (less amounts deposited into a reserve fund, if any) then the amount in excess of five percent is used for a "private business use" which is "related" and not "disproportionate", within the meaning of section 141(b)(3) of the Code, to the governmental use;

(c) to take any action to assure that no amount which is greater than the lesser of \$5,000,000, or five percent of the proceeds of the Certificates (less amounts deposited into a reserve fund, if any) is directly or indirectly used to finance loans to persons, other than state or local governmental units, in contravention of section 141(c) of the Code;

(d) to refrain from taking any action which would otherwise result in the Certificates being treated as "private activity bonds" within the meaning of section 141(b) of the Code;

(e) to refrain from taking any action that would result in the Certificates being "federally guaranteed" within the meaning of section 149(b) of the Code;

(f) to refrain from using any portion of the proceeds of the Certificates, directly or indirectly, to acquire or to replace funds which were used, directly or indirectly, to acquire investment property (as defined in section 148(b)(2) of the Code) which produces a materially higher yield over the term of the Certificates, other than investment property acquired with –

(1) proceeds of the Certificates invested for a reasonable temporary period of three years or less until such proceeds are needed for the purpose for which the Certificates are issued,

(2) amounts invested in a bona fide debt service fund, within the meaning of section 1.148-1(b) of the Treasury Regulations, and

(3) amounts deposited in any reasonably required reserve or replacement fund to the extent such amounts do not exceed 10 percent of the proceeds of the Certificates;

(g) to otherwise restrict the use of the proceeds of the Certificates or amounts treated as proceeds of the Certificates, as may be necessary, so that the Certificates do not otherwise contravene the requirements of section 148 of the Code (relating to arbitrage) and, to the extent applicable, section 149(d) of the Code (relating to advance refundings); and

(h) to pay to the United States of America at least once during each five-year period (beginning on the date of delivery of the Certificates) an amount that is at least equal to 90 percent of the "Excess Earnings," within the meaning of section 148(f) of the Code and to pay to

the United States of America, not later than 60 days after the Certificates have been paid in full, 100 percent of the amount then required to be paid as a result of Excess Earnings under section 148(f) of the Code.

For purposes of the foregoing (a) and (b), the City understands that the term "proceeds" includes "disposition proceeds" as defined in the Treasury Regulations and, in the case of refunding bonds, transferred proceeds (if any) and proceeds of the refunded bonds expended prior to the date of issuance of the Certificates. It is the understanding of the City that the covenants contained herein are intended to assure compliance with the Code and any regulations or rulings promulgated by the U.S. Department of the Treasury pursuant thereto. In the event that regulations or rulings are hereafter promulgated which modify or expand provisions of the Code, as applicable to the Certificates, the City will not be required to comply with any covenant contained herein to the extent that such failure to comply, in the opinion of nationally-recognized bond counsel, will not adversely affect the exemption from federal income taxation of interest on the Certificates under section 103 of the Code. In the event that regulations or rulings are hereafter promulgated which impose additional requirements which are applicable to the Certificates, the City agrees to comply with the additional requirements to the extent necessary, in the opinion of nationally-recognized bond counsel, to preserve the exemption from federal income taxation of interest on the Certificates under section 103 of the Code. In furtherance of such intention, the City hereby authorizes and directs the Mayor, the City Manager, any Assistant City Manager and the Executive Director of Business Services, severally, to execute any documents, certificates or reports required by the Code, and to make such elections on behalf of the City which may be permitted by the Code as are consistent with the purpose for the issuance of the Certificates.

In order to facilitate compliance with clause (h) above, a "Rebate Fund" is hereby established by the City for the sole benefit of the United States of America, and such Fund shall not be subject to the claim of any other person, including without limitation the bondholders. The Rebate Fund is established for the additional purpose of compliance with section 148 of the Code.

Section 12. ALLOCATION OF, AND LIMITATION ON, EXPENDITURES FOR THE PROJECT. That the City covenants to account for the expenditure of proceeds from the sale of the Certificates and any investment earnings thereon to be used for the purposes described in Section 1 of this Ordinance (such purpose referred to in this Section and Section 13 hereof as a "Project") on its books and records by allocating proceeds to expenditures within 18 months of the later of the date that (a) the expenditure on a Project is made or (b) such Project is completed. The foregoing notwithstanding, the City shall not expend such proceeds or investment earnings more than 60 days after the earlier of (a) the fifth anniversary of the date of delivery of the Certificates or (b) the date the Certificates are retired, unless the City obtains an opinion of nationally-recognized bond counsel substantially to the effect that such expenditure will not adversely affect the tax-exempt status of the Certificates. For purposes hereof, the City shall not be obligated to comply with this covenant if it obtains an opinion that such failure to comply will not adversely affect the excludability for federal income tax purposes from gross income of the interest.

Section 13. DISPOSITION OF PROJECT. That the City covenants that the property constituting a Project will not be sold or otherwise disposed in a transaction resulting in the receipt by the City of cash or other compensation, unless the City obtains an opinion of nationally-recognized bond counsel substantially to the effect that such sale or other disposition will not adversely affect the tax-exempt status of the Certificates. For purposes of the foregoing, the portion of the property comprising personal property and disposed in the ordinary course shall not be treated as a transaction resulting in the receipt of cash or other compensation. For purposes hereof, the City shall not be obligated to comply with this covenant if it obtains an opinion that such failure to comply will not adversely affect the excludability for federal income tax purposes from gross income of the interest.

Section 14. PROCEDURES TO MONITOR COMPLIANCE WITH TAX COVENANTS. The City hereby adopts the procedures attached hereto as *Exhibit B* as a means of monitoring compliance with the federal tax covenants made by the City herein.

Section 15. CUSTODY, APPROVAL, AND REGISTRATION OF CERTIFICATES. That the Executive Director of Business Services of the City is hereby authorized to have control of the Certificates initially issued and delivered hereunder and all necessary records and proceedings pertaining to the Certificates pending their delivery and their investigation, examination, and approval by the Attorney General of the State of Texas, and their registration by the Comptroller of Public Accounts of the State of Texas. Upon registration of the Certificates said Comptroller of Public Accounts (or a deputy designated in writing to act for said Comptroller) shall manually sign the Comptroller's Registration Certificate attached to such Certificates, and the seal of said Comptroller shall be impressed, or placed in facsimile, on such certificate. The Certificates thus registered shall remain in the custody of the Executive Director of Business Services (or the designee thereof) until delivered to the Underwriter (as defined in Section 19 of this Ordinance).

Section 16. DTC REGISTRATION. That the Certificates initially shall be issued and delivered in such manner that no physical distribution of the Certificates will be made to the public, and The Depository Trust Company ("DTC"), New York, New York, initially will act as depository for the Certificates. DTC has represented that it is a limited purpose trust company incorporated under the laws of the State of New York, a member of the Federal Reserve System, a "clearing corporation" within the meaning of the New York Uniform Commercial Code, and a "clearing agency" registered under Section 17A of the Securities Exchange Act of 1934, as amended, and the City accepts, but in no way verifies, such representations. The Certificates initially authorized by this Ordinance shall be delivered to and registered in the name of CEDE & CO., the nominee of DTC. It is expected that DTC will hold the Certificates on behalf of the Underwriter and its participants. So long as each Certificate is registered in the name of CEDE & CO., the Paying Agent/Registrar shall treat and deal with DTC the same in all respects as if it were the actual and beneficial owner thereof. It is expected that DTC will maintain a book-entry system which will identify ownership of the Certificates in Authorized Denominations, with transfers of ownership being effected on the records of DTC and its participants pursuant to rules and regulations established by them, and that the Certificates initially deposited with DTC shall be immobilized and not be further exchanged for substitute Certificates except as hereinafter provided. The City is not responsible or liable for any functions of DTC, will not be responsible for paying any fees or charges with respect to its services, will not be responsible or liable for

maintaining, supervising, or reviewing the records of DTC or its participants, or protecting any interests or rights of the beneficial owners of the Certificates. It shall be the duty of the DTC Participants, as defined in the Official Statement herein approved, to make all arrangements with DTC to establish this book-entry system, the beneficial ownership of the Certificates, and the method of paying the fees and charges of DTC. The City does not represent, nor does it in any way covenant that the initial book-entry system established with DTC will be maintained in the future. Notwithstanding the initial establishment of the foregoing book-entry system with DTC, if for any reason any of the originally delivered Certificates is duly filed with the Paying Agent/Registrar with proper request for transfer and substitution, as provided for in this Ordinance, substitute Certificates will be duly delivered as provided in this Ordinance, and there will be no assurance or representation that any book-entry system will be maintained for such Certificates. In connection with the initial establishment of the foregoing book-entry system with DTC, the City heretofore has executed a "Blanket Letter of Representations" prepared by DTC in order to implement the book-entry system described above.

Section 17. CONTINUING DISCLOSURE OBLIGATION.

(a) *Annual Reports.* (i) The City shall provide annually to the MSRB, in an electronic format as prescribed by the MSRB, within six months after the end of each fiscal year ending in or after 2012, financial information and operating data with respect to the City of the general type included in the final Official Statement authorized by Section 19 of this Ordinance, being the information described in *Exhibit C* hereto. Any financial statements so to be provided shall be (1) prepared in accordance with the accounting principles described in *Exhibit C*, or such other accounting principles as the City may be required to employ from time to time pursuant to state law or regulation, and (2) audited, if the City commissions an audit of such statements and the audit is completed within the period during which they must be provided. If the audit of such financial statements is not complete within such period, then the City shall provide unaudited financial statements by the required time, and shall provide audited financial statements for the applicable fiscal year to the MSRB, when and if the audit report on such statements become available.

(ii) If the City changes its fiscal year, it will notify the MSRB of the change (and of the date of the new fiscal year end) prior to the next date by which the City otherwise would be required to provide financial information and operating data pursuant to this Section. The financial information and operating data to be provided pursuant to this Section may be set forth in full in one or more documents or may be included by specific reference to any document that is available to the public on the MSRB's internet website or filed with the SEC. All documents provided to the MSRB pursuant to this Section shall be accompanied by identifying information as prescribed by the MSRB.

(b) *Event Notices.* The City shall notify the MSRB in an electronic format as prescribed by the MSRB, in a timely manner (but not in excess of ten Business Days after the occurrence of the event) of any of the following events with respect to the Certificates:

1. Principal and interest payment delinquencies;
2. Non-payment related defaults, if material;

3. Unscheduled draws on debt service reserves reflecting financial difficulties;
4. Unscheduled draws on credit enhancements reflecting financial difficulties;
5. Substitution of credit or liquidity providers, or their failure to perform;
6. Adverse tax opinions or the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the Certificates, or other material events affecting the tax status of the Certificates;
7. Modifications to rights of Certificateholders, if material;
8. Certificate calls, if material, and tender offers;
9. Defeasances;
10. Release, substitution, or sale of property securing repayment of the Certificates, if material;
11. Rating changes;
12. Bankruptcy, insolvency, receivership or similar event of an obligated person (which is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent, or similar officer for the City in a proceeding under the United States Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the City, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement, or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the City);
13. The consummation of a merger, consolidation, or acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;
14. Appointment of a successor or additional trustee or the change of name of a trustee, if material.

The City shall notify the MSRB, in a timely manner, of any failure by the City to provide financial information or operating data in accordance with subsection (b) of this Section by the time required by such subsection.

(c) *Limitations, Disclaimers, and Amendments.* (i) The City shall be obligated to observe and perform the covenants specified in this Section for so long as, but only for so long as, the City remains an "obligated person" with respect to the Certificates within the meaning of the Rule, except that the City in any event will give notice of any deposit made in accordance with this Ordinance or applicable law that causes Certificates no longer to be outstanding.

(ii) The provisions of this Section are for the sole benefit of the registered owners and beneficial owners of the Certificates, and nothing in this Section, express or implied, shall give any benefit or any legal or equitable right, remedy, or claim hereunder to any other person. The City undertakes to provide only the financial information, operating data, financial statements, and notices which it has expressly agreed to provide pursuant to this Section and does not hereby undertake to provide any other information that may be relevant or material to a complete presentation of the City's financial results, condition, or prospects or hereby undertake to update any information provided in accordance with this Section or otherwise, except as expressly provided herein. The City does not make any representation or warranty concerning such information or its usefulness to a decision to invest in or sell Certificates at any future date.

(iii) UNDER NO CIRCUMSTANCE SHALL THE CITY BE LIABLE TO THE REGISTERED OWNER OR BENEFICIAL OWNER OF ANY CERTIFICATE OR ANY OTHER PERSON, IN CONTRACT OR TORT, FOR DAMAGES RESULTING IN WHOLE OR IN PART FROM ANY BREACH BY THE CITY, WHETHER NEGLIGENT OR WITHOUT FAULT ON ITS PART, OF ANY COVENANT SPECIFIED IN THIS SECTION, BUT EVERY RIGHT AND REMEDY OF ANY SUCH PERSON, IN CONTRACT OR TORT, FOR OR ON ACCOUNT OF ANY SUCH BREACH SHALL BE LIMITED TO AN ACTION FOR MANDAMUS OR SPECIFIC PERFORMANCE.

(iv) No default by the City in observing or performing its obligations under this Section shall comprise a breach of or default under this Ordinance for purposes of any other provision of this Ordinance. Nothing in this Section is intended or shall act to disclaim, waive, or otherwise limit the duties of the City under federal and state securities laws.

(v) Should the Rule be amended to obligate the City to make filings with or provide notices to entities other than the MSRB, the City hereby agrees to undertake such obligation with respect to the Certificates in accordance with the Rule as amended. The provisions of this Section may be amended by the City from time to time to adapt to changed circumstances that arise from a change in legal requirements, a change in law, or a change in the identity, nature, status, or type of operations of the City, but only if (1) the provisions of this Section, as so amended, would have permitted an underwriter to purchase or sell Certificates in the primary offering of the Certificates in compliance with the Rule, taking into account any amendments or interpretations of the Rule since such

offering as well as such changed circumstances and (2) either (a) the registered owners of a majority in aggregate principal amount (or any greater amount required by any other provision of this Ordinance that authorizes such an amendment) of the outstanding Certificates consent to such amendment or (b) a person that is unaffiliated with the City (such as nationally recognized bond counsel) determined that such amendment will not materially impair the interest of the registered owners and beneficial owners of the Certificates. If the City so amends the provisions of this Section, it shall include with any amended financial information or operating data next provided in accordance with subsection (b) of this Section an explanation, in narrative form, of the reason for the amendment and of the impact of any change in the type of financial information or operating data so provided. The City may also amend or repeal the provisions of this continuing disclosure agreement if the SEC amends or repeals the applicable provision of the Rule or a court of final jurisdiction enters judgment that such provisions of the Rule are invalid, but only if and to the extent that the provisions of this sentence would not prevent an underwriter from lawfully purchasing or selling Certificates in the primary offering of the Certificates.

(d) *Procedures to Monitor Compliance with Continuing Disclosure Covenants.* The City hereby adopts the procedures attached hereto as **Exhibit B** as a means of monitoring compliance with the continuing disclosure covenants made by the City herein.

Section 18. DEFEASANCE. (a) *Deemed Paid.* Any Certificate and the interest thereon shall be deemed to be paid, retired and no longer outstanding (a "Defeased Certificate") within the meaning of this Ordinance, except to the extent provided in subsection (e) of this Section, when payment of the principal of such Certificate, plus interest thereon to the due date (whether such due date be by reason of maturity or otherwise) either (i) shall have been made or caused to be made in accordance with the terms thereof, or (ii) shall have been provided for on or before such due date by irrevocably depositing with or making available to the Paying Agent/Registrar in accordance with an escrow agreement or other instrument (the "Future Escrow Agreement") for such payment (1) lawful money of the United States of America sufficient to make such payment or (2) Defeasance Securities that mature as to principal and interest in such amounts and at such times as will insure the availability, without reinvestment, of sufficient money to provide for such payment, and when proper arrangements have been made by the City with the Paying Agent/Registrar for the payment of its services until all Defeased Certificates shall have become due and payable. At such time as a Certificate shall be deemed to be a Defeased Certificate hereunder, as aforesaid, such Certificate and the interest thereon shall no longer be secured by, payable from, or entitled to the benefits of, the ad valorem taxes herein levied and pledged or the pledge of Surplus Revenues as provided in this Ordinance, and such principal and interest shall be payable solely from such money or Defeasance Securities.

(b) *Investments.* Any moneys so deposited with the Paying Agent/Registrar may at the written direction of the City be invested in Defeasance Securities, maturing in the amounts and times as hereinbefore set forth, and all income from such Defeasance Securities received by the Paying Agent/Registrar that is not required for the payment of the Certificates and interest thereon, with respect to which such money has been so deposited, shall be turned over to the City, or deposited as directed in writing by the City. Any Future Escrow Agreement pursuant to which the money and/or Defeasance Securities are held for the payment of Defeased Certificates

may contain provisions permitting the investment or reinvestment of such moneys in Defeasance Securities or the substitution of other Defeasance Securities upon the satisfaction of the requirements specified in subsection (a)(i) or (ii) above. All income from such Defeasance Securities received by the Paying Agent/Registrar which is not required for the payment of the Defeased Securities, with respect to which such money has been so deposited, shall be remitted to the City or deposited as directed in writing by the City.

(c) *Selection of Defeased Certificates.* In the event that the City elects to defease less than all of the principal amount of Certificates of a maturity, the Paying Agent/Registrar shall select, or cause to be selected, such amount of Certificates by such random method as it deems fair and appropriate.

(d) *Defeasance Securities.* The term "Defeasance Securities" means (i) direct, noncallable obligations of the United States of America, including obligations that are unconditionally guaranteed by the United States of America, (ii) noncallable obligations of an agency or instrumentality of the United States, including obligations that are unconditionally guaranteed or insured by the agency or instrumentality and that, on the date the governing body of the City adopts or approves the proceedings authorizing the issuance of refunding bonds, are rated as to investment quality by a nationally recognized investment rating firm not less than AAA or its equivalent; (iii) noncallable obligations of a state or an agency or a county, municipality, or other political subdivision of a state that have been refunded and that, on the date the governing body of the City adopts or approves the proceedings authorizing the issuance of refunding bonds, are rated as to investment quality by a nationally recognized investment rating firm not less than AAA or its equivalent and (iv) any securities and obligations now or hereafter authorized by State law that are eligible to refund, retire or otherwise discharge obligations such as the Certificates.

(e) *Continuing Duty of Paying Agent/Registrar.* Until all Certificates defeased under this Section of this Ordinance shall become due and payable, the Paying Agent/Registrar for such Certificates shall perform the services of Paying Agent/Registrar for such Certificates the same as if they had not been defeased, and the City shall make proper arrangements to provide and pay for such services.

Section 19. SALE OF CERTIFICATES; OFFICIAL STATEMENT. (a) The Certificates shall be sold and delivered subject to the provisions of Section 1 and Section 2 hereof through a negotiated sale and pursuant to the terms and provisions of a purchase contract (the "Purchase Agreement"), the terms and provisions of which are to be determined by the Pricing Officer in accordance with Section 2 hereof, and in which the purchaser or purchasers of the Certificates (the "Underwriter") shall be designated. The Pricing Officer is hereby authorized to execute and deliver the Purchase Agreement for an on behalf of the City. The Certificates shall initially be registered in the name of the Underwriter or its designee.

(b) The City hereby approves the form and content of the draft preliminary official statement relating to the Certificates in the form attached hereto as *Exhibit D* and any addenda, supplement or amendment thereto, and approves the distribution of such preliminary official statement in the reoffering of the Certificates by the Underwriter in final form, with such changes therein or additions thereto as the Pricing Officer executing the same may deem advisable. The

Pricing Officer is hereby authorized, in the name and on behalf of the City, to approve, distribute, and deliver a final preliminary official statement and a final official statement relating to the Certificates to be used by the Underwriter in the marketing of the Certificates.

(c) The Pricing Officer is authorized, in connection with effecting the sale of the Certificates, to obtain from a municipal bond insurance company so designated in the Purchase Agreement (the "Insurer") a municipal bond insurance policy (the "Insurance Policy") in support of the Certificates. To that end, should the Pricing Officer exercise such authority and commit the City to obtain a municipal bond insurance policy, for so long as the Insurance Policy is in effect, the requirements of the Insurer relating to the issuance of the Insurance Policy as set forth in the Pricing Certificate are incorporated by reference into this Ordinance and made a part hereof for all purposes, notwithstanding any other provision of this Ordinance to the contrary. The Pricing Officer shall have the authority to execute any documents to effect the issuance of the Insurance Policy by the Insurer.

(d) The Mayor and Mayor Pro Tem, the City Manager, the Executive Director of Business Services and City Secretary, shall be and they are hereby expressly authorized, empowered and directed from time to time and at any time to do and perform all such acts and things and to execute, acknowledge and deliver in the name and under the corporate seal and on behalf of the City a Paying Agent/Registrar Agreement with the Paying Agent/Registrar and all other instruments, whether or not herein mentioned, as may be necessary or desirable in order to carry out the terms and provisions of this Ordinance, the Pricing Certificate, the Certificates, the sale of the Certificates, any Purchase Agreement and the Official Statement. In case any officer whose signature shall appear on any Certificate shall cease to be such officer before the delivery of such Certificate, such signature shall nevertheless be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery.

Section 20. FURTHER PROCEDURES. That the Mayor, the City Secretary, the City Manager, the Executive Director of Business Services of the City, any Assistant City Manager, and all other officers, employees, and agents of the City, and each of them, shall be and they are hereby expressly authorized, empowered, and directed from time to time and at any time to do and perform all such acts and things and to execute, acknowledge, and deliver in the name and under the corporate seal and on behalf of the City all such instruments, whether or not herein mentioned, as may be necessary or desirable in order to carry out the terms and provisions of this Ordinance, and the sale and delivery of the Certificates and fixing all details in connection therewith. The City Council hereby authorizes the payment of the fee of the Office of the Attorney General of the State of Texas for the examination of the proceedings relating to the issuance of the Certificates, in the amount determined in accordance with the provisions of Section 1202.004, Texas Government Code.

Section 21. CONSTRUCTION FUND; USE OF PROCEEDS.

(a) The City hereby creates and establishes and shall maintain on the books of the City a separate fund to be entitled the "Series 2012 Certificates of Obligation Construction Fund" (the "Construction Fund") for use by the City for payment of all lawful costs associated with the acquisition and construction of the projects as provided in Section 1.

(b) The proceeds from the sale of the Certificates shall be deposited, on the date of closing, in the manner described in a letter of instructions prepared by the City or on behalf of the City by the City's financial advisor. The foregoing notwithstanding, proceeds representing accrued interest on the Certificates shall be deposited to the credit of the Interest and Sinking Fund. Any amounts remaining after completion of the improvements described in Section 1 hereof shall be transferred FIRST to the Rebate Fund, to the extent required by Section 11 hereof, and THEREAFTER to the Interest and Sinking Fund.

Section 22. INTEREST EARNINGS. That the interest earnings derived from the investment of proceeds from the sale of the Certificates may be used along with other proceeds for the construction of the permanent improvements set forth in Section 1 hereof for which the Certificates are issued; provided that after completion of such permanent improvements, if any of such interest earnings remain on hand, such interest earnings shall be deposited in the Interest and Sinking Fund. It is further provided, however, that any interest earnings on proceeds which are required to be rebated to the United States of America pursuant to this Ordinance hereof in order to prevent the Certificates from being arbitrage bonds shall be so rebated and not considered as interest earnings for the purposes of this Section.

Section 23. DEFAULT AND REMEDIES.

(a) *Events of Default.* Each of the following occurrences or events for the purpose of this Ordinance is hereby declared to be an Event of Default:

(i) the failure to make payment of the principal of or interest on any of the Certificates when the same becomes due and payable; or

(ii) default in the performance or observance of any other covenant, agreement or obligation of the City, the failure to perform which materially, adversely affects the rights of the registered owners of the Certificates, including, but not limited to, their prospect or ability to be repaid in accordance with this Ordinance, and the continuation thereof for a period of 60 days after notice of such default is given by any registered owner to the City.

(b) *Remedies for Default.*

(i) Upon the happening of any Event of Default, then and in every case, any registered owner or an authorized representative thereof, including, but not limited to, a trustee or trustees therefor, may proceed against the City, or any official, officer or employee of the City in their official capacity, for the purpose of protecting and enforcing the rights of the registered owners under this Ordinance, by mandamus or other suit, action or special proceeding in equity or at law, in any court of competent jurisdiction, for any relief permitted by law, including the specific performance of any covenant or agreement contained herein, or thereby to enjoin any act or thing that may be unlawful or in violation of any right of the registered owners hereunder or any combination of such remedies.

(ii) It is provided that all such proceedings shall be instituted and maintained for the equal benefit of all registered owners of Certificates then outstanding.

(c) *Remedies Not Exclusive.*

(i) No remedy herein conferred or reserved is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or under the Certificates or now or hereafter existing at law or in equity; provided, however, that notwithstanding any other provision of this Ordinance, the right to accelerate the debt evidenced by the Certificates shall not be available as a remedy under this Ordinance.

(ii) The exercise of any remedy herein conferred or reserved shall not be deemed a waiver of any other available remedy.

(iii) By accepting the delivery of a Certificate authorized under this Ordinance, such registered owner agrees that the certifications required to effectuate any covenants or representations contained in this Ordinance do not and shall never constitute or give rise to a personal or pecuniary liability or charge against the officers, employees or members of the City or the City Council.

(iv) None of the members of the City Council, nor any other official or officer, agent, or employee of the City, shall be charged personally by the registered owners with any liability, or be held personally liable to the registered owners under any term or provision of this Ordinance, or because of any Event of Default or alleged Event of Default under this Ordinance.

Section 24. MISCELLANEOUS PROVISIONS. (a) *Preamble.* The preamble to this Ordinance is incorporated by reference and made a part hereof for all purposes.

(b) *Titles Not Restrictive.* That the titles assigned to the various sections of this Ordinance are for convenience only and shall not be considered restrictive of the subject matter of any section or of any part of this Ordinance.

(c) *Rules of Construction.* The words "herein", "hereof" and "hereunder" and other words of similar import refer to this Ordinance as a whole and not to any particular section or other subdivision. Except where the context otherwise requires, terms defined in this Ordinance to impart the singular number shall be considered to include the plural number and vice versa. References to any named person means that party and its successors and assigns. References to any constitutional, statutory or regulatory provision means such provision as it exists on the date this Ordinance is adopted by the City and any future amendments thereto or successor provisions thereof. Any reference to "FORM OF CERTIFICATE" shall refer to the form of the Certificates set forth in *Exhibit A* to this Ordinance. Any reference to the payment of principal in this Ordinance shall be deemed to include the payment of any mandatory sinking fund redemption payments as may be described herein.

(d) *Inconsistent Provisions.* All ordinances, orders and resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Ordinance are hereby repealed and declared to be inapplicable, and the provisions of this Ordinance shall be and remain controlling as to the matters prescribed herein.

(e) *Severability.* If any word, phrase, clause, paragraph, sentence, part, portion, or provision of this Ordinance or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Ordinance shall nevertheless be valid and the City hereby declares that this Ordinance would have been enacted without such invalid word, phrase, clause, paragraph, sentence, part, portion, or provisions.

(f) *Governing Law.* This Ordinance shall be construed and enforced in accordance with the laws of the State of Texas.

(g) *Open Meeting.* The City officially finds and determines that the meeting at which this Ordinance is adopted was open to the public; and that public notice of the time, place, and purpose of such meeting was given, all as required by Chapter 551, Texas Government Code.

(h) *Application of Chapter 1208, Government Code.* Chapter 1208, Texas Government Code, applies to the issuance of the Certificates and the pledge of ad valorem taxes and the Surplus Revenues granted by the City under Sections 6 and 7, and such pledge is therefore valid, effective, and perfected. If Texas law is amended at any time while the Certificates are outstanding and unpaid such that the pledge of the ad valorem taxes and Surplus Revenues granted by the City is to be subject to the filing requirements of Chapter 9, Texas Business & Commerce Code, then in order to preserve to the Registered Owners of the Certificates the perfection of the security interest in said pledge, the City agrees to take such measures as it determines are reasonable and necessary under Texas law to comply with the applicable provisions of Chapter 9, Texas Business & Commerce Code and enable a filing to perfect the security interest in said pledge to occur.

(i) *Immediate Effect.* In accordance with the provisions of Section 1201.028, Texas Government Code, this Ordinance shall be effective immediately upon its adoption by the City Council.

[Remainder of page intentionally left blank.]

PASSED, APPROVED AND EFFECTIVE THIS _____, 2012.

City Secretary, City of College Station, Texas

Mayor, City of College Station, Texas

(CITY SEAL)

APPROVED:

McCall, Parkhurst & Horton L.L.P., Dallas, Texas
Bond Counsel

Ordinance
City of College Station, Texas
Certificates of Obligation, Series 2012

SIGNATURE PAGE

accrued interest due at maturity as provided herein shall be paid to the registered owner upon presentation and surrender of this Certificate for payment at the Designated Trust Office of the Paying Agent/Registrar. The City covenants with the registered owner of this Certificate that on or before each principal and interest payment date for this Certificate it will make available to the Paying Agent/Registrar, from the "Interest and Sinking Fund" created by the Certificate Ordinance, the amounts required to provide for the payment, in immediately available funds, of all principal of and interest on the Certificates, when due.

IN THE EVENT OF NON-PAYMENT of interest on a scheduled payment date, and for 30 days thereafter, a new record date for such interest payment (a "Special Record Date") will be established by the Paying Agent/Registrar, if and when funds for the payment of such interest have been received from the City. Notice of the Special Record Date and of the scheduled payment date of the past due interest ("Special Payment Date", which shall be 15 days after the Special Record Date) shall be sent at least five business days prior to the Special Record Date by United States mail, first-class postage prepaid, to the address of each registered owner of a Certificate appearing on the Registration Books kept by the Paying Agent/Registrar at the close of business on the last business day next preceding the date of mailing of such notice.

IF THE DATE for the payment of the principal of or interest on this Certificate shall be a Saturday, Sunday, a legal holiday, or a day on which banking institutions in the city where the Designated Trust Office of the Paying Agent/Registrar is located are authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not such a Saturday, Sunday, legal holiday, or day on which banking institutions are authorized to close; and payment on such date shall have the same force and effect as if made on the original date payment was due.

THIS CERTIFICATE is one of a Series of Certificates dated as of _____, 2012, authorized in accordance with the Constitution and laws of the State of Texas in the principal amount of \$_____, for the purpose of paying contractual obligations to be incurred by the City, to-wit, the construction of improvements as described in the Certificate Ordinance, and the payment of fiscal, engineering and legal fees incurred in connection therewith.

ON FEBRUARY 15, ____, or on any date thereafter, the Certificates of this Series maturing on February 15, ____ and thereafter may be redeemed prior to their scheduled maturities, at the option of the City, in whole, or in part, at par and accrued interest to the date fixed for redemption. The years of maturity of the Certificates called for redemption at the option of the City prior to stated maturity shall be selected by the City. The Certificates or portions thereof redeemed within a maturity shall be selected by lot or other method by the Paying Agent/Registrar; *provided*, that during any period in which ownership of the Certificates is determined only by a book entry at a securities depository for the Certificates, if fewer than all of the Certificates of the same maturity and bearing the same interest rate are to be redeemed, the particular Certificates of such maturity and bearing such interest rate shall be selected in accordance with the arrangements between the City and the securities depository.

AT LEAST 30 days prior to the date fixed for any such redemption, a written notice of such redemption shall be given to the registered owner of each Certificate or a portion thereof being called for redemption by depositing such notice in the United States mail, first-class postage prepaid, addressed to each such registered owner at his address shown on the Registration Books of the Paying Agent/Registrar. By the date fixed for any such redemption due provision shall be made by the City with the Paying Agent/Registrar for the payment of the required redemption price for this Certificate or the portion hereof which is to be so redeemed, plus accrued interest thereon to the date fixed for redemption. If such notice of redemption is given, and if due provision for such payment is made, all as provided above, this Certificate, or the portion hereof which is to be so redeemed, thereby automatically shall be redeemed prior to its scheduled maturity, and shall not bear interest after the date fixed for its redemption, and shall not be regarded as being outstanding except for the right of the registered owner to receive the redemption price plus accrued interest to the date fixed for redemption from the Paying Agent/Registrar out of the funds provided for such payment. The Paying Agent/Registrar shall record in the Registration Books all such redemptions of principal of this Certificate or any portion hereof. If a portion of any Certificate shall be redeemed a substitute Certificate or Certificates having the same maturity date, bearing interest at the same rate, in any denomination or denominations in Authorized Denominations, at the written request of the registered owner, and in aggregate principal amount equal to the unredeemed portion thereof, will be issued to the registered owner upon the surrender thereof for cancellation, at the expense of the City, all as provided in the Ordinance.

ALL CERTIFICATES OF THIS SERIES are issuable solely as fully registered certificates, without interest coupons, in Authorized Denominations. As provided in the Certificate Ordinance, this Certificate may, at the request of the registered owner or the assignee or assignees hereof, be assigned, transferred, and exchanged for a like aggregate principal amount of fully registered certificates, without interest coupons, payable to the appropriate registered owner, assignee, or assignees, as the case may be, having the same maturity date, and bearing interest at the same rate, in Authorized Denominations as requested in writing by the appropriate registered owner, assignee, or assignees, as the case may be, upon surrender of this Certificate to the Paying Agent/Registrar at its Designated Trust Office for cancellation, all in accordance with the form and procedures set forth in the Certificate Ordinance. Among other requirements for such assignment and transfer, this Certificate must be presented and surrendered to the Paying Agent/Registrar at its Designated Trust Office, together with proper instruments of assignment, in form and with guarantee of signatures satisfactory to the Paying Agent/Registrar, evidencing assignment of this Certificate or any portion or portions hereof in an Authorized Denomination to the assignee or assignees in whose name or names this Certificate or any such portion or portions hereof is or are to be transferred and registered. The form of Assignment printed or endorsed on this Certificate may be executed by the registered owner to evidence the assignment hereof, but such method is not exclusive, and other instruments of assignment satisfactory to the Paying Agent/Registrar may be used to evidence the assignment of this Certificate or any portion or portions hereof from time to time by the registered owner. The foregoing notwithstanding, in the case of the exchange of an assigned and transferred Certificate or Certificates or any portion or portions thereof, such fees and charges of the Paying Agent/Registrar will be paid by the City. The one requesting such exchange shall pay the Paying Agent/Registrar's reasonable standard or customary fees and charges for exchanging any Certificate or portion thereof. In any circumstance, any taxes or governmental charges required

to be paid with respect thereto shall be paid by the one requesting such assignment, transfer, or exchange as a condition precedent to the exercise of such privilege. In any circumstance, neither the City nor the Paying Agent/Registrar shall be required (1) to make any transfer or exchange during a period beginning at the opening of business 30 days before the day of the first mailing of a notice of redemption of Certificates and ending at the close of business on the day of such mailing, or (2) to transfer or exchange any Certificates so selected for redemption when such redemption is scheduled to occur within 45 calendar days.

WHENEVER the beneficial ownership of this Certificate is determined by a book entry at a securities depository for the Certificates, the foregoing requirements of holding, delivering or transferring this Certificate shall be modified to require the appropriate person or entity to meet the requirements of the securities depository as to registering or transferring the book entry to produce the same effect.

IN THE EVENT any Paying Agent/Registrar for the Certificates is changed by the City, resigns, or otherwise ceases to act as such, the City has covenanted in the Certificate Ordinance that it promptly will appoint a competent and legally qualified substitute therefor, and promptly will cause written notice thereof to be mailed to the registered owners of the Certificates.

IT IS HEREBY certified, recited and covenanted that this Certificate has been duly and validly authorized, issued, and delivered; that all acts, conditions, and things required or proper to be performed, exist, and be done precedent to or in the authorization, issuance, and delivery of this Certificate have been performed, existed, and been done in accordance with law; that this Certificate is a direct obligation of said City, issued on the full faith and credit thereof; and that in accordance with the terms of the Certificate Ordinance, annual ad valorem taxes sufficient to provide for the payment of the interest on and principal of this Certificate, as such interest comes due and such principal matures, have been levied and ordered to be levied against all taxable property in said City, and have been pledged for such payment, within the limit prescribed by law; and that a limited pledge (not to exceed \$1,000) of the Surplus Revenues from the operation of the City's combined municipal electric light and power, waterworks and sewer system remaining after payment of all operation and maintenance expenses thereof and any other obligations heretofore or hereafter incurred to which such revenues have been or shall be encumbered by a lien on and pledge of such revenues superior to the lien on and pledge of such revenues to the Certificates, have been pledged as additional security for the Certificates.

BY BECOMING the registered owner of this Certificate, the registered owner thereby acknowledges all of the terms and provisions of the Certificate Ordinance, agrees to be bound by such terms and provisions, acknowledges that the Certificate Ordinance is duly recorded and available for inspection in the official minutes and records of the City, and agrees that the terms and provisions of this Certificate and the Certificate Ordinance constitute a contract between each registered owner hereof and the City.

IN WITNESS WHEREOF, this Certificate has been signed with the manual or facsimile signature of the Mayor of the City, attested by the manual or facsimile signature of the City Secretary, and the official seal of the City has been duly affixed to, or impressed, or placed in facsimile, on this Certificate.

XXXXX

City Secretary, City of College Station, Texas

XXXXX

Mayor, City of College Station, Texas

(SEAL)

FORM OF PAYING AGENT/REGISTRAR'S AUTHENTICATION CERTIFICATE

PAYING AGENT/REGISTRAR'S AUTHENTICATION CERTIFICATE

It is hereby certified that this Certificate of Obligation has been issued under the provisions of the proceedings adopted by the City as described in the text of this Certificate of Obligation; and that this Certificate of Obligation has been issued in exchange for or replacement of a Certificate of Obligation of an issue which originally was approved by the Attorney General of the State of Texas and registered by the Comptroller of Public Accounts of the State of Texas.

Dated: _____

The Bank of New York Mellon
Trust Company, N.A.
Paying Agent/Registrar

By: _____
Authorized Representative

FORM OF ASSIGNMENT

ASSIGNMENT

For value received, the undersigned hereby sells, assigns and transfers unto:

Please insert Social Security or Taxpayer Identification Number of Transferee

Please print or type name and address, including zip code of Transferee

the within Certificate and all rights thereunder, and hereby irrevocably constitutes and appoints: _____, attorney, to register the transfer of the within Certificate on the books kept for registration thereof, with full power of substitution in the premises.

Dated: _____.

Signature Guaranteed:

NOTICE: Signature(s) must be guaranteed by an eligible guarantor institution participating in a securities transfer association recognized signature guarantee program.

NOTICE: The signature above must correspond with the name of the registered owner as it appears upon the front of this Certificate in every particular, without alteration or enlargement or any change whatsoever.

EXHIBIT B

PROCEDURES REGARDING COMPLIANCE WITH FEDERAL TAX AND CONTINUING DISCLOSURE COVENANTS

This Exhibit is intended to assist the City of College Station (the "City") in complying with the federal income tax covenants and securities disclosure covenants as they apply to the issuance of tax-exempt debt securities such as the Certificates of Obligation (the "Obligations"). These procedures should be read together with any federal tax certifications, bond covenants, letters or memoranda from bond counsel and any attachments thereto (collectively, the "Closing Documents"). Failure to comply with federal guidelines could have serious consequences for investors, the City and its officials.

These procedures shall apply to the Obligations, until they are superseded by a change in circumstances at which time the City's bond counsel will propose new procedures to be adopted.

I. FEDERAL TAX LAW

1. Arbitrage Compliance.

Arbitrage refers to the difference between the interest paid on tax-exempt Obligations and the interest earned by investing the proceeds of tax-exempt Obligations in higher-yielding investments. Such higher-yielding investments could take the form of loans, securities, real property, personal property, or other investments that could yield a profit to the City. Federal income tax laws generally restrict the ability to earn arbitrage utilizing the proceeds of tax-exempt Obligations. Generally, any profit from investing Obligation proceeds at a yield above the yield paid on the Obligations belongs to the federal government and must be rebated to the federal government. If the City fails to comply federal tax guidelines, Obligations could be deemed to be "arbitrage bonds" by the Internal Revenue Service (the "IRS"), which would expose the City to monetary liability from the City's investors.

The arbitrage yield on the Obligations is set forth on the IRS Form 8038-G.

The Executive Director of Business Services and the City Treasurer (including such other employees of the City who report to such officers) (collectively, the "Responsible Person") will review the Closing Documents periodically (at least once a year) to ascertain if an exception to arbitrage compliance applies.

- a. *Procedures applicable to the Obligation.* The Responsible Person shall undertake the following procedures.
 - i. If the City plans to spend funds currently on hand for a future project with the intent to later repay such funds from a debt issue, the Responsible

Person shall contact Bond Counsel to obtain advice regarding a reimbursement resolution. The Responsible Person shall maintain any official action of the City (such as a reimbursement resolution) stating the City's intent to reimburse with the proceeds of the Obligations any amount expended prior to the Issue Date for the acquisition, renovation or construction of the Project.

- ii. The Responsible Person shall ensure that the applicable information return (e.g., U.S. Internal Revenue Service ("IRS") Form 8038-G, 8038-GC, or any successor forms) is timely filed with the IRS.
- iii. If proceeds of the Obligations are to be invested in interest-earning investments, assure that, unless excepted from rebate and yield restriction under section 148(f) of the Code, excess investment earnings are computed and paid to the U.S. government at such time and in such manner as directed by the IRS (i) at least every 5 years after the Issue Date and (ii) within 30 days after the date the Obligations are retired. If proceeds of the Obligations are to be invested in interest-earning investments, the Responsible Person should contact the City's arbitrage consultant regarding such matters.
- iv. The Responsible Person shall monitor all amounts deposited into a sinking fund or funds pledged (directly or indirectly) to the payment of the Obligations, such as the Interest and Sinking Fund (the "I&S Fund"), to assure that the maximum amount invested within such applicable fund at a yield higher than the yield on the Obligations does not exceed an amount equal to the debt service on the Obligations in the succeeding 12 month period plus a carryover amount equal to one-twelfth of the principal and interest payable on the Obligations for the immediately preceding 12-month period.

NOTE: the purpose of the I&S Fund is to achieve a proper matching of revenues with principal and interest payments within each fiscal year. The I&S Fund should be used a mechanism for payment of current debt service and not as a long-term investment fund for debt service many years in the future.

- v. The Responsible Person shall ensure that no more than 50% of the proceeds of the Obligations are invested in an investment with a guaranteed yield for 4 years or more.
- b. With respect to the investment and expenditure of the proceeds of the Obligations that are issued to finance public improvements or to acquire land or personal property, the Responsible Person shall undertake the following.

- i. The Responsible Person shall instruct the persons who are primarily responsible for the construction, renovation or acquisition of the facilities financed with Obligations (the “Project”) that the Project must (i) proceed with due diligence toward completion and that (ii) binding contracts for the expenditure of at least 5% of the proceeds of the Obligations will be entered into within six (6) months of the date of closing of the Obligations (the “Issue Date”). The Responsible Person shall monitor that the above requirements are satisfied.
- ii. The Responsible Person shall monitor that at least 85% of the proceeds of the Obligations to be used for the construction, renovation or acquisition of the Project are expended within three years of the Issue Date.
- iii. The Responsible Person shall monitor investment of proceeds of the Obligations and restrict the yield of the investments to the yield on the Obligations after three years of the Issue Date.
- iv. To the extent that there are any unspent proceeds of the Obligations at the time the Obligations are later refunded, or if there are unspent proceeds of the Obligations that are being refunded by a new issuance of Obligations, the Responsible Person shall continue monitoring the expenditure of such unspent proceeds to ensure compliance with federal tax law with respect to both the refunded Obligations and any Obligations being issued for refunding purposes, and shall contact Bond Counsel as necessary.

B. Private Business Use.

Generally, the proceeds of tax-exempt Obligations may not inure to the benefit of entities other than state or local governments (“private business use”). Private business use occurs whenever Obligation proceeds are used to benefit any entity other than a state or local government, *including nonprofit corporations and the federal government.*

A series of Obligations may lose their tax-exempt status if: (i) more than 10% of the proceeds of the Obligations are to be used for any private business use and the payment of the principal or interest on more than 10% of the proceeds of the Obligations is secured by or payable from property used for a private business use, or (ii) the amount of proceeds of the Obligations used to make loans to borrowers other than state and local governments exceeds the lesser of 5% of the proceeds or \$15 million.

With respect to the use of the facilities financed or refinanced with the proceeds of the Obligations, the Responsible Person shall undertake the following to ensure the Obligations do not violate private business use tests.

- a. The Responsible Person shall develop procedures or a “tracking system” to identify, log and record all property financed with tax-exempt debt and identify the issue of Obligations used to finance such property.
- b. The Responsible Person shall monitor and record the date on which the Project is substantially complete and available to be used for the purpose intended.
- c. The Responsible Person shall monitor and record whether, at any time the Obligations are outstanding, any person, other than the City, the employees of the City, the agents of the City or members of the general public has any contractual right (such as a lease, research contract, naming rights agreement, purchase contract, management agreement or other service agreement) with respect to any portion of the Project.
- d. Before entering into any private business use arrangement that involves the use of the Project, the Responsible Person must obtain a description of the proposed private business use arrangement and determine whether such arrangement, if put into effect, will be consistent with the restrictions on private business use of the Project. In connection with the evaluation of any proposed private business use arrangement, the Responsible Person should consult with Bond Counsel to discuss whether such arrangement, if put into effect, will be consistent with the restrictions on private business use of the Project, and, if not, whether any “remedial action” permitted under federal guidelines may be taken as a means of enabling such private business use without adversely affecting the tax-exempt status of the Obligations.
- e. The Responsible Person shall monitor and record whether, at any time the Obligations are outstanding, any person, other than the City, the employees of the City, the agents of the City or members of the general public has a right to use the output of the Project (*e.g.*, water, gas, electricity, capacity) on any basis other than standard rates and charges.
- f. The Responsible Person shall monitor and record whether, at any time the Obligations are outstanding, any person, other than the City, has a naming right for the Project or any other contractual right granting an intangible benefit.
- g. Prior to any sale of property owned by the City (real or personal), the Responsible Person must confirm whether such property was financed with tax-exempt debt, and if so, determine whether the proposed disposition of the property could impact the tax-exempt status of the series of Obligations that financed the acquisition of such property.
- h. The Responsible Person shall take any action necessary to remediate any failure to maintain compliance with the covenants contained in the ordinance authorizing the issuance of the applicable series of Obligations.

C. Record Retention.

The Responsible Person will maintain or cause to be maintained all records relating to the investment and expenditure of the proceeds of the Obligations and the use of the Project financed or refinanced thereby for a period ending three (3) years after the complete extinguishment of the Obligations. If any portion of the Obligations is refunded with the proceeds of another series of Obligations, such records shall be maintained until the three (3) years after the refunding Obligations mature or are otherwise paid off. Such records can be maintained in paper or electronic format.

For purposes of these procedures, the Memorandum of Bond Counsel dated December 1, 2011 styled "Certain Federal Income Tax Considerations for Record Retention – Record Management Program and Periodic Compliance Review" is incorporated herein and should be reviewed periodically, at least once per year, by the Responsible Person.

D. Responsible Person & Continuity.

Each Responsible Person shall receive appropriate training regarding the City's accounting system, contract intake system, facilities management and other systems necessary to track the investment and expenditure of the proceeds and the use of the facilities financed with the proceeds of the Obligations. The foregoing notwithstanding, the Responsible Person is authorized and instructed to retain such experienced advisors and agents as may be necessary to carry out the purposes of these instructions.

Prior to cessation of employment with the City, the Responsible Person should identify their successor to maintain compliance with these procedures.

II. FEDERAL SECURITIES LAW

Obligations, whether taxable or tax-exempt, sold in a public offering in an amount of \$1 million or more are subject to Rule 15c2-12 (the “Rule”) of the United States Securities and Exchange Commission (the “SEC”). Additionally, the City may have covenanted to comply with the Rule even with respect to Obligations that would otherwise be exempt from the Rule (*e.g.*, Obligations sold in a private placement or Obligations sold in an amount less than \$1 million). Pursuant to the Rule, the City is required to make annual filings of certain information, as well as make filings upon the occurrence of certain specified events. All filings must be made with the Municipal Securities Rulemaking Board (the “MSRB”) through its Electronic Municipal Market Access System (“EMMA”) at emma.msrb.org.

A. Annual Filings.

The City must file the information listed below with EMMA within six (6) months of each fiscal year end for so long as the respective series of Obligations remains outstanding. The City’s fiscal year ends on September 30 of each year. Therefore, the City must provide updated information by March 31 of the subsequent year. If audited financial statements are not available by February 28, the City must provide unaudited financial information by such date and provide audited financial statements when such statements become available. The City must file each of the following items with EMMA:

- (1) The City’s audited financial statements; and
- (2) An update of the financial tables included in the Official Statement used in connection with the Obligations as described under the caption "Continuing Disclosure of Information". The information should be from the most recent fiscal year end.

The Responsible Person must compile, prepare and make such filings within the required time, or, alternatively, contract with a third-party, such as the City’s financial advisor, to make such filings on the City’s behalf.

B. Notices of Specified Events.

The City must provide notice of any of the following events with respect to the Obligations to the MSRB in a timely manner (but not in excess of ten business days after the occurrence of the event):

- (1) Principal and interest payment delinquencies;
- (2) Non-payment related defaults, if material;
- (3) Unscheduled draws on debt service reserves reflecting financial difficulties;
- (4) Unscheduled draws on credit enhancements reflecting financial difficulties;

- (5) Substitution of credit or liquidity providers, or their failure to perform;
- (6) Adverse tax opinions, the issuance by the IRS of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the Obligations, or other material events affecting the tax status of the Obligations;
- (7) Modifications to rights of Obligation holders, if material;
- (8) Obligations calls (includes redemptions and other early payments), if material, and tender offers;
- (9) Defeasances;
- (10) Release, substitution, or sale of property securing repayment of the Obligations, if material;
- (11) Rating changes;
- (12) Bankruptcy, insolvency, receivership or similar event of the City;
- (13) The consummation of a merger, consolidation, or acquisition involving the City or the sale of all or substantially all of the assets of the City, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;
- (14) Appointment of a successor or additional paying agent or the change of name of a paying agent, if material; and
- (15) In a timely manner, notice of a failure of the City to make the required annual filings listed in Subsection II(A) above.

The Responsible Person should review this list at regular intervals to determine whether any event has occurred that may require a filing with EMMA.

EXHIBIT C

DESCRIPTION OF ANNUAL FINANCIAL INFORMATION

The following information is referred to in Section 17 of this Ordinance.

Annual Financial Statements and Operating Data

The financial information and operating data with respect to the City to be provided annually in accordance with such Section are as specified below (and included in the Appendix or under the headings of the Official Statement referred to):

1. The "Annual Financial Report" for the most recently concluded fiscal year.
2. The information included in the Official Statement under the following tables, but for the most recently concluded fiscal year: Tables 1 through 6, 8 through 20.

Accounting Principles

The accounting principles referred to in such Section are the accounting principles described in the notes to the financial statements referred to in paragraph 1 described above, as such principles may be changed from time to time to comply with state law or regulation.

EXHIBIT D

PRELIMINARY OFFICIAL STATEMENT

Certificates of Obligation

Utility Certificates of Obligation	<u>Amount</u>
Electric	
General Plant	\$ 980,000
Overhead System Improvements	1,050,000
Underground System Improvements	750,000
New Services and System Extensions	1,475,000
Residential Street Lighting	60,000
Thoroughfare Street Lighting	132,000
Distribution System Improvements	1,853,000
Transmission System Improvements	1,700,000
Electric Projects Total	\$ 8,000,000
 Water Projects	
Dowling Road High Service Water Pump Improvements	\$ 3,000,000
Water Projects Total	\$ 3,000,000
 Wastewater	
Bee Creek Parallel Trunk Line	\$ 550,000
Royder/Live Oak Sewer Ext (FM 2154)	500,000
South Knoll/The Glade Rehabilitation	1,600,000
Carter Creek Headworks Improvements	1,500,000
Lick Creek Centrifuge Replacement	1,100,000
Carter Creek Lab and SCADA Building	750,000
Wastewater Projects Total	\$ 6,000,000
<hr/>	
Utility Certificates of Obligation Subtotal	\$ 17,000,000
<u>Estimated Debt Issuance Costs *</u>	<u>\$ 300,000</u>
 Certificates of Obligation Total	\$ 17,300,000

* This is 0.59% of the total bond issue and refunding