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Mayor
Nancy Berry
Mayor Pro Tem
Karl Mooney
Interim City Manager
Frank Simpson

Council members
Blanche Brick
Jess Fields
John Nichols
Julie M. Schultz
James Benham

Agenda
College Station City Council
Regular Meeting
Thursday, January 24, 2013 at 7:00 PM
City Hall Council Chamber, 1101 Texas Avenue
College Station, Texas

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

Presentation:

- Proclamation for recognition of Johnny Manziel and TAMU Football Team.

Hear Visitors: A citizen may address the City Council on any item which does not appear on the posted Agenda. Registration forms are available in the lobby and at the desk of the City Secretary. This form should be completed and delivered to the City Secretary by 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

At the discretion of the Mayor, individuals may be allowed to speak on a Consent Agenda Item. Individuals who wish to address the City Council on a consent 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.

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:

- January 10, 2013 Workshop
- January 10, 2013 Regular Council Meeting

b. Presentation, possible action and discussion on a contract with the low bidder, Aquatec, in the amount of \$110,630, for the re-plastering of Adamson Lagoon and the repair of the filters.

c. Presentation, possible action, and discussion on the second and final reading of a franchise agreement with Viridiun; for the collection of organic waste from commercial business locations.

- d. Presentation, possible action, and discussion on the first reading of a franchise agreement with Budget Roll-Off Services; for the collection of construction and demolition debris from residential locations.
- e. Presentation, possible action, and discussion on the first reading of a franchise agreement with Brannon Industrial Group d/b/a Premier Metal Buyers; for the collection of recyclables from commercial businesses and multi-family locations.
- f. Presentation, possible action and discussion regarding a professional services contract with Halff Associates, Inc. in the amount of \$482,935 for the detailed design of the Lick Creek Greenway Trail project, and approval of a resolution declaring intention to reimburse certain expenditures with proceeds from debt.
- g. Presentation, possible action, and discussion regarding approval of a contract between the City of College Station and Ross Joseph Taylor in the amount of \$104,900 for the sale of 1208 Phoenix.
- h. 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 for \$80,843.00.
- i. Presentation, possible action, and discussion regarding a resolution consenting to the City of Bryan's use of economic development incentives for Woodbolt International.
- j. Presentation, possible action, and discussion for a City Participation Agreement for water line improvements in the Castlegate II, Section 100 Subdivision being made per City Code of Ordinances, Chapter 12, Unified Development Ordinance, Section 8.5, Responsibility for Payment for Installation Costs for a total requested City participation of \$26,810.00.
- k. Presentation, possible action and discussion regarding the approval of a resolution accepting from the Texas Division of Emergency Management (TDEM) the 2010 Homeland Security Grant Program Grant Adjustment Notice (GAN) of \$55,281.53.

Regular Agenda

At the discretion of the Mayor, individuals may be allowed to speak on a Regular Agenda Item. 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. Registration forms are available in the lobby and at the desk of the City Secretary.

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

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

1. Presentation, possible action and discussion regarding a report on the Brazos Valley Bowl.
2. Presentation, possible action, and discussion regarding the approval of an agreement with the Bryan-College Station Convention and Visitors Bureau to administer the Hotel Occupancy Tax Fund Event Grant Program.
3. Presentation, possible action, and discussion regarding the approval of HOT Funding for the Texas 4-H Roundup.
4. Presentation, possible action, and discussion on a Capital Improvement Plan update.
5. Public Hearing, presentation, possible action, and discussion approving an ordinance vacating and abandoning a 0.07 acre, 15-foot wide public utility easement, which is located on Lot 9R-A of the Sandstone Addition according to the plat recorded in Volume 2685, Page 3164 of the Deed Records of Brazos County, Texas.
6. Public Hearing, presentation, possible action, and discussion approving an ordinance vacating and abandoning a 0.03 acre right-of-way, which is located on Lots 1, 2, 11 & 12 of Block B of the College Heights Subdivision according to the plat recorded in Volume 7623, Page 231 of the Deed Records of Brazos County, Texas.
7. Public Hearing, presentation, possible action, and discussion approving an ordinance vacating and abandoning a 0.02 acre public utility easement, which is located on Lots 1 & 12 of Block B of the College Heights Subdivision according to the plat recorded in Volume 7623, Page 231 of the Deed Records of Brazos County, Texas.
8. Presentation, possible action, and discussion on an appointment to the Joint Relief Funding Review Committee.
9. Adjourn.

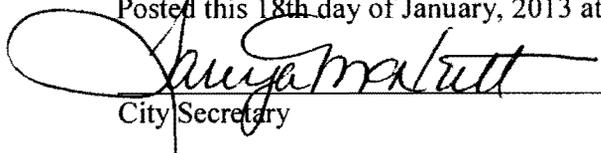
If litigation issues arise to the posted subject matter of this Council Meeting an executive session will be held.

APPROVED:


City Manager

Notice is hereby given that a Regular Meeting of the City Council of the City of College Station, Texas will be held on the Thursday, January 24, 2013 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 18th day of January, 2013 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

City Council Regular Meeting

Page 4

Thursday, January 24, 2013

notice on the bulletin board at City Hall, 1101 Texas Avenue, in College Station, Texas, and the City's website, www.cstx.gov . The Agenda and Notice are readily accessible to the general public at all times. Said Notice and Agenda were posted on January 18, 2013 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 _____, 2013 By _____

Subscribed and sworn to before me on this the ____ day of _____, 2013.

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.

January 24, 2013
City Council Consent Agenda Item No. 2a
City Council Minutes

To: Frank Simpson, Interim City Manager

From: Sherry Mashburn, City Secretary

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

- January 10, 2013 Workshop
- January 10, 2013 Regular Council Meeting

Attachments:

- January 10, 2013 Workshop
- January 10, 2013 Regular Council Meeting

MINUTES OF THE CITY COUNCIL WORKSHOP
CITY OF COLLEGE STATION
JANUARY 10, 2013

STATE OF TEXAS §
 §
COUNTY OF BRAZOS §

Present:

Nancy Berry, Mayor

Council:

Blanche Brick
Jess Fields
Karl Mooney
John Nichols
Julie Schultz
James Benham

City Staff:

David Neeley, City Manager
Frank Simpson, Deputy City Manager
Kathy Merrill, 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 5:03 p.m. on Thursday, January 10, 2013 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, §551.072-Real Estate; §551.074-Personnel, and §551.087-Economic Development Negotiations, the College Station City Council convened into Executive Session at 5:03 p.m. on Thursday, January 10, 2013 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.
- Patricia Kahlden, individ. and as rep. of the Estate of Lillie May Williams Bayless v. Laura Sue Streigler, City of College Station and James Steven Elkins, No. 11-003172-CV-272, in the 272nd District Court of Brazos County, TX
- Tom Jagielski v. City of College Station, Cause No. 12-002918-CU-361, In the 361st District Court of Brazos County, Texas
- State v. Carol Arnold, Cause Number 11-02697-CRF-85, In the 85th District Court, Brazos County, Texas

B. Consultation with City attorney to seek legal advice; to wit:

- Legal advice regarding Contract No. 11-046 for use of HUD funds

C. Deliberation on the deliberate the purchase, exchange, lease or value of real property; to wit:

- Property located generally northwest of the intersection of First Street and Church Avenue in College Station.

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

- City Manager

E. Deliberation on economic development negotiations regarding an offer of financial or other incentives for a business prospect; to wit:

- Discuss economic development incentive negotiations with TAMUS.

The Executive Session adjourned at 6:15 p.m.

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

No action was required from Executive Session.

4. Proclamation and Recognition of ASCE Centennial Anniversary.

Mayor Berry presented a proclamation recognizing the ASCE Centennial Anniversary. Present to receive the proclamation were Crespín Guzman, Texas Section ASCE Executive Director; Josh Norton, Brazos Branch Treasurer, Atmos Energy; Sam Vernon, Brazos Branch Secretary, Bleyl and Associates; Veronica Morgan, Brazos Branch member, Mitchell and Morgan; and Bobby Lys, Brazos Branch State Director, Flowtite Pipe. Engineers present and representing the City of College Station were Chuck Gilman, David Coleman, Troy Rother, and Alan Gibbs.

Engineers present and representing the City of Bryan were Jayson Barfknecht, Paul Kaspar, and Susan Monnat.

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

Item 2d was pulled for discussion.

2d: David Brower, Commercial Development Analyst, clarified this is not a call for a ban but rather an effort to regulate under lending law.

2h: Chuck Gilman, Director of Capital Projects, clarified this item representative of the template for franchises that will be used in the future. They are trying to be as consistent as possible for all franchisees.

6. Presentation and discussion regarding the College Station Economic Development Master Plan Phase II Report.

Steve Spillette, with CDS Spillette (Strategic Urban Consulting Alliance), and Amy Holloway and Tony Delissi, with Avalanche Consulting, presented the College Station Economic Development Master Plan Phase II. Phase One included the base analysis and existing conditions. Phase Two evaluated opportunities and constraints through a business survey and will look at economic development organization, policies, incentives, entertainment districts and redevelopment. Phase Three will be to develop goals and strategies. The project consultant team interviewed sixteen individuals and surveyed ninety-eight representatives from local companies during the second phase of this initiative. An internet-based survey was developed targeting business owners and high level managers. The City publicized the survey with the assistance of the Bryan College Station Chamber of Commerce, Research Valley Partnership, Brazos Valley Small Business Development Center, and Northgate District Association. Competitive strengths were identified as colleges and universities, the cost of living, the growing local economy, and our regional location. Competitive weaknesses were identified as the transportation infrastructure, the political leadership, career opportunities, the business climate, and the natural environment. During public input from the interviews, competitive advantages were identified as: great for families, low cost of living, highly educated community, Biotech industry, Texas A&M University, and Blinn College. Air service, regional roads, underemployment, and amenities for young adults are considered as limitations to development.

The City's current economic development incentive program was assessed to possess strengths including utilizing target industries clearly defined by the Research Valley Partnership, having a diversity of incentive options available, and offering cash grant incentives among others. The current incentive program had weaknesses including the lack of ISD abatements, lack of awareness in the business community of City incentives available, and R&D tax credits not being included among primary community incentives. Staff received comments to include flexible incentive options, add sections on Retention and Expansion, maintain an expedited permitting system, develop a scorecard for project evaluation, offer R&D tax credits, and create an Entrepreneurship and Innovation program.

A regional approach is critical to economic development. When companies and site consultants consider locations for investment, they begin at a regional level. Political boundaries between states, counties, and cities are not considered in the initial phases of a site search. In general, projects begin by looking at geographic territories that, depending on the type of business, make sense logistically, contain solid foundations of suppliers and talents, and are cost competitive. Territories considered might be large geographic regions such as the Southeast US or more specific such as sites within three hours driving time to an OEM.

After a geographic territory is established, more specific criteria come into play, allowing the company or site consultant to filter prospective locations. Which city or county a project locates in is determined later in the selection process when considering specific real estate and incentives.

Regionalism is important for several reasons. First, packaging assets at a regional level helps a community stand out in the site selection process, especially in the early stages when prospects are developing their initial list of large geographic territories to consider. Secondly, a regional approach allows communities to pool resources to build brand awareness and market. It elevates efficiency and effectiveness of economic development campaigns, especially in today's noisy and hyper competitive business climate. Finally, it shows prospects that communities can set aside differences to serve the needs of their customers. This gives businesses confidence that the community will work together to take care of their investment and their people.

Currently, the RVP is the primary regional EDO working with Brazos County, City of Bryan, City of College Station, and the BCS Chamber. The City traditionally works with developers and business on sites and supports quality of life and the business climate. It is recommended that the City of College Station should formalize a full-time economic development manager position that coordinates efforts across multiple departments as needed by expanding and relocating companies. The economic development manager should work with the City Manager and the Research Valley Partnership to respond quickly to opportunities. The City should continue its proactive approach to economic development, prioritizing initiatives that enhance College Station's quality of life to attract and retain talent and ensure that the City has available, developable real estate for business expansion and attraction. The needs of the Research Valley's target audiences should drive decisions regarding infrastructure and site investment. Encouraging commercialization and R&D activities should also become a focus of the City. This will require closer collaboration with TAMU and the Research Valley Partnership to work with TAMU on projects that improve the potential for graduate retention, spinoff of university research, and entrepreneurship. We should explore opportunities to co-invest with TAMU in select projects that will catalyze economic development.

The consultant team also evaluated the entertainment districts: Northgate, Wolf Pen Creek, and University Drive East and noted that College Station is fortunate to have a greater than typical volume of entertainment districts relative to its size. From an economic development standpoint, the City would be well served to focus on current existing and planned entertainment districts addressing the challenges each may face and increase the marketing and promotion of these assets. Ultimately, having quality entertainment districts adds to the quality of life and will aid the City and the region in attracting and retaining businesses and sought-after employees.

Potential redevelopment areas include FM 2154/George Bush Drive, Harvey Road and the Texas Avenue corridor. The three redevelopment areas proposed in the Comprehensive Plan were reviewed by the consultant team. An overall conclusion that applies to all three is that an unassisted evolution toward a more intensive, urban mixed-use land use profile, as proposed in the Plan, has challenges in all three areas, with the exception of student housing opportunities. Incentive programs or public-private partnerships may be needed to address issues such as land assembly, public street network modifications, and parking supply and management to achieve this type of land use objective. Existing redevelopment proposals for Campus Pointe and the Plaza Hotel property will be providing a great deal of competition in the near term for commercial development in the Comprehensive Plan redevelopment areas.

Workshop recessed at 7:15 p.m. in order to begin the Regular Meeting.

The Workshop reconvened at 10:10 p.m.

7. Presentation and discussion regarding the Green College Station Action Plan.

This item was not discussed.

8. Council Calendar

- **Jan. 11 Retirement Reception for David Neeley in Council Chambers at 3:30 p.m.**
- **Jan. 16 RVP Board Meeting at RVP, 3:00 p.m.**
- **Jan. 17 P&Z Workshop/Meeting, CSU Training Facilities, 6:00 p.m. (Karl Mooney, Liaison)**
- **Jan. 21 City Offices Closed - HOLIDAY**
- **Jan. 23 Economic Outlook Conference at CS Hilton, 8:00 a.m.**
- **Jan. 24 Executive Session/Workshop/Regular Meeting at 5:00, 6:00 & 7:00 p.m.**
- **Jan. 28 & 29 Council Strategic Plan Retreat at MTF Assembly Room - 1603 Graham Road, 8:00 a.m.**

Council reviewed the Council calendar. The RVP Board meeting has been changed to January 30. There will be a BSWMA Board meeting on January 16.

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.

Mayor Berry asked for further discussion on the request by Dr. Magyar to provide for an exemption to the Animal Ordinance regarding falconry.

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, Blinn College Brazos Valley Advisory Committee, Brazos County Health Dept., Brazos Valley Council of

Governments, Bryan/College Station Chamber of Commerce, BVSWMA, BVWACS, 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, Parks and Recreation Board, Planning and Zoning Commission, Research Valley Partnership, Regional Transportation Committee for Council of Governments, Sister City Association, TAMU Student Senate, Texas Municipal League, Youth Advisory Council, Zoning Board of Adjustments.

Councilmember Nichols reported on the BCS Chamber Legislative meeting and the United Way.

11. Adjournment

MOTION: There being no further business, Mayor Berry adjourned the workshop of the College Station City Council at 10:17 p.m. on Thursday, January 10, 2013.

Nancy Berry, Mayor

ATTEST:

Sherry Mashburn, City Secretary

MINUTES OF THE REGULAR CITY COUNCIL MEETING
CITY OF COLLEGE STATION
JANUARY 10, 2013

STATE OF TEXAS §
 §
COUNTY OF BRAZOS §

Present:

Nancy Berry

Council:

Blanche Brick
Jess Fields
Karl Mooney
John Nichols
Julie Schultz
James Benham

City Staff:

David Neeley, City Manager
Frank Simpson, Deputy City Manager
Kathy Merrill, 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 7:16 p.m. on Thursday, January 10, 2013 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.

Proclamation for the Better Business Bureau Boss of the Year.

Mayor Berry presented a proclamation recognizing Mike Beal, with Century 21 Beal Realty, as the Better Business Bureau Boss of the Year.

Special recognition of Steve Beachy for his service on the Brazos Valley Groundwater Conservation District.

Mayor Berry presented a plaque to Steve Beachy in recognition for his service on the Brazos Valley Groundwater Conservation District.

Citizen Comments

Dr. Stephen Magyar, 3425 Greens Prairie Road West, reported he is a state of Texas permitted Master falconer and requested an exemption from the City of College Station Animal Control Ordinance 2010-3237, subsection "Wild Animal" in the Texas Health and Safety Code 822.101, to thus allow any person possessing a valid state permit authorization to practice falconry. He is a member of the North American Falconers Association and the Texas Hawking Association. He has been a permitted falconer and College Station resident for over thirty years. He wants to get another hawk and be able to possess it in College Station without breaking the law. He asked what does he need to do to have an exemption added to this current ordinance so that he can continue to practice this ancient hunting sport? He provided to the Council an example of exemption language as prepared by James Maynard, General Counsel of the North American Falconers Association.

Argie Butler, 8783 Vincent Road, spoke about the Brushy community and the possible impact of the proposed landfill. She wants to keep this in the forefront of the City's mind. The dump will be as tall as Kyle Field, and there will be six days out of the week with heavy dust due to the dump trucks. She can't see how the roads can sustain this amount of traffic.

Cora Rogers, 7472 Old Jones Road, is also a member of the Brushy community. She has health issues, and she wants to live to be as old as her neighbor. The vultures will look for a cheap place where they can build. The community is standing and fighting to stop this dump site from being put in this community. She asked Council to not forget them.

CONSENT AGENDA

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

- **December 13,2012 Workshop**
- **December 13,2012 Regular Council Meeting**
- **December 18,2012 Special Meeting**

2b. Presentation, possible action and discussion on an Agreement for Services with Emergicon to provide ambulance billing, accounts receivable and delinquent account collection services in an amount not to exceed \$120,000.

2c. Presentation, possible action, and discussion approving Resolution 01-10-13-2c. authorizing a License Agreement with Heath Phillips Investments, LLC, pertaining to the encroachment in to the public utility easement area of a portion of a structure located in Common Area, The Barracks II Subdivision Phase 100, according to the plat recorded in Volume 10785, Page 163 of the Official Records of Brazos County, Texas.

2d. Presentation, possible action, and discussion regarding the approval of Resolution 01-10-13-2d, of the City of College Station requesting the Texas Legislature and the Governor of Texas enact laws to regulate the rates and fees charged by payday lending and auto title

loan businesses and to affirm cities authority to pass ordinances regulating payday lending and auto title loan business practices.

2e. Presentation, possible action, and discussion regarding approval of a contract between the City of College Station and Binkley & Barfield, Inc. in the amount of \$59,750.00 for TxDOT Drainage Infrastructure Data Collection and Mapping project and authorizing the City Manager to execute the contract on behalf of the City Council.

2f. Presentation, possible action and discussion regarding the approval of annual tire purchases from Pilger's Tire & Auto Center through the State of Texas (TxMAS) Tire Contract in the amount of \$197,000.00.

2g. Presentation, possible action, and discussion on approving an annual blanket purchase order for the purchase of auto parts, shop equipment and services from NAPA Auto Parts (College Station, TX) through the Purchasing Solutions Alliance (PSA) contract for the amount of \$75,000.00.

2h. Presentation, possible action, and discussion on the first reading of a franchise agreement with Viridiun; for the collection of organic waste from commercial business locations.

Item 2d was pulled for a separate vote.

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

(2d)MOTION: Upon a motion made by Councilmember Schultz and a second by Councilmember Nichols, the City Council voted five (5) for and two (2) opposed, with Councilmembers Fields and Mooney voting against, to adopt Resolution 01-10-13-2d, of the City of College Station requesting the Texas Legislature and the Governor of Texas enact laws to regulate the rates and fees charged by payday lending and auto title loan businesses and to affirm cities authority to pass ordinances regulating payday lending and auto title loan business practices. The motion carried.

REGULAR AGENDA

1. Public Hearing, presentation, possible action and discussion regarding adoption of Resolution 01-10-13-01 of the City of College Station supporting Legislation to create the "Rock Prairie Medical District Municipal Management District Number One", the associated draft legislation and the potential conditions of consent associated with the District.

2. Public Hearing, presentation, possible action and discussion regarding adoption of Resolution 01-10-13-02 of the City of College Station supporting Legislation to create the "Rock Prairie Medical District Municipal Management District Number Two", the associated draft legislation and the potential conditions of consent associated with the District.

The Public Hearings for Items 1 and 2 were held together.

At approximately 7:55 p.m., Mayor Berry opened the Public Hearing.

Tom Goen, 705 Putter Court, spoke on Item 2 and stated he has not had an opportunity to study the draft legislation and it appeared the board, in order to submit some action needing additional ad valorem taxes, has to be submitted by petition and signed by the majority value ownership of property owners. In this case, that would be one person and the remainder of the property owners would not be well represented. He would like to see another board member to represent the others in that case.

James Muir, 4207 Center Court, spoke on Item 2 and provided the Council with the Core Area Layout Plan and other schematics. He also provided a Statement of Mutual Agreement, dated January 8, 2013, with eight of the ten stakeholder signatures, attached. His main concern is related to board appointments. He is asking the Council keep the typical method of selection as it provides a perfect system of checks and balances. This will give the existing board and property owners the ability to feel comfortable when they are being asked to invest in the district, and it also gives the Council comfort in their ability to approve the board. He noted the property owners are the ones committing to additional assessments with the vested interest in the special district, and they do not feel comfortable without a fair system of checks and balances for board appointments.

There being no further comments, the Public Hearing was closed at 8:08 p.m.

(1)MOTION: Upon a motion made by Councilmember Brick and a second by Councilmember Nichols, the City Council voted six (6) for and one (1) opposed, with Councilmember Fields voting against, to adopt Resolution 01-10-13-01 of the City of College Station supporting Legislation to create the "Rock Prairie Medical District Municipal Management District Number One", the associated draft legislation and the potential conditions of consent associated with the District. The motion carried.

(2)MOTION: Upon a motion made by Councilmember Nichols and a second by Councilmember Brick, amended by Councilmember Benham and seconded by Councilmember Schultz, the City Council voted six (6) for and one (1) opposed, with Councilmember Fields voting against, to adopt Resolution 01-10-13-02 of the City of College Station supporting Legislation to create the "Rock Prairie Medical District Municipal Management District Number Two", the associated draft legislation, as amended, and the potential conditions of consent associated with the District. The motion carried.

The legislation included in the packet was amended with alternative language, to wit:

Sec. 38.052 RECOMMENDATIONS FOR SUCCEEDING BOARD. (a) the initial and each succeeding board of directors shall recommend to the governing body of the City persons to serve on the succeeding board.

(b) After reviewing the recommendations, the governing body shall approve or disapprove the directors recommended by the board. A person is appointed if a majority of the members of the governing body, including the mayor, of the City vote to appoint that person.

(c) If the governing body is not satisfied with the recommendations submitted by the board and does not vote to approve the board members, the board, on the request of the governing body, shall submit to the governing body additional recommendations. If after the second submittal, the governing body does not vote to approve the additional recommendations of the board, the governing body of the City may appoint qualified persons to serve on the succeeding board.

(d) Board members may serve successive terms.

(e) If any provisions of Subsections (a) through (d) is found to be invalid, the commission shall appoint the board from recommendations submitted by the preceding board.

The motion to amend the main motion carried four (4) for and three (3) against, with Councilmembers Brick, Mooney and Nichols voting against.

3. Presentation, possible action, and discussion regarding approval of an engagement letter between the City of College Station and Allen Boone Humphries Robinson, LLP in the amount of \$105,000 to provide services to the City in connection with the creation of two municipal management districts related to the Medical District and authorizing the City Manager to execute the engagement letter on behalf of the City Council.

MOTION: Upon a motion made by Councilmember Brick and a second by Councilmember Nichols, the City Council voted six (6) for and one (1) opposed, with Councilmember Fields voting against, to approve the engagement letter between the City of College Station and Allen Boone Humphries Robinson, LLP in the amount of \$105,000 to provide services to the City in connection with the creation of two municipal management districts related to the Medical District and authorizing the City Manager to execute the engagement letter on behalf of the City Council. The motion carried.

4. Public Hearing, presentation, possible action, and discussion on Ordinance 2013-3469, Budget Amendment #1, amending Ordinance Number 3443 which will amend the budget for the 2012-2013 Fiscal Year in the amount of \$2,070,602.

At approximately 10:01 p.m., Mayor Berry opened the Public Hearing.

There being no comments, the Public Hearing was closed at 10:01 p.m.

MOTION: Upon a motion made by Councilmember Nichols and a second by Councilmember Benham, the City Council voted six (6) for and one (1) opposed, with Councilmember Fields voting against, to adopt Ordinance 2013-3469, Budget Amendment #1, amending Ordinance Number 3443 which will amend the budget for the 2012-2013 Fiscal Year in the amount of \$2,070,602. The motion carried.

5. Public Hearing, presentation, possible action, and discussion regarding Ordinance 2013-3470, an amendment to Chapter 12, "Unified Development Ordinance", Section 4.2, "Official Zoning Map" of the Code of Ordinances of the City of College Station, Texas by rezoning 1.24 acres located at 3800 State Highway 6 South from CI Commercial Industrial to GC General Commercial.

At approximately 10:06 p.m., Mayor Berry opened the Public Hearing.

There being no comments, the Public Hearing was closed at 10:06 p.m.

MOTION: Upon a motion made by Councilmember Fields and a second by Councilmember Benham, the City Council voted seven (7) for and none (0) opposed, to adopt Ordinance 2013-3470, an amendment to Chapter 12, "Unified Development Ordinance", Section 4.2, "Official Zoning Map" of the Code of Ordinances of the City of College Station, Texas by rezoning 1.24 acres located at 3800 State Highway 6 South from CI Commercial Industrial to GC General Commercial. The motion carried unanimously.

6. Public Hearing, presentation, possible action and discussion regarding Ordinance 2013-3471, amending Chapter 12 "Unified Development Ordinance", Article 2 "Development Review Bodies" and Article 5 "District Purpose Statements and Supplemental Standards", of the Code of Ordinance of the City of College Station related to referencing the Easterwood Field Airport Zoning Ordinance and eliminating a duplicate Section in Article 5.

At approximately 10:09 p.m., Mayor Berry opened the Public Hearing.

There being no comments, the Public Hearing was closed at 10:09 p.m.

MOTION: Upon a motion made by Councilmember Benham and a second by Councilmember Fields, the City Council voted seven (7) for and none (0) opposed, to adopt Ordinance 2013-3471, amending Chapter 12 "Unified Development Ordinance", Article 2 "Development Review Bodies" and Article 5 "District Purpose Statements and Supplemental Standards", of the Code of Ordinance of the City of College Station related to referencing the Easterwood Field Airport Zoning Ordinance and eliminating a duplicate Section in Article 5. The motion carried unanimously.

7. Presentation, possible action, and discussion regarding an appointment to the Twin City Endowment Board of Directors.

MOTION: Upon a motion made by Mayor Berry and a second by Councilmember Nichols, the City Council voted seven (7) for and none (0) opposed, to appoint Brien Smith to the Twin City Endowment Board of Directors. The motion carried unanimously.

8. Presentation, possible action, and discussion regarding Resolution 01-10-13-08, appointing Bill Harris to the Brazos Valley Groundwater Conservation District Board of Directors, subject to confirmation by the Brazos County Commissioners Court.

MOTION: Upon a motion made by Councilmember Nichols, and a second by Councilmember Brick, the City Council voted seven (7) for and none (0) opposed, to adopt Resolution 01-10-13-08, appointing Bill Harris to the Brazos Valley Groundwater Conservation District Board of Directors, subject to confirmation by the Brazos County Commissioners Court. The motion carried unanimously.

9. Adjournment.

MOTION: There being no further business, Mayor Berry adjourned the Regular Meeting of the City Council at 10:10 p.m. on Thursday, January 10, 2013.

Nancy Berry, Mayor

ATTEST:

Sherry Mashburn, City Secretary

DRAFT

January 24, 2013
Consent Agenda Item No. 2b
Contract for Adamson Lagoon Re-plaster and Other City Pool Repairs
Contract #13-064

To: Frank Simpson, Interim City Manager

From: David Schmitz, Director, Parks and Recreation

Agenda Caption: Presentation, possible action and discussion on a contract with the low bidder, Aquatec, in the amount of \$110,630, for the re-plastering of Adamson Lagoon and the repair of the filters.

Relationship to Strategic Goals: (Select all that apply)

1. Core Services and Infrastructure
2. Neighborhood Integrity
3. Diverse Growing Economy

Recommendation(s): Staff recommends award of the contract with Aquatec for Project 1 of the bid, for the re-plastering of Adamson Lagoon and the repair of the filters, in the amount of \$110,630 and the rejection of all bids for Project 2 and all alternates.

Summary: Project 1 includes the replacement of the plaster in both pools at Adamson Lagoon. The current plaster is 12 years old. The normal life expectancy is 8 to 10 years. At the same time the filter media in the pool filters will be replaced. This was last done in 2003. The normal life expectancy of filter media is 5-8 years. In addition to the plaster, Lane Lines and turn targets will be included in the 25 meter section of Adamson Lagoon for competitive swimming and training.

Project 2 included concrete repairs to the deck surrounding the pool area and work on the large slide. Due to budget considerations we will revise the scope of this project and re-bid.

Budget & Financial Summary: Three (3) sealed, competitive bids were received and opened on December 11, 2012. The bid summary is attached. Funds are available from the Parks and Recreation Department Recreation Fund Budget as a one-time SLA.

Attachments:

1. Bid Tab #13-018
2. Contract (On File in the City Secretary's Office)



City of College Station - Purchasing Division
Bid Tabulation for #13-018
"Adamson Lagoon Replaster and
Other City Pool Repairs"
Open Date: Tuesday, December 11, 2012 @ 2:00 p.m.

	Progressive Commercial Aquatics	Aquatec	Hancock Pool Services, Inc.
Project 1 Base Bid			
A. Adamson Lagoon Plaster/Tile	\$95,044.00	\$84,300.00	\$175,800.00
B. Adamson Lagoon Children's Pool Repair	\$22,613.00	\$16,200.00	\$30,000.00
C. Adamson Lagoon Filter Work	\$13,778.00	\$9,200.00	\$17,500.00
D. Adamson Lagoon Tile Markers	\$2,878.00	\$930.00	\$4,600.00
Total Project 1 Base Bid	\$134,313.00	\$110,630.00	\$227,900.00
Project 2 Base Bid			
A. Adamson Lagoon Repairs	\$27,310.00	\$18,010.00	\$25,500.00
B. Adamson Lagoon Children's Pool Repairs	\$1,744.00	\$1,940.00	\$1,700.00
C. Adamson Lagoon Large Body Slide	\$3,866.00	\$2,820.00	\$2,700.00
D. Thomas Park Repairs	\$619.00	\$750.00	\$800.00
Total Project 2 Base Bid	\$33,539.00	\$23,520.00	\$30,700.00
Project 2 Alternate			
1. Cost variance of using FlexCrete for line A3	\$7,200.00	\$850.00	\$0.00
Total Project 2 Base Bid with Alternate	\$40,739.00	\$24,370.00	\$30,700.00
Alternates (Adamson)			
1. Removal and replacement of Caulk	\$272.00	\$550.00	\$0.00
2. Water feature pipe and head replacement	\$822.00	\$450.00	\$450.00
3. Pressure Gauge Replacement	\$247.00	\$220.00	\$300.00
4. Replace drain plugs on pump strainers	\$157.00	\$50.00	\$100.00
5. Replace PVC line, chlorine line, acid line	\$1,822.00	\$500.00	\$1,500.00
6. Install new injectors with check valves	\$418.00	\$120.00	\$400.00
7. Replace 3 inch gate valve	\$702.00	\$780.00	\$400.00
8. Install blue stem flow meters	\$597.00	\$515.00	\$200.00
9. Replace all cast iron reducers	\$1,617.00	\$1,100.00	\$3,000.00
10. Remove existing diving board frame	\$972.00	\$1,600.00	\$500.00
Alternates (Thomas Park Pool)			
11. Replace hydraulic fittings and line on filtration	\$549.00	\$250.00	\$200.00
12. Replace semi-automatic knob backwash control	\$899.00	\$1,756.00	\$1,500.00
13. Remove section of pipe and cap old heater line	\$899.00	\$900.00	\$1,300.00
14. Filter Work	\$11,245.00	\$4,400.00	\$8,400.00
Certification	Y	Y	Y
Addendum Acknowledged	2	2	2
Bid Bond	Y	Y	Y

Indicates a correction to the vendor's submitted bid amount

Contract is being awarded for Project 1. Project 2 and all alternates are being rejected at this time, and will be rebid at a later date.

January 24, 2013
Consent Agenda Item No. 2c
Viridiun Organic Waste Collection Franchise Agreement - 2nd Reading

To: Frank Simpson, Interim City Manager

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

Agenda Caption: Presentation, possible action, and discussion on the second and final reading of a franchise agreement with Viridiun; for the collection of organic waste from commercial business locations.

Relationship to Strategic Goals: Financial Sustainability

Recommendation(s): Staff recommends approval of this franchise agreement.

Summary: The proposed agreement would allow Viridiun to collect organic waste from commercial business locations within the City of College Station.

Organic waste is defined as waste of a biological origin recovered from the solid waste stream for the purposes of reuse, reclamation, or compost. Organic waste is not solid waste, unless it is abandoned or disposed of, rather than reprocessed into another product. Organic waste includes food waste, brush, manure, leaves, mulch, and compost.

The company will be responsible for developing onsite collection of organic waste so as not to interfere with the collection of municipal solid waste (MSW).

Section 104 of the City Charter states that "The City of College Station shall have the power by ordinance to grant any franchise or right mentioned in the preceding sections hereof, which ordinance, however, shall not be passed finally until it shall have been read at three (3) separate regular meetings of the City Council."

Budget & Financial Summary: N/A

Attachments:

1. Franchise Ordinance

Ordinance No. _____

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

Whereas, the City of College Station, by ordinance, provides exclusively all solid waste collection and disposal services for solid waste generated from within the corporate limits of the City of College Station; and the City of College Station may, by ordinance and charter, grant franchises to other entities for the use of public streets, alleys and thoroughfares within the corporate limits of the City of College Station for the collection and disposal of solid waste generated from within the corporate limits of the City of College Station; and

Whereas, the City of College Station desires to exercise the authority provided to it by ordinance and charter to grant a franchise for the collection and disposal of a certain classification of solid waste generated within the corporate limits of the City of College Station under the terms of this Franchise Agreement as set out below; and

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

Contract No. 13-097

**ARTICLE I
DEFINITIONS**

1. **Contractor** means Viridiun conducting a commercial and industrial organic waste collection service.
2. **Brazos Valley Solid Waste Management Inc.** or BVSWMA means a landfill operated by an interlocal agreement.
3. **City of College Station** or City means the City of College Station, Texas a Home-Rule Municipal Corporation incorporated under the laws of Texas.
4. **City Council** or Council means the governing body of the City of College Station, Texas.
5. **Class 1 Waste** means that term as defined in the Texas Administrative Code as it now exists or as is hereafter amended.
6. **Compactor** means a bulk container used for the collection of refuse, equipped with a device to compact such materials and thereby increasing the storage capacity of the containers.
7. **Container** means an apparatus of varying capacity used for refuse collection. This apparatus must have a securable lid. This lid shall remain closed and secured with the exception of loading and collection. Containers shall not be made of any temporary material.
8. **Customer** means: those industrial or commercial premises located within the City that generate organic waste.
 - a. **Commercial Customers** - Any customer who is an enterprise or establishment whose main purpose is to carry on a commercial for-profit or not-for-profit activity. Said definition shall include all uses not falling within the category of residential, including, but not limited to, churches, hospitals, schools and industries.
 - b. **Industrial Customers-** Real property on which manufacture or assembly employing labor or machinery is carried on for profit.
9. **Demolition and Construction Debris** means any building material waste resulting from demolition, remodeling, repairs, or construction, as well as materials discarded during periodic temporary facility clean-up generated within the City.
10. **Franchise Agreement** means this franchise between the City of College Station and Viridiun for provision of organic waste collection from commercial business locations within the City of College Station, under certain terms and conditions set out herein.

11. **Organic Waste** means waste of biological origin recovered from the solid waste stream for the purposes of reuse, reclamation, or compost. Organic Waste is not solid waste, unless it is abandoned or disposed of, rather than reprocessed into another product.
12. **Recyclables or Recyclable Commodities** means materials recovered from the solid waste stream for reuse or reclamation, a substantial portion of which are consistently used in the manufacture of products that may otherwise be produced using raw or virgin materials. Recyclable commodities or recyclables are not solid waste unless they are abandoned or disposed of, rather than reprocessed into another product.
13. **Residue** means the material regularly associated with and attached to recyclable commodities, as a part of the original packaging or use of that commodity, that is not recyclable itself.
14. **Roll-Off** means a container of varying capacity used for refuse collection.

**ARTICLE II
GRANT OF NON-EXCLUSIVE FRANCHISE**

1. Nothing in this Franchise shall be construed as granting an exclusive franchise or right. City hereby grants Contractor a non-exclusive franchise to operate and establish in the City from the effective date of the Agreement, to engage in the business of collecting organic waste from commercial and industrial sites; for the purpose of recycling within the jurisdictional limits of the City.

2. Contractor is granted passage and right-of-way on, along and across the streets, avenues, rights-of-way, alleys, and highways within the corporate limits of the City, for any such services and lawful purpose as stated in this Franchise, provided that all such work, activity and undertakings by Contractor shall be subject to the terms and provisions of this Franchise and the continuing exercise by the City of its governmental and police powers, and provided further that nothing herein shall be construed to require or authorize Contractor to exceed any rights granted herein or by the TCEQ.

**ARTICLE III
DISPOSAL SITE TO BE USED**

Unless approved otherwise in writing by City, Contractor shall utilize BVSWMA, Inc. landfill for the disposal of all non-recyclable waste material collected by Contractor within the corporate limits of the City. Contractor will only use a City-approved recycling facility for processing all recyclable material collected by Contractor within the corporate limits of the City under this Franchise Agreement. Contractor shall not dispose of any Class 1 Waste at the BVSWMA, Inc. landfill.

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

Attached hereto as **Exhibit "A"** and incorporated herein by reference is the Schedule of Base Rates, which Contractor shall charge for the aforementioned services. The Contractor shall notify the City in writing at least 30 days before making any base rate changes.

**ARTICLE V
PAYMENTS TO CITY**

1. For and in consideration of the grant of the franchise herein, Contractor agrees and will pay during the term of this Franchise, a sum based on the following graduated fee schedule depending on the percentage of aggregate recycling accomplished.

- a. A fee is required equivalent to five percent (5%) of Contractor's monthly gross revenues, delivery revenues, and hauling revenues; including rates as described in **"Exhibit A"**, generated from Contractor's provision of organic waste collection services within the City is required if Contractor reports aggregate recycling of at least sixty percent (60%) of organic waste collected.

- b. A fee is required equivalent to six and one half percent (6.5%) of Contractor's monthly gross revenues, delivery revenues, and hauling revenues; including rates as described in "Exhibit A", generated from Contractor's provision of organic waste collection services within the City is required if Contractor reports aggregate recycling of at least fifty-five percent (55%) but less than sixty percent (60%) of organic waste collected.
 - c. A fee is required equivalent to eight percent (8%) of Contractor's monthly gross revenues, delivery revenues, and hauling revenues; including rates as described in "Exhibit A", generated from Contractor's provision of organic waste collection services within the City is required if Contractor reports aggregate recycling less than fifty-five percent (55%) of organic waste collected.
2. Any revenue received by Contractor is subject to the franchise fee and shall be computed into Contractor's monthly gross revenues, delivery revenues, hauling revenues, and rates as described in "Exhibit A". Payment will be paid quarterly to the City, and shall be due by the twentieth day (20th) of the month following the end of the previous calendar quarter. Payment after that date shall incur a ten percent (10%) late fee on the outstanding account balance under this Article V.
3. Failure by Contractor to pay any amount due under this franchise constitutes a Failure to Perform under this contract and is subject to the provisions of Article XIV of this Franchise Agreement (FAILURE TO PERFORM).

ARTICLE VI ACCESS TO RECORDS & REPORTING

City shall have the right, upon reasonable notice and during normal business hours, to inspect Contractor's records, billing records of customers served by Contractor, and all papers relating to the operation of organic waste collection and disposal within the City. Contractor shall cooperate with City to allow the inspections.

Along with the payment to the City of the City's agreed share of revenue from the monthly gross revenues, delivery revenues, and hauling revenues from collection of organic waste, and rates as described in "Exhibit A", Contractor shall provide a Monthly Activity Report due to the City no later than the twentieth (20th) calendar day of each month, summarizing collection activity for the previous calendar month. Contractor's report shall include the following information:

- 1. Total tonnage of all materials collected from all customers, broken down by material type
- 2. Total tonnage of all materials collected from all customers from within the City, broken down by material type

3. Reports of all complaints and investigations received/ action taken by Contractor, and results or final disposition of complaint and investigation.
4. A report of all Contractor accounts served and monthly revenue derived from the provision of collecting organic waste in the City under terms of this franchise. The reports will include customer's address, frequency of pick-up, size of container, type of container, and monthly charges.
5. Such information concerning the business of collection, processing and marketing of recyclable materials as may be required by the City's representative.

**ARTICLE VII
PLACEMENT OF ROLL-OFFS, COMPACTORS, AND CONTAINERS**

1. All roll-off(s), compactor(s), and container(s) placed in service shall be located in such a manner so as not to be a safety or traffic hazard. Under no circumstances shall Contractor place roll-off(s), compactor(s), or container(s) on public streets, alleys or thoroughfares without the prior written approval of the City. City reserves the right to designate the exact location of any or all roll-off(s), compactor(s), or container(s) placed in service in the City.
2. Organic waste collection shall not interfere with the City's collection of municipal solid waste.
3. Under no circumstances shall contractor place roll-off(s), compactor(s), or container(s) in existing enclosures designated for City roll-off(s), compactor(s), and container(s).

**ARTICLE VIII
CONTAINER AND EQUIPMENT MAINTENANCE**

1. Contractor's vehicles shall at all times be clearly marked with Contractor's name, address, telephone number and if applicable, state permit number, in letters not less than three (3) inches in height. All equipment necessary for the performance of this franchise shall be in good condition and repair.
2. Contractor agrees to paint and properly maintain in a safe, clean, and sanitary condition, all roll-off, compactors, or containers placed out for service within the City. Organic waste roll-off(s), compactor(s), and container(s) must be clearly marked as used for "Organic Waste Only" in letters at least twelve inches (12") in height on the sides of the roll-off(s), compactor(s), and container(s).
3. All vehicles used by Contractor in the removal of organic waste must be covered during transport to prevent spillage, blowing, or scattering of refuse onto public streets or rights of way, private property or adjacent property. A stand-by vehicle shall always be available.

**ARTICLE IX
COMPLAINTS REGARDING SERVICE/SPILLAGE**

Contractor shall handle directly any complaints pertaining to customer service, property damage or personal injury from their collection service. Any complaints received by City shall be forwarded to Contractor within twenty-four (24) hours of receipt by City. Contractor shall respond to all complaints within twenty-four (24) hours of receiving notice of complaint from City, shall resolve complaints promptly, and shall report to City the action taken. Failure by Contractor to respond and report to City on action taken within this twenty-four (24) hour period may subject Contractor to a \$100.00 per incident charge from City, payable with the next payment due City under Article V of this Franchise Agreement.

**ARTICLE X
COMPLIANCE WITH LAWS**

1. This ordinance shall be construed in accordance with the City's Charter and Code of Ordinances in effect on the Effective Date of this ordinance to the extent such City Charter and Code of Ordinances are not in conflict with or in violation of the Constitution and Laws of the United States or the State of Texas.
2. This Ordinance shall be governed in accordance with the Laws of the State of Texas. Performance and all matters related thereto shall be in Brazos County, Texas, United States of America.
3. Notwithstanding any other provision in this franchise to the contrary, City and Contractor shall at all times comply with all laws, rules, and regulations of the state and federal government and any administrative agencies thereof, with respect to the subject matter of this Ordinance.
4. All collections made under this Agreement shall be made by Contractor without unnecessary noise, disturbance, or commotion.

**ARTICLE XI
UNDERSTANDINGS PERTAINING TO NON-EXCLUSIVITY**

This Franchise Agreement contains all the terms and conditions agreed on by the parties and no other agreements, or otherwise, regarding the subject matter of this franchise shall be of any force or effect. Both parties agree and understand that nothing in this Franchise Agreement conveys to Contractor an exclusive franchise for the services described in this franchise and that this franchise is non-exclusive.

**ARTICLE XII
OWNERSHIP OF MATERIALS**

Sole and exclusive title to all organic waste collected by Contractor under this Franchise Agreement will pass to Contractor when the debris is placed on Contractor's truck.

**ARTICLE XIII
CITY SERVICE**

Contractor agrees to provide free service to City following natural disasters or acts of God.

**ARTICLE XIV
FAILURE TO PERFORM**

It is expressly understood and agreed by the parties that if, at any time, Contractor shall fail to perform any of the terms, covenants, or conditions herein set forth, City may, after hearing as described herein, revoke and cancel the Franchise Agreement by and between the parties and said Franchise Agreement shall be null and void. Upon the determination by the staff of City that a hearing should be held before the Council of said City, City shall mail notice to Contractor, at the address designated herein or at such address as may be designated from time to time, by registered mail. The notice shall specify the time and place of the hearing and shall include the allegations being asserted for the revocation of this Franchise Agreement. The hearing shall be conducted in public before the City Council, and Contractor shall be allowed to present evidence and have an opportunity to answer all allegations for the termination set forth in the notice. In the event the Council determines the allegations set forth are true as set forth in the notice, it may by majority vote cancel this Franchise Agreement between the parties at no penalty to the City.

**ARTICLE XV
RELEASE AND INDEMNIFICATION**

1. Contractor assumes full responsibility for the work to be performed hereunder, and hereby releases, relinquishes, and discharges City, its officers, agents and employees, from all claims, demands, and causes of action of every kind and character including the cost of defense thereof, for any injury to, including death of, any person whether that person be a third person party, Contractor, or an employee of either of the parties hereto, and any loss of or damage to property, whether the same be that of either of the parties hereto or of third parties, caused by or alleged to be caused by, arising out of or in connection with the grant of this franchise to Contractor, whether or not said claims, demands and causes of action in whole or in part are covered by insurance.

2. Contractor agrees to and shall indemnify and hold City harmless and defend the City, its officers, agents and employees from and against any and all claims, losses, damages, causes of action, suits, and liability of every kind, including all expenses of litigation, court costs, and attorneys' fees, for injury to or death of any person, and for damage to any property, out of or in connection with operation of Contractor's recycling business under this franchise and disposal or resale of the recyclable waste collected by it, and arising out of or in connection with the performance of this Agreement, whether the Contractor's negligence is the sole or concurring cause of the injury, death, or damages, and whether the City's negligence is the sole or concurring cause of the injury, death, or damages. It is the express intention of the parties hereto, that the indemnity provided for

hereinabove is intended by the Contractor to indemnify and protect the City from the consequences of both the City's own negligence, whether that negligence is the sole or a concurring cause of the injury, death or damage; or the Contractor's negligence, whether that negligence is the sole or a concurring cause of the injury, death or damage.

3. Contractor assumes responsibility and liability and hereby agrees to indemnify the City from any liability caused by Contractor's failure to comply with applicable federal, state, or local laws and regulations, touching upon the maintenance of a safe and protected working environment, and the safe use and operation of machinery and equipment in that working environment.

ARTICLE XVI INSURANCE

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

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

3. Contractor shall include any and all subcontractors as additional insureds under its policies. All coverages for subcontractors shall be subject to all of the requirements and endorsements stated herein.

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

a. Standard Insurance Policies Required

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

b. General Requirements Applicable to All Policies

1. Only Insurance Carriers licensed and authorized to do business in the State of Texas will be accepted.
2. Deductibles shall be listed on the Certificate of Insurance and are acceptable only on a per occurrence basis for property damage only.
3. "Claims Made" policies are not accepted.

4. Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits of liability, except after thirty (30) days prior written notice has been given to the City of College Station.
5. In the event of a claim and upon request, Contractor shall furnish copies of all insurance policies to the City of College Station.
6. The City of College Station, its officials, employees and volunteers, are to be named as "Additional Insured" on the Commercial General and Business Automobile Liability policies. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees or volunteers.

c. Commercial General Liability

1. General Liability insurance shall be written by a carrier with a "A: VIII" or better rating in accordance with the current A. M. Best Key Rating Guide.
2. Limit of \$1,000,000.00 per occurrence for bodily injury and property damage with an annual aggregate limit of \$2,000,000.00 which limits shall be endorsed per Project.
3. Coverage shall be at least as broad as ISO form CG 00 01.
4. No coverage shall be excluded from the standard policy without notification of individual exclusions being attached for review and acceptance.
5. The coverage shall include but not be limited to the following: premises/operations with separate aggregate; independent contracts; products/completed operations; contractual liability, MSC 90 Pollution Coverage.

d. Endorsements

1. The additional insured endorsement shall be in a form at least as broad as ISO form GC 2026. Waiver of subrogation in a form at least as broad as ISO form 2404 shall be provided in favor of the City on all policies obtained by the Contractor in compliance with the terms of this Agreement. Contractor shall be responsible for all deductibles on any policies obtained in compliance with the terms of this Agreement. All coverage for subcontractors shall be subject to the requirements stated herein. All Certificates of Insurance and endorsements shall be furnished to the City's Representative at the time of execution of this Agreement, attached hereto as **Exhibit "B"**, and approved by the City before work commences.

e. Workers Compensation Insurance

1. Pursuant to the requirements set forth in Title 28, Section 110.110 of the Texas Administrative Code, all employees of the Contractor, all employees of any and all subcontractors, and all other persons providing services on the Project must be covered by a worker's compensation insurance policy, either directly through their employer's policy (the Contractor's or subcontractor's policy) or through an executed coverage agreement on an approved Texas Department of Insurance

Division of Workers Compensation (DWC) form. Accordingly, if a subcontractor does not have his or her own policy and a coverage agreement is used, contractors and subcontractors must use that portion of the form whereby the hiring contractor agrees to provide coverage to the employees of the subcontractor. The portion of the form that would otherwise allow them not to provide coverage for the employees of an independent Contractor may not be used.

2. Workers' compensation insurance shall include the following terms:
 - A. Employer's Liability minimum limits of \$1,000,000.00 for each accident/each disease/each employee is required.
 - B. "Texas Waiver of Our Right to Recover From Others Endorsement, WC 42 03 04" shall be included in this policy.
 - C. Texas must appear in Item 3A of the Workers Compensation coverage or Item 3C must contain the following: All States except those listed in Item 3A and the States of NV, ND, OH, WA, WV, and WY.
3. Pursuant to the explicit terms of Title 28, Section 110.110(c) (7) of the Texas Administrative Code, the bid specifications, this Agreement, and all subcontracts on this Project must include the following terms and conditions in the following language, without any additional words or changes, except those required to accommodate the specific document in which they are contained or to impose stricter standards of documentation:

Definitions:

- A. Certificate of coverage ("certificate") – An original certificate of insurance, a certificate of authority to self-insure issued by the Division of Workers Compensation, or a coverage agreement (DWC-81, DWC-83, or DWC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.
- B. Duration of the project - includes the time from the beginning of the work on the project until the Contractor's/person's work on the project has been completed and accepted by the governmental entity.
- C. Persons providing services on the project ("subcontractors" in § 406.096 [of the Texas Labor Code) - includes all persons or entities performing all or part of the services the Contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the Contractor and regardless of whether that person has employees. This includes, without limitation, independent Contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor,

transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

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

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

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

ARTICLE XVII ASSIGNMENT

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

ARTICLE XVIII SAFETY AND LIABILITY FOR INJURIES TO CITY OR ABUTTING PROPERTY

1. Contractor shall perform the collection in accordance with the applicable laws, codes, ordinances and regulations of the United States, State of Texas, Brazos County, and City of College Station and in compliance with OSHA and other laws as they apply to its employees. It is the intent of the parties that safety precautions are part of the collection techniques for which Contractor is solely responsible. In carrying on the services herein provided for, Contractor shall use all proper skill and care, and Contractor shall exercise all due and proper precautions to prevent injury to any property, or person(s).
2. Contractor shall pay for all damages to City property resulting from the operation of its service, and shall pay every owner of property abutting the residential property on which the container is located, for all damages or injuries caused by any act or omission of Contractor or of any of its subcontractors or employees in the operation of the Contractor service,

ARTICLE XIX AD VALOREM TAXES

Contractor agrees to render all personal property utilized in its solid waste operation services to Brazos County Appraisal District so said personal property will be the subject of ad valorem taxation for the benefit of City.

**ARTICLE XX
NOTICES AND PAYMENTS**

1. All notices and payments required under the terms of this Contract to be given by either party to the other party shall be in writing, and unless otherwise specified in writing by the respective parties, shall be sent to the parties at the addresses following:

Recycling Coordinator	Eric Hickman
City of College Station	President and CEO
P.O. Box 9960	Viridiun
College Station, Texas 77842	5050 Wallace Drive
	Cumming, Georgia 30041

2. All notices shall be deemed to have been properly served only if sent by Registered or Certified Mail, to the person(s) at the address designated as above provided, or to any other person at the address which either party may hereinafter designate by written notice to the other party.

**ARTICLE XXI
PENALTY**

Any person, firm or corporation violating any provision of this ordinance shall receive a citation and fine not to exceed \$2,000.00 for each offense, and each and every day said violation continues constitutes a separate offense.

**ARTICLE XXII
AMENDMENTS**

It is hereby understood and agreed by the parties to this franchise that no amendment to the terms of this franchise shall be made unless made in writing, approved by both parties, and attached to this Franchise Agreement to become a part hereof.

**ARTICLE XXIII
SEVERABILITY**

If any section, sentence, clause, or paragraph of this Agreement shall be held to be invalid, illegal or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The parties shall use their best efforts to replace the invalid, illegal or unenforceable provision(s) of this Agreement with valid legal terms and conditions approximating the original intent of the parties.

**ARTICLE XXIV
AUTHORIZATION TO EXECUTE**

The parties signing this Franchise Agreement shall provide adequate proof of their authority to execute this Franchise Agreement. This Franchise Agreement shall inure to the benefit and is binding upon the parties hereto and their respective successors or assigns, but shall not be assignable by either party without the written consent of the other party.

**ARTICLE XXV
TERM AND TERMINATION OF FRANCHISE**

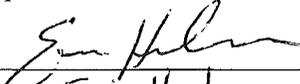
1. The term of this Franchise Agreement shall be for a period of five (5) years beginning on the date of acceptance.
2. In addition to all other rights and powers retained by City under this Franchise or otherwise, City reserves the right to declare this Franchise forfeited and to terminate the Franchise and all rights and privileges of Contractor hereunder in the event of a material breach of the terms, covenants, or conditions herein set forth. A material breach by Contractor shall include, but not be limited to, the following:
 - a. Failure to pay the fees prescribed by Article V
 - b. Failure to materially deliver the services provided for in this Franchise
 - c. Material misrepresentation of fact in the application for or negotiation of this Franchise
 - d. Conviction of any director, officer, employee, or agent of Contractor of the offense of bribery or fraud connected with or resulting from the awarding of this Franchise
 - e. Material misrepresentations of fact knowingly made to City with respect to or regarding Contractor's operations, management, revenues, services or reports required pursuant to this Franchise
 - f. Revocation or denial of registration or renewal of registration by TCEQ
 - g. Excessive interruption in service for a period of seventy-two (72) hours or more due to causes other than force majeure
3. Contractor shall not be excused by mere economic hardship nor by misfeasance or malfeasance of its directors, officers, or employees.
4. City may after a hearing as described herein, revoke and cancel this Franchise by and between the parties and said Franchise shall be null and void. City shall mail notice to Contractor, at the address designated herein or at such address as may be designated from time to time, by registered mail. The notice shall specify the time and place of the hearing and shall include the allegations being asserted for the revocation of this Agreement. The hearing shall be conducted in public before the City Council, and Contractor shall be allowed to present evidence and be given an opportunity to answer all allegations for the termination set forth in the notice. In the event the Council determines the allegations set forth are true as set forth in the notice it may by majority vote cancel this Agreement between the parties at no penalty to the City.

**ARTICLE XXVI
ACCEPTANCE OF FRANCHISE**

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

Attn: Public Works Director

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

By: 
Name: Eric Hickman
Title: President & CEO
Date: 12/21/2012

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

**ARTICLE XXVII
PUBLIC MEETING**

It is hereby found and determined that the meetings at which this ordinance was passed were open to the public, as required by Texas Government Code § 551, as amended, and that advance public notice of time, place, and purpose of said meetings was given.

First Consideration & Approval on the _____ day of _____ 2012

Second Consideration & Approval on the _____ day of _____ 2012

VIRIDIUM

CITY OF COLLEGE STATION

By: 

By: _____
Mayor

Printed Name: Eric Hickman

Date: _____

Title: President & CEO

Date: 12/21/2012

ATTEST:

City Secretary
Date: _____

APPROVED:

City Manager
Date: _____


City Attorney
Date: 1-3-13

Executive Dir. Business Services
Date: _____

EXHIBIT "A"
SCHEDULE OF RATES

Organic Recycling Service	\$210.00 per pickup
----------------------------------	----------------------------

EXHIBIT "B"
CERTIFICATES OF INSURANCE AND ENDORSEMENTS

January 24, 2013
Consent Agenda Item No. 2d
Budget Roll-Off Services Residential Construction and Demolition Debris
Collection Franchise Agreement

To: Frank Simpson, Interim City Manager

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

Agenda Caption: Presentation, possible action, and discussion on the first reading of a franchise agreement with Budget Roll-Off Services; for the collection of construction and demolition debris from residential locations.

Relationship to Strategic Goals: Financial Sustainability

Recommendation(s): Staff recommends approval of this franchise agreement.

Summary: The proposed agreement would allow Budget Roll-Off Services to collect construction and demolition debris from residential locations within the City of College Station.

Construction and demolition debris is defined as any building material waste resulting from demolition, remodeling, repairs, or construction, as well as materials discarded during periodic temporary facility clean-up generated within the City.

The company will be responsible for developing onsite collection of recyclables so as not to interfere with the collection of municipal solid waste (MSW).

Section 104 of the City Charter states that "The City of College Station shall have the power by ordinance to grant any franchise or right mentioned in the preceding sections hereof, which ordinance, however, shall not be passed finally until it shall have been read at three (3) separate regular meetings of the City Council."

Budget & Financial Summary: N/A

Reviewed and Approved by Legal: Yes

Attachments:

1. Franchise Ordinance

Ordinance No. _____

AN ORDINANCE GRANTING BUDGET ROLL-OFF SERVICES, ITS SUCCESSORS AND ASSIGNS, A NON-EXCLUSIVE FRANCHISE FOR THE PRIVILEGE AND USE OF PUBLIC STREETS, ALLEYS, AND PUBLIC WAYS WITHIN THE CORPORATE LIMITS OF THE CITY OF COLLEGE STATION FOR THE PURPOSE OF PROVIDING RESIDENTIAL DEMOLITION AND CONSTRUCTION DEBRIS COLLECTION; PRESCRIBING THE TERMS, CONDITIONS, OBLIGATIONS, AND LIMITATIONS UNDER WHICH SAID FRANCHISE SHALL BE EXERCISED; PROVIDING FOR THE CONSIDERATION; FOR THE PERIOD OF THE GRANT; FOR ASSIGNMENT; FOR THE METHOD OF ACCEPTANCE; FOR REPEAL OF CONFLICTING ORDINANCES; AND FOR PARTIAL INVALIDITY.

Whereas, the City of College Station, by ordinance, provides exclusively all solid waste collection and disposal services for solid waste generated from within the corporate limits of the City of College Station; and the City of College Station may, by ordinance and charter, grant franchises to other entities for the use of public streets, alleys and thoroughfares within the corporate limits of the City of College Station for the collection and disposal of solid waste generated from within the corporate limits of the City of College Station; and

Whereas, the City of College Station desires to exercise the authority provided to it by ordinance and charter to grant a franchise for the collection and disposal of a certain classification of solid waste generated within the corporate limits of the City of College Station under the terms of this Franchise Agreement as set out below; and

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

**ARTICLE I
DEFINITIONS**

1. **Contractor** means Budget Roll-Off Services conducting a residential demolition and construction debris collection service.
2. **Brazos Valley Solid Waste Management Inc.** or BVSWMA means a landfill operated by an interlocal agreement.
3. **City of College Station** or City means the City of College Station, Texas a Home-Rule Municipal Corporation incorporated under the laws of Texas.
4. **City Council** or Council means the governing body of the City of College Station, Texas.
5. **Class 1 Waste** means that term as defined in the Texas Administrative Code as it now exists or as is hereafter amended.
6. **Compactor** means a bulk container used for the collection of refuse, equipped with a device to compact such materials and thereby increasing the storage capacity of the containers.
7. **Container** means an apparatus of varying capacity used for refuse collection. This apparatus must have a securable lid. This lid shall remain closed and secured with the exception of loading and collection. Containers shall not be made of any temporary material.
8. **Customer** means those residential premises located within the City that generate demolition and construction debris.
 - a. **Residential Customers**
 - i. Each single-family detached residential unit or residential units in a building with fewer than a total of four (4) attached residential units in a complex where each residential unit has been assigned a seventy-gallon automated solid waste container, receiving weekly garbage, rubbish, brush and recycling collection.
 - ii. Each residential unit in a building with fewer than a total of four (4) attached residential units in a complex the City has not identified as a multi-family apartment complex, that has been assigned a shared three hundred-gallon or larger automated solid waste collection container, receiving twice-per-week garbage collection, weekly curbside recycling collection, and weekly rubbish/brush collection.
9. **Demolition and Construction Debris** means any building material waste resulting from demolition, remodeling, repairs, or construction, as well as materials discarded during periodic temporary facility clean-up generated within the City.

- 10. Franchise Agreement** means this franchise between the City of College Station and Budget Roll-Off Services for provision of a demolition and construction debris collection from residential locations within the City of College Station, under certain terms and conditions set out herein.
- 11. Organic Waste** means waste of biological origin recovered from the solid waste stream for the purposes of reuse, reclamation, or compost. Organic Waste is not solid waste, unless it is abandoned or disposed of, rather than reprocessed into another product.
- 12. Recyclables or Recyclable Commodities** means materials recovered from the solid waste stream for reuse or reclamation, a substantial portion of which are consistently used in the manufacture of products that may otherwise be produced using raw or virgin materials. Recyclable commodities or recyclables are not solid waste unless they are abandoned or disposed of, rather than reprocessed into another product.
- 13. Residue** means the material regularly associated with and attached to recyclable commodities, as a part of the original packaging or use of that commodity, that is not recyclable itself.
- 14. Roll-Off** means a container of varying capacity used for refuse collection.

**ARTICLE II
GRANT OF NON-EXCLUSIVE FRANCHISE**

1. Nothing in this Franchise shall be construed as granting an exclusive franchise or right. City hereby grants Contractor a non-exclusive franchise to operate and establish in the City from the effective date of the Agreement, to engage in the business of collecting demolition and construction debris from residential sites; for the purpose of recycling and/ or disposal within the jurisdictional limits of the City.

2. Contractor is granted passage and right-of-way on, along and across the streets, avenues, rights-of-way, alleys, and highways within the corporate limits of the City, for any such services and lawful purpose as stated in this Franchise, provided that all such work, activity and undertakings by Contractor shall be subject to the terms and provisions of this Franchise and the continuing exercise by the City of its governmental and police powers, and provided further that nothing herein shall be construed to require or authorize Contractor to exceed any rights granted herein or by the TCEQ.

**ARTICLE III
DISPOSAL SITE TO BE USED**

Unless approved otherwise in writing by City, Contractor shall utilize BVSWMA, Inc. landfill for the disposal of all non-recyclable waste material collected by Contractor within the corporate limits of the City. Contractor will only use a City-approved recycling facility for processing all recyclable material collected by Contractor within the corporate limits of the City under this Franchise Agreement. Contractor shall not dispose of any Class 1 Waste at the BVSWMA, Inc. landfill.

**ARTICLE IV
RATES TO BE CHARGED BY BUDGET ROLL-OFF SERVICES**

Attached hereto as **Exhibit "A"** and incorporated herein by reference is the Schedule of Base Rates, which Contractor shall charge for the aforementioned services. The Contractor shall notify the City in writing at least 30 days before making any base rate changes.

**ARTICLE V
PAYMENTS TO CITY**

1. For and in consideration of the grant of the franchise herein, Contractor agrees and will pay during the term of this Franchise, a sum based on the following graduated fee schedule depending on the percentage of aggregate recycling accomplished:

- a. A fee is required, equivalent to five percent (5%) of Contractor's monthly gross revenues, delivery revenues, and hauling revenues; including rates as described in "**Exhibit A**", generated from Contractor's provision of demolition and construction debris collection services within the City if Contractor reports

aggregate recycling of at least sixty percent (60%) of demolition and construction debris collected.

- b. A fee is required, equivalent to six and one half percent (6.5%) of Contractor's monthly gross revenues, delivery revenues, and hauling revenues; including rates as described in "Exhibit A", generated from Contractor's provision of demolition and construction debris collection services within the City if Contractor reports aggregate recycling of at least fifty-five percent (55%) but less than sixty percent (60%) of demolition and construction debris collected.
- c. A fee is required, equivalent to eight percent (8%) of Contractor's monthly gross revenues, delivery revenues, and hauling revenues; including rates as described in "Exhibit A", generated from Contractor's provision of demolition and construction debris collection services within the City if Contractor reports aggregate recycling less than fifty-five percent (55%) of demolition and construction debris collected.

2. Any revenue received by Contractor is subject to the franchise fee and shall be computed into Contractor's monthly gross revenues, delivery revenues, hauling revenues, and rates, as described in "Exhibit A". Payment will be paid quarterly to the City, and shall be due by the twentieth (20th) day of the month following the end of the previous calendar quarter. Payment after that date shall incur a ten percent (10%) late fee on the outstanding account balance under this Article V.

3. Failure by Contractor to pay any amount due under this franchise constitutes a Failure to Perform under this contract and is subject to the provisions of Article XIV of this Franchise Agreement (FAILURE TO PERFORM).

ARTICLE VI ACCESS TO RECORDS & REPORTING

City shall have the right, upon reasonable notice and during normal business hours, to inspect Contractor's records, billing records of customers served by Contractor, and all papers relating to the operation of demolition and construction debris collection and disposal within the City. Contractor shall cooperate with City to allow the inspections.

Along with the payment to the City of the City's agreed share of revenue from the monthly gross revenues, delivery revenues, and hauling revenues from collection of demolition and construction debris, and rates as described in "Exhibit A", Contractor shall provide a Monthly Activity Report due to the City no later than the twentieth (20th) calendar day of each month, summarizing collection activity for the previous calendar month. Contractor's report shall include the following information:

- 1. Total tonnage of all materials collected from all customers, broken down by material type

2. Total tonnage of all materials collected from all customers from within the City, broken down by material type
3. Reports of all complaints and investigations received/ action taken by Contractor, and results or final disposition of complaint and investigation.
4. A report of all Contractor accounts served and monthly revenue derived from the provision of collecting demolition and construction debris in the City under terms of this franchise. The reports will include customer's address, frequency of pick-up, size of container, type of container, and monthly charges.
5. Such information concerning the business of collection, processing and marketing of recyclable materials as may be required by the City's representative.

**ARTICLE VII
PLACEMENT OF ROLL-OFFS, COMPACTORS, AND CONTAINERS**

1. All roll-off(s), compactor(s), and container(s) placed in service shall be located in such a manner so as not to be a safety or traffic hazard. Under no circumstances shall Contractor place roll-off(s), compactor(s), or container(s) on public streets, alleys or thoroughfares without the prior written approval of the City. City reserves the right to designate the exact location of any or all roll-off(s), compactor(s), or container(s) placed in service in the City.
2. Demolition and construction debris, recycling, and organic waste collection shall not interfere with the City's collection of municipal solid waste.
3. Under no circumstances shall contractor place roll-off(s), compactor(s), or container(s) in existing enclosures designated for City roll-off(s), compactor(s), and container(s).

**ARTICLE VIII
CONTAINER AND EQUIPMENT MAINTENANCE**

1. Contractor's vehicles shall at all times be clearly marked with Contractor's name, address, telephone number and if applicable, state permit number, in letters not less than three (3) inches in height. All equipment necessary for the performance of this franchise shall be in good condition and repair.
2. Contractor agrees to paint and properly maintain in a safe, clean, and sanitary condition, all roll-off(s), compactor(s), or container(s) placed out for service within the City. Demolition and construction debris roll-off(s), compactor(s), and container(s) must be clearly marked as used for "C & D Waste Only" in letters at least twelve inches (12") in height on the sides of the roll-off(s), compactor(s), and container(s).
3. All vehicles used by Contractor in the removal of demolition and construction debris, must be covered during transport to prevent spillage, blowing, or scattering of refuse onto public

streets or rights of way, private property or adjacent property. A stand-by vehicle shall always be available.

**ARTICLE IX
COMPLAINTS REGARDING SERVICE/SPILLAGE**

Contractor shall handle directly any complaints pertaining to customer service, property damage or personal injury from their collection service. Any complaints received by City shall be forwarded to Contractor within twenty-four (24) hours of receipt by City. Contractor shall respond to all complaints within twenty-four (24) hours of receiving notice of complaint from City, shall resolve complaints promptly, and shall report to City the action taken. Failure by Contractor to respond and report to City on action taken within this twenty-four (24) hour period may subject Contractor to a \$100.00 per incident charge from City, payable with the next payment due City under Article V of this Franchise Agreement.

**ARTICLE X
COMPLIANCE WITH LAWS**

1. This ordinance shall be construed in accordance with the City's Charter and Code of Ordinances in effect on the Effective Date of this ordinance to the extent such City Charter and Code of Ordinances are not in conflict with or in violation of the Constitution and Laws of the United States or the State of Texas.
2. This Ordinance shall be governed in accordance with the Laws of the State of Texas. Performance and all matters related thereto shall be in Brazos County, Texas, United States of America.
3. Notwithstanding any other provision in this franchise to the contrary, City and Contractor shall at all times comply with all laws, rules, and regulations of the state and federal government and any administrative agencies thereof, with respect to the subject matter of this Ordinance.
4. All collections made under this Agreement shall be made by Contractor without unnecessary noise, disturbance, or commotion.

**ARTICLE XI
UNDERSTANDINGS PERTAINING TO NON-EXCLUSIVITY**

This Franchise Agreement contains all the terms and conditions agreed on by the parties and no other agreements, or otherwise, regarding the subject matter of this franchise shall be of any force or effect. Both parties agree and understand that nothing in this Franchise Agreement conveys to Contractor an exclusive franchise for the services described in this franchise and that this franchise is non-exclusive.

**ARTICLE XII
OWNERSHIP OF MATERIALS**

Sole and exclusive title to all demolition and construction debris collected by Contractor under this Franchise Agreement will pass to Contractor when the debris is placed on Contractor's truck.

**ARTICLE XIII
CITY SERVICE**

Contractor agrees to provide free service to City following natural disasters or acts of God.

**ARTICLE XIV
FAILURE TO PERFORM**

It is expressly understood and agreed by the parties that if, at any time, Contractor shall fail to perform any of the terms, covenants, or conditions herein set forth, City may, after hearing as described herein, revoke and cancel the Franchise Agreement by and between the parties and said Franchise Agreement shall be null and void. Upon the determination by the staff of City that a hearing should be held before the Council of said City, City shall mail notice to Contractor, at the address designated herein or at such address as may be designated from time to time, by registered mail. The notice shall specify the time and place of the hearing and shall include the allegations being asserted for the revocation of this Franchise Agreement. The hearing shall be conducted in public before the City Council, and Contractor shall be allowed to present evidence and have an opportunity to answer all allegations for the termination set forth in the notice. In the event the Council determines the allegations set forth are true as set forth in the notice, it may by majority vote cancel this Franchise Agreement between the parties at no penalty to the City.

**ARTICLE XV
RELEASE AND INDEMNIFICATION**

1. Contractor assumes full responsibility for the work to be performed hereunder, and hereby releases, relinquishes, and discharges City, its officers, agents and employees, from all claims, demands, and causes of action of every kind and character including the cost of defense thereof, for any injury to, including death of, any person whether that person be a third person party, Contractor, or an employee of either of the parties hereto, and any loss of or damage to property, whether the same be that of either of the parties hereto or of third parties, caused by or alleged to be caused by, arising out of or in connection with the grant of this franchise to Contractor, whether or not said claims, demands and causes of action in whole or in part are covered by insurance.

2. Contractor agrees to and shall indemnify and hold City harmless and defend the City, its officers, agents and employees from and against any and all claims, losses, damages, causes of action, suits, and liability of every kind, including all expenses of

litigation, court costs, and attorneys' fees, for injury to or death of any person, and for damage to any property, out of or in connection with operation of Contractor's recycling business under this franchise and disposal or resale of the recyclable waste collected by it, and arising out of or in connection with the performance of this Agreement, whether the Contractor's negligence is the sole or concurring cause of the injury, death, or damages, and whether the City's negligence is the sole or concurring cause of the injury, death, or damages. It is the express intention of the parties hereto, that the indemnity provided for hereinabove is intended by the Contractor to indemnify and protect the City from the consequences of both the City's own negligence, whether that negligence is the sole or a concurring cause of the injury, death or damage; or the Contractor's negligence, whether that negligence is the sole or a concurring cause of the injury, death or damage.

3. Contractor assumes responsibility and liability and hereby agrees to indemnify the City from any liability caused by Contractor's failure to comply with applicable federal, state, or local laws and regulations, touching upon the maintenance of a safe and protected working environment, and the safe use and operation of machinery and equipment in that working environment.

ARTICLE XVI INSURANCE

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

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

3. Contractor shall include any and all subcontractors as additional insureds under its policies. All coverages for subcontractors shall be subject to all of the requirements and endorsements stated herein.

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

a. Standard Insurance Policies Required

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

b. General Requirements Applicable to All Policies

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

c. Commercial General Liability

1. General Liability insurance shall be written by a carrier with a "A: VIII" or better rating in accordance with the current A. M. Best Key Rating Guide.
2. Limit of \$1,000,000.00 per occurrence for bodily injury and property damage with an annual aggregate limit of \$2,000,000.00 which limits shall be endorsed per Project.
3. Coverage shall be at least as broad as ISO form CG 00 01.
4. No coverage shall be excluded from the standard policy without notification of individual exclusions being attached for review and acceptance.
5. The coverage shall include but not be limited to the following: premises/operations with separate aggregate; independent contracts; products/completed operations; contractual liability, MSC 90 Pollution Coverage.

d. Endorsements

1. The additional insured endorsement shall be in a form at least as broad as ISO form GC 2026. Waiver of subrogation in a form at least as broad as ISO form 2404 shall be provided in favor of the City on all policies obtained by the Contractor in compliance with the terms of this Agreement. Contractor shall be responsible for all deductibles on any policies obtained in compliance with the terms of this Agreement. All coverage for subcontractors shall be subject to the requirements stated herein. All Certificates of Insurance and endorsements shall be furnished to the City's Representative at the time of execution of this Agreement, attached hereto as **Exhibit "B"**, and approved by the City before work commences.

e. Workers Compensation Insurance

1. Pursuant to the requirements set forth in Title 28, Section 110.110 of the Texas Administrative Code, all employees of the Contractor, all employees of any and all subcontractors, and all other persons providing services on the Project must be covered by a worker's compensation insurance policy, either directly through their employer's policy (the Contractor's or subcontractor's policy) or through an executed coverage agreement on an approved Texas Department of Insurance Division of Workers Compensation (DWC) form. Accordingly, if a subcontractor does not have his or her own policy and a coverage agreement is used, contractors and subcontractors must use that portion of the form whereby the hiring contractor agrees to provide coverage to the employees of the subcontractor. The portion of the form that would otherwise allow them not to provide coverage for the employees of an independent Contractor may not be used.

2. Workers' compensation insurance shall include the following terms:
 - A. Employer's Liability minimum limits of \$1,000,000.00 for each accident/each disease/each employee is required.
 - B. "Texas Waiver of Our Right to Recover From Others Endorsement, WC 42 03 04" shall be included in this policy.
 - C. Texas must appear in Item 3A of the Workers Compensation coverage or Item 3C must contain the following: All States except those listed in Item 3A and the States of NV, ND, OH, WA, WV, and WY.

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

Definitions:

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

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

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

- A. Provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, that meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;
 - B. Provide to the Contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;
 - C. Provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 - D. Obtain from each other person with whom it contracts, and provide to the Contractor:
 - i. A certificate of coverage, prior to the other person beginning work on the project; and
 - ii. A new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 - E. Retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
 - F. Notify the governmental entity in writing by certified mail or personal delivery, within 10 calendar days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
 - G. Contractually require each person with whom it contracts to perform as required by paragraphs (a) - (g), with the certificates of coverage to be provided to the person for whom they are providing services.
12. By signing this contract, or providing, or causing to be provided a certificate of coverage, the Contractor is representing to the governmental entity that all employees of the Contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project; that the coverage will be based on proper reporting of classification codes and payroll amounts; and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the Commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.
13. The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor that entitles the governmental entity to declare the contract void if the Contractor does not remedy the breach within ten calendar days after receipt of notice of breach from the governmental entity.

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

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

**ARTICLE XVII
ASSIGNMENT**

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

**ARTICLE XVIII
SAFETY AND LIABILITY FOR INJURIES TO CITY OR ABUTTING PROPERTY**

1. Contractor shall perform the collection in accordance with the applicable laws, codes, ordinances and regulations of the United States, State of Texas, Brazos County, and City of College Station and in compliance with OSHA and other laws as they apply to its employees. It is the intent of the parties that safety precautions are part of the collection techniques for which Contractor is solely responsible. In carrying on the services herein provided for, Contractor shall use all proper skill and care, and Contractor shall exercise all due and proper precautions to prevent injury to any property, or person(s).

2. Contractor shall pay for all damages to City property resulting from the operation of its service, and shall pay every owner of property abutting the residential property on which the container is located, for all damages or injuries caused by any act or omission of Contractor or of any of its subcontractors or employees in the operation of the Contractor service,

**ARTICLE XIX
AD VALOREM TAXES**

Contractor agrees to render all personal property utilized in its solid waste operation services to Brazos County Appraisal District so said personal property will be the subject of ad valorem taxation for the benefit of City.

**ARTICLE XX
NOTICES AND PAYMENTS**

1. All notices and payments required under the terms of this Contract to be given by either party to the other party shall be in writing, and unless otherwise specified in writing by the respective parties, shall be sent to the parties at the addresses following:

Recycling Coordinator	Mike Brannon
City of College Station	Owner
P.O. Box 9960	Budget Roll-Off Services
College Station, Texas 77842	8408 Quebe Rd
	Brenham, Texas 77833

2. All notices shall be deemed to have been properly served only if sent by Registered or Certified Mail, to the person(s) at the address designated as above provided, or to any other person at the address which either party may hereinafter designate by written notice to the other party.

**ARTICLE XXI
PENALTY**

Any person, firm or corporation violating any provision of this ordinance shall receive a citation and fine not to exceed \$2,000.00 for each offense, and each and every day said violation continues constitutes a separate offense.

**ARTICLE XXII
AMENDMENTS**

It is hereby understood and agreed by the parties to this franchise that no amendment to the terms of this franchise shall be made unless made in writing, approved by both parties, and attached to this Franchise Agreement to become a part hereof.

**ARTICLE XXIII
SEVERABILITY**

If any section, sentence, clause, or paragraph of this Agreement shall be held to be invalid, illegal or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The parties shall use their best efforts to replace the invalid, illegal or unenforceable provision(s) of this Agreement with valid legal terms and conditions approximating the original intent of the parties.

**ARTICLE XXIV
AUTHORIZATION TO EXECUTE**

The parties signing this Franchise Agreement shall provide adequate proof of their authority to execute this Franchise Agreement. This Franchise Agreement shall inure to the benefit and is binding upon the parties hereto and their respective successors or assigns, but shall not be assignable by either party without the written consent of the other party.

**ARTICLE XXV
TERM AND TERMINATION OF FRANCHISE**

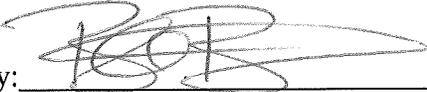
1. The term of this Franchise Agreement shall be for a period of five (5) years beginning on the date of acceptance.
2. In addition to all other rights and powers retained by City under this Franchise or otherwise, City reserves the right to declare this Franchise forfeited and to terminate the Franchise and all rights and privileges of Contractor hereunder in the event of a material breach of the terms, covenants, or conditions herein set forth. A material breach by Contractor shall include, but not be limited to, the following:
 - a. Failure to pay the fees prescribed by Article V
 - b. Failure to materially deliver the services provided for in this Franchise
 - c. Material misrepresentation of fact in the application for or negotiation of this Franchise
 - d. Conviction of any director, officer, employee, or agent of Contractor of the offense of bribery or fraud connected with or resulting from the awarding of this Franchise
 - e. Material misrepresentations of fact knowingly made to City with respect to or regarding Contractor's operations, management, revenues, services or reports required pursuant to this Franchise
 - f. Revocation or denial of registration or renewal of registration by TCEQ
 - g. Excessive interruption in service for a period of seventy-two (72) hours or more due to causes other than force majeure
3. Contractor shall not be excused by mere economic hardship nor by misfeasance or malfeasance of its directors, officers, or employees.
4. City may, after a hearing as described herein, revoke and cancel this Franchise by and between the parties and said Franchise shall be null and void. City shall mail notice to Contractor, at the address designated herein or at such address as may be designated from time to time, by registered mail. The notice shall specify the time and place of the hearing and shall include the allegations being asserted for the revocation of this Agreement. The hearing shall be conducted in public before the City Council, and Contractor shall be allowed to present evidence and be given an opportunity to answer all allegations for the termination set forth in the notice. In the event the Council determines the allegations set forth are true as set forth in the notice it may by majority vote cancel this Agreement between the parties at no penalty to the City.

**ARTICLE XXVI
ACCEPTANCE OF FRANCHISE**

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

Attn: Public Works Director

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

By: 
Name: Blake Brannon
Title: President
Date: 1/10/13

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

**ARTICLE XXVII
PUBLIC MEETING**

It is hereby found and determined that the meetings at which this ordinance was passed were open to the public, as required by Texas Government Code § 551, as amended, and that advance public notice of time, place, and purpose of said meetings was given.

First Consideration & Approval on the _____ day of _____ 2013

Second Consideration & Approval on the _____ day of _____ 2013

BUDGET ROLL-OFF SERVICES

CITY OF COLLEGE STATION

By:  _____

Printed Name: Blake Brannon

Title: President

Date: 11/10/13

By: _____

Mayor

Date: _____

ATTEST:

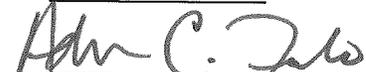
City Secretary

Date: _____

APPROVED:

City Manager

Date: _____

 _____

City Attorney

Date: 1-11-13

Executive Dir. Business Services

Date: _____

EXHIBIT "A"
SCHEDULE OF BASE RATES

Container Size	Tonnage Included	Price
10 Yard - 14 x 8 x 3	1 Ton Included	\$300.00
15 Yard - 16 x 8 x 4	2 Tons Included	\$350.00
20 Yard - 16 x 8 x 5	3 Tons Included	\$400.00
25 Yard - 16 x 8 x 6	4 Tons Included	\$450.00
30 Yard - 20 x 8 x 6.5	5 Tons Included	\$500.00

7 Days Free Rental on all containers - \$5.00 per day after 7

\$40.00 per ton after the included tonnage

10% fuel surcharge added to the price of each container

Delivery Charge:

Inside Brenham City Limits - \$35

Outside Brenham City Limits - \$85

Taxes are based on the County the container is delivered to

Prices are in effect immediately and are subject to change.

EXHIBIT "B"
CERTIFICATES OF INSURANCE AND ENDORSEMENTS



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
01/11/2013

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Washington County Ins. Agcy. 2544 Ryan St. Brenham, TX 77833 Jeffrey Martin Neal		Phone: 979-251-7771 Fax:	CONTACT NAME: PHONE (A/C, No, Ext): E-MAIL ADDRESS: FAX (A/C, No):
INSURED Budget Rolloffs LLC 1555 Hwy 36 N Brenham, TX 77833		INSURER(S) AFFORDING COVERAGE INSURER A: Catlin Insurance Co. INSURER B: Century Surety Co INSURER C: Hallmark County Mutual INSURER D: INSURER E: INSURER F:	
		NAIC # 36951	

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

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

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY			4201300388	02/13/2012	02/13/2013	EACH OCCURRENCE \$ 1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						MED EXP (Any one person) \$ 5,000
							PERSONAL & ADV INJURY \$ 1,000,000
							GENERAL AGGREGATE \$ 2,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						PRODUCTS - COMP/OP AGG \$ 2,000,000
	<input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC						\$
C	AUTOMOBILE LIABILITY			TXA505066-03	09/10/2012	09/10/2013	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
	<input type="checkbox"/> ANY AUTO						BODILY INJURY (Per person) \$
	<input type="checkbox"/> ALL OWNED AUTOS	<input checked="" type="checkbox"/> SCHEDULED AUTOS					BODILY INJURY (Per accident) \$
	<input checked="" type="checkbox"/> HIRED AUTOS	<input checked="" type="checkbox"/> NON-OWNED AUTOS					PROPERTY DAMAGE (Per accident) \$
							\$
B	UMBRELLA LIAB			CCP748371	02/13/2012	02/13/2013	EACH OCCURRENCE \$ 1,000,000
	<input type="checkbox"/> EXCESS LIAB	<input checked="" type="checkbox"/> OCCUR					AGGREGATE \$ 1,000,000
	<input type="checkbox"/> CLAIMS-MADE						\$
	DED <input type="checkbox"/> RETENTION \$						\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER <input type="checkbox"/>
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)			N/A			E.L. EACH ACCIDENT \$
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE \$
							E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
The certificate holder is listed as additional insured and in favor of waiver of subrogation with respect to the above policies which are primary and non-contributory with a 30 day written notice to the certificate holder before cancellation, non-renewal or reduction in limits of liability except for non-payment which is a 10 day notice.

CERTIFICATE HOLDER City of College Station Risk Management P O Box 9960 College Station, TX 77842	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE Jeffrey Martin Neal <i>Mart Neal</i>
--	--

NOTEPAD

INSURED'S NAME **Budget Rolloffs LLC**

BUDGE-1
OP ID: SK

PAGE 2
DATE 01/11/13

Budget Rolloffs Inc. and Brannon Industrial Group LLC dba Premier Metal Buyers are owned by Mike Brannon and Blake Brannon. Since same ownership; Budget Rolloffs is covered under Brannon Industrial Group LLC dba Premier Metal Buyers workers compensation policy.

January 24, 2013
Consent Agenda Item No. 2e
Brannon Industrial Group Commercial and Multifamily Recycling Collection
Franchise Agreement

To: Frank Simpson, Interim City Manager

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

Agenda Caption: Presentation, possible action, and discussion on the first reading of a franchise agreement with Brannon Industrial Group d/b/a Premier Metal Buyers; for the collection of recyclables from commercial businesses and multi-family locations.

Relationship to Strategic Goals: Financial Sustainability

Recommendation(s): Staff recommends approval of this franchise agreement.

Summary: The proposed agreement would allow Brannon Industrial Group d/b/a Premier Metal Buyers to collect recyclables from commercial businesses and multi-family locations within the City of College Station.

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

The company will be responsible for developing onsite collection of recyclables so as not to interfere with the collection of municipal solid waste (MSW).

Section 104 of the City Charter states that "The City of College Station shall have the power by ordinance to grant any franchise or right mentioned in the preceding sections hereof, which ordinance, however, shall not be passed finally until it shall have been read at three (3) separate regular meetings of the City Council."

Budget & Financial Summary: N/A

Reviewed and Approved by Legal: Yes

Attachments: Franchise Ordinance

Ordinance No. _____

AN ORDINANCE GRANTING BRANNON INDUSTRIAL GROUP D/B/A PREMIER METAL BUYERS, ITS SUCCESSORS AND ASSIGNS, A NON-EXCLUSIVE FRANCHISE FOR THE PRIVILEGE AND USE OF PUBLIC STREETS, ALLEYS, AND PUBLIC WAYS WITHIN THE CORPORATE LIMITS OF THE CITY OF COLLEGE STATION FOR THE PURPOSE OF PROVIDING MULTI-FAMILY AND COMMERCIAL RECYCLING COLLECTION; PRESCRIBING THE TERMS, CONDITIONS, OBLIGATIONS, AND LIMITATIONS UNDER WHICH SAID FRANCHISE SHALL BE EXERCISED; PROVIDING FOR THE CONSIDERATION; FOR THE PERIOD OF THE GRANT; FOR ASSIGNMENT; FOR THE METHOD OF ACCEPTANCE; FOR REPEAL OF CONFLICTING ORDINANCES; AND FOR PARTIAL INVALIDITY.

Whereas, the City of College Station, by ordinance, provides exclusively all solid waste collection and disposal services for solid waste generated from within the corporate limits of the City of College Station; and the City of College Station may, by ordinance and charter, grant franchises to other entities for the use of public streets, alleys and thoroughfares within the corporate limits of the City of College Station for the collection and disposal of solid waste generated from within the corporate limits of the City of College Station; and

Whereas, the City of College Station desires to exercise the authority provided to it by ordinance and charter to grant a franchise for the collection and disposal of a certain classification of solid waste generated within the corporate limits of the City of College Station under the terms of this Franchise Agreement as set out below; and

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

**ARTICLE I
DEFINITIONS**

1. **Contractor** means Brannon Industrial Group d/b/a Premier Metal Buyers conducting multi-family apartment and commercial business recycling collection.
2. **Brazos Valley Solid Waste Management Inc.** or BVSWMA means a landfill operated by an interlocal agreement.
3. **City of College Station** or City means the City of College Station, Texas a Home-Rule Municipal Corporation incorporated under the laws of Texas.
4. **City Council** or Council means the governing body of the City of College Station, Texas.
5. **Class 1 Waste** means that term as defined in the Texas Administrative Code as it now exists or as is hereafter amended.
6. **Compactor** means a bulk container used for the collection of refuse, equipped with a device to compact such materials and thereby increasing the storage capacity of the containers.
7. **Container** means an apparatus of varying capacity used for refuse collection. This apparatus must have a securable lid. This lid shall remain closed and secured with the exception of loading and collection. Containers shall not be made of any temporary material.
8. **Customer** means: those commercial, industrial, or multi-family premises located within the City that generate recyclables.
 - a. **Commercial Customers** - Any customer who is an enterprise or establishment whose main purpose is to carry on a commercial for-profit or not-for-profit activity. Said definition shall include all uses not falling within the category of residential, including, but not limited to, churches, hospitals, schools and industries.
 - b. **Industrial Customers**- Real property on which manufacture or assembly employing labor or machinery is carried on for profit.
 - c. **Multi-family Customers** - Each residential unit in a building with a total of four (4) or more attached residential units in a complex the City has identified as a multi-family apartment complex, that has been assigned a large solid waste container shared by multiple residential units for garbage collection only.
9. **Demolition and Construction Debris** means any building material waste resulting from demolition, remodeling, repairs, or construction, as well as materials discarded during periodic temporary facility clean-up generated within the City.

10. **Franchise Agreement** means this franchise between the City of College Station and Brannon Industrial Group d/b/a Premier Metal Buyers for provision of recycling collection from multi-family apartment and commercial business locations within the City of College Station; under certain terms and conditions set out herein.
11. **Organic Waste** means waste of biological origin recovered from the solid waste stream for the purposes of reuse, reclamation, or compost. Organic Waste is not solid waste, unless it is abandoned or disposed rather than reprocessed into another product.
12. **Recyclables or Recyclable Commodities** means materials recovered from the solid waste stream for reuse or reclamation, a substantial portion of which are consistently used in the manufacture of products that may otherwise be produced using raw or virgin materials. Recyclable commodities or recyclables are not solid waste unless they are abandoned or disposed rather than reprocessed into another product.
13. **Residue** means the material regularly associated with and attached to recyclable commodities, as a part of the original packaging or use of that commodity, that is not recyclable itself.
14. **Roll-Off** means a container of varying capacity used for refuse collection.

**ARTICLE II
GRANT OF NON EXCLUSIVE FRANCHISE**

1. Nothing in this Franchise shall be construed as granting an exclusive franchise or right. City hereby grants Contractor a non-exclusive franchise to operate and establish in the City from the effective date of the Agreement, to engage in the business of collecting recyclables from commercial, industrial, and multifamily sites, for the purpose of recycling within the jurisdictional limits of the City.

2. Contractor is granted passage and right-of-way on, along and across the streets, avenues, rights-of-way, alleys, and highways within the corporate limits of the City, for any such services and lawful purpose as stated in this Franchise, provided that all such work, activity and undertakings by Contractor shall be subject to the terms and provisions of this Franchise and the continuing exercise by the City of its governmental and police powers, and provided further that nothing herein shall be construed to require or authorize Contractor to exceed any rights granted herein or by the TCEQ.

**ARTICLE III
DISPOSAL SITE TO BE USED**

Unless approved otherwise in writing by City, Contractor shall utilize BVSWMA, Inc. landfill for the disposal of all non-recyclable waste material collected by Contractor within the corporate limits of the City. Contractor will only use a City-approved recycling facility for processing all recyclable material collected by Contractor within the corporate limits of the City under this Franchise Agreement. Contractor shall not dispose of any Class 1 Waste at the BVSWMA, Inc. landfill.

**ARTICLE IV
RATES TO BE CHARGED BY PREMIER METAL BUYERS**

Attached hereto as **Exhibit "A"** and incorporated herein by reference is the Schedule of Base Rates, which Contractor shall charge for the aforementioned services. The Contractor shall notify the City in writing at least 30 days before making any rate changes.

**ARTICLE V
PAYMENTS TO CITY**

1. For and in consideration of the grant of the franchise herein, Contractor agrees and will pay during the term of this Franchise, a sum based on the following graduated fee schedule depending on the percentage of aggregate recycling accomplished.

- a. A fee is required, equivalent to five percent (5%) of Contractor's monthly gross revenues, delivery revenues, and hauling revenues; including rates as described in "**Exhibit A**", generated from Contractor's provision of recyclable collection services within the City if Contractor reports aggregate recycling of at least sixty percent (60%) of recyclables collected.

- b. A fee is required equivalent to six and one half percent (6.5%) of Contractor's monthly gross revenues, delivery revenues, and hauling revenues; including rates as described in "Exhibit A", generated from Contractor's provision of recyclable collection services within the City if Contractor reports aggregate recycling of at least fifty-five percent (55%) but less than sixty percent (60%) of recyclables collected.
- c. A fee is required equivalent to eight percent (8%) of Contractor's monthly gross revenues, delivery revenues, and hauling revenues; including rates as described in "Exhibit A", generated from Contractor's provision of recyclable collection services within the City if Contractor reports aggregate recycling less than fifty-five percent (55%) of recyclables collected.

2. Any revenue received by Contractor is subject to the franchise fee and shall be computed into Contractor's monthly gross revenues, delivery revenues, hauling revenues, and rates as described in "Exhibit A". Payment will be paid quarterly to the City, and shall be due by the twentieth day (20th) of the month following the end of the previous calendar quarter. Payment after that date shall incur a ten percent (10%) late fee on the outstanding account balance under this Article V.

3. Failure by Contractor to pay any amount due under this franchise constitutes a Failure to Perform under this contract and is subject to the provisions of Article XIV of this Franchise Agreement (FAILURE TO PERFORM).

ARTICLE VI ACCESS TO RECORDS & REPORTING

City shall have the right, upon reasonable notice and during normal business hours, to inspect Contractor's records, billing records of customers served by Contractor, and all papers relating to the operation of recyclable collection and disposal within the City. Contractor shall cooperate with City to allow the inspections.

Along with the payment to the City of the City's agreed share of revenue from the monthly gross revenues, delivery revenues, and hauling revenues from collection of recyclables and rates as described in "Exhibit A", Contractor shall provide a Monthly Activity Report due to the City no later than the twentieth (20th) calendar day of each month, summarizing collection activity for the previous calendar month. Contractor's report shall include the following information:

1. Total tonnage of all materials collected from all customers, broken down by material type.
2. Total tonnage of all materials collected from all customers from within the City, broken down by material type.

3. Reports of all complaints and investigations received/ action taken by Contractor, and results or final disposition of complaint and investigation.
4. A report of all Contractor accounts served and monthly revenue derived from the provision of collecting recyclables in the City under terms of this franchise. The reports will include customer's address, frequency of pick-up, size of container, type of container, and monthly charges.
5. Such information concerning the business of collection, processing and marketing of recyclable materials as may be required by the City's representative.

**ARTICLE VII
PLACEMENT OF ROLL-OFFS, COMPACTORS, AND CONTAINERS**

1. All roll-off(s), compactor(s), and container(s) placed in service shall be located in such a manner so as not to be a safety or traffic hazard. Under no circumstances shall Contractor place roll-off(s), compactor(s), or container(s) on public streets, alleys or thoroughfares without the prior written approval of the City. City reserves the right to designate the exact location of any or all roll-off(s), compactor(s), or container(s) placed in service in the City.
2. Recycling collection shall not interfere with the City's collection of municipal solid waste.
3. Under no circumstances shall contractor place roll-off(s), compactor(s), or container(s) in existing enclosures designated for City roll-off(s), compactor(s), and container(s).

**ARTICLE VIII
CONTAINER AND EQUIPMENT MAINTENANCE**

1. Contractor's vehicles shall at all times be clearly marked with Contractor's name, address, telephone number and if applicable, state permit number, in letters not less than three (3) inches in height. All equipment necessary for the performance of this franchise shall be in good condition and repair.
2. Contractor agrees to paint and properly maintain in a safe, clean, and sanitary condition, all roll-off(s), compactor(s), or container(s) placed out for service within the City. Recycling roll-off(s), compactor(s), and container(s) must be clearly marked as used for "Recyclables Only" in letters at least twelve inches (12") in height on the sides of the roll-off container(s), compactor(s), or container(s).
3. All vehicles used by Contractor in the removal of recyclables must be covered during transport to prevent spillage, blowing, or scattering of refuse onto public streets or rights of way, private property or adjacent property. A stand-by vehicle shall always be available.

**ARTICLE IX
COMPLAINTS REGARDING SERVICE/SPILLAGE**

Contractor shall handle directly any complaints pertaining to customer service, property damage or personal injury from their collection service. Any complaints received by City shall be forwarded to Contractor within twenty-four (24) hours of receipt by City. Contractor shall respond to all complaints within twenty-four (24) hours of receiving notice of complaint from City, shall resolve complaints promptly, and shall report to City the action taken. Failure by Contractor to respond and report to City on action taken within this twenty-four (24) hour period may subject Contractor to a \$100.00 per incident charge from City, payable with the next payment due City under Article V of this Franchise Agreement.

**ARTICLE X
COMPLIANCE WITH LAWS**

1. This ordinance shall be construed in accordance with the City's Charter and Code of Ordinances in effect on the Effective Date of this ordinance to the extent such City Charter and Code of Ordinances are not in conflict with or in violation of the Constitution and Laws of the United States or the State of Texas.
2. This Ordinance shall be governed in accordance with the Laws of the State of Texas. Performance and all matters related thereto shall be in Brazos County, Texas, United States of America.
3. Notwithstanding any other provision in this franchise to the contrary, City and Contractor shall at all times comply with all laws, rules, and regulations of the state and federal government and any administrative agencies thereof, with respect to the subject matter of this Ordinance.
4. All collections made under this Agreement shall be made by Contractor without unnecessary noise, disturbance, or commotion.

**ARTICLE XI
UNDERSTANDINGS PERTAINING TO NON-EXCLUSIVITY**

This Franchise Agreement contains all the terms and conditions agreed on by the parties and no other agreements, or otherwise, regarding the subject matter of this franchise shall be of any force or effect. Both parties agree and understand that nothing in this Franchise Agreement conveys to Contractor an exclusive franchise for the services described in this franchise and that this franchise is non-exclusive.

**ARTICLE XII
OWNERSHIP OF MATERIALS**

Sole and exclusive title to all recyclables collected by Contractor under this Franchise Agreement will pass to Contractor when the debris is placed on Contractor's truck.

**ARTICLE XIII
CITY SERVICE**

Contractor agrees to provide free service to City following natural disasters or acts of God.

**ARTICLE XIV
FAILURE TO PERFORM**

It is expressly understood and agreed by the parties that if, at any time, Contractor shall fail to perform any of the terms, covenants, or conditions herein set forth, City may, after hearing as described herein, revoke and cancel the Franchise Agreement by and between the parties and said Franchise Agreement shall be null and void. Upon the determination by the staff of City that a hearing should be held before the Council of said City, City shall mail notice to Contractor, at the address designated herein or at such address as may be designated from time to time, by registered mail. The notice shall specify the time and place of the hearing and shall include the allegations being asserted for the revocation of this Franchise Agreement. The hearing shall be conducted in public before the City Council, and Contractor shall be allowed to present evidence and have an opportunity to answer all allegations for the termination set forth in the notice. In the event the Council determines the allegations set forth are true as set forth in the notice, it may by majority vote cancel this Franchise Agreement between the parties at no penalty to the City.

**ARTICLE XV
RELEASE AND INDEMNIFICATION**

1. Contractor assumes full responsibility for the work to be performed hereunder, and hereby releases, relinquishes, and discharges City, its officers, agents and employees, from all claims, demands, and causes of action of every kind and character including the cost of defense thereof, for any injury to, including death of, any person whether that person be a third person party, Contractor, or an employee of either of the parties hereto, and any loss of or damage to property, whether the same be that of either of the parties hereto or of third parties, caused by or alleged to be caused by, arising out of or in connection with the grant of this franchise to Contractor, whether or not said claims, demands and causes of action in whole or in part are covered by insurance.

2. Contractor agrees to and shall indemnify and hold City harmless and defend the City, its officers, agents and employees from and against any and all claims, losses, damages, causes of action, suits, and liability of every kind, including all expenses of litigation, court costs, and attorneys' fees, for injury to or death of any person, and for damage to any property, out of or in connection with operation of Contractor's recycling business under this franchise and disposal or resale of the recyclable waste collected by it, and arising out of or in connection with the performance of this Agreement, whether the Contractor's negligence is the sole or concurring cause of the injury, death, or damages, and whether the City's negligence is the sole or concurring cause of the injury, death, or damages. It is the express intention of the parties hereto, that the indemnity provided for

hereinabove is intended by the Contractor to indemnify and protect the City from the consequences of both the City's own negligence, whether that negligence is the sole or a concurring cause of the injury, death or damage; or the Contractor's negligence, whether that negligence is the sole or a concurring cause of the injury, death or damage.

3. Contractor assumes responsibility and liability and hereby agrees to indemnify the City from any liability caused by Contractor's failure to comply with applicable federal, state, or local laws and regulations, touching upon the maintenance of a safe and protected working environment, and the safe use and operation of machinery and equipment in that working environment.

ARTICLE XVI INSURANCE

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

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

3. Contractor shall include any and all subcontractors as additional insureds under its policies. All coverages for subcontractors shall be subject to all of the requirements and endorsements stated herein.

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

a. Standard Insurance Policies Required

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

b. General Requirements Applicable to All Policies

1. Only Insurance Carriers licensed and authorized to do business in the State of Texas will be accepted.
2. Deductibles shall be listed on the Certificate of Insurance and are acceptable only on a per occurrence basis for property damage only.
3. "Claims Made" policies are not accepted.

4. Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits of liability, except after thirty (30) days prior written notice has been given to the City of College Station.
5. In the event of a claim and upon request, Contractor shall furnish copies of all insurance policies to the City of College Station.
6. The City of College Station, its officials, employees and volunteers, are to be named as "Additional Insured" on the Commercial General and Business Automobile Liability policies. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees or volunteers.

c. Commercial General Liability

1. General Liability insurance shall be written by a carrier with a "A: VIII" or better rating in accordance with the current A. M. Best Key Rating Guide.
2. Limit of \$1,000,000.00 per occurrence for bodily injury and property damage with an annual aggregate limit of \$2,000,000.00 which limits shall be endorsed per Project.
3. Coverage shall be at least as broad as ISO form CG 00 01.
4. No coverage shall be excluded from the standard policy without notification of individual exclusions being attached for review and acceptance.
5. The coverage shall include but not be limited to the following: premises/operations with separate aggregate; independent contracts; products/completed operations; contractual liability, MSC 90 Pollution Coverage.

d. Endorsements

1. The additional insured endorsement shall be in a form at least as broad as ISO form GC 2026. Waiver of subrogation in a form at least as broad as ISO form 2404 shall be provided in favor of the City on all policies obtained by the Contractor in compliance with the terms of this Agreement. Contractor shall be responsible for all deductibles on any policies obtained in compliance with the terms of this Agreement. All coverage for subcontractors shall be subject to the requirements stated herein. All Certificates of Insurance and endorsements shall be furnished to the City's Representative at the time of execution of this Agreement, attached hereto as **Exhibit "B"**, and approved by the City before work commences.

e. Workers Compensation Insurance

1. Pursuant to the requirements set forth in Title 28, Section 110.110 of the Texas Administrative Code, all employees of the Contractor, all employees of any and all subcontractors, and all other persons providing services on the Project must be covered by a worker's compensation insurance policy, either directly through their employer's policy (the Contractor's or subcontractor's policy) or through an executed coverage agreement on an approved Texas Department of Insurance

Division of Workers Compensation (DWC) form. Accordingly, if a subcontractor does not have his or her own policy and a coverage agreement is used, contractors and subcontractors must use that portion of the form whereby the hiring contractor agrees to provide coverage to the employees of the subcontractor. The portion of the form that would otherwise allow them not to provide coverage for the employees of an independent Contractor may not be used.

2. Workers' compensation insurance shall include the following terms:
 - A. Employer's Liability minimum limits of \$1,000,000.00 for each accident/each disease/each employee is required.
 - B. "Texas Waiver of Our Right to Recover From Others Endorsement, WC 42 03 04" shall be included in this policy.
 - C. Texas must appear in Item 3A of the Workers Compensation coverage or Item 3C must contain the following: All States except those listed in Item 3A and the States of NV, ND, OH, WA, WV, and WY.
3. Pursuant to the explicit terms of Title 28, Section 110.110(c) (7) of the Texas Administrative Code, the bid specifications, this Agreement, and all subcontracts on this Project must include the following terms and conditions in the following language, without any additional words or changes, except those required to accommodate the specific document in which they are contained or to impose stricter standards of documentation:

Definitions:

- A. Certificate of coverage ("certificate") – An original certificate of insurance, a certificate of authority to self-insure issued by the Division of Workers Compensation, or a coverage agreement (DWC-81, DWC-83, or DWC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.
- B. Duration of the project - includes the time from the beginning of the work on the project until the Contractor's/person's work on the project has been completed and accepted by the governmental entity.
- C. Persons providing services on the project ("subcontractors" in § 406.096 [of the Texas Labor Code) - includes all persons or entities performing all or part of the services the Contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the Contractor and regardless of whether that person has employees. This includes, without limitation, independent Contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor,

transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

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

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

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

- 1. The company is licensed and authorized to do business in the State of Texas.

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

ARTICLE XVII ASSIGNMENT

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

ARTICLE XVIII SAFETY AND LIABILITY FOR INJURIES TO CITY OR ABUTTING PROPERTY

1. Contractor shall perform the collection in accordance with the applicable laws, codes, ordinances and regulations of the United States, State of Texas, Brazos County, and City of College Station and in compliance with OSHA and other laws as they apply to its employees. It is the intent of the parties that safety precautions are part of the collection techniques for which Contractor is solely responsible. In carrying on the services herein provided for, Contractor shall use all proper skill and care, and Contractor shall exercise all due and proper precautions to prevent injury to any property, or person(s).
2. Contractor shall pay for all damages to City property resulting from the operation of its service, and shall pay every owner of property abutting the residential property on which the container is located, for all damages or injuries caused by any act or omission of Contractor or of any of its subcontractors or employees in the operation of the Contractor service,

ARTICLE XIX AD VALOREM TAXES

Contractor agrees to render all personal property utilized in its solid waste operation services to Brazos County Appraisal District so said personal property will be the subject of ad valorem taxation for the benefit of City.

**ARTICLE XX
NOTICES AND PAYMENTS**

1. All notices and payments required under the terms of this Contract to be given by either party to the other party shall be in writing, and unless otherwise specified in writing by the respective parties, shall be sent to the parties at the addresses following:

Recycling Coordinator	Mike Brannon
City of College Station	Owner
P.O. Box 9960	Brannon Industrial Group
College Station, Texas 77842	8408 Quebe Rd
	Brenham, Texas 77833

2. All notices shall be deemed to have been properly served only if sent by Registered or Certified Mail, to the person(s) at the address designated as above provided, or to any other person at the address which either party may hereinafter designate by written notice to the other party.

**ARTICLE XXI
PENALTY**

Any person, firm or corporation violating any provision of this ordinance shall receive a citation and fine not to exceed \$2,000.00 for each offense, and each and every day said violation continues constitutes a separate offense.

**ARTICLE XXII
AMENDMENTS**

It is hereby understood and agreed by the parties to this franchise that no amendment to the terms of this franchise shall be made unless made in writing, approved by both parties, and attached to this Franchise Agreement to become a part hereof.

**ARTICLE XXIII
SEVERABILITY**

If any section, sentence, clause, or paragraph of this Agreement shall be held to be invalid, illegal or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The parties shall use their best efforts to replace the invalid, illegal or unenforceable provision(s) of this Agreement with valid legal terms and conditions approximating the original intent of the parties.

**ARTICLE XXIV
AUTHORIZATION TO EXECUTE**

The parties signing this Franchise Agreement shall provide adequate proof of their authority to execute this Franchise Agreement. This Franchise Agreement shall inure to the benefit and is binding upon the parties hereto and their respective successors or assigns, but shall not be assignable by either party without the written consent of the other party.

**ARTICLE XXV
TERM AND TERMINATION OF FRANCHISE**

1. The term of this Franchise Agreement shall be for a period of five (5) years beginning on the date of acceptance.
2. In addition to all other rights and powers retained by City under this Franchise or otherwise, City reserves the right to declare this Franchise forfeited and to terminate the Franchise and all rights and privileges of Contractor hereunder in the event of a material breach of the terms, covenants, or conditions herein set forth. A material breach by Contractor shall include, but not be limited to, the following:
 - a. Failure to pay the fees prescribed by Article V
 - b. Failure to materially deliver the services provided for in this Franchise
 - c. Material misrepresentation of fact in the application for or negotiation of this Franchise
 - d. Conviction of any director, officer, employee, or agent of Contractor of the offense of bribery or fraud connected with or resulting from the awarding of this Franchise
 - e. Material misrepresentations of fact knowingly made to City with respect to or regarding Contractor's operations, management, revenues, services or reports required pursuant to this Franchise
 - f. Revocation or denial of registration or renewal of registration by TCEQ
 - g. Excessive interruption in service for a period of seventy-two (72) hours or more due to causes other than force majeure
3. Contractor shall not be excused by mere economic hardship nor by misfeasance or malfeasance of its directors, officers, or employees.
4. City may after a hearing as described herein, revoke and cancel this Franchise by and between the parties and said Franchise shall be null and void. City shall mail notice to Contractor, at the address designated herein or at such address as may be designated from time to time, by registered mail. The notice shall specify the time and place of the hearing and shall include the allegations being asserted for the revocation of this Agreement. The hearing shall be conducted in public before the City Council, and Contractor shall be allowed to present evidence and be given an opportunity to answer all allegations for the termination set forth in the notice. In the event the Council determines the allegations set forth are true as set forth in the notice it may by majority vote cancel this Agreement between the parties at no penalty to the City.

**ARTICLE XXVI
ACCEPTANCE OF FRANCHISE**

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

Attn: Public Works Director

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

By: _____
Name: Blake Brannon
Title: President
Date: 1/10/13

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

**ARTICLE XXVII
PUBLIC MEETING**

It is hereby found and determined that the meetings at which this ordinance was passed were open to the public, as required by Texas Government Code § 551, as amended, and that advance public notice of time, place, and purpose of said meetings was given.

First Consideration & Approval on the _____ day of _____ 2013

Second Consideration & Approval on the _____ day of _____ 2013

**BRANNON INDUSTRIAL GROUP
d/b/a Premier Metal Buyers**

CITY OF COLLEGE STATION

By: 

By: _____

Printed Name: Blake Brannon

Mayor
Date: _____

Title: President

Date: 1/10/13

ATTEST:

City Secretary
Date: _____

APPROVED:

City Manager
Date: _____



City Attorney
Date: 1-11-13

Executive Dir. Business Services
Date: _____

EXHIBIT "A"
SCHEDULE OF BASE RATES

20 yd \$275/ Haul

\$27/ton Disposal + any additional landfill fees

\$3.25/day rental

25 yd \$275/Haul

\$27/ton Disposal+ any additional landfill fees

\$3.40/day rental

30yd \$275/Haul

\$27/ton disposal+ any additional landfill fees

\$3.55/day rental

40yd \$300/Haul

\$27/ton Disposal+ any additional landfill fees

\$3.75/day Rental

Fuel surcharge can be added if diesel prices continue to go up.

EXHIBIT "B"
CERTIFICATES OF INSURANCE AND ENDORSEMENTS

NOTEPAD

INSURED'S NAME Premier Metal LLC

PREMI-3
OP ID: SK

PAGE 2
DATE 01/11/13

Brannon Industrial Group LLC dba Premier Metal Buyers and Budget Rolloffs are owned by Mike Brannon and Blake Brannon. Since same ownership; Budget Rolloffs is covered under Brannon Industrial Group LLC dba Premier Metal Buyers workers compensation policy.

January 24, 2013
Consent Agenda Item No. 2f
Lick Creek Greenway Trail Design and a
Resolution Declaring Intention to Reimburse Certain
Expenditures with Proceeds From Debt

To: Frank Simpson, Interim City Manager

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

Agenda Caption: Presentation, possible action and discussion regarding a professional services contract with Halff Associates, Inc. in the amount of \$482,935 for the detailed design of the Lick Creek Greenway Trail project, and approval of a resolution declaring intention to reimburse certain expenditures with proceeds from debt.

Relationship to Strategic Goals:

1. Core Services and Infrastructure
2. Improving Mobility

Recommendation(s): Staff recommends approval of the professional services contract to Halff Associates, Inc. in the amount of \$482,935 and recommends approval of the resolution declaring intention to reimburse certain expenditures with proceeds from debt.

Summary: The Lick Creek Greenway Trail project was approved as part of the 2008 GOB election to construct approximately 4 miles of multi-use paths along Lick Creek from Creek View Park to Lick Creek Park. This new trail will be instrumental in connecting residential neighborhoods and parks. This project is also on the City's Bicycle, Pedestrian, and Greenways Master Plan.

Halff Associates, Inc. (Halff) was engaged in September 2011 to conduct a preliminary design and route analysis for the proposed Lick Creek Greenway Trail. The final recommendation was based on several factors, including pedestrian and user safety, project development costs, environmental concerns, connections to major thoroughfares and trail systems, as well as feedback from the public and potential users.

City staff and the design team conducted several public meetings in an effort to engage the public and gather input on the trail alignment. The preferred alignment followed the greenway of Lick Creek from Creek View Park to W.D. Fitch Pkwy, and continued along dedicated parkland from W.D. Fitch Pkwy to Lick Creek Park. After several public meetings and cooperative discussions over concerns with the trail following the greenway between Creek View Park and SH 6, an alternative on-street route was presented by staff at the August 9, 2012 meeting.

At the August 9, 2012 meeting, the Council supported the recommendation by staff to proceed with the design of the complete multi-use path utilizing the Consultant's

preferred alignment for Segments B and C (east of SH 6) and an on-street option for Segment A (west of SH 6). Halff has been selected to develop a detailed design of the greenway trail. The design contract includes a drainage analysis to ensure compliance with the City's No Adverse Impact Ordinance. In addition to the development of construction bid documents, Halff's scope of work also includes topographic surveying, a cultural resource investigation, determination of jurisdictional waters by the US Army Corps of Engineers, biological evaluation for threatened and endangered species in the project area, geotechnical investigation and construction administration services.

Budget & Financial Summary: Funds in the amount of \$4,410,000 are budgeted for this project from the Streets Capital Projects Fund. A total of \$85,911.50 has been expended or committed to date, leaving a balance of \$4,324,088.50 for design and construction. The "Resolution Declaring Intention to Reimburse Certain Expenditures with Proceeds from Debt" is necessary for this item because the majority of the long term debt has not been issued for the project. The debt for the project is scheduled to be issued later this fiscal year.

Reviewed and Approved by Legal: Yes

Attachments:

1. Contract - On file in the City Secretary's Office
2. Resolution Declaring Intention to Reimburse Certain Expenditures with Proceeds from Debt
3. Project Location Map

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 \$4,200,000, 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 24th DAY OF JANUARY, 2013.

Nancy Berry, Mayor

ATTEST:

Sherry Mashburn, City Secretary

(Seal)

APPROVED:



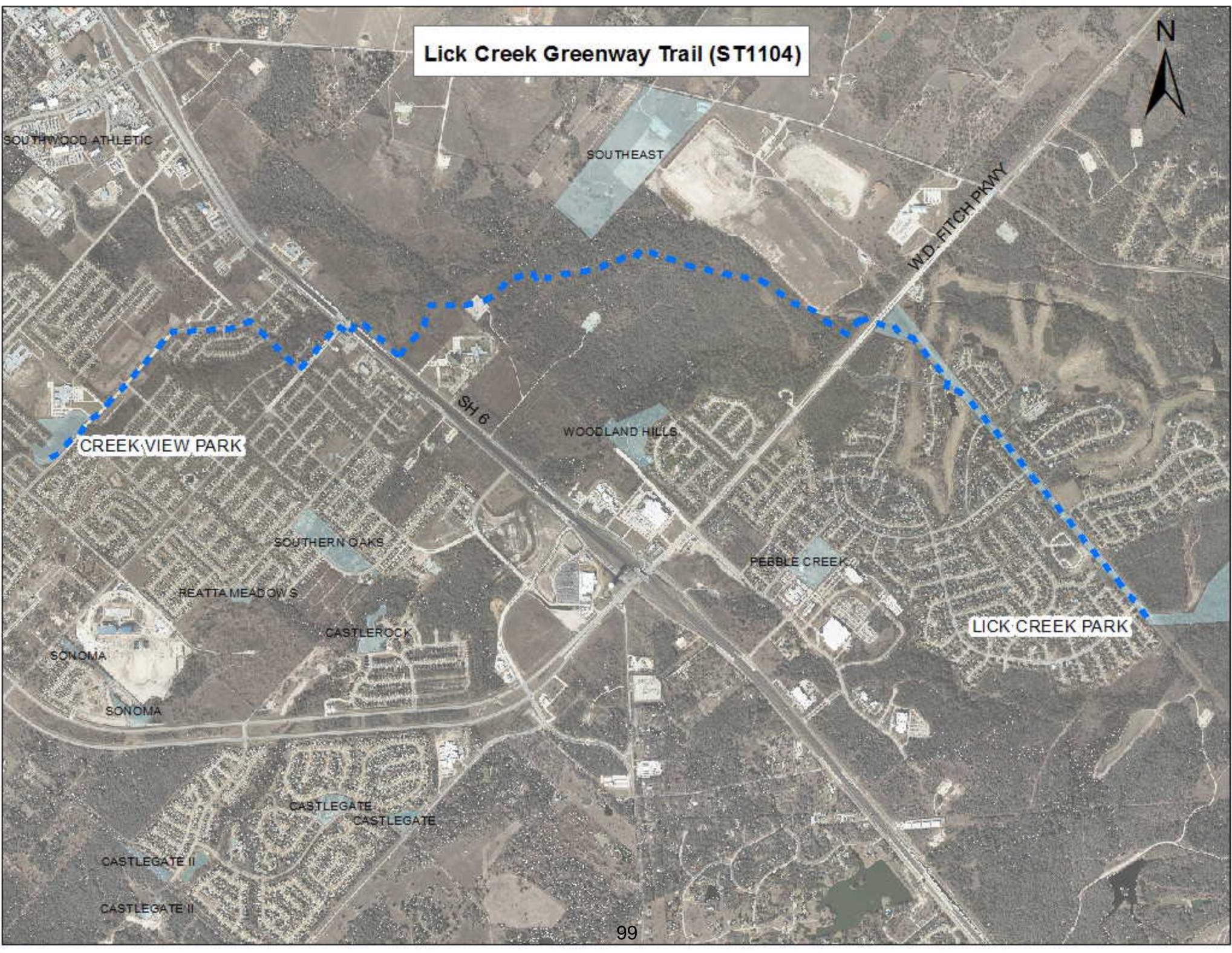
McCall, Parkhurst & Horton L.L.P.
Bond Counsel

Exhibit "A"

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

Lick Creek Hike and Bike Trail – Design and construction of approximately 4 miles of multi-use paths along Lick Creek from Creek View Park to Lick Creek Park connecting residential neighborhoods and College Station Independent School District property.

Lick Creek Greenway Trail (ST1104)



SOUTHWOOD ATHLETIC

SOUTHEAST

WD. FITCH PKWY

CREEK VIEW PARK

SH 6

WOODLAND HILLS

SOUTHERN OAKS

PEBBLE CREEK

LICK CREEK PARK

HEATTA MEADOWS

CASTLEROCK

SONOMA

SONOMA

CASTLEGATE

CASTLEGATE

CASTLEGATE II

CASTLEGATE II

January 24, 2013
Consent Agenda Item No. 2g
Sale of City-Owned Affordable Home at 1208 Phoenix

To: Frank Simpson, Interim City Manager

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

Agenda Caption: Presentation, possible action, and discussion regarding approval of a contract between the City of College Station and Ross Joseph Taylor in the amount of **\$104,900** for the sale of 1208 Phoenix.

Relationship to Strategic Goals:

1. Financially Sustainable City
2. Core Services and Infrastructure
3. Neighborhood Integrity

Recommendation(s): Staff recommends approval of the contract and authorization for the City Manager to execute the contract.

Summary: On December 26, 2012, the City released an Invitation to Bid for the sale of City property located at 1208 Phoenix to individuals, households, or families at or below 80% of the area median income as determined by the U. S. Department of Housing and Urban Development (HUD).

Staff evaluated the bid submitted as of the January 10, 2013 deadline and this bid accomplishes the requirement of selling the property to an income-eligible household who has also qualified for the City's Down Payment Assistance Program. A deferred loan in the amount of **\$20,980** (20% of the sales price) will be made to assist with affordability.

The property at 1208 Phoenix was acquired by the City with Community Development Block Grant funds and a substandard structure located on the property was subsequently demolished. The construction of a new affordable single-family home was completed in 2010 using HOME Investment Partnership Program grant funds. The City's total investment in the acquisition, demolition, construction, maintenance, and real estate fees is approximately \$136,000.

The original appraisal on this property upon completion of construction was \$128,000. A Broker's Opinion of Value completed in July 2012 recommended a lower sales price of \$104,900.

Budget & Financial Summary: The minimum bid specified in the Invitation to Bid 13-033 was \$104,900. The bid currently held us for **\$104,900**.

Reviewed and Approved by Legal: Yes / No

Attachments:

- Attachment 1: Real Estate Contract
- Attachment 2: Location Map

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 ROSS JOSEPH TAYLOR ("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 **1208 Phoenix, McCulloch (George), Block 2, Lot 42**, 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

2.1 The purchase price for said PROPERTY shall be the sum of **ONE HUNDRED FOUR THOUSAND NINE HUNDRED AND NO/100 DOLLARS (\$104,900.00)**. The purchase price shall be payable as follows: **ONE HUNDRED FOUR THOUSAND NINE HUNDRED AND NO/100 DOLLARS (\$104,900.00)** as a credit for the consideration heretofore paid for the PROPERTY, and the balance payable at closing.

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 #13-033 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 forty-five (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 pro-rated taxes, at closing.

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

(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 THOUSAND NINE HUNDRED EIGHTY AND NO/100 DOLLARS (\$20,980.00).

(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 #13-033.

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 #13-033 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: Ross Joseph Taylor
2101 Harvey Mitchell #226
College Station, Texas 77840

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.

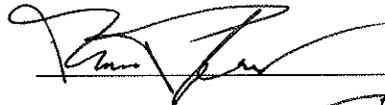
9.11 Memorandum of Contract: Upon request of either party, both parties shall promptly execute a memorandum of this agreement suitable for filing of record.

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

SELLER:

BUYER:

CITY OF COLLEGE STATION



BY: _____
Mayor

Printed Name: ROSS TAYLOR

Date: _____

Date: 1/10/13

ATTEST:

City Secretary

Date: _____

APPROVED:

City Manager
Date: _____

Chief Financial Officer
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 acknowledged 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

Attachment 1

REQUEST FOR BID



**SALE OF PROPERTY
LOCATED AT 1208 PHOENIX, COLLEGE STATION**



BID #13-033

**DUE DATE:
Thursday, January 10, 2013 @ 2:00 P.M. C.S.T.**

**PLANNING & DEVELOPMENT SERVICES DEPARTMENT COMMUNITY
DEVELOPMENT UNIT
CITY OF COLLEGE STATION, TEXAS
1101 Texas Ave.
College Station, TX 77840
(979) 764-3778
www.cstx.gov**

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FORM DEED OF TRUST (Down Payment Assistance)	Exh. J

INTRODUCTION

Bids will be received at the City of College Station Purchasing Department, 1101 Texas Avenue, College Station, Texas 77842, until **Thursday, January 10, 2013 at 2:00 P.M. CST**, and publicly opened and read aloud at City Hall, 1101 Texas Avenue, College Station, Texas. Questions regarding this bid shall be submitted in writing via the Brazos Valley Online Bidding System at <http://brazosbid.cstx.gov>. The deadline to submit written questions is **Monday, January 7, 2013 @ 2:00 P.M. CST**. Clearly mark return bid envelope with Bid #13-033 and Bid Opening Date.

A pre-bid meeting will be held at 2:00 PM CST, Thursday, January 3, 2013 at the City Hall (2nd floor), 1101 Texas Avenue, College Station, Texas. This meeting is not mandatory, but attendance is highly recommended.

By submitting a bid, the Bidder acknowledges that it is not relying on any representation, warranty, statement or other assertion of City or any employee, agent or representative of City, and the Bidder is relying on the Bidder's own examination of the Property.

Bids are solicited for the cash sale of a tract of land and improvements located thereon which include a single family residence. This property is available for sale and is subject to the terms and conditions specified hereinbelow:

SPECIFIC TERMS AND CONDITIONS

The following instructions apply to all bids and become a part of the terms and conditions of any bid submitted to the City of College Station Purchasing Services Division, unless otherwise specified elsewhere in this bid request. All Bidders are required to be informed of these Terms and Conditions and will be held responsible for having done so:

Definitions

In order to simplify the language throughout this bid, the following definitions shall apply:

QUALIFIED BIDDER, BIDDER means – an individual, household, or family, earning at or below 80% of the area median income, that has been pre-qualified and pre-approved by a lending institution for mortgage financing compatible with their bid, and will ultimately own and occupy the property. Intermediaries, speculative investors or real estate agents are not qualified bidders and are NOT eligible to submit a bid.

CITY COUNCIL – means the elected officials of the City of College Station, Texas, given the authority to exercise such powers and jurisdiction of all City business as conferred by the State Constitution, City Charter, and all applicable laws.

CONTRACT DOCUMENTS – means a real estate sales contract and all documents related thereto including this request for bids between the City and a successful Bidder for the sale of the Property specified in this bid.

BUYER – means the successful Highest Responsible Qualified Bidder(s) of this bid request.

GUIDELINES - The Down Payment Assistance Guidelines, version as approved by the City Council in April 2011, a copy of which is included in this bid packet as Exhibit E.

PROPERTY - means Lot Forty-Two (42), Block Two (2), McCULLOCH'S SUBDIVISION College Station, Brazos County, Texas, as shown in the plat recorded in Volume 122, Page 91, of the Official Records of Brazos County, Texas, more commonly known as 1208 PHOENIX, College Station, Texas, together with all and singular the rights and appurtenances pertaining to the PROPERTY.

IMPROVEMENTS: means a 3-bedroom, 2-bath house consisting of approximately 1,351 heated square feet. A floor plan is attached hereto as Exhibit C.

SELLER, CITY or CITY OF COLLEGE STATION –means the City of College Station, a Texas home-rule municipal corporation.

Guidelines for Bids

- The minimum bid for the Property is **\$104,900**.
- **Bids must be submitted on the Real Estate Contract attached to this Bid Packet as Exhibit G, which Contract must be completed and signed by the Bidder.**
- Bidders shall submit a \$500 certified or cashier's check, made out to the title company of the bidder's choice, as a partial earnest money deposit to accompany the Real Estate Contract at bid opening. The certified or cashier's check will be returned to the unsuccessful bidders when a buyer has been determined, or not to exceed 30 days beyond bid opening.

Receipt of Bids

Bids must be received by the Purchasing Services Division prior to the time and date specified. The mere fact that the bid was dispatched will not be considered sufficient. The bidder must ensure that the bid is actually delivered. **Faxed bid responses are NOT acceptable.**

Certification

Bids must be completed and submitted on the real estate sales contract form included in this bid. Certification of Bid must be fully completed.

Award of Contract

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

- a. Price;
- b. Documentation and Verification of Bidder's financial history and employment;
- c. Eligibility of Bidder for Down Payment Assistance under City's Down Payment Assistance Guidelines;
- d. Pre-qualification and pre-approval by a mortgage lending institution, and;
- e. Any other applicable federal or City guidelines, laws, regulations or rules governing Community Development programs or funds for this project.

In the event that there are any discrepancies between the total bid price and the terms of sale, the price that renders the highest monetary bid for the property will prevail.

Although the monetary amount of the bid is an essential part of the Bid, the City is not obligated to award a contract on the sole basis of the monetary bid.

Acceptance

Upon acceptance and approval by the City Council, this bid is accepted and becomes part of the contract documents between the City and the successful bidder for the period designated.

Reservations

The City reserves the right to accept or reject in part or in whole, any bids submitted, and to waive any non-material technicalities for the best interest of the City. The City reserves the right to reject any bid that does not fully respond to each specified item.

Communication

No verbal agreement or conversation with any officer, agent or employee of the CITY and any potential bidder, either before or after the closing of the bid, shall be binding on the City or affect or modify any of the terms or obligations hereunder. Only bid price and community development qualifications will be considered.

Cancellation

The City reserves the right to cancel this contract or any portion thereof immediately should Buyer fail to comply with terms stated in contract.

Changes

Any change in income or household composition may result in disqualification of the bid. Bidder shall notify the City in writing immediately upon any change in household composition or income. The City shall not be obligated to sell the property unless City expressly consents to the changes after notice, Bidder demonstrates that it can meet all the requirements contained in this bid, and City evaluates and assesses the Bidder's submittal.

Payment Terms

Buyer shall be bound to the payment terms City of College Station DAP guidelines. City will not finance any part of the sale except for any Down Payment Assistance.

DISCLAIMER OF WARRANTIES/SALE OF PROPERTY AND IMPROVEMENTS "AS IS"

CITY MAKES NO WARRANTIES OR REPRESENTATIONS ABOUT THE CONDITION, HABITABILITY, MERCHANTABILITY OR FITNESS OF THE IMPROVEMENTS, UTILITIES, ENVIRONMENTAL STATE OF THE PROPERTY OR SUITABILITY OF THE PROPERTY FOR ANY PARTICULAR PURPOSE. THE PROPERTY IS PLACED OUT FOR BID AND SOLD "AS IS" AND "WITH ALL FAULTS". WITHOUT LIMITING CITY'S OBLIGATION TO DELIVER A DEED WITH SPECIAL WARRANTY OF TITLE ON THE TERMS AND CONDITIONS CONTAINED IN THIS CONTRACT, CITY MAKES NO REPRESENTATIONS OR WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTY. IN NO EVENT WILL THE CITY BE RESPONSIBLE OR LIABLE FOR LATENT OR PATENT DEFECTS OR FAULTS, IF ANY, IN THE PROPERTY OR IMPROVEMENTS THEREON, OR FOR REMEDYING OR REPAIRING SAME, INCLUDING BUT NOT LIMITED TO, DEFECTS RELATING TO REPAIRING ANY STREETS, UTILITIES OR ANY IMPROVEMENTS LOCATED ON THE PROPERTY OR SHOWN ON ANY PLAT OF THE PROPERTY. THE CITY HAS NOT CONDUCTED, AND WILL NOT CONDUCT, ANY ENVIRONMENTAL INSPECTION OR OTHER TESTING OR INSPECTION OF THE PROPERTY OR THE IMPROVEMENTS. THE PROVISIONS CONTAINED IN THIS PARAGRAPH SHALL SURVIVE THE CLOSING HEREUNDER AND THE DELIVERY FROM SELLER TO BUYER OF THE WARRANTY DEED. BIDDER IS ADVISED TO MAKE ITS OWN INSPECTION OF THE PROPERTY.

Variations

Any variation from the conditions of sale must be indicated on the Bid or on a separate attachment to the Bid. This sheet shall be labeled as such.

SALE CONTINGENT ON COUNCIL APPROVAL

THIS SALE IS SUBJECT TO THE EXPRESS APPROVAL OF THE CITY OF COLLEGE STATION CITY COUNCIL. SHOULD THE CITY COUNCIL FAIL TO APPROVE THIS SALE FOR ANY REASON, THE CONTRACT WILL IMMEDIATELY BECOME NULL AND VOID, CITY WILL AUTHORIZE THE TITLE COMPANY TO RETURN THE EARNEST MONEY TO THE PURCHASER AND NEITHER PARTY WILL HAVE ANY FURTHER OBLIGATIONS OR LIABILITY TO THE OTHER.

NO WARRANTIES OR GUARANTIES

ANY OFFER PRESENTED TO CITY MUST BE BASED ON THE BIDDER'S OWN INSPECTION AND INVESTIGATION OF THE PROPERTY AND NOT ON ANY STATEMENTS MADE BY CITY OR COMMUNITY DEVELOPMENT EMPLOYEES. CITY MAKES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER WITH RESPECT TO THE PROPERTY, THE INFORMATION SET FORTH IN THIS REQUEST FOR BIDS OR ANY COMMUNITY DEVELOPMENT REQUIREMENTS.

WITHDRAWAL

THIS PROPERTY IS SUBJECT TO WITHDRAWAL FROM THE MARKET BY CITY AT ANY TIME FOR ANY OR NO REASON. IN THE EVENT OF SUCH WITHDRAWAL, BIDDERS WILL BE NOTIFIED BY CITY BASED UPON THE LIST MAINTAINED BY THE CITY PURCHASING DEPARTMENT OF DELIVERED BID PACKAGES.

RIGHT OF REJECTION OR DISCONTINUATION RESERVED BY CITY

CITY RESERVES THE RIGHT TO REJECT ANY AND ALL OFFERS IN ITS SOLE DISCRETION FOR ANY OR NO REASON WHATSOEVER. CITY SHALL HAVE THE RIGHT TO DISCONTINUE THE OFFER PROCESS AT ANY TIME PRIOR TO EXECUTION BY CITY OF THE CONTRACT. IN SUCH EVENT, CITY SHALL NOTIFY THE BIDDERS OF SUCH DISCONTINUATION. CITY RESERVES THE RIGHT, AFTER DISCONTINUANCE OF THE BID PROCESS, TO SELL THE PROPERTY TO ANY PARTY AND ON ANY TERMS ACCEPTABLE TO CITY.

PROJECT/PROPERTY INFORMATION

Project Description

As part of a strategy to promote homeownership opportunities for low-income and moderate-income individuals and households, the City of College Station is soliciting bids from qualified bidders for the purchase of the Property for the sole purpose of owner occupancy.

DOWN PAYMENT ASSISTANCE INFORMATION

The City will provide down-payment assistance to the Buyer in the amount up to \$20,980 from the City's federal HOME grant funds to facilitate the purchase of the property by the successful bidder.

The sale of this property will be subject to the criteria specified in Exhibit E to ensure that the property remains owner-occupied by a low to moderate income household. Any change in income or household composition may result in disqualification of the bid. Bidder shall notify the City in writing immediately upon any change in household composition or income. The City shall not be obligated to sell the property unless City expressly consents to the changes after notice, Bidder demonstrates that it can meet all the requirements contained in this

bid, the contract documents, any applicable federal laws pertaining to community development and City evaluates and assesses the Bidder's submittal and qualifications.

Property Information

Property size: as described in the survey attached as Exhibit B.

Improvements: as described in "Specific Terms and Conditions" Section hereinabove.

Property Description: as described in "Specific Terms and Conditions" Section hereinabove. The property has been platted. The property is subject to restrictive covenants filed in Volume 122, Page 91, of the Official Records, Brazos County, Texas. The sale of this Property does not include any minerals.

Zoning: The property is zoned R-1.

Utilities: Water, sewer, gas, and electricity are connected.

NOTICE AND DISCLAIMER REGARDING PLANS

The City does not guarantee the actual square footage of the structure. Bidders may rely only upon their own investigation and inspection of the structure and improvements. The plans available for review are for general informational purposes only and the Bidder may not rely on their accuracy. There may be differences or discrepancies between the plans and the house as built.

The information provided is the best available information available to the City, but is not warranted or guaranteed in whole or in part. The bidder is entirely responsible for verifying the accuracy of this information and the suitability of the Property for any intended use. The bidder is encouraged to inspect the Property carefully, as provided in this Request for Bids and to become familiar with access, taxes, utilities, easements and all other issues which concern the Property.

CITY EXPRESSLY DISCLAIMS ALL REPRESENTATIONS, WARRANTIES, COVENANTS AND AGREEMENTS (EXPRESS OR IMPLIED OR BY OPERATION OF LAW), WITH RESPECT TO THE CONDITION, SUITABILITY, HABITABILITY, MERCHANTABILITY OR FITNESS OF THE IMPROVEMENTS OR UTILITIES FOR ANY PARTICULAR PURPOSE.

TERMS OF SALE

The successful bid will be subject to the following terms of sale:

- All Bidders must schedule an appointment and attend homebuyer counseling with the City's Community Development Unit (phone 979-764-3778 for an appointment).
- All Bidders must submit a completed Application for Homeownership Programs, Verification of Employment form, and all required supporting documents to the Community Development Unit prior to scheduling homebuyer counseling.
- Successful Bidder must obtain permanent financing in compliance with Down Payment Assistance Guidelines and close the sale transaction within 60 days of award of bid.
- The terms and conditions of the contract documents including Buyer's bid proposal shall be binding on Buyer and Buyer's successors-in-interest, heirs, and assigns. Bids shall be valid for a period of 120 days from the deadline for submittal.
- The City will convey the Property subject to the retention of any easements or rights of way necessary for utilities or other public improvements. If the easements or rights of way are not specified on or before closing the property will be conveyed subject to blanket utility, drainage, greenway and other public

easements as determined by the City in the City's sole discretion. A survey is provided at City's cost and will be the legal description employed in the final contract documents.

- Buyer to pay all closing costs and expenses for the Property, except for a standard Form T-1 Texas Owner Policy of Title Insurance and City's attorney fees, which will be paid by the City of College Station Community Development Down Payment Assistance Program.
- Buyer will comply with all provisions of the City's Down Payment Assistance Guidelines.
- The above criteria are incorporated into the contract documents.
- **Following the Bid deadline, but prior to selection by City of the winning offer, City reserves the right to require evidence satisfactory to City of any bidder's financial ability to purchase the Property, their eligibility under the Down Payment Assistance Program and any other federal or City requirements, and to fully perform its obligations under the Contract. A Bidder who fails to promptly supply evidence satisfactory to City may be disqualified at the option and sole discretion of City.**

SELECTION PROCESS/LIMITATION

Selection Process

Bids will be evaluated on the basis of compliance with the criteria listed hereinabove, information supplied in response to the items defined herein, and the highest net monetary bid amount. All respondents will be notified of the selection once the City Council has made its decision.

Limitation

The City of College Station reserves the right to accept or reject any or all bids as a result of this request, or to cancel, in part or in its entirety, this Request for Bids if found to be in the best interest of the City. This Request for Bids does not commit the City to award a contract, pay costs incurred for the preparation of the response documents, or any subsequent costs associated with provision of additional information or presentation, or to procure or contract for services or goods. All submittals become the property of the City of College Station, and will be open to public inspection.

Questions regarding this bid shall be submitted in writing via the Brazos Valley Online Bidding System at <http://brazosbid.cstx.gov>. The deadline to submit written questions is **Monday, January 7, 2013 @ 2:00 P.M. CST.**

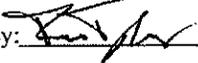
Sealed bids must be received no later than **2:00 p.m. on Thursday, January 10, 2013** by the Purchasing Department, at which time they will be publicly opened. Bids received after that time will be returned unopened to the sender.

CERTIFICATION OF BID

The undersigned represents that no member of the College Station City Council is under contract either directly or indirectly with Bidder, Bidder's agents, contractors or subcontractors. This representation and warranty shall be in effect for the full term of this Agreement.

The undersigned affirms that they are duly authorized to execute this contract, that this bid has not been prepared in collusion with any other bidder, and that the contents of this bid have not been communicated to any other bidder prior to the official opening of this bid.

Furthermore, the undersigned agrees to execute the required real estate contract, promissory note, and deed of trust, the form of which are attached hereto as Exhibits G, I, and J. The undersigned also certifies the bidder's commitment to adhere to the Terms of Sale in this invitation to bid.

Signed By: 

Typed Name: Ross Taylor

Phone No.: 806-290-2029

Fax No.: 979-764-0421 Attn: Kristi Fox

Mailing Address: 2101 Harvey Mitchell #226
P.O. Box or Street

E-mail: RT2035@gmail.com

College Station TX 77840
City State Zip

Date: 12/31/12

END OF BID #13-033

EXHIBIT "A"
SITE LOCATION MAP

1208 Phoenix



EXHIBIT "B"

SURVEY

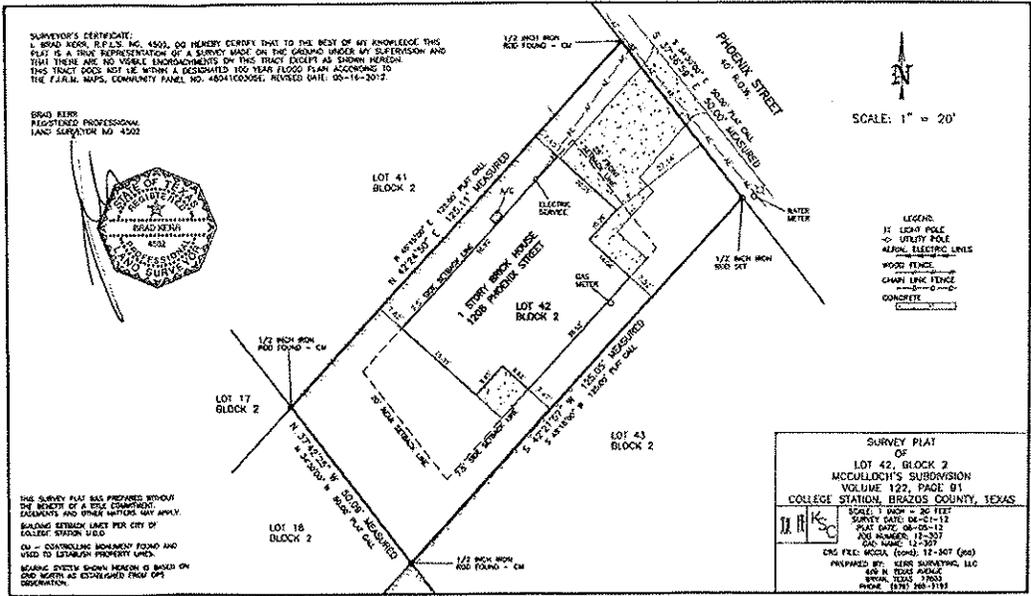


EXHIBIT "C"
FLOORPLAN

EXHIBIT "D"
MEDIAN INCOME LIMITS

2013 MEDIAN INCOME LIMITS
City of College Station
Community Development

This list supersedes all other lists of prior dates.

Household	30%	50%	80%
1	\$11,650	\$19,400	\$31,000
2	\$13,300	\$22,150	\$35,400
3	\$14,950	\$24,900	\$39,850
4	\$16,600	\$27,650	\$44,250
5	\$17,950	\$29,900	\$47,800
6	\$19,300	\$32,100	\$51,350
7	\$20,600	\$34,300	\$54,900
8	\$21,950	\$36,500	\$58,450

The left column (Household) refers to the number of people in the home. The highlighted column (80%) refers to your maximum income allowed per year by HUD guidelines. Limits effective for 2013 on December 11, 2012.

Source: http://www.huduser.org/portal/datasets/il/il13/index_il2013.html

EXHIBIT "E"

DOWN PAYMENT ASSISTANCE GUIDELINES

Applicable Guidelines Summary:

- **Down Payment Assistance Amount up to twenty percent (20%) of the sales price of the home.**
- **The loan is deferred and non-interest bearing. The buyer signs a note and deed of trust with the city, and the note is paid back upon sale of the property, or if the buyer ceases to owner-occupy.**
- **Buyer must contribute a minimum of 1.5% toward the purchase.**

**CITY OF COLLEGE STATION
DOWN-PAYMENT ASSISTANCE PROGRAM**

PROGRAM GUIDELINES

Unless herein stated otherwise, the general operating procedures contained in 24 CFR Part 92 (Home Investment Partnerships Program) will be followed.

A. STATEMENT OF PURPOSE & PROGRAM OVERVIEW

The City of College Station Down-Payment Assistance Program (DAP) is funded through the U.S. Department of Housing and Urban Development (HUD) Community Development Block Grant (CDBG) and Home Investment Partnership Program (HOME) funds. Additionally, the City may utilize other local, state, or federal resources that become available.

DAP is designed to assist income-eligible homebuyers with the purchase of affordable single family residential properties located within the City of College Station for owner-occupied, homestead use only. DAP financial assistance shall be limited to providing qualified applicants with down payment/principal reduction and/or closing cost assistance under the provisions of 92 CFR § 92.254 qualification as affordable housing: homeownership. This may be accomplished in part by developing, with City Council approval, affordable single-family units to be made available to program eligible families.

The basic goals of the Down-Payment Assistance Program are:

- To provide homeownership opportunities for low income individuals and families,
- To expand the supply of decent housing available to low-income homebuyers, and
- To provide homeowner training and homebuyer counseling activities to low-income homebuyers.

DAP financial assistance shall be provided using deferred loans which, to the extent proceeds are available from the transaction, are fully repayable upon sale of the property. This assistance is combined with conventional permanent financing offered by private sector lenders (i.e., banks, thrifts, or mortgage corporations). Seller/owner financing is not permitted, except for applicants applying under the Habitat for Humanity homebuyer program. DAP will provide a maximum of 15% of the sales price, for one to four-person households, provided that the amount of assistance does not decrease the debt/income ratio for Principal, Interest, Taxes, and Insurance (PITI) below 20% of gross monthly income or increase the amount of assistance beyond the maximum 224(d)(3) limit as published by HUD for qualified applicants purchasing eligible properties in the City of College Station. The maximum purchase price shall not exceed the maximum published FHA mortgage limit (203b limit). At his/her sole discretion, the Planning & Development Services Director may increase the amount of DAP assistance to above the maximum of 15% of the sales price of the home for an applicant purchasing properties developed by the City's Community Development Unit or CHDOs if necessary to accomplish other City or program objectives, or upon significant demonstration of extraordinary circumstances.

DAP assistance will require a lien by the City of College Station. DAP homebuyers must contribute a minimum of 1.5% of the sales price to the purchase of properties, except for applicants applying under the Habitat for Humanity homebuyer program. At the discretion of the Planning & Development Services Director, this requirement may be waived.

Participating lenders must provide escrow services to buyers for insurance and tax payment purposes. The City will not participate in purchases where the mortgage lender's interest rate exceeds the local average mortgage rate by more than one and one-half additional percentage points. Additionally, lender mortgages of less than fifteen (15) years will not be eligible for participation in the DAP Program.

B. HOMEBUYER ELIGIBILITY CRITERIA

Eligible applicants of DAP financial assistance must meet the following qualifications:

1. An applicant must have a gross income of less than eighty (80) percent of the Bryan/College Station area median income as established by HUD. Income will be determined by the provisions of 24 CFR § 92.203 (Income determinations) and 24 CFR § 5.609 (Annual income). Applicants will not be eligible for DAP assistance if, upon application, they have assets exceeding \$20,000 on hand. Retirement funds in IRS recognized retirement accounts are excluded.
2. Participants will be required to certify at the time they acquire an ownership interest in the unit that they intend to occupy the unit as their principal residence. Occupancy will be determined through verification of utility consumption, and other verifications determined to be acceptable by the City, on an annual basis.
3. Credit and Employment Standards
 - a. Qualified applicants will have an average FICO credit score of no less than 600, with no bankruptcies, foreclosures, student loan delinquencies, income tax delinquencies, child support delinquencies or repossessions within the previous two (2) years. This provision does not apply to applicants applying under the Habitat for Humanity homebuyer program. The Planning & Development Services Director may waive this requirement if necessary to accomplish other City or program objectives, or upon significant demonstration of extraordinary circumstances.
 - b. Applicants must have an employment history in the same job, or in the case of professional, salaried employees (as defined in 29 CFR § 541 meeting any of the requirements in Subparts B, C, D, E, or F), in the same field of employment, for a minimum of six (6) months.
 - c. Student loans which are currently deferred at the time of application will be included in the debt ratio calculation as if in repayment status.
4. Citizenship: In order to receive DAP assistance, applicants must be United States Citizens, U.S. Non-Citizen Nationals, or Qualified Aliens as defined by Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. Qualified Alien status will be verified by the U.S. Citizenship and Immigration Services Division of the Department of Homeland Security.

C. ELIGIBLE PROPERTY CRITERIA

Property eligible for purchase under DAP is subject to the requirements of 24 CFR § 92.254 (Qualification as affordable housing: homeownership) and as follows:

1. The DAP will be implemented on a city-wide basis within the city limits of the City of College Station.
2. All single-family property, located within the above mentioned boundaries. The definition of "single-family" property includes individually owned townhouse units, homeplexes and condominium units, but excludes mobile homes, duplexes and quadplexes.

3. Only property that is debt-free and has an otherwise clear title on the date it is acquired by an applicant is eligible.
4. All eligible DAP properties shall not exceed 95 percent of the maximum amount insurable under Section 203(b) of the National Housing Act (FHA lending limit) for the Bryan/College Station area.
5. Eligible properties must not be tenant-occupied on the date of the execution of the Earnest Money or Sales Contract, unless the occupant is the buyer.
6. Properties constructed prior to 1978 must have passed a lead-based paint risk assessment by a State of Texas-licensed Lead Risk Assessor.

D. LOAN INSTRUMENTS

DAP shall use two (2) basic loan instruments (promissory note and deed-of-trust) to provide financial assistance to eligible applicants and to comply with the provisions of 24 CFR § 92.254(a)(5)(i)(A) (Recapture, Net Proceeds). The intention of the DAP loan instrument is to provide supplemental financial assistance when combined with permanent financing.

Affordability shall be determined, except in the case of purchases through the Habitat for Humanity homebuyer program, by ensuring the total PITI (principal, interest, taxes, and insurance) payment (front ratio) is not less than 20% but not more than 35% of the monthly income of the eligible DAP homebuyer. With lender approval, the upper percentage may be slightly exceeded under extenuating circumstances that demonstrate the buyer's ability to handle higher payments. The maximum total debt-to-income ratio (back ratio) is 45% (participating lenders may require a lower percentage). The City of College Station shall not participate in loan packages that have mortgages that are not fully amortizing ("balloon" mortgage) or contain negative amortization. Mortgage interest rates must be fixed for the full loan term. Interest rate buy-downs are not permitted. A maximum of 30% of the program assistance may be used for closing costs, except prepaid taxes or mortgage insurance. The remaining 70% must be applied directly to the down payment. Any Mortgage Credit Certificate Tax Credits claimed by the applicant will not be included in the debt ratio calculation.

DAP loan instruments shall require that the property must be maintained to meet all applicable City codes, including community appearance standards and code enforcement ordinances.

Deferred Loan

Amount:	All households: 15% of the sales price of the house
Repayment Due:	100% upon sale (to the extent proceeds available)
Lien holder Position:	Second
Refinancing:	Allowed for payment, term, or interest rate reduction. No cash-out refinance allowed.
Owner Occupancy Required:	On the date the homebuyer ceases occupying the property as a primary residence (i.e., rental, gift, death, abandonment), the deferred loan will become due and payable to the City (except for deployed military personnel.)

Except in the case of purchases under the Habitat for Humanity homebuyer program, the City shall have the prior right to purchase the ownership interest in the property from the initial DAP homeowner for the

amount specified in a firm contract between the homeowner and the prospective buyer. The City shall have 10 business days after receiving notice of the firm contract to decide whether to exercise its right and 60 additional calendar days to complete closing of the property.

Military Deployment - In the event that the homebuyer is deployed on active duty, the homebuyer may, at their discretion, rent the home during the time of deployment to an income-eligible applicant if the homebuyer's monthly mortgage payment will exceed 30% of gross monthly income after deployment. The maximum rent will be determined by published maximum HUD rents for the area. The City of College Station Community Development Unit will verify income eligibility of the rental applicant and will file a copy of the deployment orders in the homebuyer's client file. If the home is rented to an income-eligible applicant, or is occupied by the homebuyer's dependents, the DAP loan will continue to be deferred.

E. HOUSING QUALITY PLAN

1. Community Development Unit staff, who are experienced in conducting inspections of housing units for health and safety standards will complete inspections of all proposed units for conditions posing a health or safety threat to occupants prior to approval of the unit for transfer to the homebuyer.
2. All DAP funded properties must meet all requirements under 24 CFR § 92.251(a) (Property standards) prior to closing.
3. Subject properties will be reviewed with regards to environmental issues as required by federal guidelines in 24 CFR § 92.352 (Environmental review) Properties not eligible for federal assistance due to environmental hazards will be ineligible for this program.

F. DAP HOMEBUYER AND HOMEOWNER COUNSELING PROGRAM

The Homebuyer and Homeowner Counseling Program will provide a full range of services, advice, and assistance to potential homebuyers to assist them in meeting the responsibilities of home ownership.

1. An **Intake Interview** will be conducted between the counselor and the prospective homebuyer once the application has been completed and reviewed by the counselor. The counselor will obtain and document sufficient information on the nature of the applicant's housing needs to determine the applicability of housing counseling, the type of assistance needed, and to establish a case action plan.
2. The counseling session will cover housing selection, Fair Housing laws, purchase procedures, real estate and mortgage terminology, types of financing and assistance programs, and the rights and responsibilities of homeowners.
3. The counseling session will also provide training to enhance home management skills, including money management, comparative shopping, use of credit, debt management and homeowner's insurance and property taxes. A review of the homebuyer's income and expenses and the development of a budget will be covered.
4. The counseling session will provide instruction/information on property care and maintenance, simple home repairs, and housing codes and enforcement procedures.
5. Information regarding reducing energy waste, developing an energy conservation lifestyle, energy audits, tax credit information, low cost weatherizing instructions, product fraud prevention, and safety information will also be provided.

6. Post-Occupancy Counseling will be offered upon request to the homebuyer after the purchase of the home. This counseling will also be available to assist in resolving problems between the mortgagee and the home buyer and will provide appropriate referrals to other agencies, as needed.

G. APPLICATION PROCESS

Persons having previously completed homebuyer assistance evaluations and counseling with staff will be given priority. Interested applicants will be given application and verification forms and instructions for completion. Staff will be available to assist with completion of required forms.

1. Once an applicant meets all program requirements, to include applying for and receiving approval for permanent mortgage financing, an Electronic Funds Transfer (E.F.T.) or check will be requested for the appropriate program assistance. Program documents will be prepared and forwarded to the appropriate title company. Upon Closing, DAP funds will be made available to the selected title company. The E.F.T. or check will be made out to the title company for the benefit of the applicant/buyer.
2. All program requirements having been met, eligible applicants will be prioritized according to date and time of intake interview and pre-purchase session. Assistance will continue until all funds are depleted or the program is terminated. In the event of a funding shortage, families with dependent children will receive priority. Families with dependent children will also receive priority for properties developed and owned by the City.
3. Previous recipients of Community Development housing program assistance (ORP, Rehab, TBRA, etc.) must be approved by the Community Development Department Director prior to receiving DAP assistance. Previous DAP recipients are not eligible for additional DAP assistance, except upon approval of the Planning & Development Services Director.
4. Applicants falsifying information will be disqualified from participating in the program and may be subject to criminal prosecution.
5. Applicants denied for DAP can reapply no earlier than six (6) months from the date of original application.
6. A non-refundable fee of \$20 shall be due upon receipt of the application or pre-application. This fee is meant to primarily cover the cost of the prospective client's credit report.

H. ANTI-DISPLACEMENT POLICY STATEMENT

1. The City shall not engage or participate in any activities that influence the permanent and/or involuntary relocation or displacement of any low-income family due to the DAP pursuant to the provisions of 24 CFR§ 92.353 Displacement, Relocation, and Acquisition.
2. It is not anticipated that it would be necessary to relocate any families. However, the City will follow the relocation procedures as set forth in its adopted Anti-Displacement Policy if the need does arise.

I. EQUAL OPPORTUNITY STATEMENT

The City of College Station is committed to providing equal opportunity for minority- or women-owned businesses to compete and obtain contracts for City sponsored projects, and will comply with the provisions of 24 CFR § 92.350 (Other Federal requirements and nondiscrimination) and 24 CFR § 92.351 (Affirmative marketing; minority outreach program).

J. FAIR HOUSING POLICY STATEMENT

The City of College Station adopted a Fair Housing Ordinance in 1979, which prohibits discrimination in the sale or rental of housing, and discrimination in the provision of brokerage services. The ordinance also outlines the City's procedures regarding complaints, investigation, cumulative legal effect, unlawful intimidation, education and public information and penalty. The City is not under any court order or decree regarding Fair Housing. Relevant policies and codes have been examined and no exclusionary zoning codes were evident. The City of College Station does not have a rental control ordinance. The City of College Station will comply with the provisions of 24 CFR § 92.351 (Affirmative marketing; minority outreach program).

Information regarding the DAP will be made available to the public through the use of a variety of public media, to include: meetings, the City's website and ads in the classified section of the newspapers. Press releases may be given to the local media. Information and applications will be made available to local agencies that deal with low to moderate income people. Community Development staff will be available to speak to organizations or groups of interested individuals. Other methods of program information outreach may be utilized, including utility bill inserts, direct mailing, television advertising, and applications and program information will also be available on various City-specific media.

In addition, the City of College Station will seek technical assistance from the appropriate HUD staff in order to ensure that all Fair Housing requirements and standards are upheld and ultimately furthered.

EXHIBIT "F"
APPLICATION FOR HOMEOWNERSHIP PROGRAMS

**COLLEGE STATION COMMUNITY DEVELOPMENT
APPLICATION FOR HOMEOWNERSHIP PROGRAMS**

1. BORROWER:

Name _____ Address _____ City _____ Zip _____
 Social Security # _____ Driver's License # _____
 Home Phone _____ Cell Phone _____ Email Address _____
 Rent _____ Own _____ Number of Years _____ Amount of Rent \$ _____
 Unmarried _____ Married _____ Separated _____ Widowed _____
 Name of Employer _____ Address _____
 Position _____ Years on Job _____ Work Phone _____
 Salary: \$ _____ per hour Hours worked weekly: _____ OR Annual Salary: \$ _____
 Former Address _____ Rent _____ Own _____ Number of Years _____

2. CO-BORROWER (Spouse, partner, or household member. No co-signer):

Name _____ Address _____ City _____ Zip _____
 Social Security # _____ Driver's License # _____
 Home Phone _____ Cell Phone _____ E-Mail Address _____
 Rent _____ Own _____ Number of Years _____ Amount of Rent \$ _____
 Unmarried _____ Married _____ Separated _____ Widowed _____
 Name of Employer _____ Address _____
 Position _____ Years on Job _____ Work Phone _____
 Salary: \$ _____ per hour Hours worked weekly: _____ OR Annual Salary: \$ _____
 Former Address _____ Rent _____ Own _____ Number of Years _____

3. HOUSEHOLD INFORMATION:

List all persons living in your household, including yourself first.

Last Name	First Name	Relationship	Date of Birth	Sex	Social Security Number

4. SOURCES OF INCOME:

Income includes wages, child support, alimony, AFDC, SSI, Social Security benefits, interest earned from assets and all other income for any and all household members.

Name	Source of Income	Annual Amount Received

5. ASSETS:

List all assets for any and all household members. Assets include balances of bank accounts, IRAs, gas or oil royalties, rental income, cash value of stocks or bonds, value of automobiles, and any other assets.

Name	Type of Asset	Value of Asset

6. THESE QUESTIONS APPLY TO BOTH BORROWER & CO-BORROWER

- Yes No * Do you have any outstanding judgments?
- Yes No * In the last 7 years, have you declared bankruptcy?
- Yes No * Have you had real property foreclosed upon or voluntarily given real property back to the seller?
- Yes No * **Are you a co-signer or endorser on a note?**
- Yes No * Are you a party in a lawsuit?
- Yes No * Are you obligated to pay alimony, child support or separate maintenance?
- Yes No * Are you a first time homebuyer?
- Yes No * Have you owned a home within the last three years?
- Yes No * Are you a displaced homemaker?
- Yes No * If divorced, did you own a home with your spouse?
- Yes No * Are you currently living in government-assisted housing? (Section 8, Voucher, Certificate, Public Housing, etc.?)

If a "YES" answer is given to any question, please explain: (If more room is needed please attach an extra sheet.)

LIABILITIES AND DEBTS:

Debts include charge accounts, furniture accounts, automobile loans, alimony, child support, personal and real estate loans, finance companies, and any other monthly financial obligation, excluding utilities.

Creditor/Address	Account #	Monthly Payment	Total Owed

COLLECTION POLICIES FOR CONSUMER DEBTS:

The City of College Station is authorized by law to take any or all of the following actions in the event of any questionable information given.

- Report your name and account information to the credit bureau.
- Assess additional interest and penalty charges for the period of time that payment is not made.
- Assess charges to cover additional administrative costs incurred by the City to service your account.
- Offset amounts owed to you under other City programs.
- Refer your account and application to a private collection agency to collect the amount due.
- Refer your account and application for litigation in the courts.
- Refer your debt and application to the Internal Revenue Service for offset against any amount owed to you as income tax refund.
- Report any written off debt to the Internal Revenue Service as taxable income.

All of these actions can and will be used to recover any debts owed when it is determined to be in the interest of the City to do so.

ADDITIONAL INFORMATION:

1. You must provide copies of the Social Security Cards for all household members (copy the front and back of each card).
2. Borrower and Co-Borrower, if applicable, must present Driver's License when application is presented.
3. You must provide a copy of the last two months' paycheck stubs.
4. You must provide copies of your last six months bank statements for all accounts (except retirement or pensions).
5. If you pay or receive child support or alimony, you must provide a copy of the divorce decree.
6. If you are self-employed, an independent contractor, or a commissioned salesperson, you must provide income tax returns and bank deposit statements for the previous two years in addition to your current Verification Of Employment form.

INFORMATION FOR GOVERNMENT MONITORING PURPOSES:

Borrower: (Select one)

- American Citizen
- U.S. Non-Citizen National
- Qualified Alien

1.) Ethnicity (Select one)

Is your ethnicity:

- Hispanic or Latino or
- Not Hispanic or Latino

2.) Race (Select one)

Is your race:

- American Indian or Alaskan
- Asian
- Black or African American
- Native Hawaiian or other Pacific Islander
- White
- American Indian or Alaskan & White
- Asian and White
- Black or African American & White
- American Indian or Alaskan & Black or African American
- Race combination not included in above categories

Co-Borrower: (Select one)

- American Citizen
- U.S. Non-Citizen National
- Qualified Alien

1.) Ethnicity (Select one)

Is your ethnicity:

- Hispanic or Latino or
- Not Hispanic or Latino

2.) Race (Select one)

Is your race:

- American Indian or Alaskan
- Asian
- Black or African American
- Native Hawaiian or other Pacific Islander
- White
- American Indian or Alaskan & White
- Asian and White
- Black or African American & White
- American Indian or Alaskan & Black or African American
- Race combination not included in above categories

How did you learn about this program? (check one) __City Website __Newspaper Ad __Utility Bill Stuffer __Word of Mouth
Referral from (check one if applicable) __Realtor __Lender __City Staff __Other (explain)_____.

AGREEMENT:

The undersigned applies for the loan indicated in this application to be secured by a mortgage or deed of trust on the property herein, and represents that the property will not be used for any illegal or restricted purpose, and that all statements made in this application are true and are made for the purpose of obtaining the loan. Verification may be obtained from any source named in this application. The lender will retain the original of this application, even if the loan is not granted.

CERTIFICATION:

Under the penalties of perjury, I/We certify that the Social Security Number(s) and other information provided on this form are true, correct and complete.

I/We fully understand that it is a federal crime punishable by fine or imprisonment, or both, to knowingly make any false statements concerning any of the above facts as applicable under the provisions of Title 18, United States Code.

I have read and I understand the actions the City can take in the event that I fail to meet my scheduled payments in accordance with the terms and conditions of my agreement. I also agree that I have provided accurate and complete information regarding my income and eligibility for the program. In addition, I give permission for the City of College Station to obtain and review any and all information regarding my credit history.

WARNING

Section 1001 of Title 18 of the U.S. Code makes it a criminal offense to make willful false statements or misrepresentations to any Department or Agency of the United States Government as to any matter within its jurisdiction.

Borrower's Signature

Date

Co-Borrower's Signature

Date

EXHIBIT "G"
FORM REAL ESTATE SALES CONTRACT

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 _____ ("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 _____, 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 _____ (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

2.1 The purchase price for said PROPERTY shall be the sum of _____ AND NO/100 DOLLARS (\$_____.00). The purchase price shall be payable as follows: _____ AND NO/100 DOLLARS (\$_____) as a credit for the consideration heretofore paid for the PROPERTY, and the balance payable at closing.

EARNEST MONEY

2.2 BUYER shall deposit \$_____ as earnest money with _____ (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 # _____ 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 _____ (TITLE COMPANY), within forty-five (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 _____ (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 _____.
- (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 _____ AND NO/100 DOLLARS (\$_____).
- (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 # _____.

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 # _____ is attached hereto as Exhibit _____ 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: _____

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

BY: _____
Mayor

Printed Name: _____

Date: _____

Date: _____

ATTEST:

City Secretary

Date: _____

APPROVED:

City Manager
Date: _____

Chief Financial Officer
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 acknowledged 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

EXHIBIT "H"
FORM SPECIAL WARRANTY DEED

EXHIBIT "H"

**FORM SPECIAL WARRANTY DEED
WITH VENDOR'S LIEN**

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

**SPECIAL WARRANTY DEED
WITH VENDOR'S LIEN**

DATE: _____

GRANTOR: CITY OF COLLEGE STATION, TEXAS

GRANTOR'S MAILING ADDRESS: P.O. Box 9960
(including county) Brazos County
College Station, Texas 77840

GRANTEE: _____

GRANTEE'S MAILING ADDRESS: _____
(including county) Brazos County
College Station, Texas 778__

CONSIDERATION:

Ten Dollars (\$10.00) and other good and valuable consideration, and two notes of even date that are described in this paragraph and referred to as the first-lien note and the second-lien note. The first-lien note is in the principal amount of _____ AND ____/100 DOLLARS (\$ _____), payable to the order of _____. That first-lien note is secured by a first and superior vendor's lien and superior title retained in this deed for _____ and is also secured by a first and superior deed of trust of even date from Grantee to _____. The second-lien note is in the principal amount _____ AND ____/100 DOLLARS (\$ _____) and is executed by Grantee, payable to the order of Grantor. The second-lien note is secured by a second and inferior vendor's lien and superior title retained in this deed and by a second and inferior deed of trust of even date from Grantee to Glenn Brown, Trustee, for the benefit of Grantor.

PROPERTY (including any improvements):

All that certain lot, tract or parcel of land lying and being situated in Brazos County, Texas, and being Lot _____ (___), Block _____ (___), _____, an addition to the City of College Station, Brazos County, Texas, according to the Plat recorded in Volume _____, Page _____, of the Official Records of Brazos County, Texas.

RESERVATIONS FROM AND EXCEPTIONS TO CONVEYANCE AND WARRANTY:

This conveyance is made subject to all valid and subsisting easements, restrictions, rights-of-way, conditions, exceptions, reservations, covenants, oil and gas leases, mineral severances, and other instruments of whatsoever nature of record, if any; zoning laws and other restrictions, regulations, ordinances and statutes of municipal or other governmental authorities applicable to and enforceable against the described premises; rights of adjoining owners in any driveways, walkways, walls and fences situated on a common boundary; any discrepancies, conflicts, or shortages in area or boundary lines; any encroachments or overlapping improvements; taxes for _____ from the date of closing which GRANTEE assumes.

OTHER EXCEPTIONS TO CONVEYANCE AND WARRANTY:

Grantor hereby reserves all interest in the oil, gas, and other minerals in and under and that may be produced from the said property, together with the right of ingress and egress at all times for the purpose of mining, drilling, exploring, operating and developing said property for oil, gas and other minerals and removing the same therefrom.

EXCEPT FOR THE REPRESENTATIONS, IF ANY, CONTAINED IN THIS SPECIAL WARRANTY DEED WITH VENDOR'S LIEN BETWEEN GRANTOR AND GRANTEE, GRANTEE ACKNOWLEDGES THAT GRANTOR 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). GRANTEE EXPRESSLY AGREES THAT TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE PROPERTY IS CONVEYED "AS IS" AND "WITH ALL FAULTS", AND GRANTOR EXPRESSLY DISCLAIMS, AND GRANTEE ACKNOWLEDGES AND ACCEPTS THAT GRANTOR 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 GRANTEE'S ACCEPTANCE OF THIS SPECIAL WARRANTY DEED WITH VENDOR'S LIEN, GRANTEE REPRESENTS THAT GRANTEE HAS MADE (i) ALL INSPECTIONS OF THE PROPERTY TO DETERMINE ITS VALUE AND CONDITION DEEMED NECESSARY OR APPROPRIATE BY GRANTEE, 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. GRANTEE TAKES THE PROPERTY WITH THE EXPRESS UNDERSTANDING AND STIPULATION THAT THERE ARE NO EXPRESS OR IMPLIED WARRANTIES.

Grantor, for the consideration and subject to the reservations from and exceptions to conveyance and warranty, grants, sells, and conveys to Grantee the property, together with all and singular the rights and appurtenances thereto in any wise belonging, to have and hold it to Grantee, Grantee's heirs, executors, administrators, successors, or assigns forever. Grantor binds Grantor and Grantor's successors and assigns, to warrant and forever defend all and singular the property to Grantee and Grantee's heirs, executors, administrators, successors and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, except as to the reservations from and exceptions to conveyance and warranty, when the claim is by, through, or under Grantor but not otherwise.

The first vendor's lien and superior title retained in this deed secure payment of the first-lien note, and they are transferred to _____ without recourse on Grantor. The second vendor's lien and superior title secure payment of the second-lien note, and all liens securing its payment are second, subordinate, and inferior to the first-lien note, and to all liens securing payment of the first-lien note.

When the context requires, singular nouns and pronouns include the plural.

CITY OF COLLEGE STATION

BY: _____
Mayor

ATTEST:

City Secretary

THE STATE OF TEXAS §
 §
COUNTY OF BRAZOS §

This instrument was acknowledged before me on the _____ day of _____, 20____, by _____, Mayor of the City of College Station, a Texas Municipal Corporation, on behalf of said corporation.

Notary Public in and for the State of Texas

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

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

EXHIBIT "I"

FORM NOTE (Down Payment Assistance)

EXHIBIT "I"
REAL ESTATE LIEN NOTE

**CITY OF COLLEGE STATION
DOWN PAYMENT ASSISTANCE PROGRAM
REAL ESTATE LIEN NOTE**

DATE: _____, 20__

BORROWER: _____

BORROWER'S MAILING ADDRESS:
(including county)

Brazos County
College Station, Texas 7784__

LENDER: CITY OF COLLEGE STATION, TEXAS

LENDER'S MAILING ADDRESS:
(including County)

P.O. Box 9960
Brazos County
College Station, Texas 77842

PLACE OF PAYMENT:
(including County)

City of College Station
1101 Texas Avenue
Brazos County
College Station, Texas 77842

PRINCIPAL AMOUNT: _____ THOUSAND _____ HUNDRED
AND NO/100 DOLLARS (\$_____.00)

**ANNUAL INTEREST RATE ON
UNPAID PRINCIPAL FROM DATE:** 0% per annum

PROPERTY (including any improvements):
Lot Forty-Two (42), Block Two (2), McCULLOCH'S SUBDIVISION College Station, Brazos
County, Texas, as shown in the plat recorded in Volume 122, Page 91, of the Official Records of
Brazos County, Texas, more commonly known as 1208 PHOENIX, College Station, Texas,
together with all and singular the rights and appurtenances pertaining to the PROPERTY.

1. BORROWER'S PROMISE TO PAY

A. Purpose. This Note implements requirements applicable to assistance furnished by the City of College Station Community Development Office ("Lender") to _____ ("Borrower") under a Down Payment Assistance Program ("Program") to help eligible families become homeowners. This Program is being carried out by Lender using HOME funds pursuant 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 Lender has assisted the Borrower in purchasing the Property for use as the Borrower's principal residence. The Lender or any authorized party who takes this Note by assignment and is entitled to receive amounts due under this Note is called the "Note Holder."

B. Nonrecourse Note. Payment of this Note may be enforced solely out of the proceeds of sale of the Property, whether the sale constitutes a Sale under Paragraph 3.A. or a Default under Paragraph 5.A. (except to the extent of fraud or misrepresentation by the Borrower). The Note Holder may not seek or obtain a deficiency judgment or any other recovery from the Borrower personally in the event that the proceeds of sale are insufficient to fully satisfy the amounts due on this Note. However, the Note Holder may, at its option, seek and obtain a personal judgment for all amounts payable under this Note against any Borrower responsible for any fraud or misrepresentation that constitutes a Default under subparagraph 5.A.(v). This right shall be in addition to any other remedies available to the Note Holder for such fraud or misrepresentation.

C. Obligation to Repay Subsidy or Principal. In return for the down payment assistance that the undersigned Borrower has received pursuant to the Program for the purchase of the Property, Borrower hereby promises to pay _____ AND NO/100 DOLLARS (\$ _____ .00) to the order of Lender. Payment of Principal under this Note will be deferred until sale of the property. Principal may be prepaid as stated in Paragraph 4. The payment of Principal shall be due and payable on the Closing Date of any Sale, as defined in Paragraph 3.A., or in the event of Default, as stated in Paragraph 5.

2. INTEREST

No interest will be charged on this Note unless and until a Default has been declared by the Note Holder under Paragraph 5. Borrower agrees to pay interest at a yearly rate of ten percent (10%) per annum on the then-outstanding Principal balance of this Note from the date of any Notice of Default until paid.

3. PAYMENT DUE ON SALE

A. Sale. For purposes of this Note, a "Sale" means any sale or transfer of the Property, or any interest therein (including a beneficial interest), from a Borrower to any other person or entity. As used herein the term Sale includes, but is not limited to, any transfer of any interest in the Property that results from the death, divorce, legal separation, or legal incapacity of a Borrower. Borrower authorizes the Note Holder, in its sole discretion, to determine whether any transfer, sale, transaction, or other event that substantially affects Borrower's or Note Holder's interests in the Property constitutes a Sale as defined herein.

B. Notice. Borrower agrees to mail, certified mail, return receipt requested, or handdeliver notice of any proposed Sale and a copy of any sales contract to the Note Holder at least fourteen (14) calendar days before the proposed Closing Date or other date on which the transfer shall become effective.

C. In the event of a Sale, Borrower will pay the Principal then outstanding under Paragraphs 1.C. to the Note Holder on the Closing Date or other effective date of the transfer.

4. BORROWER'S RIGHT TO PREPAY

This Note may be prepaid. In the event of prepayment, the Note Holder will use all prepayments to reduce the amount of Principal that Borrower owes under this Note.

5. DEFAULT

A. **Events of Default.** Any of the following events shall constitute a Default under this Note, as of the date of the Notice of Default under Paragraph 5.B:

(i) **Rental.** If the Borrower rents or leases (Including an oral lease) the Property, or any unit in a two to four unit Property, to any person or entity during the five (5) years after the date of this Note, the Borrower is in Default under this Note, except that the Borrower may rent limited space, such as a room or basement, in a single-unit Property, or in the Borrower's unit in a multi-unit Property, to the extent permitted by the law of the jurisdiction, provided that the Borrower continues to occupy the unit as his or her Principal Residence.

(ii) **Failure to Occupy Property as Principal Residence.** If all Borrowers are continuously absent from the Property for a period of more than thirty (30) days, or move substantially all their personal possessions out of the Property, without the written consent of the Note Holder, Borrowers shall be deemed not to be occupying the Property as their Principal Residence and shall be in Default under this Note.

(iii) **Any Transfer of the Property Other than a Sale.** Sale is defined in Paragraph 3.A. Any transfer of the Property or any interest therein (including a beneficial interest) that is not a Sale as defined in Paragraph 3.A. is a Default under this Note.

(iv) **Any Default under the Deed of Trust.**

(v) **Borrower's Fraud or Misrepresentation.** Any willful misstatement of, or failure to disclose, a material fact by Borrower relating to his or her eligibility for assistance with respect to the Property under the Lender's Program is a Default under this Paragraph. Recovery against the Borrower responsible for the fraud or misrepresentation is not limited to the proceeds of fraud or sale of the Property but may include personal judgment and execution thereon to the full extent authorized by law.

(vi) **Failure to Pay Principal Upon Sale of Property.** If, in the event of a Sale of the Property, Borrower for any reason fails to provide Notice as required under Paragraph 3.B. of this Note or fails to pay the Principal then outstanding on the Closing Date of the Sale or other effective date of the transfer as required under Paragraph 3.C., Borrower shall be in default under this Note.

B. **Notice of Default and Amount Due.** If Borrower is in Default, the Note Holder may send Borrower a written Notice of Default stating the reason Borrower is in Default and demanding immediate payment of the following: (i) the full amount of Principal then due on this Note; (ii) all of the interest that accrues on that amount pursuant to Paragraph 2 of this Note from the date of the Notice of Default until paid, and (iii) all of the Note Holder's costs and expenses reimbursable under Paragraph 5.C.

C. **Payment of Note Holder's Costs and Expenses.** If the Note Holder has provided Borrower with a Notice of Default under Paragraph 5.B., the Note Holder has the right to be repaid from the proceeds of foreclosure for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include for example, reasonable attorneys' fees.

D. **No Waiver By Note Holder.** Even if, at any time when Borrower is in Default, the Note Holder does not require Borrower to pay immediately in full under Paragraph 5.B., the Note Holder will still have the right to do so if Borrower is in Default for the same reason, or for another reason, at any later time.

6. GIVING OF NOTICES

Any notice that must be given to Borrower under this Note will be given by delivering it or by mailing it by first class mail to Borrower at the Property Address above, or at a different address if Borrower gives the Note Holder written notice of a different address to the Beneficiary's mailing address as listed in the Deed of Trust. Except as stated in Paragraph 3.B., any notice that must be given to the Note Holder under this Note will be given by mailing it by first class mail to the Note Holder at the "Place of Payment" address shown on page 1 of this Note, or at a different address, if Borrower is given a notice of that different address.

7. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed from the proceeds of a Sale of the Property. Any person who is a guarantor, surety or endorser of this Note is also obligated to the same extent. Any person who takes over these obligations including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all signers, successors, guarantors, sureties, or endorsers together.

8. WAIVERS

Borrower and any other person who has obligations under this Note waive the rights of Presentment and Notice of dishonor. "Presentment" means the right to require that the Note Holder formally demand payment of amounts due. "Notice of dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

9. SENIOR LIENS

The indebtedness evidenced by this Note is subordinate in all respects to the indebtedness evidenced by one or more notes payable to one or more Senior Lien Holders, which notes are secured by the following "Senior Lien":

A first and superior Deed of Trust dated _____, filed for record in the Official Records of the Office of the County Clerk of Brazos County on _____, under Clerk's File Number _____ from _____, to _____, Trustee, for the benefit of _____, securing a Promissory Note of even date therewith, in the principal amount of \$_____, from _____, and payable to the order of _____, as provided therein.

10. DEED OF TRUST

In addition to the protections given to the Note Holder under this Note, a Deed of Trust, dated the same date as this Note and subordinate to any Senior Liens described above, secures this Note. The subordinate Deed of Trust describes the conditions under which the Borrower may be required to make immediate payment in full of all amounts owed under this Note. One of those conditions, as set forth therein, is as follows:

Transfer of the Property

If all or any part of the Property or any interest in it (including a beneficial interest) is sold or transferred without notice to the Note Holder and compliance with the terms of the Note and this Deed of Trust, the Note Holder will require immediate payment in full of all sums secured by this Deed of Trust. In the event of such a sale, or in the event of any other Default under the Note or the Deed of Trust, the Note Holder may give the Borrower Notice of Default and acceleration under Paragraph 5 of the Note.

11. RELEASE AND SATISFACTION

This Note shall be deemed satisfied and Borrower shall be entitled to a release of the Deed of Trust upon payment of a reasonable fee, as determined by the Note Holder, for preparation and recordation of the release under any of the circumstances: (a) if upon the Closing Date or other effective date of a Sale in accordance with Paragraph 3, the thenoutstanding Principal balance is paid in full; (b) upon full prepayment under Paragraph 4; or (c) upon payment of all amounts due upon Default under Paragraph 5.

12. COMPLIANCE WITH ENVIRONMENTAL LAWS

Borrower agrees to comply with all applicable environmental laws and authorities.

13. MAINTENANCE OF PROPERTY

The Property must be maintained to meet all applicable City codes, including community appearance standards and code enforcement ordinances.

14. GOVERNING LAW

This Note and the Deed of Trust shall be governed by the law of the State of Texas. Venue shall lie with a court of competent jurisdiction in Brazos County, Texas.

Printed Name: _____

Printed Name: _____

EXHIBIT "J"

FORM DEED OF TRUST (Down Payment Assistance)

EXHIBIT "J"
REAL ESTATE DEED OF TRUST

DEED OF TRUST

DATE: _____

GRANTOR: _____

GRANTOR'S MAILING ADDRESS: _____
(including county) Brazos County
College Station, Texas 7784__

TRUSTEE: DAVID NEELEY, CITY MANAGER

TRUSTEE'S MAILING ADDRESS: P.O. Box 9960
(including county) Brazos County
College Station, Texas 77842

BENEFICIARY: CITY OF COLLEGE STATION

BENEFICIARY'S MAILING ADDRESS: P.O. Box 9960
(including county) Brazos County
College Station, Texas 77842

NOTE(S):

DATE: _____

AMOUNT: _____ THOUSAND _____ HUNDRED
AND NO/100 DOLLARS (\$ _____ .00)

BORROWER: _____

LENDER: CITY OF COLLEGE STATION

FINAL MATURITY DATE: As provided in the note.

PROPERTY (including any improvements):

INSERT PROPERTY DESCRIPTION

SENIOR LIEN(S):

A first and superior Deed of Trust, dated _____, filed for record in the Official Records of the Office of the County Clerk of Brazos County on _____, under Clerk's File Number _____ from _____ to _____, Trustee, for the benefit of _____, securing a Promissory Note of even date therewith, in the principal amount of \$ _____, from _____ and payable to the order of _____, as provided therein.

EXCEPTIONS TO CONVEYANCE AND WARRANTY:

All valid and subsisting easements, restrictions, rights-of-way, conditions, exceptions, reservations, and covenants of record of whatever nature, if any, and also the zoning laws and other restrictions, regulations, ordinances and statutes of municipal or other government authorities applicable to and enforceable against the described premises.

FOR VALUE RECEIVED AND TO SECURE PAYMENT OF THE NOTE, Grantor conveys the property to Trustee in trust. Grantor warrants and agrees to defend the title to the property. If Grantor performs all the covenants and pays the Note according to its terms, this Deed of Trust shall have no further effect, and Beneficiary shall release it at Grantor's expense.

GRANTOR'S OBLIGATIONS:

Grantor agrees to :

1. keep the Property in good repair and condition;
2. pay all taxes and assessments on the Property when due;
3. preserve the lien's priority as it is established in this Deed of Trust;
4. maintain, in a form acceptable to Beneficiary, an insurance policy that:
 - (a) covers all improvements for their full insurable value as determined when the policy is issued and renewed, unless Beneficiary approves a smaller amount in writing;
 - (b) contains an 80% coinsurance clause;
 - (c) provides fire and extended coverage, including windstorm coverage;
 - (d) protects Beneficiary with a standard mortgage clause;

- (e) provides flood insurance at any time the Property is in a flood hazard area; and
- (f) contains such other coverage as Beneficiary may reasonably require;
- 5. comply at all times with the requirements of the 80% coinsurance clause;
- 6. deliver the insurance policy to Beneficiary and deliver renewals to Beneficiary at least ten (10) business days before expiration;
- 7. keep any buildings occupied as required by the insurance policy;
- 8. if this is not a first lien, pay all prior lien notes that Grantor is personally liable to pay and abide by all prior lien instruments; and
- 9. comply with all provisions of the Note of even date from Grantor to Beneficiary.
- 10. Grantor agrees to furnish on Beneficiary's request evidence satisfactory to Beneficiary that all taxes and assessments on the property have been paid when due.

BENEFICIARY'S RIGHTS:

- 1. Beneficiary may appoint in writing a substitute or successor trustee, succeeding to all rights and responsibilities of Trustee.
- 2. If the proceeds of the Note are used to pay any debt secured by prior liens, Beneficiary is subrogated to all of the rights and liens of the holders of any debt so paid.
- 3. Beneficiary may apply any proceeds received under the insurance policy either to reduce the amount owed under the Note or to repair or replace damaged or destroyed improvements covered by the policy.
- 4. If Grantor fails to perform any of Grantor's obligations, Beneficiary may perform those obligations and be reimbursed by Grantor on demand at the place where the note is payable for any sums so paid, including attorney's fees, plus interest on those sums from the dates of payment at the rate stated in the note for matured, unpaid amounts. The sum to be reimbursed shall be secured by this Deed of Trust.
- 5. If Grantor defaults on the Note or fails to perform any of Grantor's obligations or if default occurs on a prior lien note or other instrument, Beneficiary may:
 - (a) declare the unpaid principal balance and earned interest on the Note immediately due;
 - (b) request Trustee to foreclose this lien, in which case Beneficiary or Beneficiary's agent shall give notice of the foreclosure sale as provided by the Texas Property Code as then amended; and
 - (c) purchase the Property at any foreclosure sale by offering the highest bid and then have the bid credited on the Note.

TRUSTEE'S DUTIES:

If requested by Beneficiary to foreclose this lien, Trustee shall:

1. either personally or by agent give notice of the foreclosure sale as required by the Texas Property Code as then amended;
2. sell and convey all or part of the Property to the highest bidder for cash with a general warranty binding Grantor, subject to prior liens and to other exceptions to conveyance and warranty; and
3. from the proceeds of the sale, pay, in this order:
 - (a) expenses of foreclosure, including a commission to Trustee of 5% of the bid;
 - (b) to Beneficiary, the full amount of principal, interest, attorney's fees, other costs of collection or foreclosure, and other charges due and unpaid;
 - (c) any amounts required by law to be paid before payment to Grantor; and
 - (d) to Grantor, any balance.**

GENERAL PROVISIONS:

1. If any of the Property is sold under this Deed of Trust, Grantor shall immediately surrender possession to the purchaser. If Grantor fails to do so, Grantor shall become a tenant at sufferance of the purchaser, subject to an action for forcible detainer.
2. Recitals in any Trustee's deed conveying the Property will be presumed to be true.
3. Proceeding under this Deed of Trust, filing suit for foreclosure, or pursuing any other remedy will not constitute an election of remedies.
4. This lien shall remain superior to liens later created even if the time of payment of all or part of the Note is extended or part of the Property is released.
5. If any portion of the Note cannot be lawfully secured by this Deed of Trust, payments shall be applied first to discharge that portion.
6. Grantor assigns to Beneficiary all sums payable to or received by Grantor from condemnation of all or part of the property, from private sale in lieu of condemnation, and from damages caused by public works or construction on or near the Property. After deducting any expenses incurred, including attorney's fees, Beneficiary may release any remaining sums to Grantor or apply such sums to reduce the Note. Beneficiary shall not be liable for failure to collect or to exercise diligence in collecting any such sums.
7. **GOVERNING LAW:** This Deed of Trust and the Note of even date implement requirements applicable to the City of College Station Community Development Office's Down Payment Assistance Program (the "Program") using HOME funds pursuant 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. This Deed of Trust and the Note of even date shall be construed in accordance the requirements of the Program and the above-referenced federal law. To the extent not inconsistent therewith these documents

shall be governed by the law of the State of Texas and the local jurisdiction in which the Property is located.

8. TRANSFER OF THE PROPERTY: If all or any part of the Property or any interest in it (including a beneficial interest) is sold or transferred without notice to the Beneficiary and compliance with the terms of the Note and this Deed of Trust, the Beneficiary will require immediate payment in full of all sums secured by this Deed of Trust. In the event of such a sale, or in the event of any other Default under the Note or this Deed of Trust, the Beneficiary may give the Grantor Notice of Default and acceleration as provided for in the Note.
9. FIRST RIGHT TO PURCHASE: In the event of a proposed sale or transfer of all or any part of the Property or any interest in it (including a beneficial interest) by the Grantor, the Beneficiary shall have the first right to purchase the Property from the Grantor for the amount and on the terms specified in a written, firm contract between the Grantor and the prospective purchaser. Grantor will give notice of the proposed sale and a copy of the contract to the Beneficiary as required by Paragraph 3.B. of the Note.

The Beneficiary shall have ten (10) calendar days after the date it receives the copy of the contract to decide whether to exercise its right to purchase thereunder by sending notice to the Grantor as provided in the Note. If the Beneficiary gives Grantor such timely notice of its decision to exercise its right to purchase the Property, it shall have sixty (60) additional calendar days after the date of its notice to Grantor to complete closing of the purchase. If the Beneficiary notifies Grantor that it does not intend to purchase the Property after receiving a copy of the contract, or if Beneficiary does not timely notify Grantor of its decision to exercise its right to purchase, or if Beneficiary does not timely close on its purchase of the Property, Grantor shall have the right to sell the Property free of Beneficiary's right to purchase under this Paragraph on the terms stated in the contract Grantor presented to the Beneficiary or on such other terms as are permitted thereby.

This Paragraph shall terminate and have no further force and effect upon the occurrence of any of the following events:

- (a) Title to the Grantor's interest in the Property is acquired by the Holder of the Senior Lien, _____, or its successor in interest upon foreclosure of the Senior Lien.
 - (b) Title to the Grantor's interest in the Property is acquired by the holder of the Senior Lien, _____, or its successor in interest by deed in lieu of foreclosure.
10. PROHIBITION OF ASSUMPTIONS: Except where otherwise required or permitted by the Beneficiary in connection with a transfer on death, divorce, legal separation, or legal incapacity of a Grantor as provided in Paragraph 3 of the Note, the Note and this Deed of Trust may not be assumed.
 11. SUBORDINATION: Beneficiary and Grantor acknowledge and agree that this subordinate Deed of Trust is subject and subordinate in all respects to the Senior

Lien, terms, covenants and conditions of the superior Deed of Trust and to all advances heretofore made pursuant to the superior Deed of Trust, including all sums advanced for the purpose of:

- (a) protecting or further securing the lien of the superior Deed of Trust; or
- (b) constructing, renovating, repairing, furnishing fixtures or equipping the Property. The terms and provisions of the superior Deed of Trust are paramount and controlling, and they supersede any other terms and provisions of this subordinate Deed of Trust in conflict therewith. In the event of a foreclosure or deed in lieu of foreclosure of the superior Deed of Trust, any provisions herein or any provisions in any collateral agreement restricting the use of the property to low or moderate-income households or otherwise restricting the Grantor's ability to sell the Property shall have no further force or effect on subsequent owners or purchasers of the Property. Any person, including his successors or assigns (other than the Grantor or a person or entity related to the Grantor), receiving title to the Property through foreclosure or deed in lieu of foreclosure of the superior Deed of Trust shall receive title to the Property free and clear from such restrictions.

Further, if the Senior Lien Holder acquires title to the Property pursuant to a deed in lieu of foreclosure, the junior lien of this subordinate Deed of Trust shall automatically terminate upon the Senior Lien Holder's acquisition of title, provided that

- (i) the Beneficiary has been given written notice of a default under the superior Deed of Trust; and
 - (ii) the Beneficiary (or another party acting on its behalf) shall not have cured the default under the superior Deed of Trust, or diligently pursued curing the default as determined by the Senior Lien Holder, within the sixty day period provided in such notice sent to the Beneficiary.
- 12. When the context requires, singular nouns and pronouns include the plural.
 - 13. The term "Note" includes all sums secured by this Deed of Trust.
 - 14. This Deed of Trust shall bind, inure to the benefit of, and be exercised by successors in interest of all parties.
 - 15. If Grantor and Borrower are not the same person, the term "Grantor" shall include Borrower.
 - 16. Grantor represents that this Deed of Trust and the Note are given for the following purposes:

The Note represents _____ THOUSAND _____ HUNDRED DOLLARS (\$_____.00), in cash that Beneficiary advanced to Grantor under a Down Payment Assistance Program for the purpose of acquiring the Property for use as the Grantor's principal residence in accordance with the Note and this Deed of Trust.

If Grantor fails to pay any part of principal or interest on the Property when it becomes payable or is in default, the debt secured by this Deed of Trust shall become payable at the option of Beneficiary.

EXECUTED this _____ day of _____, 20 ____.

THE STATE OF TEXAS §
 § ACKNOWLEDGMENT
COUNTY OF BRAZOS §

This instrument was acknowledged 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 acknowledged before me on the _____ day of _____,
20 __, by _____.

Notary Public in and for the State of Texas

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

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

January 24, 2013
Consent Agenda Item No. 2h
Pad-Mounted Distribution Transformers

To: Frank Simpson, Interim City Manager

From: Jeff Kersten, Executive Director Business Services

Agenda Caption: 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 for \$80,843.00.

Relationship to Strategic Goals: Core Services and Infrastructure

Recommendation(s): Recommend award to each bidder providing the best value to the City as follows:

Item 1:	HD Supply Utilities	\$37,946.80
Item 2:	HD Supply Utilities	\$14,970.21
Item 3:	HD Supply Utilities	\$27,925.53
TOTAL		\$80,842.54

Summary: Eight (8) sealed competitive bids were received and opened on December 21, 2012. The low bidder for Item 2 is Shihlin Electric. Shinlin Electric does not have local representation, and uses overseas manufacturing. All other recommended vendors manufacture on the North American Continent, and have representation within the State of Texas. Therefore, Staff is recommending award for Item 2 based on best value. Staff is familiar with the quality of each recommended bidders products, their reputation and the long term cost for acquiring the products from the vendors recommended. Upon Council approval, purchase orders will be issued to the vendors recommended for award. The transformers will be placed and maintained in the electrical inventory and expensed as necessary.

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

Reviewed and Approved by Legal: N/A

Attachments: Bid Tabulation #13-029

City of College Station - Purchasing Division
 Bid Tabulation for #13-029
 "Purchase of 3 Phase Pad-Mount Transformers"
 Open Date: Friday, December 21, 2012 @ 2:00 p.m.

SUMMARY

	Vendor	Manufacturer	Quantity	Unit Price	Total	Delivery
Item #1 300 KVA Padmount Transformer 208/120 Inventory #285-086-00041	HD Supply Utilities	GE Prolec	5	\$7,589.36	\$37,946.80	9 weeks
Item #2 750 KVA Padmount Transformer 208/120 Inventory #285-086-00043	HD Supply Utilities	GE Prolec	1	\$14,970.21	\$14,970.21	9 weeks
Item #3 500 KVA Padmount Transformer 480/277 Inventory #285-086-00049	HD Supply Utilities	GE Prolec	3	\$9,308.51	\$27,925.53	9 weeks

GRAND TOTAL

HD Supply Utilities	\$80,842.54
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City of College Station - Purchasing Division
 Bid Tabulation for #13-029
 "Purchase of 3 Phase Pad-Mount Transformers"
 Open Date: Friday, December 21, 2012 @ 2:00 p.m.

ITEM NUMBER: 1

ITEM DESCRIPTION: 300 KVA Padmount Transformer 208/120

Order Quantity: 5

INVENTORY #: 285-086-00041

BIDDER	MANUFACTURER	UNIT PRICE	EXTENDED PRICE	Total Owning Cost (TOC)	DELIVERY (weeks)
KBS #1	Cooper	\$9,678.00	\$48,390.00	\$13,858.59	8-10
KBS #2	Ermco	\$8,540.00	\$42,700.00	\$12,815.92	10-12
HD Supply #1	GE Prolec	\$7,589.36	\$37,946.80	\$11,678.04	9
HD Supply #2	Ermco	\$8,722.34	\$43,611.70	\$12,998.26	10-12
*Oberlender	CG Power Systems	\$7,823.55	\$39,117.75	\$12,137.69	10
Shihlin	Shihlin	\$10,400.00	\$52,000.00	\$13,888.38	20
**TEC #1	GE	\$7,885.50	\$39,427.50	\$11,974.18	9
***TEC #2	Ermco	\$9,061.50	\$45,307.50	\$13,337.42	10-12
Techline	Howard	\$8,955.00	\$44,775.00	\$13,008.37	14-16
Wesco	ABB	\$8,285.00	\$41,425.00	\$12,193.82	10-12

winning bid

*Oberlender originally bid \$7,451 but took exception to liquidated damages. Per bid specifications, 5% was added to the unit cost and recalculated to \$7,823.55. TOC was recalculated to \$12,137.69.

**TEC #1 originally bid \$7,510 but took exception to liquidated damages. Per bid specifications, 5% was added to the unit cost and recalculated to \$7,885.50. TOC was recalculated to \$11,974.18.

***TEC #2 originally bid \$8,630 but took exception to liquidated damages. Per bid specifications, 5% was added to the unit cost and recalculated to \$9,061.50. TOC was recalculated to \$13,337.42.

City of College Station - Purchasing Division
 Bid Tabulation for #13-029
 "Purchase of 3 Phase Pad-Mount Transformers"
 Open Date: Friday, December 21, 2012 @ 2:00 p.m.

ITEM NUMBER: 2

ITEM DESCRIPTION: 750 KVA Padmount Transformer 208/120

Order Quantity: 1

INVENTORY #: 285-086-00043

BIDDER	MANUFACTURER	UNIT PRICE	EXTENDED PRICE	Total Owning Cost (TOC)	DELIVERY (weeks)
KBS #1	Cooper	\$18,240.00	\$18,240.00	\$27,481.78	8-10
KBS #2	Ermco	\$15,010.00	\$15,010.00	\$24,531.67	10-12
HD Supply #1	GE Prolec	\$14,970.21	\$14,970.21	\$24,537.18	9
HD Supply #2	Ermco	\$15,329.79	\$15,329.79	\$24,851.46	10-12
*Oberlender	CG Power Systems	\$15,962.10	\$15,962.10	\$25,551.20	10
Shihlin	Shihlin	\$14,300.00	\$14,300.00	\$21,299.02	20
**TEC #1	GE	\$15,555.75	\$15,555.75	\$25,122.72	9
***TEC #2	Ermco	\$15,928.50	\$15,928.50	\$25,450.17	10-12
Techline #1	Howard	\$17,532.00	\$17,532.00	\$26,732.49	14-16
Techline #1	Howard	\$16,472.00	\$16,472.00	\$25,497.33	16-18
Wesco	ABB	\$15,530.00	\$15,530.00	\$24,822.81	10-12

winning bid

Low bid rejected due to lack of North American manufacture and service/sales presence as required in the bid documents.

*Oberlender originally bid \$15,202 but took exception to liquidated damages. Per bid specifications, 5% was added to the unit cost and recalculated to \$15,962.10. TOC was recalculated to \$25,551.20.

**TEC #1 originally bid \$14,815 but took exception to liquidated damages. Per bid specifications, 5% was added to the unit cost and recalculated to \$15,555.75. TOC was recalculated to \$25,122.72.

***TEC #2 originally bid \$15,170 but took exception to liquidated damages. Per bid specifications, 5% was added to the unit cost and recalculated to \$15,928.50. TOC was recalculated to \$25,450.17.

City of College Station - Purchasing Division
 Bid Tabulation for #13-029
 "Purchase of 3 Phase Pad-Mount Transformers"
 Open Date: Friday, December 21, 2012 @ 2:00 p.m.

ITEM NUMBER: 3

ITEM DESCRIPTION: 500 KVA Padmount Transformer 480/277

Order Quantity: 3

INVENTORY #: 285-086-00049

BIDDER	MANUFACTURER	UNIT PRICE	EXTENDED PRICE	Total Owning Cost (TOC)	DELIVERY (weeks)
Evans Enterprises	Cooper	\$16,941.18	\$50,823.54	\$23,656.00	9-11
KBS #1	Cooper	\$13,306.00	\$39,918.00	\$19,948.90	8-10
KBS #2	Ermco	\$10,160.00	\$30,480.00	\$17,128.62	10-12
HD Supply #1	GE Prolec	\$9,308.51	\$27,925.53	\$15,373.11	9
HD Supply #2	Ermco	\$10,385.10	\$31,155.30	\$17,353.72	10-12
*Oberlender	CG Power Systems	\$9,769.20	\$29,307.60	\$16,339.70	10
Shihlin	Shihlin	\$12,200.00	\$36,600.00	\$17,256.90	20
**TEC #1	GE	\$9,670.50	\$29,011.50	\$15,735.10	9
***TEC #2	Ermco	\$10,788.75	\$32,366.25	\$17,757.37	10-12
Techline #1	Howard	\$10,856.00	\$32,568.00	\$17,468.57	14-16
Techline #1	Howard	\$11,526.00	\$34,578.00	\$17,560.35	16-18
Wesco	ABB	\$10,706.00	\$32,118.00	\$16,345.18	10-12

winning bid

*Oberlender originally bid \$9,304 but took exception to liquidated damages. Per bid specifications, 5% was added to the unit cost and recalculated to \$9,769.20. TOC was recalculated to \$16,339.70.

**TEC #1 originally bid \$9,210 but took exception to liquidated damages. Per bid specifications, 5% was added to the unit cost and recalculated to \$9,670.50. TOC was recalculated to \$15,735.10.

***TEC #2 originally bid \$10,275 but took exception to liquidated damages. Per bid specifications, 5% was added to the unit cost and recalculated to \$10,788.75. TOC was recalculated to \$17,757.37.

January 24, 2013
Consent Agenda Item No. 2i
**Approval of a Resolution consenting to the City of Bryan's economic
development incentives for Woodbolt International**

To: Mayor and City Council

From: Frank Simpson, Interim City Manager

Agenda Caption: Presentation, possible action, and discussion regarding a resolution consenting to the City of Bryan's use of economic development incentives for Woodbolt International.

Relationship to Strategic Goals: Diverse Growing Economy

Recommendation: Staff recommends adoption of this Resolution.

Summary: The City of Bryan and Research Valley Partnership have engaged a business prospect to locate in the BioCorridor. However, the Interlocal Cooperation and Joint Development Agreement requires joint approval between the two cities for all economic development incentives to prospects within the BioCorridor.

This resolution serves as College Station City Council's written approval consenting to the Bryan City Council's use of economic development incentives for the prospect.

The proposed incentive package does not include any incentives provided directly by the City of College Station.

Budget & Financial Summary: N/A

Reviewed and Approved by Legal: Yes

Attachments:

1. Resolution

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COLLEGE STATION, TEXAS, CONSENTING TO THE CITY COUNCIL OF THE CITY OF BRYAN PROVIDING ECONOMIC DEVELOPMENT INCENTIVES TO A BUSINESS PROSPECT LOCATED IN THE JOINT RESEARCH VALLEY BIOCORRIDOR DEVELOPMENT PROJECT.

WHEREAS, the City of College Station, Texas, and the City of Bryan, Texas entered into an agreement (ILA) which sets forth the understandings and obligations of the Cities with respect to certain infrastructure projects and a joint economic development program known as the Joint Research Valley BioCorridor Development Project; and

WHEREAS, the promotion of the expansion of existing businesses within the Cities and the recruitment of new business enterprises to the Cities will promote economic development, stimulate commercial activity, generate additional sales tax and will enhance the property tax base and economic vitality of the Cities; and

WHEREAS, the ILA requires joint approval of all economic development incentives to business prospects or development within the Joint Research Valley BioCorridor Development Project; now, therefore,

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

- PART 1: That the City Council hereby consents to the City Council of the City of Bryan providing economic development incentives to Woodbolt International as shown in **Exhibit A** and **Exhibit B** (attached).
- PART 2: That the City Council's consent in this Resolution shall serve as written approval for the purposes of the ILA.
- PART 3: That this resolution shall take effect immediately from and after its passage.

ADOPTED this _____ day of _____, A.D. 2013.

ATTEST:

APPROVED:

City Secretary

MAYOR

APPROVED:



City Attorney

EXHIBIT "A"

**TAX ABATEMENT AGREEMENT BETWEEN THE
CITY OF BRYAN, TEXAS, AND WOODBOLT INTERNATIONAL**

This **TAX ABATEMENT AGREEMENT** (this "Agreement") is made between the **CITY OF BRYAN, TEXAS**, a home rule municipal corporation of the State of Texas, **DCMP REAL ESTATE I, LLC**, a Texas limited liability company and **WOODBOLT DISTRIBUTION LLC, D/B/A WOODBOLT INTERNATIONAL**, a Texas limited liability company.

1. Authorization and Findings. This Agreement complies with and is authorized by the Property Redevelopment and Tax Abatement Act, codified as Chapter 312 of the Texas Tax Code, as amended. The City's city council finds that:

(a) The City has adopted Guidelines and Criteria for Granting Tax Abatement in Reinvestment Zones as required by law and the Owner's request for tax abatement conforms to those Guidelines and Criteria;

(b) The City has created Reinvestment Zone No. 31, in which the property subject to tax abatement will be located;

(c) The property for which abatement is granted in this Agreement is not owned or leased by a member of the City's city council or the planning and zoning commission; and

(d) The City's city council approved this Agreement by an affirmative vote of a majority of its members at a regularly scheduled council meeting.

2. Definitions. In this Agreement, the following terms shall have the following meanings:

Bankruptcy or Insolvency means the dissolution or termination of a party's existence as a going business, insolvency, appointment of receiver for any part of a party's property and such appointment is not terminated within 90 days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceedings under any bankruptcy or insolvency laws by or against such party, and such proceeding is not dismissed within 90 days of the filing thereof.

City means the City of Bryan, Texas.

City manager means the City's city manager or any person designated or authorized to act for the city manager.

District means the Brazos County Appraisal District.

Employee means a person who:

- (1) Is an employee of the Owner; and
- (2) Regularly works at least 37 hours a week at the site of the Improvements, excluding time taken for holidays, vacations, sick leave, or other regular leave.

Health spa means a business that is regulated by the Health Spa Act and that offers for sale, or sells, memberships that provide the members instruction in or the use of facilities for a physical exercise program.

Improvements means a building to be used as the corporate headquarters and nutraceutical testing facility for a manufacturer and distributor of health supplements, containing approximately 49,000 square feet of floor space, and any sidewalks, parking lots, outdoor lighting, landscaping and other improvements to serve the building, all as shown in **Exhibit A**, attached to and incorporated into this Agreement by reference.

Land means the real property as described in Ordinance No. _____, which created Reinvestment Zone No. 31.

Owner means DCMP Real Estate I, LLC, and Woodbolt Distribution LLC, d/b/a Woodbolt International, the person or entity that owns the real property on the date taxes are abated under this Agreement or any other person or entity to which this Agreement is assigned in accordance with this Agreement.

Personal Property means any property classified as tangible personal property by the District, other than inventory or supplies, that is located within the building to be constructed as part of the Improvements.

Value means the appraised value shown on the records of the District.

Wages means the remuneration for personal services the Owner pays to an Employee that is included as the total (gross) wages in the “Reimbursing Employer’s Quarterly Report” (or similar report) required to be filed with the Texas Workforce Commission (or successor agency) for purposes of administering the Texas Unemployment Compensation Act (Tex. Labor Code, Chapter 201 et. seq.). If the Employer is no longer required to report Wages to the Texas Workforce Commission during the term of this Agreement, the City may use other information or a reporting source that defines Wages in the same or similar manner.

3. Tax Abatement.

(a) Abatement Years and Amount. In consideration of the Owner constructing the Improvements and complying with all other conditions of this Agreement, the City grants a property tax abatement on the Value of the Improvements, as follows:

<u>Tax Year</u>	<u>Percentage Abatement</u>
2014	100%
2015	100%

2016	90%
2017	80%
2018	70%
2019	30%
2020	20%
2021	20%
2022	10%
2023	10%

(b) Abatement Exclusions. The tax abatement granted does not apply to the Value of the Land, increases in the Value of the Land, or to inventory or supplies.

(c) Minimum Value of Improvements. Tax abatement on the Improvements does not apply in any year where the Value of the Improvements is less than \$9,000,000.00 on January 1 of that year.

(d) District Values. The District's determination of Value of the property subject to this Agreement applies. If the Owner protests the District's Value placed on the Improvements, the Value placed on the Improvements after the protest is resolved under State law applies.

(e) Freeport Exemption. Article 8, Section 1-j of the Texas Constitution allows a city to exempt from taxation inventory (freeport goods), which is transported beyond the State within a specified time. As of the date of this Agreement, the City does not exempt freeport goods from taxation. Should the City exempt freeport goods from taxation during the term of this Agreement, the amount, if any, of personal property taxes abated under this Agreement will automatically decrease in an amount equal to the taxes that would have been paid on freeport goods, if any, without the exemption on freeport goods.

4. Responsibilities of Owner. In consideration of receiving the tax abatement granted herein, the Owner agrees that:

(a) Improvements: The Improvements will:

(1) Be completed before April 1, 2014, subject to force majeure;

(2) Have a Value of at least \$9,000,000 when completed;

(3) Be constructed in substantial compliance with the plans shown in Exhibit A and in conformity with the City's ordinances.

(b) Employees Required and Wages. Beginning on January 1, 2016, and continuing through December 31, 2022, Owner will have at least 75 Employees. During that time period, the Wages received by all Employees each calendar year, on average, will be at least \$3,000,000.00. If the Owner fails to comply with the requirements

of this paragraph at least one time during any consecutive 90-day period during the time specified in this paragraph, the failure is an event of default for which the City may terminate this Agreement and to which the right of the Owner to cure the default, as provided for in paragraph 6 (c), does not apply.

- (c) Occupancy Required. For each year that taxes are abated under this Agreement, the Owner will fully occupy and use the Improvements for its corporate headquarters and nutraceutical testing facility; provided, however, that Owner may sublease or otherwise allow other parties to occupy up to 5% of the rentable area of the Improvements.
- (d) Separated Contracts. The Owner will provide in any contract for the construction of the Improvements that the contract be a separated contract (under section 151.056 (b) of the Texas Tax Code and Comptroller's Rule 3 TAC, section 291, or as the referenced law or regulation is amended, recodified, or redesignated), so that there is imposed and the contractor will be required to collect from the Owner the City's municipal sales tax on the sales price of the materials incorporated into the Improvements. The Owner will provide, if requested by the City, documentation that verifies to the satisfaction of the City that the Owner has complied with the provisions of this paragraph.
- (e) District Filing. **THE OWNER IS RESPONSIBLE FOR NOTIFYING THE DISTRICT OF THE ABATEMENT, INCLUDING FILING WITH THE DISTRICT ANY APPLICATION OR OTHER FORMS NECESSARY TO QUALIFY FOR OR RECEIVE THE ABATEMENT GRANTED.**
- (f) Owner Certification and Reports. On or before May 1 of each year of this Agreement, the Owner will certify in writing to the City's city council that the Owner is in compliance with this Agreement and that the Owner will provide, upon the City's request, any information reasonably necessary for the City to determine if the Owner has complied with the Agreement. Beginning on January 1, 2016, and continuing through 2022, the Owner will, within 30 days of the end of each quarter of the calendar year, provide to the City copies of the "Reimbursing Employer's Quarterly Report" (or similar report by whatever name) required to be filed with the Texas Workforce Commission (or successor agency) for purposes of administering the Texas Unemployment Compensation Act. (Tex. Labor Code, Chapter 201 et. seq.).
- (g) City Access. The Owner will allow the City's employees access to the Improvements during regular business hours and upon three (3) business days' prior written notice to determine if the terms of this Agreement are being met.
- (h) Compliance. The Property and Improvements constructed pursuant to this Agreement must at all times be used in a manner (i) that is consistent with the City's Zoning Ordinance, as amended, (ii) that is consistent with the BioCorridor Planned Development District, as amended; and (iii) that, during the period taxes

are abated hereunder, is consistent with the general purposes of encouraging development or redevelopment within the Reinvestment Zone.

5. Term. This Agreement is effective on the latest date of the dates executed by the City and the Owner if on that date the Owner owns fee title to the real property subject to this Agreement. If the Owner does not have fee title to the real property on the date the Owner executes this Agreement, the Owner will give written notice to the City of the date the Owner acquires fee title to the real property. If the Owner fails to acquire fee title to the real property within 60 days following the date Owner executes this Agreement, the City may terminate this Agreement by giving written notice to the Owner and the Owner's right to cure does not apply.

6. Termination.

(a) This Agreement terminates on the completion of the abatement period, unless earlier terminated as provided in this Agreement.

(b) This paragraph is required by Chapter 2264, Tex. Gov. Code and governs over any conflicting provisions of this Agreement. The Owner will not knowingly employ undocumented workers as that term is defined in Section 2264.001, Tex. Gov. Code. If the Owner is convicted of a violation under 8 U.S.C. Section 1324a (f), the conviction is a breach of this Agreement and the city manager will send the Owner written notice that the Owner has violated this paragraph and that the Agreement terminates 30 days from the date of the notice.

(c) Subject to the last paragraph of this Section 6(c), the city manager may terminate this Agreement at any time during its term if the Owner:

- (1) Fails to comply with any term of this Agreement,
- (2) Allows ad valorem taxes on the Land or any property located thereon to become delinquent,
- (3) Has an event of Bankruptcy or Insolvency,
- (4) Fails to timely pay any undisputed debt owed to the City, or
- (5) Operates, or allows a sub lessee to operate a Health spa.

The City will notify the Owner of the default in writing specifying the default. If the Owner fails to cure the default within 30 days from the date of the notice to cure, the city manager may terminate this Agreement by written notice to the Owner specifying the date of termination.

(d) If the city manager terminates this Agreement as provided in this Agreement, the Owner is liable for and will pay the City within 30 days following the date of

termination of this Agreement:

- (1) The amount of all property taxes abated under this Agreement;
- (2) Interest on the abated amount at the rate provided for in the Tax Code for delinquent taxes;
- (3) Penalties on the amount abated in the year of default, at the rate provided for in the Tax Code for delinquent taxes.

(e) The Owner's obligation upon termination to pay to the City monies owed for taxes abated, interest and penalties thereon, survives termination and the City has a lien against the Owner's Land and Improvements for the monies owed until paid.

7. Notice. All notices will be in writing and may be delivered by mail, in person, or by facsimile. Mailed notice is deemed received three days after the date of deposit in the United States mail. Unless otherwise provided in this Agreement, all notices will be delivered to the following addresses:

To the Owner: Woodbolt International
Attn: Doss Cunningham
715 N. Main
Bryan, Texas 77803
(512) 983-1181
(979) 779-1469

To the City: City Manager
City of Bryan
P. O. Box 1000
Bryan, Texas 77805
(979) 209 - 5100
(979) 209 - 5003

Any party may designate a different address by giving the other party 10 days written notice in the manner prescribed above.

8. Force Majeure. If the Owner gives written notice to the City that Owner cannot perform one or more of the Owner's obligations because of force majeure within ten days of the force majeure, the city manager may, by written notice to the Owner, suspend one or more of the Owner's obligations in whole or in part for the time and to the extent necessary to allow the Owner to overcome the force majeure and resume performance thereof. If there is an event of force majeure, then the city manager may also adjust the time period to which tax abatement benefits apply to this Agreement if necessary to provide the Owner the tax abatement benefits the Owner would have received in the absence of the force majeure, so long as the adjusted time period of exemption does not exceed ten years. For purposes of this provision, "force majeure" means lightning, earthquakes, hurricanes, storms, floods, or other

natural occurrence; strikes, lockouts, riots, wars, or other civil disturbances; or explosions, fires, or similar accidents not reasonably within the control of the Owner or Owner's agents or contractors.

9. Severability. If any section, subsection, paragraph, sentence, phrase or word herein is held invalid, illegal or unconstitutional, the balance of this Agreement shall stand, shall be enforceable and shall be read as if the parties intended at all times to delete said invalid section, subsection, paragraph, sentence, phrase or word.

10. Governing Law. This Agreement shall be governed by the laws of the State of Texas without regard to any conflict of law rules. Exclusive venue for any action under this Agreement shall be in the State District Court of Brazos County, Texas. The parties agree to submit to the personal and subject matter jurisdiction of said court.

11. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

12. Assignment. This Agreement may not be assigned by Owner without the prior written consent of the city manager which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, Owner, may assign this Agreement without the city manager's consent to any entity that purchases all or substantially all of Owner's assets.

13. Entire Agreement. This Agreement and the Economic Development Agreement dated _____ contain the entire agreement between the parties and supersede all other negotiations and agreements, whether written or oral.

CITY OF BRYAN

DCMP REAL ESTATE I, LLC

Jason P. Bienski, Mayor

By: _____
Doss Cunningham, President

Date: _____

Date: _____

WOODBOLT DISTRIBUTION LLC

By: _____
Doss Cunningham, President

Date: _____

ATTEST:

EXHIBIT "B"

STATE OF TEXAS §

COUNTY OF BRAZOS §

CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT
WOODBOLT INTERNATIONAL HEADQUARTERS

This Chapter 380 Economic Development Agreement (this "Agreement") is entered into by and between Woodbolt Distribution LLC, d/b/a Woodbolt International, a Texas limited liability company ("Woodbolt"), and the City of Bryan, Texas, a Texas home rule municipal corporation ("City").

WHEREAS, Woodbolt is a manufacturer and distributor of health supplements which are marketed and sold throughout the world; and

WHEREAS, Woodbolt desires to build an expanded corporate headquarters in the BioCorridor, within the jurisdictional limits of the City; and

WHEREAS, in so doing, Woodbolt will be investing upwards of \$9 million into the community and employing dozens of people who will live and work in this community; and

WHEREAS, it will not be possible to build this corporate headquarters and nutraceutical testing facility without participation from the City; and

WHEREAS, Chapter 380 of the Texas Local Government Code permits a city to create a program that will expend funds in the form of grants or loans for the purpose of stimulating economic development within the limits of the City; and

WHEREAS, the City Council of the City of Bryan created the Woodbolt Economic Development Program pursuant to Resolution No. ___, on the ___ day of January, 2013; and

WHEREAS, the City Council of the City of Bryan has determined that it is in the best interests of the citizens of this community to encourage Woodbolt to proceed with this project and therefore justifies the incentives being granted herein.

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

I. Property

The real property on which the improvements, personal property, and equipment ("Property") that is the subject of this Agreement is situated, is a tract of land consisting of eight acres of land, and being more particularly described by metes and bounds in Exhibit A, which is attached and incorporated herein for all purposes.

II. Cash Incentive

Woodbolt will construct its corporate headquarters and nutraceutical testing facility in accordance with all applicable federal, state, and local laws, regulations, and ordinances in effect at the time of construction. As an incentive for the purchase of the Property the City will contribute \$49,240.00 to Woodbolt. Upon receiving a certificate of occupancy, Woodbolt will be entitled to make a written

request to the City for payment of this incentive. City will remit payment to Woodbolt within 30 days of receiving the request.

III. Development Fees

As an additional incentive, the City agrees to waive development and permit fees, not including water and sewer tap fees, associated with the construction of the new headquarters, not to exceed \$25,000.00 in waived fees.

IV. Term

This Agreement is effective upon signature by the all parties, and shall continue for two years unless sooner terminated as provided herein.

V. Breach & Termination

If Woodbolt fails to complete construction of its corporate headquarters and nutraceutical testing facility by April 1, 2014 (as may be extended by force majeure), the City may provide notice of default to Woodbolt. If Woodbolt fails to cure same within thirty days, Woodbolt will be in default and the City will be entitled to declare this Agreement terminated and the City will be relieved of the obligation to pay Woodbolt the \$49,240.00 incentive.

VI. Miscellaneous

- A. Assignment. This Agreement is not assignable by any party without the express, prior, written approval of the other party, which consent shall not be unreasonably withheld, conditioned or delayed.
- B. Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws effective while this Agreement is in effect, such provision shall be automatically deleted from this Agreement and the legality, validity and enforceability of the remaining provisions of this Agreement shall not be affected thereby, and in lieu of such deleted provision, there shall be added as part of this Agreement a provision that is legal, valid and enforceable and that is as similar as possible in terms and substance as possible to the deleted provision.
- C. Texas Law to Apply. This Agreement shall be construed under and in accordance with the laws of the State of Texas and the obligations of the parties created hereunder are performable by the parties in the City of Bryan, Texas. Venue for any litigation arising under this Agreement shall be in a court of appropriate jurisdiction in Brazos County, Texas.
- D. Sole Agreement. With the exception of the Tax Abatement Agreement among the City, Woodbolt and DCMP Real Estate I, LLC, this Agreement constitutes the sole and only Agreement of the Parties hereto respecting the subject matter covered by this Agreement, and supersedes any prior understandings or written or oral agreements between the parties.
- E. Amendments. No amendment, modification or alteration of the terms hereof shall be binding unless the same shall be in writing and dated subsequent to the date hereof and duly executed by the parties hereto.

- F. Rights and Remedies Cumulative. The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by either party shall not preclude or waive its right to use any and all other legal remedies. Said rights and remedies are provided in addition to any other rights the parties may have by law, statute, ordinance or otherwise.
- G. No Waiver. A party's failure to take action to enforce this Agreement in the event of another party's default or breach of any covenant, condition, or stipulation herein on one occasion shall not be treated as a waiver and shall not prevent a party from taking action to enforce this Agreement on subsequent occasions.
- H. Notices. The parties hereby designate the following individuals to receive any notices required to be submitted pursuant to the terms of this Agreement:

City of Bryan
 Attn: City Manager
 300 S. Texas Ave.
 Bryan, Texas 77803
 (979) 209 – 5100
 (979) 209 – 5003

Woodbolt International
 Attn: Doss Cunningham
 715 N. Main
 Bryan, Texas 77803
 (512) 983-1181
 (979) 779-1469

The parties agree to notify one another if the contact person or contact information is changed during the course of this Agreement,

- I. Incorporation of Recitals. The determinations recited and declared in the preambles to this Agreement are hereby incorporated herein as part of this Agreement.
- J. Headings. The paragraph headings contained in this Agreement are for convenience only and do not enlarge or limit the scope or meaning of the paragraphs.
- K. Incorporation of Exhibits. All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

Executed and effective on the date signed by all necessary parties, as set forth below.

CITY OF BRYAN

WOODBOLT DISTRIBUTION, LLC

 Jason P. Bienski, Mayor

By: _____
 Doss Cunningham, President

Date: _____

Date: _____

Attest:

 Mary Lynne Stratta, City Secretary

Approved as to form:

 Janis K. Hampton, City Attorney

January 24, 2013
Consent Agenda Item No. 2j
Castlegate II, Section 100 – City Participation Agreement

To: Frank Simpson, Interim City Manager

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

Agenda Caption: Presentation, possible action, and discussion for a City Participation Agreement for water line improvements in the Castlegate II, Section 100 Subdivision being made per City Code of Ordinances, Chapter 12, Unified Development Ordinance, Section 8.5, Responsibility for Payment for Installation Costs for a total requested City participation of \$26,810.00.

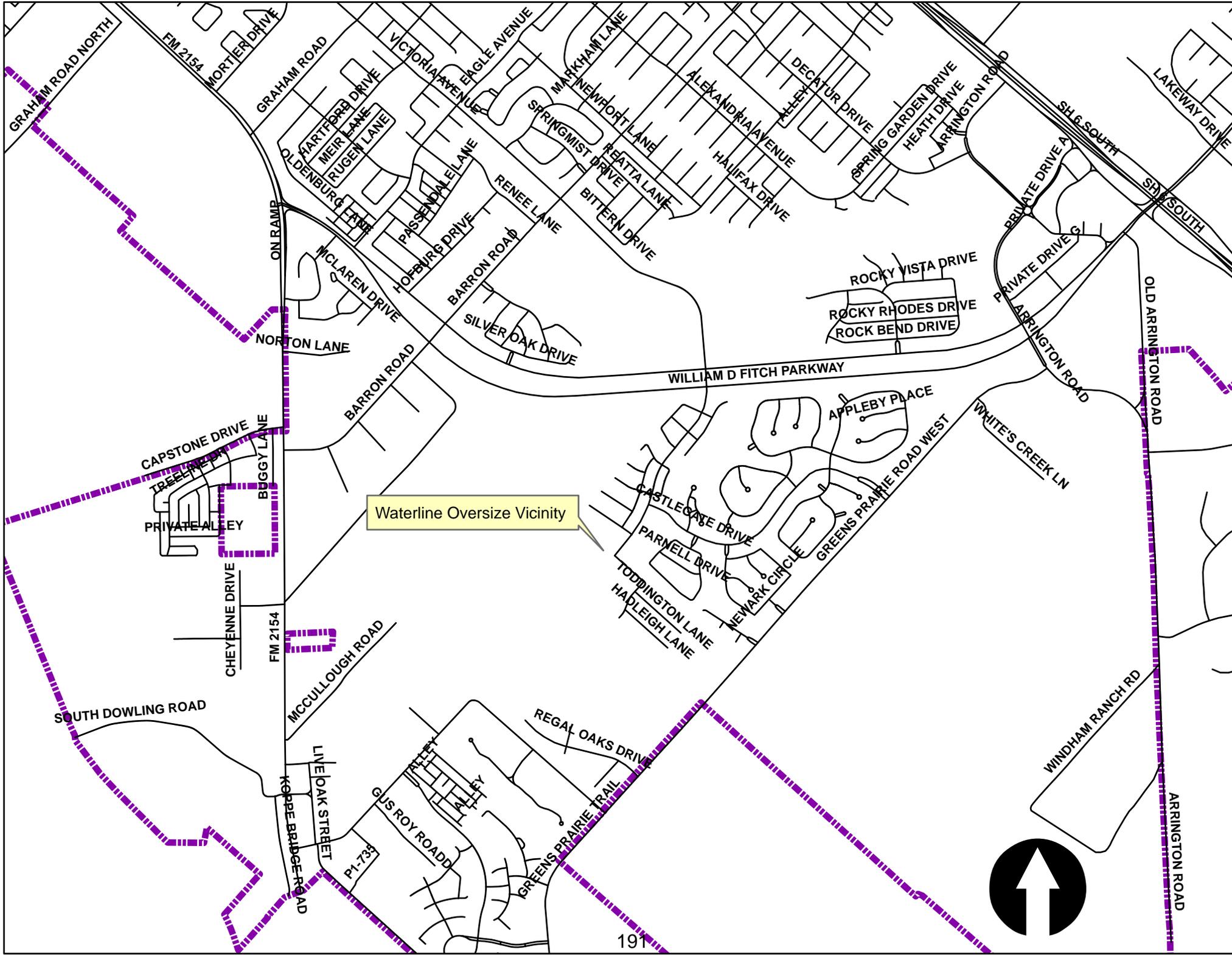
Recommendation(s): Staff recommends approval of the City Participation Agreement.

Summary: Associated with the development of Castlegate II, Section 100, the City required the construction of a 12 inch water line for the larger City system. The developer's engineer demonstrated an 8 inch waterline is sufficient for this development. This city participation request is the construction cost difference for upsizing an 8 inch water line to a 12 inch water line for an approximately 1405 linear feet section through Castlegate II, Section 100.

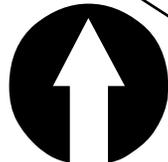
Budget & Financial Summary: Funds for this request are available from the Water Capital Projects Fund.

Attachments:

1. Attachment 1 – Vicinity Map
2. Attachment 2 - City Participation Agreement
 - Exhibit A (Description of Property)
 - Exhibit B (Description of Project)
 - Exhibit C (Engineer's Estimate of the Costs of the Project and Request Letter)
 - Exhibit D (Affidavit of All Bills Paid Form)
3. Attachment 3 - Ordinance



Waterline Oversize Vicinity



CITY PARTICIPATION AGREEMENT

This Agreement is entered into this _____ day of _____, 20___, by and between the **City of College Station**, a Texas home rule municipal corporation (hereinafter "CITY"), and **Dos Dorado Development**, a Texas Limited Liability company **d/b/a 3-D Development** (hereinafter "DEVELOPER").

WHEREAS, DEVELOPER is developing property within the City of College Station, more particularly described as Castlegate II, Section 100, College Station, Brazos County, Texas (hereinafter "Property") a description of which is attached hereto as **Exhibit A**; and

WHEREAS, DEVELOPER is required to construct certain public infrastructure, such as roadways, utilities, sidewalks, drainage facilities, water and sewer facilities, etc. that relate to DEVELOPER'S proposed development; and

WHEREAS, CITY is required or desirous of assuming some or all responsibility for construction of certain public infrastructure affecting DEVELOPER'S development; and

WHEREAS, because of this and in order to comply with CITY's overall development scheme both DEVELOPER and CITY agree that it is in the best interests of the public to jointly construct certain identified public infrastructure; and

WHEREAS, the City Engineer has reviewed the data, reports and analysis, including that provided by DEVELOPER's engineers, and determined that such public improvement qualifies for joint CITY-DEVELOPER participation; and

WHEREAS, both parties agree as to the nature and proportion of joint participation as further recited herein and as may be required in accordance with section 212.071 et seq and Chapter 252 Texas Local Government Code;

NOW, THEREFORE, for and in consideration of the recitations above and the promises and covenants herein expressed, the parties hereby agree as follows:

I. DEFINITIONS

1.1 Approved Plans means the plans and specifications that meet the requirements of this Participation Agreement, the City of College Station Codes and Ordinances and any other applicable laws and that have been submitted to, reviewed and approved by the City of College Station relating to the Project.

1.2 CITY or College Station means the City of College Station, a Texas home rule municipal corporation located at 1101 Texas Avenue, College Station, Texas 77840.

1.3 DEVELOPER means Dos Dorado Development, a Texas Limited Liability Company d/b/a 3-D Development whose principal office is located at 4490 Castlegate Drive, College Station, Texas 77845.

1.4 Effective Date. The date on which this Agreement is signed by the last party whose signing makes the Agreement fully executed.

1.5 Final Completion. The term "Final Completion" means that all the work on the Project has been completed, a written guarantee of performance for a one year maintenance period has been provided, all final punch list items have been inspected and satisfactorily completed, all payments to materialmen and subcontractors have been made, all documentation, and all closeout documents have been executed and approved by the DEVELOPER as required, all Letters of Completion and other CITY documentation have been issued for the Project, all reports have been submitted and reporting requirements have been met, and DEVELOPER has fully performed any other requirements contained herein.

1.6 Letter of Completion. A letter issued by the City Engineer stating that the construction of public improvements conforms to the plans, specifications and standards contained in or referred to in the CITY OF COLLEGE STATION UNIFIED DEVELOPMENT ORDINANCE.

1.7 Property means that one certain tract of land known as Castlegate II, Section 100 and as further described in **Exhibit A** attached hereto and incorporated herein made a part hereof.

1.8 Project means the construction of waterline improvements as detailed in **Exhibit B** attached hereto and incorporated herein by reference.

II. CITY COST PARTICIATION

2.1 Agree to Participate. CITY agrees to cost participate in the Project in the maximum amount estimated as set forth in **Exhibit C**, which is attached hereto and incorporated herein by reference. CITY'S actual rate of participation will be based upon the final actual cost of the Project as reflected by the breakdown of costs required pursuant to this Agreement but in no event shall exceed the maximum amount estimated in **Exhibit C**.

2.2 Public Bidding. The total estimated cost of the Project is as set forth in **Exhibit C**. If CITY's cost participation exceeds 30% of the total cost of the Project or is located within the extraterritorial jurisdiction of the CITY, then the Project must be competitively bid pursuant to Chapter 252 Texas Local Government Code, as amended. If CITY participation exceeds 30% of the total cost of the Project, CITY shall be responsible for advertising and obtaining bids or negotiating proposals for the construction of the Project.

DEVELOPER shall pay for all costs associated with advertising, printing, and distributing plans and specifications for the Project.

If CITY's cost participation is 30% or less of the total cost of the Project and is located within the boundaries of the CITY, the Project need not be competitively bid.

2.3 Cost of Project. DEVELOPER's engineer's detailed cost estimate of the Project is attached hereto and incorporated herein as **Exhibit C**.

2.4 Application for Payment. Application for payment by the DEVELOPER to the CITY for payment to the DEVELOPER pursuant to the terms of this Agreement must include the following in a form acceptable to CITY:

- (1) Final Completion of the Project in accordance with the Approved Plans;
- (2) issuance of all Letters of Completion relating to the Project;
- (3) DEVELOPER's compliance with all CITY Codes, Ordinances and standards relating to the Project, the Property and its subdivision and development;
- (4) dedication of the land for the right-of-way either by plat or by deed relating to the Project;
- (5) a current title report as of the date of such land dedication and updated within sixty (60) days of the date of this Agreement;
- (6) lien releases or subordinations from all lenders as required by CITY;
- (7) Proof that all guarantees of performance and payment as set forth in this Agreement have been met, including all bond requirements when applicable; and
- (8) A breakdown of actual costs of the Project with supporting documentation, including all payment receipts.

2.5 City Participation Payment. DEVELOPER shall submit the written application for CITY participation payment within thirty (30) days after issuance of all Letters of Completion relating to the Project or DEVELOPER shall be ineligible to receive the CITY participation payment specified in this Agreement and CITY's obligation to cost participate shall terminate without any liability. Applications may not be submitted prior to Final Completion. CITY will pay its participation funds in one payment within thirty (30) days after receipt of a complete written application for participation payment from DEVELOPER.

2.6 Reports, books and other records. DEVELOPER shall make its books and other records related to the project available for inspection by CITY. DEVELOPER shall submit to CITY any and all information or reports requested to verify the expenditures submitted for CITY participation eligibility including but not limited to bid documents, payment applications, including any supporting information, cancelled checks, copies of construction and engineering documents, as determined by the City Engineer in his sole

discretion, for the verification of the cost of the Project detailed in **Exhibit B and C** of this Agreement. The submission of these reports and information shall be the responsibility of DEVELOPER and shall be certified by DEVELOPER's Licensed Professional Engineer at DEVELOPER's expense and signed by an authorized official of the entity.

III.

GOVERNMENTAL IMMUNITY, INDEMNIFICATION AND RELEASE

CITY is a political subdivision of the state and enjoys governmental immunity. By entering into this Agreement, CITY does not consent to suit, waive its governmental immunity, or the limitations as to damages under the Texas Tort Claims Act.

DEVELOPER agrees to and shall indemnify, hold harmless, and defend CITY and its officers, agents, and employees from and against any and all claims, losses, damages, causes of action, suits, and liability of every kind, including all expenses of litigation, court costs, expert fees and attorney's fees, for injury to or death of any person, or for damage to any property, or for breach of contract, arising out of or in connection with the work done by DEVELOPER under this Agreement, regardless of whether such injuries, death, damages or breach are caused in whole or in part by the negligence of CITY, any other party indemnified hereunder, or the DEVELOPER.

DEVELOPER shall indemnify and hold CITY harmless from any claims of suppliers or subcontractors of DEVELOPER for improvements constructed or caused to be constructed by DEVELOPER.

DEVELOPER shall indemnify and hold CITY harmless from any and all injuries to or claims of adjacent property developers resulting from or relating to their performance under this Agreement.

DEVELOPER assumes full responsibility for the work to be performed hereunder, and releases, relinquishes and discharges CITY, its officers, agents and employees, from all claims, demands, and causes of action of every kind and character, including the cost of defense therefore, for any injury to or death of any persons and any loss of or damage to any property that is caused by, alleged to be caused by, arising out of, or in connection with, DEVELOPER's work to be performed hereunder. This release shall apply whether or not said claims, demands, and causes or action are covered in whole or in part by insurance and regardless of whether or not said claims, demands, and causes of action were caused in whole or in part by the negligence of CITY, any other party released hereunder, or DEVELOPER.

IV.
PROJECT AND CONSTRUCTION

4.1 Right to Inspect the Work. CITY may inspect the improvements for compliance with the Approved Plans during construction. In the event that it is determined by CITY that any of the work or materials furnished is not in strict accordance with the Approved Plans, CITY may withhold funds until the nonconforming work conforms to the Approved Plans or terminate this Agreement at CITY's election without any further liability.

4.2 Independent Contractor. DEVELOPER shall be solely responsible for selecting, supervising, and paying the construction contractor(s) or subcontractors and for complying with all applicable laws, including but not limited to all requirements concerning workers compensation and construction retainage.

The parties to this Agreement agree and understand that all employees, volunteers, personnel and materials furnished or used by DEVELOPER in the installation of the specified improvements shall be the responsibility of DEVELOPER and shall not be deemed employees or agents of CITY for any purpose.

4.3 Payment for materials and labor. DEVELOPER shall be solely and exclusively responsible for compensating any of its contractors, employees, subcontractors, materialmen and/or suppliers of any type or nature whatsoever and insuring that no claims or liens of any type will be filed against any property owned by CITY arising out of or incidental to the performance of any service performed pursuant to this Agreement. In the event a statutory lien notice is sent to CITY, DEVELOPER shall, where no payment bond covers the work, upon written notice from the CITY, immediately obtain a bond at its expense and hold CITY harmless from any losses that may result from the filing or enforcement of any said lien notice.

4.4 Affidavit of bills paid. Prior to the issuance of a Letter of Completion of the improvements, DEVELOPER shall provide CITY a notarized affidavit stating that all bills for labor, materials, and incidentals incurred have been paid in full, that any claims from manufacturers, materialmen, and subcontractors have been released, and that there are no claims pending of which DEVELOPER has been notified. Such affidavit shall be in a form as substantially set forth in **Exhibit D** which is attached hereto and incorporated by reference.

4.5 Requirements of Applicable rules remain. This Agreement does not alter, amend modify or replace any other requirements contained in the Code of Ordinances, Unified Development Code, or other applicable law.

V.
GUARANTEE OF PERFORMANCE AND PAYMENT

5.1 Bonding Requirements of Developer. Where CITY participation is 30% or less of the total value of the Project, DEVELOPER shall execute a performance bond to ensure construction of the Project and shall ensure that its contractor performing the Project executes a payment bond to ensure payment to subcontractors, if any. The bonds must be executed by a corporate surety in accordance with CHAPTER 2253, TEXAS GOVERNMENT CODE. The bonds shall be in the total amount of the contract price as approved by CITY.

5.2 Bonding Requirements of City. Where CITY participation is greater than 30% of the total value of the Project or when the Project is located within the extraterritorial jurisdiction of the CITY, the CITY shall ensure that the prime contractor of the Project execute to the CITY a performance bond and/or a payment bond as may be required pursuant to chapter 2253 Texas Government Code.

VI.
GENERAL PROVISIONS

6.1 Amendments. 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.

6.2 Choice of law and Venue. This Agreement has been made under and shall be governed by the laws of the State of Texas. Performance and all matters related thereto shall be in Brazos County, Texas, United States of America.

6.3 Authority to enter into Agreement. Each party represents that it has the full power and authority to enter into and perform this Agreement. The person executing this Agreement on behalf of each party has been properly authorized and empowered to enter into this Agreement. The person executing this Agreement on behalf of DEVELOPER represents that he or she is authorized to sign on behalf of DEVELOPER and agrees to provide proof of such authorization to the CITY upon request.

6.4 Agreement read. The parties acknowledge that they have read, understand and intend to be bound by the terms and conditions of this Agreement.

6.5 Notice. Any notice sent under this Agreement (except as otherwise expressly required) shall be hand delivered, written and mailed, or sent by electronic or facsimile transmission confirmed by mailing written confirmation at substantially the same time as such electronic or facsimile transmission, or personally delivered to an officer of the receiving party at the following addresses:

Dos Dorado Development, LLC
d/b/a 3-D Development
Wallace Phillips IV
4490 Castlegate Drive
College Station, Texas 77845

City of College Station
City Engineer
P.O. Box 9960
College Station, TX 77842

With copies to:
City Attorney and City Manager
1101 Texas Avenue
College Station, TX 77842

Each party may change its address by written notice in accordance with this section. Any communication addressed and mailed in accordance with this section shall be deemed to be given when so mailed, any notice so sent by electronic or facsimile transmission shall be deemed to be given when receipt of such transmission is acknowledged, and any communication so delivered in person shall be deemed to be given when receipted for by, or actually received by, the party.

6.6 Assignment. This Agreement and the rights and obligations contained herein may not be assigned by DEVELOPER without the prior written approval of the CITY.

6.7 Default. In the event of a breach of this Agreement by DEVELOPER, CITY may terminate this Agreement and exercise any and all legal remedies available to it.

Executed this _____ day of _____, 20__.

List of Exhibits:

- A A description of the Property
- B A description of the Project
- C Engineer's estimate of the costs of the Project
- D Affidavit of All Bills Paid form

DOS DORADO DEVELOPMENT, LLC
D/B/A 3-D DEVELOPMENT

CITY OF COLLEGE STATION

BY: _____
Printed Name: _____
Title: _____

BY: _____
Mayor

ATTEST:

City Secretary

APPROVED:

City Manager

City Attorney

Executive Director Business Services

**METES AND BOUNDS DESCRIPTION
OF A
12.437 ACRE TRACT
ROBERT STEVENSON LEAGUE, A-54
COLLEGE STATION, BRAZOS COUNTY, TEXAS**

METES AND BOUNDS DESCRIPTION OF ALL THAT CERTAIN TRACT OR PARCEL OF LAND LYING AND BEING SITUATED IN THE ROBERT STEVENSON LEAGUE, ABSTRACT NO. 54, COLLEGE STATION, BRAZOS COUNTY, TEXAS. SAID TRACT BEING A PORTION OF THE REMAINDER OF A CALLED 202.66 ACRE TRACT AS DESCRIBED BY A DEED TO DOS DORADO DEVELOPMENT, LLC, RECORDED IN VOLUME 9656, PAGE 213 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 AT THE PLATTED END OF THE RIGHT-OF-WAY OF VICTORIA AVENUE (77' R.O.W.) MARKING THE MOST NORTHERLY WEST CORNER OF THE PARKLAND DEDICATION TO THE CITY OF COLLEGE STATION AS REFLECTED ON THE PLAT OF CASTLEGATE II SUBDIVISION, SECTION 200, RECORDED IN VOLUME 10392, PAGE 260 OF THE OFFICIAL PUBLIC RECORDS OF BRAZOS COUNTY, TEXAS;

THENCE: ALONG THE NORTHWESTERLY LINE OF SAID PARKLAND DEDICATION, SAME BEING THE EXTENSION OF THE SOUTHEAST LINE OF VICTORIA AVENUE, FOR THE FOLLOWING CALLS:

S 41° 56' 29" W FOR A DISTANCE OF 144.62 FEET TO THE BEGINNING OF A CLOCKWISE CURVE HAVING A RADIUS OF 613.50 FEET;

ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 18° 25' 03" FOR AN ARC DISTANCE OF 197.21 FEET (CHORD BEARS: S 51° 09' 00" W – 196.36 FEET) TO THE END OF SAID CURVE;

S 60° 21' 56" W FOR A DISTANCE OF 130.44 FEET TO THE BEGINNING OF A COUNTERCLOCKWISE CURVE HAVING A RADIUS OF 536.50 FEET;

ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 14° 42' 54" FOR AN ARC DISTANCE OF 137.79 FEET (CHORD BEARS: S 53° 00' 29" W – 137.41 FEET) TO THE END OF SAID CURVE AND THE BEGINNING OF A COUNTERCLOCKWISE CURVE HAVING A RADIUS OF 25.00 FEET;

ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 93° 42' 18" FOR AN ARC DISTANCE OF 40.89 FEET (CHORD BEARS: S 01° 12' 07" E – 36.48 FEET) TO THE END OF SAID CURVE AT THE PLATTED END OF NORWICH DRIVE RIGHT-OF-WAY (50' R.O.W.) ACCORDING TO THE PLAT OF CASTLEGATE II SUBDIVISION, SECTION 201;

THENCE: S 41° 56' 44" W ACROSS THE END OF NORWICH DRIVE FOR A DISTANCE OF 50.00 FEET TO THE BEGINNING OF A COUNTERCLOCKWISE CURVE HAVING A RADIUS OF 25.00 FEET;

THENCE: ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 92° 19' 28" FOR AN ARC DISTANCE OF 40.34 FEET (CHORD BEARS: S 88° 08' 51" W – 36.12 FEET) TO THE END OF SAID CURVE;

THENCE: THROUGH SAID REMAINDER OF 202.66 ACRE TRACT FOR THE FOLLOWING CALLS:

N 48° 03' 20" W FOR A DISTANCE OF 77.00 FEET TO THE BEGINNING OF A COUNTERCLOCKWISE CURVE HAVING A RADIUS OF 25.00 FEET;

ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 90° 00' 00" FOR AN ARC DISTANCE OF 39.27 FEET (CHORD BEARS: N 03° 03' 16" W – 35.36 FEET) TO THE END OF SAID CURVE;

N 48° 03' 16" W FOR A DISTANCE OF 70.55 FEET TO THE BEGINNING OF A COUNTERCLOCKWISE CURVE HAVING A RADIUS OF 25.00 FEET;

ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 90° 00' 00" FOR AN ARC DISTANCE OF 39.27 FEET (CHORD BEARS: S 86° 56' 44" W – 35.36 FEET) TO THE END OF SAID CURVE;

N 48° 03' 16" W FOR A DISTANCE OF 50.00 FEET;

N 41° 56' 44" E FOR A DISTANCE OF 40.00 FEET;

N 48° 03' 16" W FOR A DISTANCE OF 411.65 FEET TO THE MOST WESTERLY CORNER OF THIS HEREIN DESCRIBED TRACT;

N 41° 56' 44" E FOR A DISTANCE OF 563.63 FEET;

S 48° 03' 16" E FOR A DISTANCE OF 95.55 FEET TO THE BEGINNING OF A COUNTERCLOCKWISE CURVE HAVING A RADIUS OF 25.00 FEET;

ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 90° 00' 00" FOR AN ARC DISTANCE OF 39.27 FEET (CHORD BEARS: N 86° 56' 44" E – 35.36 FEET) TO THE END OF SAID CURVE;

N 41° 56' 44" E FOR A DISTANCE OF 70.00 FEET TO THE BEGINNING OF A COUNTERCLOCKWISE CURVE HAVING A RADIUS OF 25.00 FEET;

ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 90° 00' 00" FOR AN ARC DISTANCE OF 39.27 FEET (CHORD BEARS: N 03° 03' 23" W – 35.36 FEET) TO THE END OF SAID CURVE;

N 41° 56' 29" E FOR A DISTANCE OF 101.00 FEET TO THE SOUTHWEST LINE OF ANOTHER PARKLAND DEDICATION AREA OF SAID CASTLEGATE II SUBDIVISION, SECTION 200;

THENCE: S 48° 03' 31" E ALONG THE SOUTHWEST LINE OF SAID PARKLAND DEDICATION AREA, SAME BEING THE EXTENSION OF THE NORTHEAST LINE OF W. S. PHILLIPS PARKWAY (101' R.O.W.), FOR A DISTANCE OF 561.75 FEET TO THE PLATTED END OF W. S. PHILLIPS PARKWAY;

THENCE: S 41° 56' 29" W ACROSS THE END OF W. S. PHILLIPS PARKWAY FOR A DISTANCE OF 101.00 FEET TO THE BEGINNING OF A CLOCKWISE CURVE HAVING A RADIUS OF 25.00 FEET;

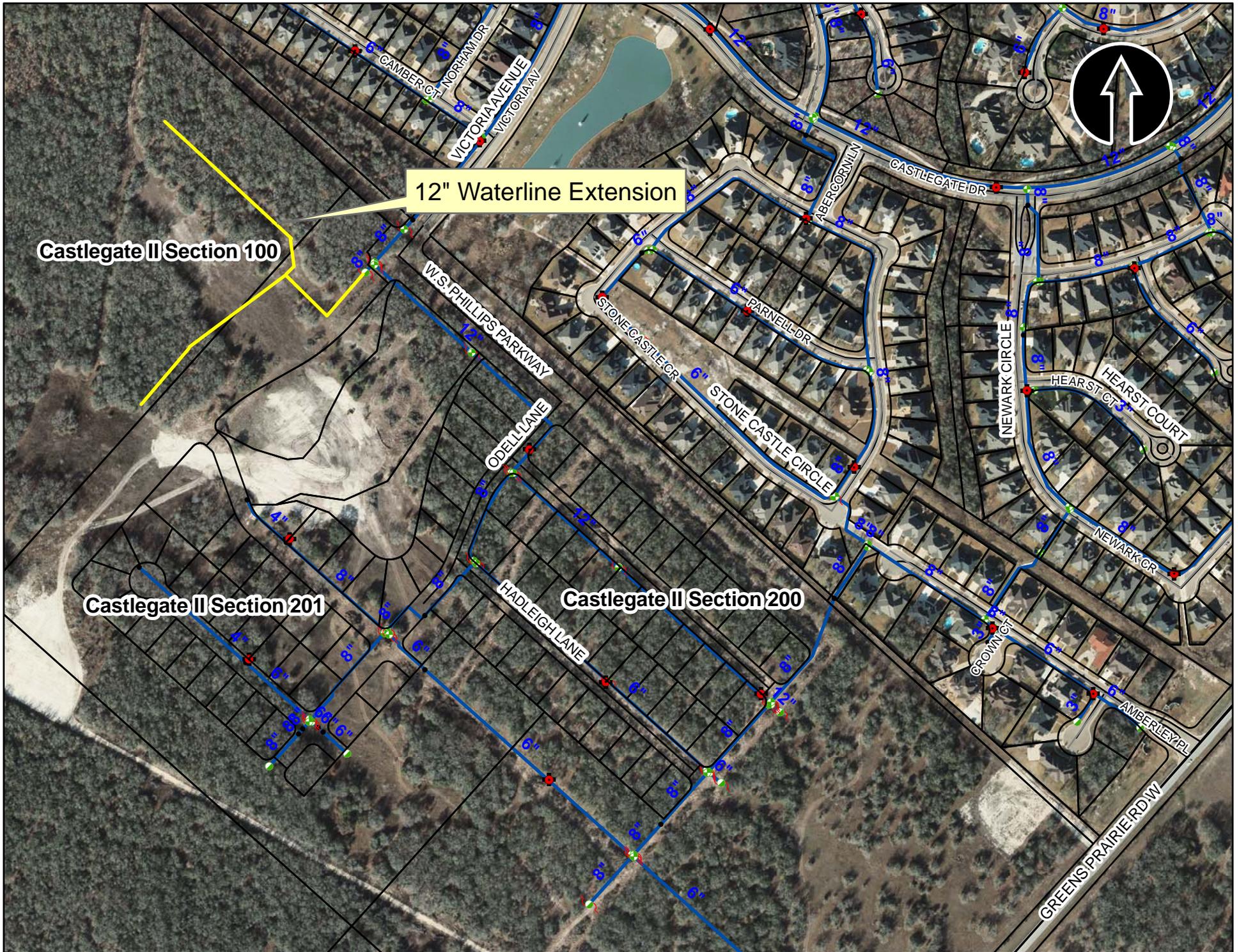
THENCE: ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 90° 00' 00" FOR AN ARC DISTANCE OF 39.27 FEET (CHORD BEARS: S 03° 03' 31" E – 35.36 FEET) TO THE END OF SAID CURVE AT THE PLATTED END OF VICTORIA AVENUE;

THENCE: S 48° 03' 31" E ACROSS THE END OF VICTORIA AVENUE FOR A DISTANCE OF 77.00 FEET TO THE **POINT OF BEGINNING** CONTAINING 12.437 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/CG2-100.MAB





December 7, 2012

Danielle Singh
Graduate Civil Engineer
City of College Station
1101 Texas Avenue
College Station, TX 77840

**Re: Request for Oversize Participation Expenditures
Castlegate II Subdivision, Section 100**

Dear Ms. Singh:

With this letter we wish to initiate a request for Oversize Participation by the City of College Station for the 12" water line being installed with Section 100 of the Castlegate II Subdivision. This water line was designed to comply with the City's Water Master Plan. The construction plans for the water system are included with this submittal for your review. They show approximately 1,405 linear feet of 12" water line routed through Section 100.

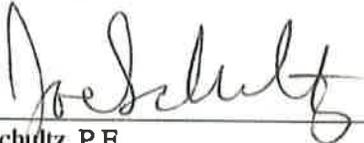
In the attached Water System Report, the water system has been modeled using an 8" water line as the main line. The model demonstrates that the system performs above minimum standards using the 8" line as the main line. We conclude that anything larger than an 8" line can be considered oversized.

Also, included with this submittal is an estimated cost of the water system using 12" lines and another using 8" lines. The difference in cost between the two line sizes and the related fittings is \$23,550. We believe this is a conservative number and that the actual construction costs should not exceed that figure. I also estimate a cost of 3% of that figure for the performance and payment bonds which comes to \$3,260. The total Oversized Participation request is \$26,810. This figure is approximately 25% of the overall water system cost and is well below the threshold limit of 30%, where competitive bidding becomes a requirement.

We ask that you review this submittal and let us know what subsequent steps we need to take to move forward with this request.

Sincerely,

Schultz Engineering, LLC.



Joe Schultz, P.E.
Civil Engineer/Manager

Attachments

P.O. Box 11995 • College Station, Texas 77842
schultzengeeringllc.com

SCHULTZ ENGINEERING, LLC.
2730 Longmire Drive, Suite A
College Station, Texas 77845
Firm No. 12327

Castlegate II Subdivision, Section 100
Engineer's Estimate of Oversize Participation Cost - Summary
November 6, 2012

Water System w/12" Lines	\$ 108,656
Water System w/8" Lines	\$ 85,106
Subtotal	\$ 23,550
Performance & Payment Bonds 3%	\$ 3,260
Overall Participation Estimate	\$ 26,810



F-12327 12-7-12
SCHULTZ ENGINEERING, LLC.

SCHULTZ ENGINEERING, LLC.
2730 Longmire Drive, Suite A
College Station, Texas 77845
Firm No. 12327

Castlegate II Subdivision, Section 100
Engineer's Estimate of Oversize Participation Cost
November 6, 2012

Item	Description	Unit	Estimated Quantity	Unit Price	Total
Water System w/12" Lines					
1	12" C900 Water Pipe - Structural Backfill w/ tracer wire, complete in place	LF	220	\$ 38.00	\$8,360
2	12" C900 Water Pipe - Non-Structural Backfill w/ tracer wire, complete in place	LF	1185	\$ 32.00	\$37,920
3	Fire Hydrant Assembly (w/12" x 6" Tee, valve, vert. extension), complete in place	EA	1	\$ 3,750.00	\$3,750
4	Connect to Existing Water Line	EA	1	\$ 1,000.00	\$1,000
5	12" x 45° M.J. Bend, complete in place	EA	8	\$ 650.00	\$5,200
6	12" x 11.25° M.J. Bend, complete in place	EA	1	\$ 650.00	\$650
7	12"x 12" M.J. Tee, complete in place	EA	1	\$ 850.00	\$850
8	12"x 6" M.J. Tee, complete in place	EA	1	\$ 750.00	\$750
9	12" M.J. Gate Valve, complete in place	EA	4	\$ 1,850.00	\$7,400
10	1" Water Service, < 15 ft (avg length = 3 ft) (12" Line)	EA	3	\$ 750.00	\$2,250
11	1.5" Water Service, < 15 ft (avg length = 3 ft) (12" Line)	EA	6	\$ 1,100.00	\$6,600
12	1.5" Water Service, > 15 ft (avg length = 47 ft) (12" Line)	EA	5	\$ 1,600.00	\$8,000
13	4" Blowoff Assembly, complete in place	EA	2	\$ 2,200.00	\$4,400
14	Waterline Testing	LS	1	\$ 1,000.00	\$1,000
15	6" C900 Water Pipe - Structural Backfill w/ tracer wire, complete in place	LF	51	\$ 22.00	\$1,122
16	6" C900 Water Pipe - Non-Structural Backfill w/ tracer wire, complete in place	LF	228	\$ 18.00	\$4,104
17	Fire Hydrant Assembly (w/6" x 6" Tee, valve, vert. extension), complete in place	EA	1	\$ 3,500.00	\$3,500
18	6" M.J. Gate Valve, complete in place	EA	2	\$ 1,000.00	\$2,000
19	1" Water Service, > 15 ft (avg length = 47 ft) (6" Line)	EA	2	\$ 1,000.00	\$2,000
20	1.5" Water Service, < 15 ft (avg length = 3 ft) (6" Line)	EA	4	\$ 800.00	\$3,200
21	1.5" Water Service, > 15 ft (avg length = 47 ft) (6" Line)	EA	3	\$ 1,200.00	\$3,600
22	2" Blowoff Assembly, complete in place	EA	1	\$ 1,000.00	\$1,000
Water System w/12" Lines					\$108,656
Performance & Payment Bonds 3%					\$3,260

SCHULTZ ENGINEERING, LLC.
2730 Longmlre Drive, Suite A
College Station, Texas 77845
Firm No. 12327

Castlegate II Subdivision, Section 100
Engineer's Estimate of Oversize Participation Cost
November 6, 2012

Item	Description	Unit	Estimated Quantity	Unit Price	Total
Water System w/8" Lines					
1	8" C900 Water Pipe - Structural Backfill w/ tracer wire, complete in place	LF	220	\$ 28.00	\$6,160
2	8" C900 Water Pipe - NonStructural Backfill w/ tracer wire, complete in place	LF	1185	\$ 22.00	\$26,070
3	Fire Hydrant Assembly (w/8" x 6" Tee, valve, vert. extension), complete in place	EA	1	\$ 3,500.00	\$3,500
4	Connect to Existing Water Line	EA	1	\$ 1,000.00	\$1,000
5	8" x 45° M.J. Bend, complete in place	EA	8	\$ 400.00	\$3,200
6	8" x 11.25° M.J. Bend, complete in place	EA	1	\$ 400.00	\$400
7	8"x 8" M.J. Tee, complete in place	EA	1	\$ 500.00	\$500
8	8"x 6" M.J. Tee, complete in place	EA	1	\$ 500.00	\$500
9	8" M.J. Gate Valve, complete in place	EA	4	\$ 1,200.00	\$4,800
10	1" Water Service, < 15 ft (avg length = 3 ft) (8" Line)	EA	3	\$ 650.00	\$1,950
11	1.5" Water Service, < 15 ft (avg length = 3 ft) (8" Line)	EA	6	\$ 1,000.00	\$6,000
12	1.5" Water Service, > 15 ft (avg length = 47 ft) (8" Line)	EA	5	\$ 1,500.00	\$7,500
13	2" Blowoff Assembly, complete in place	EA	2	\$ 1,000.00	\$2,000
14	Waterline Testing	LS	1	\$ 1,000.00	\$1,000
15	6" C900 Water Pipe - Structural Backfill w/ tracer wire, complete in place	LF	51	\$ 22.00	\$1,122
16	6" C900 Water Pipe - Non-Structural Backfill w/ tracer wire, complete in place	LF	228	\$ 18.00	\$4,104
17	Fire Hydrant Assembly (w/6" x 6" Tee, valve, vert. extension), complete in place	EA	1	\$ 3,500.00	\$3,500
18	6" M.J. Gate Valve, complete in place	EA	2	\$ 1,000.00	\$2,000
19	1" Water Service, > 15 ft (avg length = 47 ft) (6" Line)	EA	2	\$ 1,000.00	\$2,000
20	1.5" Water Service, < 15 ft (avg length = 3 ft) (6" Line)	EA	4	\$ 800.00	\$3,200
21	1.5" Water Service, > 15 ft (avg length = 47 ft) (6" Line)	EA	3	\$ 1,200.00	\$3,600
22	2" Blowoff Assembly, complete in place	EA	1	\$ 1,000.00	\$1,000
Water System w/8" Lines					\$85,106

THE STATE OF TEXAS)
COUNTY OF BRAZOS)

AFFIDAVIT OF BILLS PAID

Before me, the undersigned authority, personally appeared _____ (“Affiant”), _____ of _____ (“Contractor”), who being first duly sworn, deposed and state the following:

“My name is _____. I am over 18 years of age, of sound mind, capable of making this affidavit, and personally acquainted with the facts stated in it, which facts are true and correct.

Pursuant to that certain _____ contract, dated as of _____, 200__ (the “Contract”) by and between the City of College Station, Texas, and _____, Contractor furnished labor and materials to construct _____ on the real property known as _____ (more particularly described in the Contract) the “Project”.

To the extend that Contractor constructed or contracted for the construction of such _____, Contractor has paid each of its sub-contractors, laborers and materialmen in full (except for statutory retainage) for all labor and/or materials provided to Contractor on the Project.

To the best of Affiant’s knowledge, Contractor has not received notice of any claims pending against the Project in connection with the _____ described in the Contract.

Further, Affiant saith not.

Executed this _____ day of _____, 200__.

AFFIANT:

Printed Name:_____

SUBSCRIBED AND SWORN TO before me on this _____ day of _____, 200__.

Notary Public, State of Texas

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COLLEGE STATION, TEXAS, APPROVING A PARTICIPATION AGREEMENT BY AND BETWEEN THE CITY AND DOS DORADO DEVELOPMENT, L.L.C. FOR THE DEVELOPMENT OF THE CASTLEGATE II SUBDIVISION, SECTION 100, WATER LINE PROJECT AND AUTHORIZING THE EXPENDITURE OF FUNDS.

WHEREAS, Dos Dorado Development, L.L.C. is a developer developing the Castlegate II Subdivision, Section 100; and

WHEREAS, as part of said development, the construction of certain public infrastructure is required; and

WHEREAS, pursuant to Section 212.071 et seq. Texas Local Government Code the City of College Station and the developer have agreed to jointly participate in the construction of certain public infrastructure to wit: the Castlegate II Subdivision, Section 100 Water Line Project (“Project”) as further set forth in a Participation Agreement; now, therefore,

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

- PART 1: That the City Council hereby finds it to be in the best interests of its citizens to enter into that one certain Participation Agreement with Dos Dorado Development, L.L.C. for the construction of the Castlegate II Subdivision, Section 100 Water Line Project. A copy of said Participation Agreement is attached as Exhibit “A” and incorporated herein by reference.
- PART 2: That the City Council hereby approves the contract with Dos Dorado Development, L.L.C. obligating the CITY to pay a maximum of \$26,810.00 out of a total estimated amount of \$108,656.00 for the labor, materials and equipment required for the improvements related to the Castlegate II Subdivision, Section 100 Water Line Project.
- PART 3: That the funding for this Contract shall be as budgeted from the Water Capital Improvement Project Fund, in the amount of \$26,810.00.
- PART 4: That this ordinance shall take effect immediately from and after its passage.

ORDINANCE NO. _____

Page 2

PASSED, ADOPTED and APPROVED this _____ day of _____, 2013.

APPROVED:

NANCY BERRY, Mayor

ATTEST:

SHERRY MASHBURN, City Secretary

APPROVED:



Carla A. Robinson
City Attorney

January 24, 2013
Consent Agenda Item No. 2k
Homeland Security Grant Program

To: Frank Simpson, Interim 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 2010 Homeland Security Grant Program Grant Adjustment Notice (GAN) of \$55,281.53.

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

Summary: The City of College Station has been awarded the Homeland Security program grant of **\$55,281.53** through TDEM. The funding was used by the Police Department to purchase SWAT equipment that will enhance our response capabilities to terrorist threats or catastrophic events. The period of performance of this agreement shall end on July 31, 2012. **This will close out the 2010 State Homeland Security Grant.**

Budget & Financial Summary: There is no impact to the city with this action.

Attachments:

2010 Homeland Security Grant Adjustment Notice – 10-GA 15976-02F

Resolution Number: _____



Texas Department of Public Safety

2010 Grant Adjustment Notice for City of College Station

Date of Award

January 3, 2013

1. Sub-Recipient Name and Address	2. Prepared by: Youngs, Jamie	3. SAA Award Number: 10-GA 15976-02F
Mayor Nancy Berry City of College Station P.O. Box 9960 College Station, TX 77842-0960	4. Federal Grant Information	
	Federal Grant Title: Homeland Security Grant Program (HSGP) State Homeland Security Program (SHSP)	
	Federal Grant Award Number: 2010-SS-T0-0008	
	Date Federal Grant Awarded to TxDPS: August 1, 2010	
	Federal Granting Agency: Department of Homeland Security FEMA Grant Programs Directorate	

5. Award Amount and Grant Breakdowns

SHSP Award Amount (Federal) CFDA: 97.073 \$55,281.53	<table border="1" style="margin: auto;"> <tr> <th colspan="2">Grant Period:</th> </tr> <tr> <td style="text-align: center;">From: Aug 1, 2010</td> <td style="text-align: center;">To: Jul 31, 2012</td> </tr> <tr> <td colspan="2" style="text-align: center; font-size: small;">(The SAA must receive all invoices by the end of grant period)</td> </tr> </table>	Grant Period:		From: Aug 1, 2010	To: Jul 31, 2012	(The SAA must receive all invoices by the end of grant period)	
Grant Period:							
From: Aug 1, 2010	To: Jul 31, 2012						
(The SAA must receive all invoices by the end of grant period)							

6. Statutory Authority for Grant: This project is supported under Department of Homeland Security Appropriations Act, 2010 (Public Law 111-83).

7. Method of Payment: Primary method is reimbursement.

8. Debarment/Suspension Certification: The Sub-Recipient certifies that the sub-recipient and its contractors/vendors are not 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.2.8.9029.0>

9. Agency Approval

Approving TxDPS Official: Mabelle Pharr Deputy Assistant Director State Administrative Agency Texas Department of Public Safety	Signature of TxDPS Official:
--	---

10. Sub-Recipient Acceptance

I have read and understand the attached Terms and Conditions.

Type name and title of Authorized Sub-Recipient official:	Signature of Sub-Recipient Official:
--	---

11. Enter Employer Identification Number (EIN) / Federal Tax Identification Number:	12. Date Signed :
--	--------------------------

13. DUE DATE: February 17, 2013

Signed award and Direct Deposit Form (if applicable) must be returned to TxDPS on or before the above due date.

2010 TERMS AND CONDITIONS

Instructions:

The Sub-recipient must:

1. Fill in the contact information and sign the Sub-Recipient Award
2. Certify they have read and understand the Terms and Conditions by initialing the bottom of each page.
3. Fill in the contact information located on Page 4.
4. Certify to the statements provided in Exhibits A and B and C located at the back of this document by filling in contact information and signing both exhibits.
5. Return all documents to the SAA in accordance with the date provided in the transmittal letter and/or in the agreement.

Parties to Sub-recipient Agreement

This Sub-recipient Agreement (includes the Sub-recipient Award and the Terms and Conditions) is made and entered into by and between the Department of Public Safety / State Administrative Agency, (DPS/SAA) an agency of the State of Texas, hereinafter referred to as "DPS/SAA," and the funds recipient, hereinafter referred to as the "Sub-recipient." Furthermore, DPS/SAA and the Sub-recipient are collectively hereinafter referred to as the "Parties." The Sub-recipient Agreement is only an offer until the Sub-recipient returns the signed copy of the 2010 Sub-recipient Agreement in accordance with the date provided in the transmittal letter and/or in the agreement Sub-recipient Agreement Award.

Sub-recipient must not assign or transfer any interest in this Sub-recipient Agreement without the express, prior written consent of the SAA.

Overview, and Performance Standards

All allocations and use of funds under this grant must be in accordance with the FY 2010 Guidelines and Application Kit for the Federal Grant Title specified on the Sub-recipient Agreement Award. All award Sub-recipients are required to have read, understood and accepted the FY 2010 Guidance and Application Kit as binding.

Standard of Performance. The Sub-recipient shall perform all activities and projects entered into the SAA web-based grants management system approved by its Regional Planning Group / Urban Area Working Group and/or by the State Administrative Agency (SAA) as applicable. The Sub-recipient shall perform all activities in accordance with all terms, provisions and requirements set forth in this Sub-recipient agreement, Terms and Conditions and the following Exhibits located at the end of this document:

1. Assurance – Non-Construction Programs, hereinafter referred to as "**Exhibit A**"
2. Assurance – Construction Programs, hereinafter referred to as "**Exhibit B**"
3. Certification, hereinafter referred to as "**Exhibit C**"

Failure to Perform. In the event the Sub-recipient fails to implement the project(s) entered into the SAA web-based grants management system, or comply with any of this Sub-recipient agreement's provisions, in addition to the remedies specified in this Sub-recipient agreement, the Sub-recipient is liable to DPS/SAA for an amount not to exceed the award amount of this Sub-recipient agreement and may be barred from applying for or receiving additional DHS/FEMA grant program funds or any other federal program funds administered by DPS/SAA until repayment to DPS/SAA is made and any other compliance or audit finding is satisfactorily resolved.

Initial _____ Date _____

DPS/SAA Obligations

Measure of Liability. DPS/SAA shall not be liable to the Sub-recipient for any costs incurred by the Sub-recipient that are not allowable costs.

Sub-recipient Agreement Funds Defined and Limit of Liability. The term "Sub-recipient agreement funds" as used in this Sub-recipient agreement means funds provided by DPS/SAA under the DHS/FEMA grant programs. The term "Sub-recipient's funds" or match funds as used in this Sub-recipient agreement means funds provided by the Sub-recipient.

Notwithstanding any other provision of this Sub-recipient agreement, the total of all payments and other obligations incurred by DPS/SAA under this Sub-recipient agreement shall not exceed the Total Award Amount listed on the cover page of the Sub-recipient agreement.

Sub-recipient shall contribute the match funds listed on the Sub-recipient Award page.

Excess Payments. The Sub-recipient shall refund to DPS/SAA any sum of Sub-recipient agreement funds that has been paid to the Sub-recipient by DPS/SAA or that DPS/SAA determines has resulted in overpayment to the Sub-recipient or that DPS/SAA determines has not been spent by the Sub-recipient in accordance with this Sub-recipient agreement. No refund payment(s) may be made from local, state or federal grant funds unless repayment with grant funds is specifically permitted by statute or regulation. The Sub-recipient shall make such refund to DPS/SAA within thirty (30) days after DPS/SAA requests such refund.

Suspension

In the event the Sub-recipient fails to comply with any of this Sub-recipient Agreement's terms, DPS/SAA may, upon written notification to the Sub-recipient, suspend this Sub-recipient agreement in whole or in part, withhold payments to the Sub-recipient and prohibit the Sub-recipient from incurring additional obligations of Sub-recipient agreement funds.

Termination

DPS/SAA's Right to Terminate. DPS/SAA shall have the right to terminate this Sub-recipient agreement, in whole or in part, at any time before the end of the Performance Period, whenever DPS/SAA determines that the Sub-recipient has failed to comply with any of this Sub-recipient agreement's terms. DPS/SAA shall notify the Sub-recipient in writing prior to the thirtieth (30th) day preceding the termination of such determination and include:

1. the reasons for such termination;
2. the effective date of such termination; and
3. in the case of partial termination, the portion of the Sub-recipient agreement to be terminated.

Appeal will be made to the Deputy Director of Homeland Security, Department of Public Safety.

Enforcement

In taking an enforcement action, the awarding agency will provide the sub-recipient an opportunity for such hearing, appeal, or other administrative proceeding to which the sub-recipient is entitled under any statute or regulation applicable to the action involved.

Initial _____ Date _____

Conflict of Interest

No employee, officer or agent of the sub-recipient shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved.

Monitoring

Sub-recipients will be monitored periodically by federal or state agencies, both programmatically and financially, to ensure that project goals, objectives, performance requirement, timelines, milestone completion, budget, and other related program criteria are being met.

DPS/SAA reserves the right to perform periodic office-based and/or on-site monitoring of the Sub-recipient's compliance with this Sub-recipient agreement's terms and conditions and of the adequacy and timeliness of the Sub-recipient's performance pursuant to this Sub-recipient agreement. After each monitoring visit, DPS/SAA shall provide the Sub-recipient with a written report of the monitor's findings. If the monitoring report notes deficiencies in the Sub-recipient's performance under this Sub-recipient agreement's terms, the monitoring report shall include requirements for the timely correction of such deficiencies by the Sub-recipient. Failure by the Sub-recipient to take action specified in the monitoring report may be cause for this Sub-recipient agreement's suspension or termination pursuant to the Suspension and/or Termination Section.

Audit

Audit of Federal and State Funds. The Sub-recipient shall arrange for the performance of an annual financial and compliance audit of Sub-recipient agreement funds received and performances rendered under this Sub-recipient agreement as required by the Single Audit Act (OMB Circular A – 133; 44 C.F.R. 13.26) and as outlined in Exhibit A. The Sub-recipient will also comply, as applicable, with Texas Government Code, Chapter 783, 1 TAC 5.141.et.seq. and the Uniform Grant Management Standards (UGMS), State Uniform Administrative Requirements for Grants and Cooperative Agreements.

DPS/SAA's Right to Audit. DPS/SAA reserves the right to conduct a financial and compliance audit of Sub-recipient agreement funds received and performances rendered under this Sub-recipient agreement. The Sub-recipient agrees to permit DPS/SAA or its authorized representative to audit the Sub-recipient's records. The sub-recipient shall provide any documents, materials or information necessary to facilitate such audit.

Sub-recipient's Liability for Disallowed Costs. The Sub-recipient understands and agrees that it shall be liable to DPS/SAA for any costs disallowed pursuant to financial and compliance audit(s) of Sub-recipient agreement funds. The Sub-recipient further understands and agrees that reimbursement to DPS/SAA of such disallowed costs shall be paid by the Sub-recipient from funds that were not provided or otherwise made available to the Sub-recipient pursuant to this Sub-recipient agreement or any other federal contract.

Sub-recipient's Facilitation of Audit. The Sub-recipient shall take such action to facilitate the performance of such audit(s) conducted pursuant to this Section as DPS/SAA may require of the Sub-recipient. The Sub-recipient shall ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through the Sub-recipient and the requirement to cooperate is included in any subcontract it awards.

Other Requirements

A. During the performance period of this grant, Sub-recipients must maintain an Emergency Management Plan at the Intermediate Level of planning preparedness or higher, as prescribed by the Texas Division of Emergency Management (TDEM). This may be accomplished by a jurisdiction maintaining its own emergency management plan or participating in an inter-jurisdictional emergency management program that meets the required standards. If TDEM identifies deficiencies in the Sub-recipient's plan, Sub-recipient will correct deficiencies within 60 days of receiving notice of such deficiencies from TDEM.

Initial _____ Date _____

B. Projects identified in the SAA web-based grant management system must identify and relate to the goals and objectives indicated by the applicable approved project investments for the period of performance of the grant.

C. During the performance period of this grant, Sub-recipient agrees that it will participate in a legally-adopted county and/or regional mutual aid agreement.

D. During the performance period, the Sub-recipient must be a registered user of the Texas Regional Response Network (TRRN) and identify all major resources such as vehicles and trailers, equipment costing \$5,000 or more and specialized teams/response units equipped and/or trained using grant funds (i.e. hazardous material, decontamination, search and rescue, etc.). This registration is to ensure jurisdictions or organizations are prepared to make grant funded resources available to other jurisdictions through mutual aid.

E. Sub-recipients must submit Fiscal Year 2010 Indirect Cost Allocation Plan signed by Cognizant Agency - "Cognizant agency" means the Federal agency responsible for reviewing, negotiating, and approving cost allocation plans or indirect cost proposals developed under 2 CFR part 225 on behalf of all Federal agencies. OMB publishes a listing of cognizant agencies. Plan should be forwarded to the SAA along with the Planning and Administration Grant Budget Form.

F. Council of Governments (COG) will follow guidelines listed in the SAA FY 10 COG Statement of Work.

G. Sub-recipient acknowledges that FEMA National Preparedness Directorate reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use, and authorize others to use, for Federal government purposes: (1) the copyright in any work developed under an award or sub-award; and (2) any rights of copyright to which a recipient or Sub-recipient purchases ownership with Federal support. The sub-recipient agrees to consult with DPS/SAA regarding the allocation of any patent rights that arise from, or are purchased with, this funding.

Closing the Grant

A. The Sub-recipient must have expended all grant funds and submitted expenditure reimbursement requests and any invoices by the end of the performance period listed on the sub-recipient agreement.

B. DPS/SAA will close a sub-award after receiving Sub-recipient's final performance report indicating that all approved work has been completed and all funds have been disbursed, completing a review to confirm the accuracy of the reported information, and reconciling actual costs to awards modifications and payments. If the close out review and reconciliation indicates that the Sub-recipient is owed additional funds, DPS/SAA will send the final payment automatically to the Sub-recipient. If the Sub-recipient did not use all the funds received, DPS/SAA will issue a Grant Adjustment Notice (GAN) to recover the unused funds.

C. At the completion of the sub-recipient's performance period, DPS/SAA will de-obligate all uncommitted / unexpended funds.

Restrictions, Disclaimers and Notices

A. In cases where local funding is established by a COG or UASI, governing board, the release of funds by DPS/SAA is contingent upon funding allocation approval by the governing board.

B. Notwithstanding any other agreement provisions, the parties hereto understand and agree that DPS/SAA's obligations under this agreement are contingent upon the receipt of adequate funds to meet DPS/SAA's liabilities hereunder, except as required by IECGP and HSGP grants. DPS/SAA shall not be liable to the Sub-recipient for costs under this Agreement which exceed the amount specified in the Notice of Sub-recipient Award.

C. All notices or communication required or permitted to be given by either party hereunder shall be deemed sufficiently given if mailed by registered mail or certified mail, return receipt requested, or sent by overnight courier, such as Federal Express, to the other party at its respective address set forth below or to the Point of Contact listed for the sub-recipient in the SAA Grants Management System shall be deemed received the following business day.

Initial _____ Date _____

DPS/SAA Contact Information
Deputy Director, Homeland Security Texas Department of Public Safety State Administrative Agency P.O. Box 4087 Austin, TX 78773-0220

Sub-Recipient Contact Information
(Please Fill-In Contact Information below)
Name:
Title:
Agency:
Address:

Uniform Administrative Requirements, Cost Principals and Audit Requirements

Except as specifically modified by law or this Sub-recipient agreement’s provisions, the Sub-recipient shall administer the award through compliance with the most recent version of all applicable Laws and Regulations. A non-exclusive list is provided below

A. Administrative Requirements

1. 44 C.F.R. Part 13, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments;
2. 2 C.F.R. Part 215, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations (OMB Circular A-110).

B. Cost Principles

1. 2 C.F.R. Part 225, Cost Principles for State, Local and Indian Tribal Governments (OMB Circular A-87)
2. 2 C.F.R. Part 220, Cost Principles for Education Institutions (OMB Circular A-21)
3. 2 C.F.R. Part 230, Cost Principles for Non-Profit Organizations (OMB Circular A-122)
4. Federal Acquisition Regulations (FAR) Subpart 31.2, Contracts with Commercial Organizations

C. Audit Requirements – OMB Circular A-133, Audits of States, Local Governments and Non-Profit Organizations.

D. Sub-recipient understands and agrees that it cannot use any federal funds, either directly or indirectly, in support of the enactment, repeal, modification or adoption of any law, regulation or policy, at any level of government, without the express prior written approval of FEMA.

E. The sub-recipient agrees that all allocations and use of funds under this grant will be in accordance with the applicable FY2010 Grant Program Guidance and Application Kit.

F. The recipient must provide information to FEMA to assist with the legally-required environmental planning and historic preservation (EHP) review and to ensure compliance with applicable EHP laws and Executive Orders (EO). These EHP requirements include but are not limited to National Environmental Policy Act, National Historic Preservation Act, Endangered Species Act, EO 11988 – Floodplain Management, EO 11990 – Protection of Wetlands, and EO 12898 – Environmental Justice. The recipient must comply with all Federal, State, and local EHP requirements and obtain applicable permits and clearances.

Recipient shall not undertake any activity from the project that would result in ground disturbance, facility modification, or relates to the use of sonar equipment without the prior approval of FEMA. These include but are not limited to communications towers, physical security enhancements involving ground disturbance, new construction, and modifications to buildings that are 50 years old or older. Recipient must comply with all mitigation or treatment measures required for the project as the result of FEMA’s EHP review. Any changes to an approved project description will require re-evaluation for compliance with EHP requirements before the project can proceed. If ground disturbing activities occur during project implementation, the recipient must ensure monitoring of ground disturbance and if any potential archeological resources are discovered, the recipient will immediately cease construction in that area and notify FEMA and the appropriate State Historical Preservation Office. Initiation of these activities prior to completion of FEMA’s EHP review will result in a non-compliance finding and may not be eligible for grant funding.

G. Sub-recipient shall also comply with all other federal, state, and local laws and regulations applicable to this Sub-recipient agreement’s activities and performances rendered by the Sub-recipient including but not limited to the laws and the regulations promulgated in State Administrative Agency Information Bulletins, and Texas Uniform Grants Management Standards (UGMS).

H. The sub-recipient(s) must, in addition to the assurances, comply and require each of its subcontractors employed in the completion of the project to comply with all applicable statutes, regulations, executive orders, OMB circulars, terms and conditions of the award, and the approved application.

Initial _____ Date _____

Retention and Accessibility of Records

Retention of Records. The Sub-recipient shall maintain fiscal records and supporting documentation for all expenditures of Sub-recipient agreement funds pursuant to the applicable OMB Circular and this Sub-recipient agreement. The Sub-recipient shall retain these records and any supporting documentation for the greater of three (3) years from the completion of this project's public objective, including program requirements and financial obligations, or the period of time required by other applicable laws and regulations. Sub-recipient shall comply with 44 CFR Section 13.42 and UGMS §-___.42

Access to Records. The Sub-recipient shall give the United States Department of Homeland Security (DHS), the Comptroller General of the United States, the Texas State Auditor, DPS/SAA, or any of their duly authorized representatives, access to and the right to examine all books, accounts, records, reports, files, other papers, things or property belonging to or in use by the Sub-recipient pertaining to this Sub-recipient agreement including records concerning the past use of DHS/FEMA funds. Such rights to access shall continue as long as the records are retained by the Sub-recipient. The Sub-recipient agrees to maintain such records in an accessible location and to provide citizens reasonable access to such records consistent with the Texas Public Information Act, , and Texas Government Code Chapter 552.

Inclusion in Subcontracts. The Sub-recipient shall include the substance of this Section in all subcontracts.

Legal Authority

Signatory Authority. The Sub-recipient assures and guarantees that the Sub-recipient possesses the legal authority to enter into this Sub-recipient agreement, receive Sub-recipient agreement funds and to perform the services the Sub-recipient has obligated itself to perform pursuant to this Sub-recipient agreement.

Authorized Representative. The person or persons signing and executing this Sub-recipient agreement on the Sub-recipient's behalf do warrant and guarantee that he, she or they have been duly authorized by the Sub-recipient to execute this Sub-recipient agreement on the Sub-recipient's behalf and to validly and legally bind the Sub-recipient to all contractual terms, performances and provisions.

Conflicts in Requirements. If conflict exists between federal, state, or local requirements, the sub-recipient shall comply with the strictest requirement. .

Notice of Litigation and Claims

The Sub-recipient shall give DPS/SAA immediate notice in writing of any action, including any proceeding before an administrative agency, filed against the Sub-recipient arising out of the performance under this Sub-recipient agreement

Except as otherwise directed by DPS/SAA, the Sub-recipient shall furnish immediately to DPS/SAA copies of all documentation or pleadings received by the Sub-recipient with respect to such action or claim.

Non-Waiver of Defaults

ANY FAILURE OF DPS/SAA, AT ANY TIME, TO ENFORCE OR REQUIRE THE STRICT KEEPING AND PERFORMANCE OF ANY PROVISION OF THIS AGREEMENT WILL NOT CONSTITUTE A WAIVER OF SUCH PROVISION, AND WILL NOT AFFECT OR IMPAIR SAME OR THE RIGHT OF DPS/SAA AT ANY TIME TO AVAIL ITSELF OF SAME. A WAIVER DOES NOT BECOME EFFECTIVE UNLESS DPS/SAA EXPRESSLY AGREES TO SUCH WAIVER IN WRITING. ANY PAYMENT BY DPS/SAA SHALL NOT CONSTITUTE A WAIVER OR OTHERWISE IMPAIR OR PREJUDICE ANY RIGHT, POWER, PRIVILEGE, OR REMEDY AVAILABLE TO DPS/SAA TO ENFORCE ITS RIGHTS, AS SUCH RIGHTS, POWERS, PRIVILEGES, AND REMEDIES ARE SPECIFICALLY PRESERVED.

Indemnity

AS PERMITTED BY LAW, SUB-RECIPIENT SHALL INDEMNIFY, DEFEND AND HOLD DPS/SAA AND THE STATE OF TEXAS (INCLUDING ITS DIRECTORS, COMMISSIONERS, EMPLOYEES, AGENTS AND THEIR SUCCESSORS) ("INDEMNITEES") HARMLESS FROM AND AGAINST ANY OF THE FOLLOWING THAT ARISE OUT OF OR RESULT FROM SUB-RECIPIENT'S NEGLIGENCE (ANY AND ALL), FAULT, ACT, FAILURE TO ACT, OMISSION, BREACH OF THIS AGREEMENT OR VIOLATION OF ANY STATE OR FEDERAL LAW AND/OR REGULATION, AS WELL AS ANY VIOLATION OF ANY MATTER MADE THE BASIS OF A TREATY AND/OR CONVENTION AND/OR AGREEMENT BETWEEN THE UNITED STATES AND ANOTHER NATION: CLAIMS; LAWSUITS; DAMAGES; LIABILITIES; PENALTIES; TAXES; FINES; INTEREST; EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, INVESTIGATION COSTS AND ALL DIRECT OR INDIRECT COSTS OR EXPENSES INCURRED IN DEFENDING AGAINST ANY CLAIM, LAWSUIT, OR OTHER PROCEEDING, INCLUDING THOSE EXPENSES INCURRED IN ANY NEGOTIATION, SETTLEMENT, OR ALTERNATIVE DISPUTE RESOLUTION); ANY AND ALL DAMAGES, HOWEVER CHARACTERIZED, SUCH AS DIRECT, GENERAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, PUNITIVE, OR SPECIAL DAMAGES OF ANY KIND (INCLUDING LOST REVENUES OR PROFITS, LOSS OF BUSINESS, LOSS OF USE, OR LOSS OF DATA) ARISING OUT OF OR IN CONNECTION WITH OR RELATED TO THIS AGREEMENT OR THE RIGHTS PROVIDED THEREIN.

IN ANY AND ALL CLAIMS AGAINST ANY OF THE INDEMNITEES BY ANY EMPLOYEE OF THE SUB-RECIPIENT OR ANY EMPLOYEE OF ITS SUBCONTRACTOR(S), THE INDEMNIFICATION OBLIGATION UNDER THIS AGREEMENT WILL NOT BE LIMITED IN ANY WAY BY THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION, OR BENEFITS PAYABLE BY OR FOR THE SUB-RECIPIENT OR ANY OF ITS SUBCONTRACTOR(S) UNDER WORKER'S DISABILITY COMPENSATION ACTS, DISABILITY BENEFITS ACTS, OR OTHER EMPLOYEE BENEFITS ACTS.

SUB-RECIPIENT SHALL COORDINATE ITS DEFENSE AND ANY SETTLEMENT WITH THE ATTORNEY GENERAL FOR THE STATE OF TEXAS AS REQUESTED BY THE DPS/SAA. IN ANY SETTLEMENT, SUB-RECIPIENT MUST NOT MAKE ANY ADMISSION OF LIABILITY ON THE PART OF ANY OF THE INDEMNITEES.

THIS SECTION SHALL NOT BE CONSTRUED TO ELIMINATE OR REDUCE ANY OTHER INDEMNIFICATION, CONTRIBUTION OR RIGHT WHICH ANY OF THE INDEMNITEES HAVE BY LAW OR EQUITY.

THIS SECTION SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THIS AGREEMENT.

Changes and Amendments

Written Amendment. Except as specifically provided otherwise in this Sub-recipient agreement, any alterations, additions or deletions to this Sub-recipient agreement's terms shall be made through Grant Adjustment Notices generated by the SAA web-based grants management system and executed by the Parties.

Authority to Amend. During the period of this Sub-recipient agreement's performance DPS/SAA and/or FEMA may issue policy directives that serve to establish, interpret or clarify this Sub-recipient agreement's performance requirements. Such policy directives shall be promulgated by DPS/SAA or FEMA in the form of Information Bulletins and shall have the effect of qualifying this Sub-recipient agreement's terms and shall be binding upon the Sub-recipient as if written in the Sub-recipient agreement.

Effect of Changes in Federal and State Laws. Any alterations, additions, or deletions to this Sub-recipient agreement's terms that are required by the changes in federal and state laws or regulations are automatically incorporated into this Sub-recipient agreement without written amendment to this Sub-recipient agreement and shall become effective on the date designated by such law or regulation. . In the event FEMA or DPS/SAA determines that changes are necessary to the award document after an award has been made, including changes to period of performance or terms and conditions, recipients will be notified of the changes in writing. Once notification has been made, any subsequent request for funds will indicate sub-recipient acceptance of the changes to the award.

Initial _____ Date _____

Headings

Headings and captions of this Sub-recipient agreement's sections and paragraphs are only for convenience and reference. These headings and captions shall not affect or modify this Sub-recipient agreement's terms or be used to interpret or assist in the construction of this Sub-recipient agreement.

Venue

For purposes of litigation pursuant to this Sub-recipient agreement, venue shall lie in Travis County, Texas, and be governed by Texas Law.

Initial _____ Date _____

Special Conditions

2010 Operation Stonegarden (OPSG) Specific:

1) The recipient is prohibited from obligating or expending Operation Stonegarden (OPSG) funds provided through this award until each unique, specific or modified county level or equivalent Operational Order/Frag Operations Order with embedded estimated operational budget has been reviewed and approved through an official email notice issued by FEMA removing this special programmatic condition. The Operations Order approval process/structure is as follows: Operations Orders are submitted to (1) the appropriate Customs and Border Protection (CBP) Border Patrol (BP) Sector Headquarters (HQ); upon approval by the Sector HQ, forwarded through the Border Patrol Enforcement Transfer System (BPETS) system to (2) the OPSG Coordinator, CBP/BP Washington, DC and upon approval forwarded to (3) Federal Emergency Management Agency (FEMA), Grant Programs Directorate (GPD), Grant Development and Administration Division (GD&A). Notification of release of programmatic hold will be sent by FEMA via email to the State Administrative Agency (SAA) with a copy to OPSG Coordinator at CBP/BP HQ, Washington DC.

General:

- 1)
 - a) Provisions applicable to a sub-recipient that is a private entity.
 - i) You as a sub-recipient, your employees, may not:
 - (1) Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
 - (2) Procure a commercial sex act during the period of time that the award is in effect: or
 - (3) Use forced labor in the performance of the award or sub-award under this award.
 - ii) We may unilaterally terminate this award, without penalty, if the sub-recipient that is a private entity:
 - (1) Is determined to have violated a prohibition in paragraph 1a of this award term; or
 - (2) Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition of this award term through conduct that is either:
 - (a) Associated with performance under this award; or
 - (b) Imputed to you or the sub-recipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR Part 180, "OMB Guidelines to Agencies on Government Debarment and Suspension (Non-procurement)," as implemented at 2 CFR Part 3000.
 - b) Provisions applicable to a sub-recipient that is other than a private entity. We may unilaterally terminate this award, without penalty, if the sub-recipient that is a private entity:
 - i) Is determined to have violated a prohibition in paragraph 1a of this award term; or
 - ii) Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a1 of this award term through conduct that is either:
 - (1) Associated with performance under this award; or
 - (2) Imputed to you or the sub-recipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR Part 180, "OMB Guidelines to Agencies on Government Debarment and Suspension (Non-procurement)," as implemented at 2 CFR Part 3000.
 - c) Provisions applicable to any recipient:
 - i) You must inform us immediately of any information you received from any source alleging a violation of a prohibition in paragraph a1 of this award term.
 - ii) Our right to terminate unilaterally that is described in 1b or 2 of this section:
 - (1) Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104 (g), and
 - (2) Is in addition to all other remedies for noncompliance that are available to us under this award.

Initial _____ Date _____

- iii) You must include the requirements of 1a of this award term in any sub-award you make to a private entity.
- d) Definitions. For purposes of this award term:
 - i) "Employee" means either:
 - (1) An individual employed by a sub-recipient who is engaged in the performance of the project or program under this award: or
 - (2) Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.
 - ii) "Forced labor" means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
 - iii) "Private entity" means:
 - (1) Any entity other than a State, local government, Indian Tribe, or foreign public entities, as those terms are defined in 2 CFR 175.25.
 - (2) Includes:
 - (a) A non-profit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian Tribe at 2CFR 175.25(b).
 - (b) A for-profit organization
 - iv) "Severe forms of trafficking in persons," "commercial sex act," and "coercion" have the meaning given at section 103 of the TVPA, as amended (22 U.S.C. 7102).

2)

- a) Classified national security information as defined in Executive Order (EO) 12958, as amended, means information that has been determined pursuant to EO 12958 or any predecessor order to require protection against unauthorized disclosure and is marked to indicate its classified status when in documentary form.
- b) No funding under this award shall be used to support a contract, sub-award, or other agreement for goods or services that will include access to classified national security information if the award recipient has not been approved for that access to such information
- c) Where an award recipient has been approved for and has access to classified national security information, no funding under this award shall be used to support a contract, sub-award, or other agreement for goods or services that will include access to classified national security information by the contractor, sub-awardee, or other entity without prior written approval from the DHS Office of Security, Industrial Security Program Branch (ISBP), or an appropriate official within the Federal department or agency with whom the classified effort will be performed.
- d) Such contracts, sub-awards, or other agreements shall be processed and administered in accordance with the DHS " Standard Operation Procedures, Classified Contracting by States and Local Entities," dated July 7, 20089: EO's 12829, 12959, 12968, as amended; the National Industrial Security Program Operating Manual (NISPOM); and /or other applicable implementing directives or instruction. All security requirement documents are located at: <http://www.dhs.gov/xopnbiz/grants/index.shtm>.
- e) Immediately upon determination by the award recipient that funding under this award will be used to support such a contract, sub-award, or other agreement, and prior to execution of any action to facilitate the acquisition of such a contract sub-award, or other agreement, the award recipient shall contact ISPB, or the appropriate Federal department or agency, for approval and processing instructions.

Please fill in the appropriate information and sign.

Type Name of Authorized Official

Title

Sub-recipient Organization

Signature of Authorized Official

Date

Initial _____ Date _____

EXHIBIT A

ASSURANCES - NON-CONSTRUCTION PROGRAMS

As the duly authorized representative of the sub-recipient, I certify that the sub-recipient:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this agreement.
2. Will give the Department of Homeland Security, the Department of Public Safety, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681- 1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee- 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which agreement for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction sub-agreements.
10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93- 205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

Initial _____ Date _____

EXHIBIT B

ASSURANCES - CONSTRUCTION PROGRAMS

As the duly authorized representative of the sub-recipient, I certify that the sub-recipient:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of project described in this agreement.
2. Will give the Department of Homeland Security, the Department of Public Safety, the Comptroller General of the United States and, if appropriate, the State, the right to examine all records, books, papers, or documents related to the assistance; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will not dispose of, modify the use of, or change the terms of the real property title or other interest in the site and facilities without permission and instructions from the awarding agency. Will record the Federal awarding agency directives and will include a covenant in the title of real property acquired in whole or in part with Federal assistance funds to assure nondiscrimination during the useful life of the project.
4. Will comply with the requirements of the assistance awarding agency with regard to the drafting, review and approval of construction plans and specifications.
5. Will provide and maintain competent and adequate engineering supervision at the construction site to ensure that the complete work conforms with the approved plans and specifications and will furnish progressive reports and such other information as may be required by the assistance awarding agency or State.
6. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
7. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
8. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards of merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
9. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.
10. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681 1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which agreement for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the agreement.
11. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal and federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
12. Will comply with the provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
13. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act(40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327- 333) regarding labor standards for federally-assisted construction sub-agreements.
14. Will comply with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.

Initial _____ Date _____

15. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91- 190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).

16. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

17. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq).

18. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

19. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

Please fill in the appropriate information and sign.

Type Name of Authorized Official

Title

Sub-recipient Organization

Signature of Authorized Official

Date

Initial _____ Date _____

Exhibit C

Certifications

The undersigned, _____ (print), as the authorized official of _____ certifies the following to the best of his/her knowledge and belief.

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

B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee or a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL "Disclosure of Lobbying Activities," in accordance with its instructions

C. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontract, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

D. As required by Executive Order 12549, Debarment and Suspension, and implemented at 28C.F.R. Part 67, for prospective participants in primary covered transactions, as defined at 28C.F.R. Part 67, Section 67.510. (Federal Certification) The Sub-recipient certifies that it and its principals and vendors:

1. Are not debarred, suspended, proposed for debarment, declared ineligible, sentenced to a denial of Federal benefits by a State or Federal court, or voluntarily excluded from covered transactions by any Federal department or agency; Sub-recipients can access debarment information by going to www.epls.gov and the State Debarred Vendor List <http://www.window.state.tx.us/prc> http://www.window.state.tx.us/procurement/prog/vendor_performance/debarred/

2. Have not within a three-year period preceding this agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (D)(2) of this certification; and

4. Have not within a three-year period preceding this agreement had one or more public transactions (Federal, State, or local) terminated for cause or default; and

5. Where the sub-recipient is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this agreement. (Federal Certification)

E. The Sub-recipient certifies federal funds will be used to supplement existing funds, and will not replace (supplant) funds that have been appropriated for the same purpose. Sub-recipient may be required to supply documentation certifying that a reduction in non-federal resources occurred for reasons other than the receipt or expected receipt of federal funds.

F. Sub-recipient must comply with 2 CFR Part 180 Subpart C as a condition of receiving grant funds, and sub-recipient must require such compliance in any sub-grants or contract at the next tier.

G. Will comply with all applicable requirements of all other federal laws, executive orders, regulations, program and administrative requirements, policies and any other requirements governing this program.

H. Drug-free Workplace Act, as amended, 41 U.S.C. §701 et seq. – Requires the recipient to publish a statement about its drug-free workplace program and give a copy of the statement to each employee (including consultants and temporary personnel) who will be involved in award-supported activities at any site where these activities will be carried out. Also, place(s) where work is being performed under the award (i.e., street address, city, state, and zip code) must be maintained on file. The recipient must notify the Grants Officer of any employee convicted of a violation of a criminal drug statute that occurs in the workplace. For additional information, see 44 CFR Part 17.

Initial _____ Date _____

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COLLEGE STATION, TEXAS, ACCEPTING THE 2010 HOMELAND SECURITY GRANT ADJUSTMENT NOTICE.

WHEREAS, the Office for Domestic Preparedness, a component of the U.S. Department of Homeland Security, has awarded the Texas Division of Emergency Management (TDEM) the 2010 Homeland Security Grant Adjustment Notice; and

WHEREAS, the Texas Division of Emergency Management (TDEM) has served the City of College Station with a Grant Adjustment Notice for the 2010 Homeland Security Grant Program in the amount of \$55,281.53 to be used in this performance period ending on July 31, 2012; and

WHEREAS, the intent of this Grant Adjustment Notice is to aid in the City's ability to enhance its capacity to prevent, respond to and recover from acts of terrorism and natural disasters; now, therefore,

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

PART 1: That the City Council hereby accepts the Grant Adjustment Notice for the 2010 Homeland Security Grant Program in the amount of \$55,281.53 from the Texas Division of Emergency Management (TDEM).

PART 2: That the City Council hereby authorizes the Mayor to sign agreements with the Governor's Division of Emergency Management and hereby designates said position to receive this award on behalf of the City of College Station.

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

ADOPTED this _____ day of _____, 2013.

ATTEST:

APPROVED:

City Secretary

Mayor

APPROVED:



City Attorney

January 24, 2013
Regular Agenda Item No. 1
Brazos Valley Bowl Report

To: Frank Simpson, Interim City Manager

From: City Manager's Office

Agenda Caption: Presentation, possible action and discussion regarding a report on the Brazos Valley Bowl.

Relationship to Strategic Goals: Diverse Growing Economy

Recommendation(s): Staff recommends that the Council receive the update from Sylvia McMullen, Director of the Brazos Valley Bowl and Kendra Fry of the CVB.

Summary: After the City Council authorized the commitment of \$25,000 from Hotel Occupancy Tax funds, The Brazos Valley Bowl was held at Kyle Field on December1, 2012. Dr. Ted Raspiller, President of the Blinn College Brazos Campuses will be presenting a report on the outcome of the Bowl and the estimated economic impact on the community.

Budget & Financial Summary: \$25,000 from the HOT Fund was included in the FY2013 Budget in the event that the bowl game was awarded to College Station.

Reviewed and Approved by Legal: N/A

Attachments: N/A

January 24, 2013
Regular Agenda Item No. 2
HOT Fund Event Grant Program

To: Frank Simpson, Interim City Manager

From: Randall Heye, Economic Development Analyst

Agenda Caption: Presentation, possible action, and discussion regarding the approval of an agreement with the Bryan-College Station Convention and Visitors Bureau to administer the Hotel Occupancy Tax Fund Event Grant Program.

Relationship to Strategic Goals: Diverse Growing Economy

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

Summary: In 2011 the Bryan-College Station Convention and Visitors Bureau (CVB) engaged The Indigo Resource Group to study how to improve the effectiveness and efficiencies of the hotel occupancy tax (HOT) investments, and then make observations and recommendations to have that happen. The final report was delivered in June 2011, which the CVB then focused on three initiatives: (1) standardize the allocation process for requests to utilize HOT funds, (2) create and implement a way finding master plan, and (3) strengthen stakeholder relationships.

On June 14, 2012 city staff presented to Council an overview of a proposed HOT fund event grant application, review, and approval process in an effort to standardize how allocations are made for use of HOT funds. Staff had worked with the CVB and the City of Bryan staffs to collectively come to agreement for the basics of a standardized program while leaving the actual approval for the use of each City's HOT funds independent of the other. Staff has also worked closely with attorneys for the Texas Hotel & Lodging Association.

This agreement will allow the CVB to effectively and efficiently administer the HOT Fund Event Grant Program to sub-recipients. This is similar to the existing agreement in place between the City and the Arts Council of Brazos Valley.

Budget & Financial Summary: N/A

Reviewed and Approved by Legal: Yes

Attachments:

1. HOT Fund Event Grant Program Agreement will be available at the City Council meeting.

January 24, 2013
Regular Agenda Item No.3
Texas 4-H Roundup HOT Fund Event

To: Frank Simpson, Interim City Manager

From: Randall Heye, Economic Development Analyst

Agenda Caption: Presentation, possible action, and discussion regarding the approval of HOT Funding for the Texas 4-H Roundup.

Relationship to Strategic Goals: Diverse Growing Economy

Recommendation(s): Staff recommends approval.

Summary: The Texas 4-H Roundup is an annual 4-H event for youth between the ages of 11 and 18 that have successfully placed in a qualifying event at the district level or signed up to compete in an invitational event at the state level. The Roundup includes approximately 50 different contests and workshops that test 4-H members on life skills such as decision making, public speaking, organization, and working with others.

In accordance with the proposed HOT Fund Event Grant Program, the CVB has received an application from the Texas 4-H Roundup planning committee for the 2013 Roundup to be held in College Station during June 10-14. The 2012 Roundup was previously held in Lubbock, Texas.

In accordance with the HOT Fund Event Grant Program as approved by the College Station City Council, this request needs Council approval due to the requested amount. The CVB Executive Committee has previously approved the request, and determined that the use of HOT funds will improve the success of the event and positively impact the local hotel industry.

It is estimated the economic impact in College Station will be approximately \$1.1 million; consisting of 4,000 attendees and 2,000 room nights.

Budget & Financial Summary: The Texas 4-H Roundup has requested \$50,000 from the City's Hotel Occupancy Tax fund.

Reviewed and Approved by Legal: N/A

Attachments: N/A

January 24, 2013
Workshop Agenda Item No. 4
Update on Capital Plan

To: Frank Simpson, Interim City Manager

From: Chuck Gilman, PE, PMP, Public Works Director

Agenda Caption: Presentation, possible action, and discussion on an update to the Capital Plan.

Relationship to Strategic Goals: Core Services and Infrastructure

Recommendation(s): Staff requests that the Council receive the update.

Summary: Currently five project managers in the Department of Public Works are managing 57 capital projects. These projects include the design and construction of facilities and infrastructure ranging from roadways and facilities, to parks, pump stations, and pipelines.

This presentation will provide an overview of the active projects (planning through the warranty period), highlights from recently completed projects, and a summary of the status of the projects included in the 2008 bond authorization.

Budget & Financial Summary: N/A

Reviewed and Approved by Legal: No

Attachments: N/A

January 24, 2013
Regular Agenda Item No. 5
Public Utility Easement Abandonment – 2005 Oakwood Trail

To: Frank Simpson, Interim 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 0.07 acre, 15-foot wide public utility easement, which is located on Lot 9R-A of the Sandstone Addition according to the plat recorded in Volume 2685, Page 3164 of the Deed Records of Brazos County, Texas.

Relationship to Strategic Initiatives: N/A

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

Summary: This public utility easement abandonment accommodates future development of the tract. There are no public or private utilities in the subject portion of easement to be abandoned.

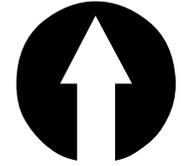
The 0.07 acre, 15-foot wide public utility easement to be abandoned is located on Lot 9R-A of the Sandstone Addition according to the plat recorded in Volume 2685, Page 3164 of the Deed Records of Brazos County, Texas.

Budget & Financial Summary: N/A

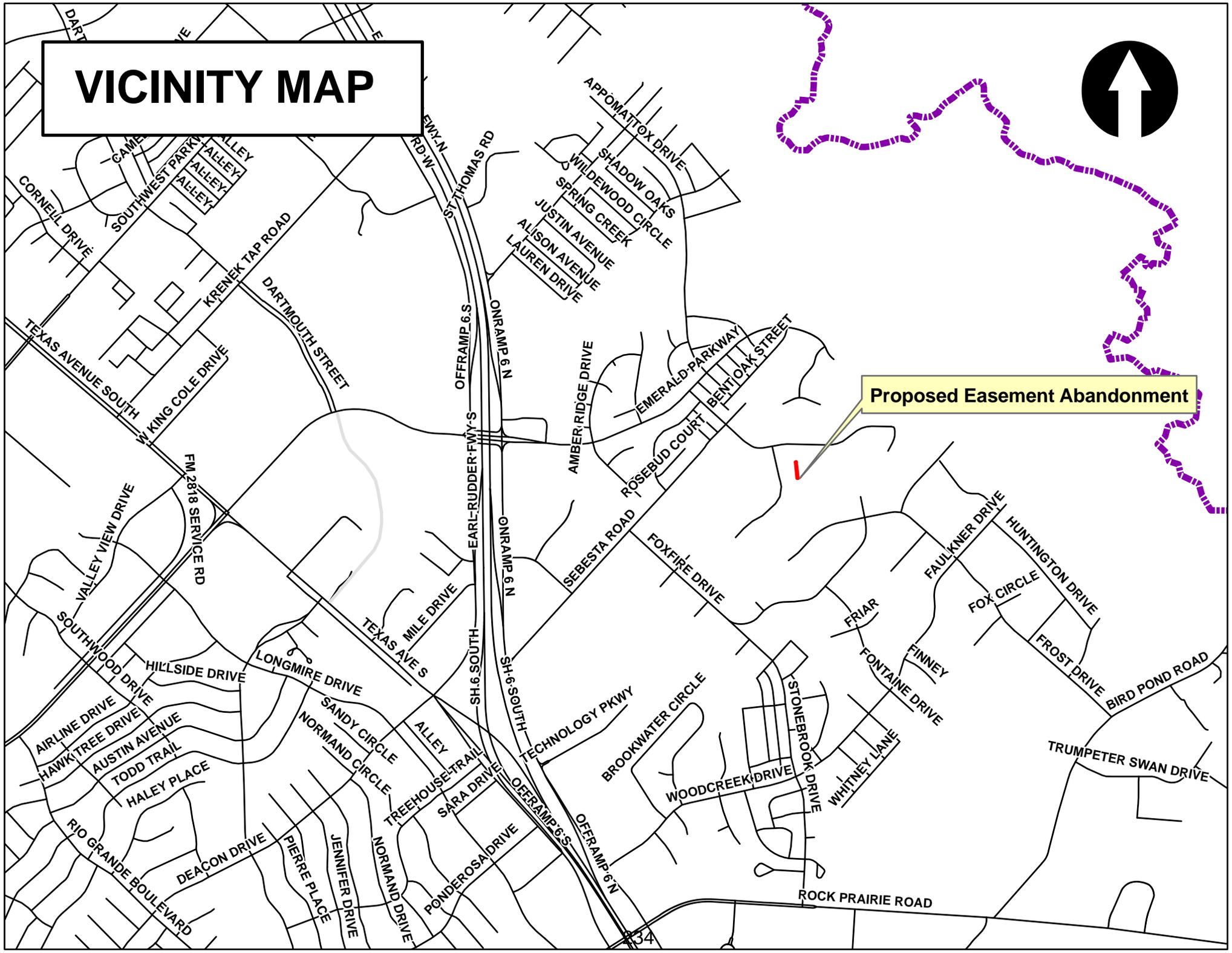
Attachments:

1. Attachment 1 - Vicinity Map
2. Attachment 2 - Location Map
3. Attachment 3 - Ordinance
4. Attachment 4 - Ordinance Exhibit "A"
5. Attachment 5 - Application for Abandonment (On file at the City Engineer's Office)

VICINITY MAP



Proposed Easement Abandonment



LOCATION MAP



SANDSTONE DRIVE

OAKWOOD TRAIL

Proposed Easement Abandonment

ORDINANCE NO. _____

AN ORDINANCE MAKING CERTAIN AFFIRMATIVE FINDINGS AND VACATING AND ABANDONING A 0.07 ACRE PORTION OF THE 15- FOOT WIDTH PUBLIC UTILITY EASEMENT, SAID PORTION LYING ALONG LOT 9R-A, OF THE SANDSTONE ADDITION, ACCORDING TO THE PLAT RECORDED IN VOLUME 2685, PAGE 3164 OF THE OFFICIAL RECORDS OF BRAZOS COUNTY, TEXAS.

WHEREAS, the City of College Station, Texas, has received an application for the vacation and abandonment of a portion of the 15-foot Width Public Utility Easement, said portion lying along Lot 9R-A of the Sandstone Addition, according to the plat recorded in Volume 2685, Page 3164, of the Official Records of Brazos County, Texas, as described in Exhibit "A" attached hereto (such portion hereinafter referred to as the "Easement"); and

WHEREAS, in order for the Easement 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 Easement described in Exhibit "A" attached hereto and made a part of this ordinance for all purposes.

1. Abandonment of the Easement will not result in property that does not have access to public roadways or utilities.
2. There is no public need or use for the Easement.
3. There is no anticipated future public need or use for the Easement.
4. Abandonment of the Easement will not impact access for all public utilities to serve current and future customers.

PART 2: That the Easement as described in Exhibit "A" be abandoned and vacated by the City.

ORDINANCE NO. _____

Page 2

PASSED, ADOPTED and APPROVED this _____ day of _____, 2013.

APPROVED:

NANCY BERRY, Mayor

ATTEST:

SHERRY MASHBURN, City Secretary

APPROVED:



Carla A Robinson
City Attorney

Field Notes
Utility Easement

Being all of that certain tract or parcel of land, lying and being situated in the Morgan Rector League, A-46, College Station, Texas and being a part of lot 9RA, Sandstone Addition, plat recorded in Volume 2685, page 3164, Official Records of Brazos County, Texas and being more particularly described as follows:

COMMENCING; at the most westerly common corner of lots 9RA and 9RB of said Sandstone Addition, same being in the east right of way line of Oakwood Trail;

THENCE: S 85° 47' 43" E – 176.43 feet along the common line between said lots 9RA and 9RB to a point in the south line of a 15.00 foot utility easement for the POINT OF BEGINNING;

THENCE: S 85° 47' 43" E – 15.51 feet continuing along said common line to a point in the east line of said utility easement for corner;

THENCE: S 10° 33' 40" E – 214.06 feet along said east line of said utility easement to a point for corner in the north line of a 15.0 foot utility easement;

THENCE: N 85° 47' 43" W – 15.51 feet along said north line of said utility easement to a point for corner;

THENCE: N 10° 33' 40" W – 214.06 feet along the west line of said utility easement to the PLACE OF BEGINNING; and containing 0.07 acres of land.



A handwritten signature, likely "C. J. Garutt", is written over a circular notary seal. The seal contains the text "NOTARY PUBLIC" and "BRAZOS COUNTY TEXAS".

Field Notes
Utility Easement

Being all of that certain tract or parcel of land, lying and being situated in the Morgan Rector League, A-46, College Station, Texas and being a part of lot 9RA, Sandstone Addition, plat recorded in Volume 2685, page 3164, Official Records of Brazos County, Texas and being more particularly described as follows:

COMMENCING; at the most westerly common corner of lots 9RA and 9RB of said Sandstone Addition, same being in the east right of way line of Oakwood Trail;

THENCE: S 85° 47' 43" E – 176.43 feet along the common line between said lots 9RA and 9RB to a point in the south line of a 15.00 foot utility easement for the POINT OF BEGINNING;

THENCE: S 85° 47' 43" E – 15.51 feet continuing along said common line to a point in the east line of said utility easement for corner;

THENCE: S 10° 33' 40" E – 214.06 feet along said east line of said utility easement to a point for corner in the north line of a 15.0 foot utility easement;

THENCE: N 85° 47' 43" W – 15.51 feet along said north line of said utility easement to a point for corner;

THENCE: N 10° 33' 40" W – 214.06 feet along the west line of said utility easement to the PLACE OF BEGINNING; and containing 0.07 acres of land.



January 24, 2013
Regular Agenda Item No. 6
Right-of-Way Abandonment
College Heights, Block B, Lots 1, 2, 11 & 12

To: Frank Simpson, Interim 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 0.03 acre right-of-way, which is located on Lots 1, 2, 11 & 12 of Block B of the College Heights Subdivision according to the plat recorded in Volume 7623, Page 231 of the Deed Records of Brazos County, Texas.

Relationship to Strategic Initiatives: N/A

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

Summary: This right-of-way abandonment accommodates future development of the tract. A sanitary sewer main exists in the right-of-way as described above and will be removed and relocated by the applicant. The City has received a temporary blanket easement to cover the sanitary sewer removal and relocation.

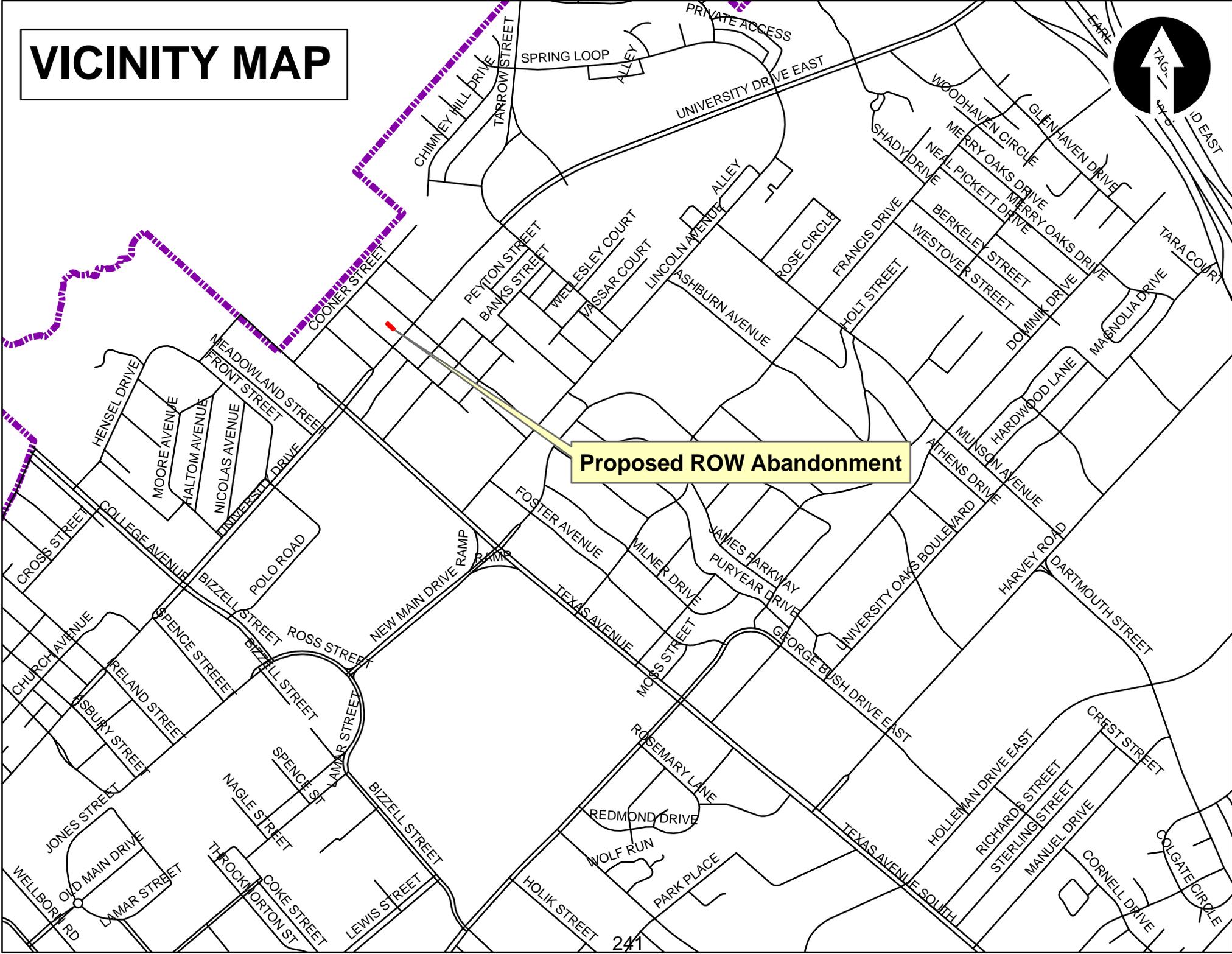
The 0.03 acre, 15-foot wide unimproved public alley to be abandoned is located on Lots 1, 2, 11 & 12 of Block B of the College Heights Subdivision according to the plat recorded in Volume 7623, Page 231 of the Deed Records of Brazos County, Texas.

Budget & Financial Summary: N/A

Attachments:

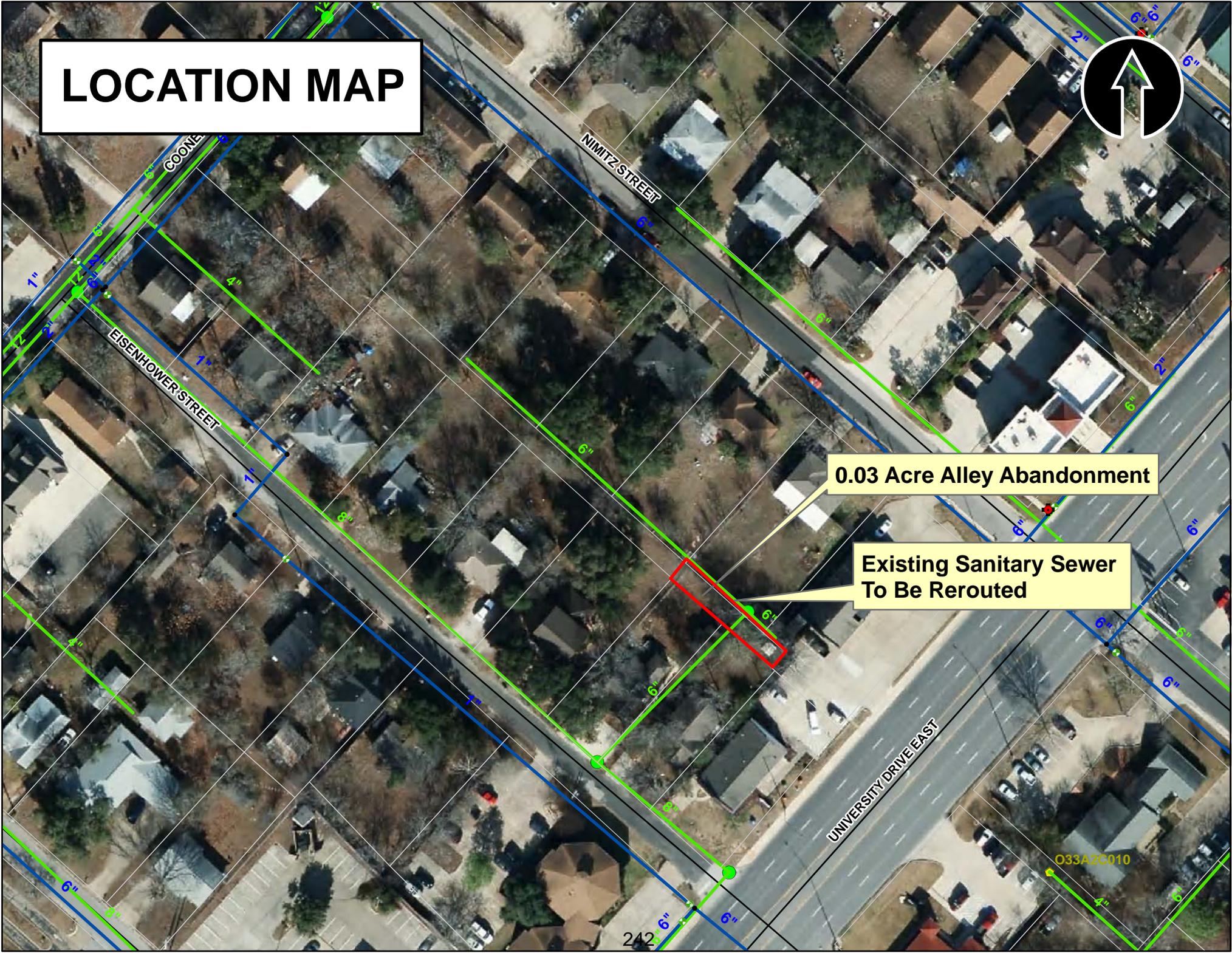
1. Attachment 1 - Vicinity Map
2. Attachment 2 - Location Map
3. Attachment 3 - Ordinance
4. Attachment 4 - Ordinance Exhibit "A"
5. Attachment 5 - Application for Abandonment (On file at the City Engineer's Office)

VICINITY MAP



Proposed ROW Abandonment

LOCATION MAP



0.03 Acre Alley Abandonment

Existing Sanitary Sewer To Be Rerouted

O33A2C010

242

ORDINANCE NO. _____

AN ORDINANCE MAKING CERTAIN AFFIRMATIVE FINDINGS AND VACATING AND ABANDONING A 0.03 ACRE PORTION OF THE 15-FOOT WIDTH RIGHT OF WAY, SAID PORTION LYING ALONG LOTS 1, 2, 11 & 12, BLOCK B, OF THE COLLEGE HEIGHTS SUBDIVISION, ACCORDING TO THE PLAT RECORDED IN VOLUME 7623, PAGE 231 OF THE OFFICIAL RECORDS OF BRAZOS COUNTY, TEXAS.

WHEREAS, the City of College Station, Texas, has received an application for the vacation and abandonment of a portion of the 15-foot Width Right-of-Way, said portion lying along Lots 1, 2, 11 & 12, Block B, of the College Heights Subdivision, according to the plat recorded in Volume 7623, Page 231, 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 as 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; and

PART 2: That the Right-of-Way as described in Exhibit "A" be abandoned and vacated by the City only upon completion of the following conditions:

1. That the Applicant shall provide the City with surety, which will be released upon the complete removal and relocation of the sanitary sewer main in accordance with the approved construction documents.
2. That the Applicant shall, upon completion of the removal and relocation of the sanitary sewer main, convey by separate instrument or plat to the City a public utility easement or right-of-way at the location of said sanitary sewer main, in a form acceptable to the City.

PASSED, ADOPTED and APPROVED this _____ day of _____, 2013.

APPROVED:

NANCY BERRY, Mayor

ATTEST:

SHERRY MASHBURN, City Secretary

APPROVED:



Carla A. Robinson
City Attorney

ALLEY

**METES AND BOUNDS DESCRIPTION
OF A
0.03 ACRE TRACT
PORTION OF 15' ALLEY, BLOCK 'B'
COLLEGE HEIGHTS
COLLEGE STATION, BRAZOS COUNTY, TEXAS**

METES AND BOUNDS DESCRIPTION OF ALL THAT CERTAIN TRACT OF LAND LYING AND BEING SITUATED IN COLLEGE STATION, BRAZOS COUNTY, TEXAS. SAID TRACT BEING A PORTION OF A 15' ALLEY, BLOCK 'B', COLLEGE HEIGHTS ACCORDING TO THE PLAT RECORDED IN VOLUME 124, PAGE 259 OF THE DEED RECORDS OF BRAZOS COUNTY, TEXAS.

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

BEGINNING AT A POINT ON THE SOUTHWEST LINE OF SAID ALLEY MARKING THE NORTH CORNER OF LOT 11 AND THE EAST CORNER OF LOT 10 OF SAID BLOCK 'B'. FOR REFERENCE, A 5/8 INCH IRON ROD FOUND ON THE NORTHEAST LINE OF EISENHOWER STREET MARKING THE COMMON CORNER OF SAID LOTS 10 AND 11 BEARS: S 41° 24' 06" W FOR A DISTANCE OF 137.50 FEET (PLAT CALL AND MEASURED DISTANCE);

THENCE: N 41° 24' 06" E THROUGH SAID ALLEY FOR A DISTANCE OF 15.00 FEET TO A POINT MARKING THE WEST CORNER OF LOT 2 AND THE SOUTH CORNER OF LOT 3 OF SAID BLOCK 'B'. FOR REFERENCE, A 3/4 INCH IRON ROD FOUND ON THE SOUTHWEST LINE OF NIMITZ STREET MARKING THE COMMON CORNER OF SAID LOTS 2 AND 3 BEARS: N 41° 24' 06" E FOR A DISTANCE OF 137.73 FEET (PLAT CALL DISTANCE: 137.50 FEET);

THENCE: S 49° 36' 26" E ALONG THE SOUTHWEST LINE OF SAID LOT 2, AT 75.05 FEET PASS A 1/2 INCH IRON ROD FOUND MARKING THE NORTHWEST CORNER OF A CALLED 0.316 ACRE TRACT OF LAND AS DESCRIBED BY A DEED TO KALGROUP PROPERTIES, LP RECORDED IN VOLUME 8579, PAGE 45 OF THE OFFICIAL PUBLIC RECORDS OF BRAZOS COUNTY, TEXAS, CONTINUE ON ALONG THE SOUTHWEST LINE OF SAID 0.316 ACRE TRACT FOR A TOTAL DISTANCE OF 100.00 FEET TO A POINT MARKING THE EAST CORNER OF THIS HEREIN DESCRIBED TRACT;

THENCE: S 41° 23' 53" W CONTINUING ALONG THE SOUTHWEST LINE OF SAID 0.316 ACRE TRACT FOR A DISTANCE OF 15.00 FEET TO A POINT ON THE NORTHEAST LINE OF LOT 12 OF SAID BLOCK 'B' MARKING THE SOUTHWEST CORNER OF SAID 0.316 ACRE TRACT AND THE NORTH CORNER OF A CALLED 0.213 ACRE TRACT OF LAND AS DESCRIBED BY A DEED TO 303A PROPERTIES, LLC RECORDED IN VOLUME 8579 PAGE 27 OF THE OFFICIAL PUBLIC RECORDS OF BRAZOS COUNTY, TEXAS. FOR REFERENCE, A 1/2 INCH IRON ROD FOUND ON THE NORTHWEST LINE OF UNIVERSITY DRIVE MARKING THE EAST CORNER OF SAID LOT 12 BEARS: S 49° 36' 26" E FOR A DISTANCE OF 67.53 FEET (DEED CALL DISTANCE: 67.50 FEET, 8579/27);

THENCE: N 49° 36' 26" W ALONG THE NORTHEAST LINE OF SAID LOTS 11 AND 12 FOR A DISTANCE OF 100.00 FEET TO THE **POINT OF BEGINNING** CONTAINING 0.03 OF AN ACRE OF LAND (1500 SQ. FT.), AS SURVEYED ON THE GROUND JULY, 2012. SEE PLAT PREPARED NOVEMBER, 2012, FOR MORE DESCRIPTIVE INFORMATION. BEARING SYSTEM SHOWN HEREIN IS BASED ON GRID NORTH AS ESTABLISHED BY GPS OBSERVATION.

BRAD KERR
REGISTERED PROFESSIONAL
LAND SURVEYOR No. 4502

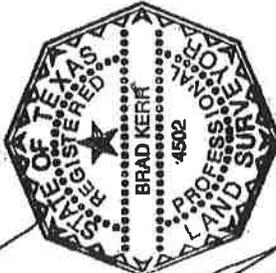
C:/WORK/MAB/12-456A



SURVEY PLAT
 OF A
 0.03 ACRE TRACT
 PORTION OF
 15' ALLEY, BLOCK 'B'
 COLLEGE HEIGHTS
 VOLUME 124, PAGE 259
 COLLEGE STATION, BRAZOS COUNTY, TEXAS

SCALE: 1" = 20 FEET
 SURVEY DATE: JULY, 2012
 PLAT DATE: 11-15-12
 JOB NUMBER: 12-456
 CAD NAME: 12-456A

CRS FILE: PASLER (cont); 12-456 (job)
 PREPARED BY: KERR SURVEYING, LLC
 409 N TEXAS AVENUE
 BRYAN, TEXAS 77803
 PHONE (979) 268-3195



N/F
 KALGROUP PROPERTIES, LP
 CALLED 0.316 ACRE TRACT
 8579/45

N/F
 303A PROPERTIES, LLC
 CALLED 0.213 ACRE TRACT
 8579/27

1/2 INCH IRON
 ROD FOUND - CM

UNIVERSITY DRIVE
 R.O.W. VARIES

PORTION OF
 15' ALLEY
 DEED CALL DISTANCE: 67.53' MEASURED

SCALE: 1" = 20'



3/4 INCH IRON ROD FOUND (CM)
 BEARS: N 41°24'06" E 157.73'
 (PLAT CALL DISTANCE: 157.50')

N/F
 KALGROUP PROPERTIES, LP
 CALLED 0.24 ACRE PORTION
 OF LOT 2, BLOCK 'B'
 8841/166

LOT 2
 BLOCK 'B'

S 49°36'26" E 100.00'
 75.08'
 0.03 ACRE TRACT
 1500 SQ. FT.
 PORTION OF 15' ALLEY, BLOCK 'B'

LOT 1
 BLOCK 'B'

1/2 INCH IRON
 ROD FOUND - CM

N/F
 303A PROPERTIES, LLC
 CALLED 0.16 ACRE TRACT
 PORTION OF LOTS 11
 AND 12, BLOCK 'B'
 8827/243

1/2 INCH IRON ROD FOUND (CM)
 BEARS: S 41°24'06" E 157.73'
 (DEED CALL DISTANCE: 157.50')

LOT 12
 BLOCK 'B'

LOT 11
 LOT 12

LOT 3
 BLOCK 'B'

REMAINDER OF
 15' ALLEY

POINT OF
 BEGINNING

LOT 10
 BLOCK 'B'

5/8 INCH IRON ROD FOUND (CM)
 BEARS: S 41°24'06" W 137.50'
 (PLAT CALL AND MEASURED DISTANCE)

LOT 11
 BLOCK 'B'

N/F
 303A PROPERTIES, LLC
 0.162 ACRE PORTION
 OF LOT 11, BLOCK 'B'
 8846/38

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

CM - CONTROLLING MONUMENT FOUND AND
 USED TO ESTABLISH PROPERTY LINES.

SEE METES AND BOUNDS PREPARED NOVEMBER,
 2012, FOR MORE DESCRIPTIVE INFORMATION.

LINE	BEARING	DISTANCE
L1	N 41°24'06" E	15.00'
L2	S 41°23'53" W	15.00'

January 24, 2013
Regular Agenda Item No. 7
Public Utility Easement Abandonment
College Heights, Block B, Lots 1 & 12

To: Frank Simpson, Interim 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 0.02 acre public utility easement, which is located on Lots 1 & 12 of Block B of the College Heights Subdivision according to the plat recorded in Volume 7623, Page 231 of the Deed Records of Brazos County, Texas.

Relationship to Strategic Initiatives: N/A

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

Summary: This public utility easement abandonment accommodates future development of the tract. There are no public or private utilities in the subject portion of the easement to be abandoned.

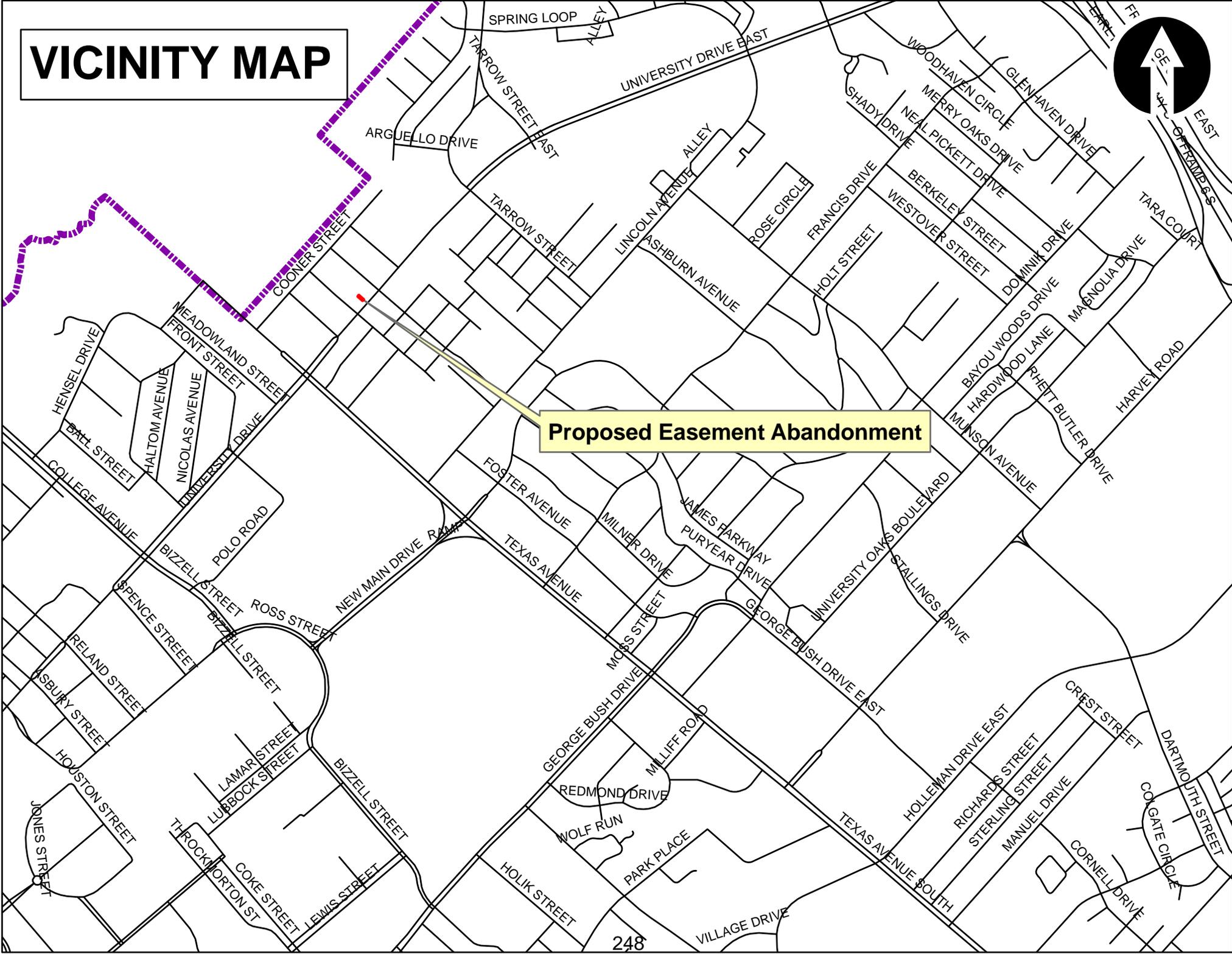
The 0.02 acre, 15-foot wide public utility easement to be abandoned is located on Lots 1 & 12 of Block B of the College Heights Subdivision according to the plat recorded in Volume 7623, Page 231 of the Deed Records of Brazos County, Texas.

Budget & Financial Summary: N/A

Attachments:

1. Attachment 1 - Vicinity Map
2. Attachment 2 - Location Map
3. Attachment 3 - Ordinance
4. Attachment 4 - Ordinance Exhibit "A"
5. Attachment 5 - Application for Abandonment (On file at the City Engineer's Office)

VICINITY MAP

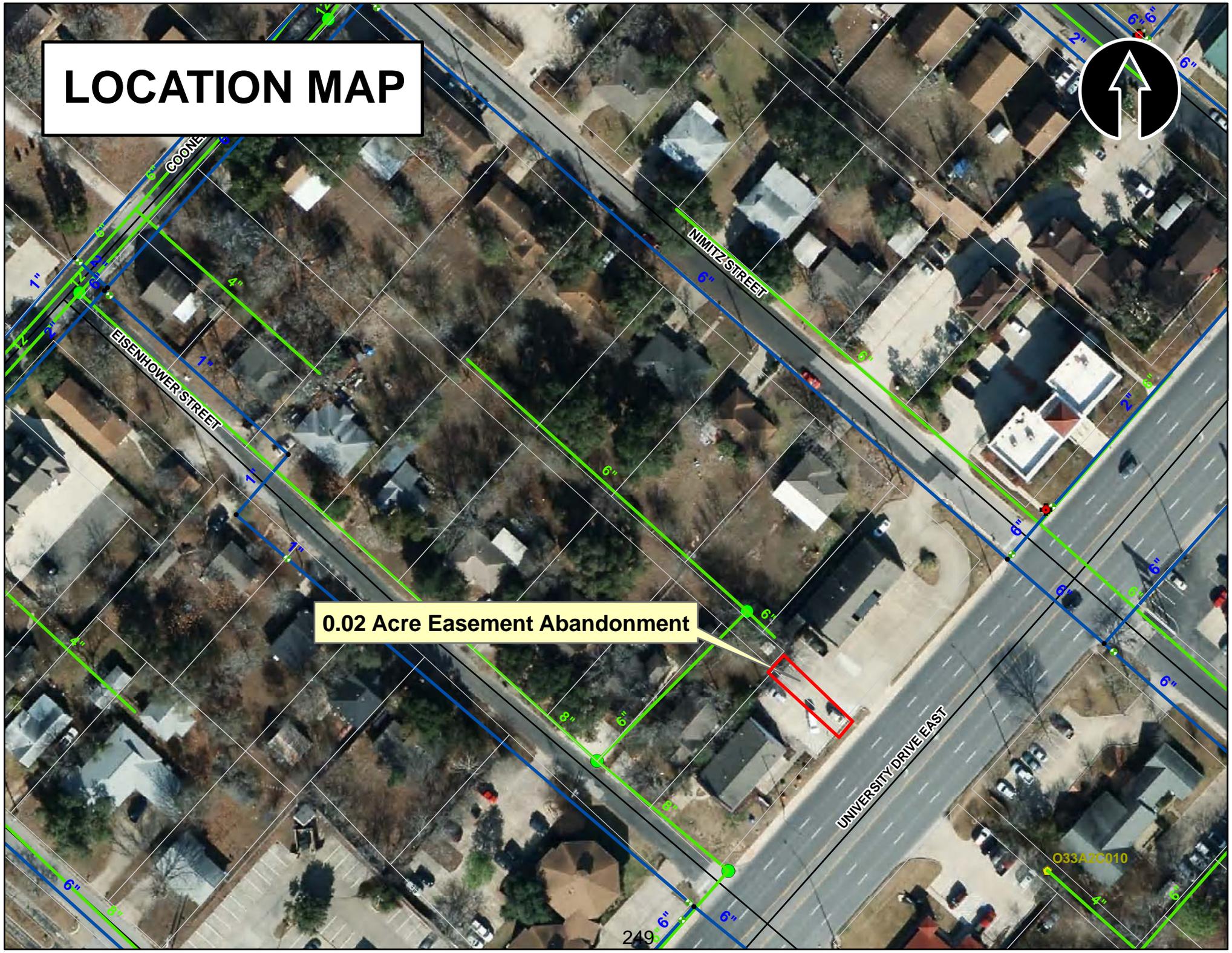


Proposed Easement Abandonment

LOCATION MAP



0.02 Acre Easement Abandonment



ORDINANCE NO. _____

AN ORDINANCE MAKING CERTAIN AFFIRMATIVE FINDINGS AND VACATING AND ABANDONING A 0.02 ACRE, 15-FOOT WIDTH PUBLIC UTILITY EASEMENT, LYING ALONG LOTS 1 & 12, BLOCK B, OF THE COLLEGE HEIGHTS SUBDIVISION, ACCORDING TO THE PLAT RECORDED IN VOLUME 7623, PAGE 231 OF THE OFFICIAL RECORDS OF BRAZOS COUNTY, TEXAS.

WHEREAS, the City of College Station, Texas, has received an application for the vacation and abandonment of the 15-foot Width Public Utility Easement lying along Lots 1 & 12, Block B, of the College Heights Subdivision, according to the plat recorded in Volume 7623, Page 231, of the Official Records of Brazos County, Texas, as described in Exhibit "A" attached hereto (such portion hereinafter referred to as the "Easement"); and

WHEREAS, in order for the Easement 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 Easement described in Exhibit "A" attached hereto and made a part of this ordinance for all purposes.

1. Abandonment of the Easement will not result in property that does not have access to public roadways or utilities.
2. There is no public need or use for the Easement;
3. There is no anticipated future public need or use for the Easement;
4. Abandonment of the Easement will not impact access for all public utilities to serve current and future customers;

PART 2: That the Easement described above and in Exhibit "A" attached hereto be abandoned and vacated by the City.

ORDINANCE NO. _____

Page 2

PASSED, ADOPTED and APPROVED this _____ day of _____, 2013.

APPROVED:

NANCY BERRY, Mayor

ATTEST:

SHERRY MASHBURN, City Secretary

APPROVED:



Carla A. Robinson
City Attorney

EASEMENT

**METES AND BOUNDS DESCRIPTION
OF A
15' WIDE UTILITY EASEMENT
PORTION OF 15' ALLEY, BLOCK 'B'
COLLEGE HEIGHTS
COLLEGE STATION, BRAZOS COUNTY, TEXAS**

METES AND BOUNDS DESCRIPTION OF ALL THAT CERTAIN TRACT OF LAND LYING AND BEING SITUATED IN COLLEGE STATION, BRAZOS COUNTY, TEXAS. SAID TRACT BEING A PORTION OF A 15' ALLEY, BLOCK 'B', COLLEGE HEIGHTS ACCORDING TO THE PLAT RECORDED IN VOLUME 124, PAGE 259 OF THE DEED RECORDS OF BRAZOS COUNTY, TEXAS AND A PORTION OF A CALLED 0.316 ACRE TRACT OF LAND AS DESCRIBED BY A DEED TO KALGROUP PROPERTIES, LP RECORDED IN VOLUME 8579, PAGE 45 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 NORTHWEST LINE OF UNIVERSITY DRIVE MARKING THE SOUTH CORNER OF SAID 0.316 ACRE TRACT AND THE EAST CORNER OF A CALLED 0.213 ACRE PORTION OF LOT 12, BLOCK 'B' AS DESCRIBED BY A DEED TO 303A PROPERTIES, LLC RECORDED IN VOLUME 8579, PAGE 27 OF THE OFFICIAL PUBLIC RECORDS OF BRAZOS COUNTY, TEXAS. FOR REFERENCE, A ½ INCH IRON ROD FOUND MARKING THE SOUTH CORNER OF SAID LOT 12 BEARS: S 41° 21' 48" W FOR A DISTANCE OF 137.40 FEET (PLAT CALL DISTANCE: 137.50 FEET);

THENCE: N 49° 36' 26" W ALONG THE NORTHEAST LINE OF SAID LOT 12 FOR A DISTANCE OF 67.53 FEET (DEED CALL DISTANCE: 67.50 FEET, 8579/27) TO A POINT MARKING THE NORTH CORNER OF SAID 0.213 ACRE TRACT. FOR REFERENCE, A ½ INCH IRON ROD FOUND ON THE NORTHEAST LINE OF EISENHOWER STREET MARKING THE WEST CORNER OF SAID 0.213 ACRE TRACT BEARS: S 41° 21' 48" W FOR A DISTANCE OF 137.44 FEET (DEED CALL DISTANCE: 137.50 FEET, 8579/27);

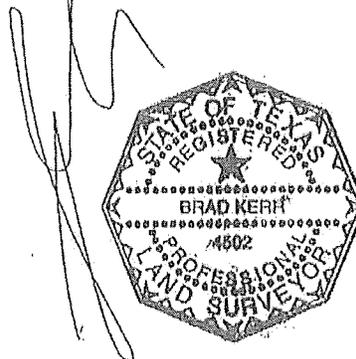
THENCE: N 41° 23' 53" E THROUGH SAID ALLEY AND ALONG THE WEST LINE OF SAID 0.316 ACRE TRACT FOR A DISTANCE OF 15.00 FEET TO A POINT ON THE SOUTHWEST LINE OF LOT 1 OF SAID BLOCK 'B'. FOR REFERENCE, A ½ INCH IRON ROD FOUND MARKING THE NORTHWEST CORNER OF SAID 0.316 ACRE TRACT BEARS: N 49° 36' 26" W FOR A DISTANCE OF 24.96 FEET;

THENCE: S 49° 36' 26" E ALONG THE SOUTHWEST LINE OF SAID LOT 1 AND THROUGH SAID 0.316 ACRE TRACT FOR A DISTANCE OF 67.53 FEET TO A POINT ON THE NORTHWEST LINE OF UNIVERSITY DRIVE MARKING THE SOUTH CORNER OF SAID LOT 1. FOR REFERENCE, A ½ INCH IRON ROD FOUND MARKING THE EAST CORNER OF SAID LOT 1 BEARS: N 41° 23' 53" E FOR A DISTANCE OF 137.76 FEET (PLAT CALL DISTANCE: 137.50 FEET);

THENCE: S 41° 23' 53" W ALONG THE NORTHWEST LINE OF UNIVERSITY DRIVE FOR A DISTANCE OF 15.00 FEET TO THE POINT OF BEGINNING CONTAINING 0.02 OF AN ACRE OF LAND (1013 SQ. FT.), AS SURVEYED ON THE GROUND JULY, 2012. SEE PLAT PREPARED NOVEMBER, 2012, FOR MORE DESCRIPTIVE INFORMATION. BEARING SYSTEM SHOWN HEREIN IS BASED ON GRID NORTH AS ESTABLISHED BY GPS OBSERVATION.

BRAD KERR
REGISTERED PROFESSIONAL
LAND SURVEYOR No. 4502

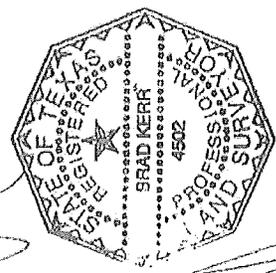
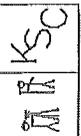
C:/WORK/MAB/12-456B



SURVEY PLAT

OF A
15' WIDE UTILITY EASEMENT
 PORTION OF
15' ALLEY, BLOCK 'B'
 COLLEGE HEIGHTS
 VOLUME 124, PAGE 259
 COLLEGE STATION, BRAZOS COUNTY, TEXAS

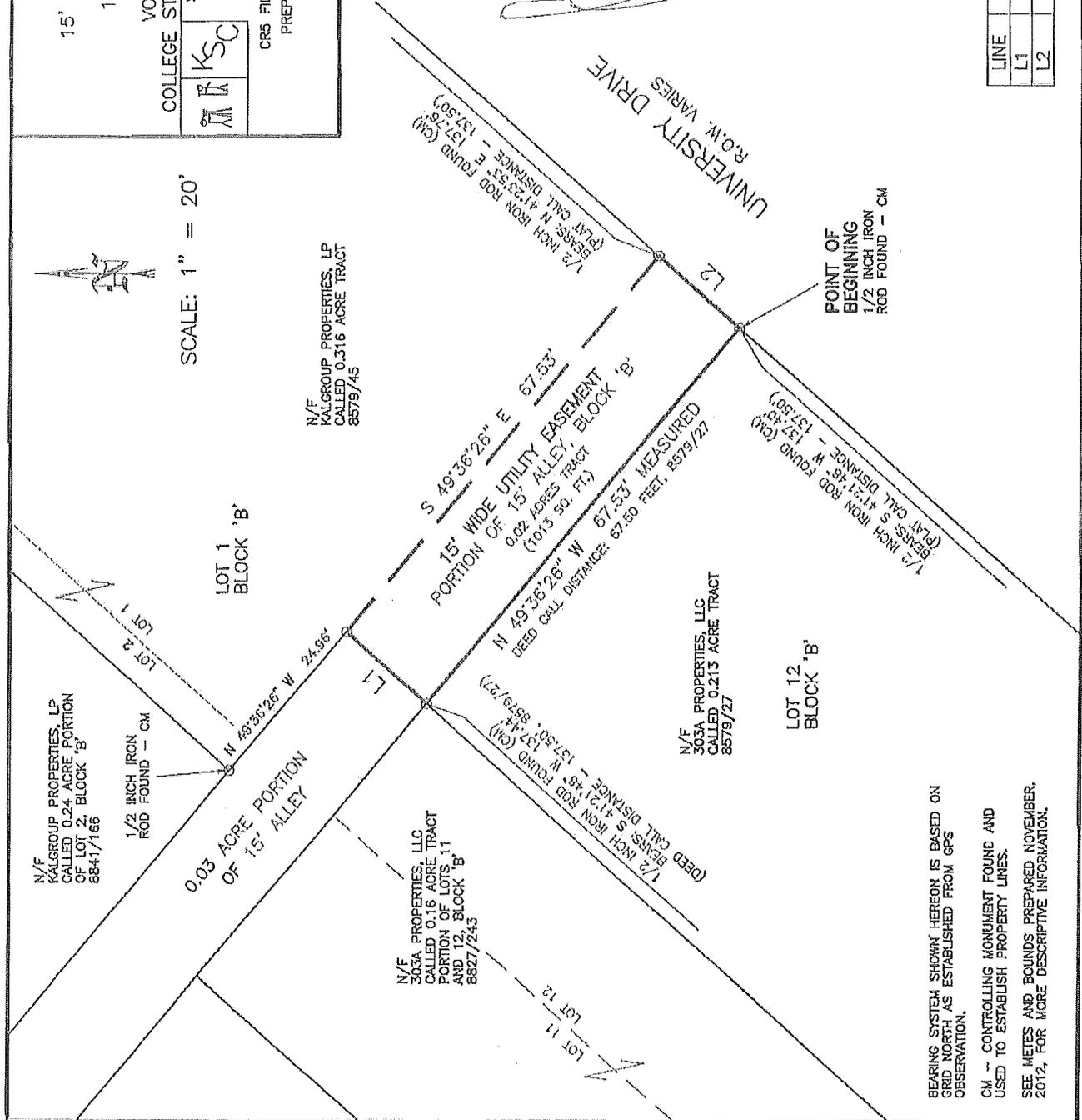
SCALE: 1 INCH = 20 FEET
 SURVEY DATE: JULY, 2012
 PLAT DATE: 11-15-12
 JOB NUMBER: 12-456
 CAD. NAME: 12-456B
 CRS FILE: PASLER (cont); 12-456 (job)
 PREPARED BY: KERR SURVEYING, LLC
 409 N. TEXAS AVENUE
 BRYAN, TEXAS 77803
 PHONE: (979) 266-3195



LINE	BEARING	DISTANCE
L1	N 41°23'53" E	15.00'
L2	S 41°23'53" W	15.00'



SCALE: 1" = 20'



BEARING SYSTEM SHOWN HEREON IS BASED ON GRID NORTH AS ESTABLISHED FROM GPS OBSERVATION.
 CM -- CONTROLLING MONUMENT FOUND AND USED TO ESTABLISH PROPERTY LINES.
 SEE METES AND BOUNDS PREPARED NOVEMBER, 2012, FOR MORE DESCRIPTIVE INFORMATION.

EASEMENT

**METES AND BOUNDS DESCRIPTION
OF A
15' WIDE UTILITY EASEMENT
PORTION OF 15' ALLEY, BLOCK 'B'
COLLEGE HEIGHTS
COLLEGE STATION, BRAZOS COUNTY, TEXAS**

METES AND BOUNDS DESCRIPTION OF ALL THAT CERTAIN TRACT OF LAND LYING AND BEING SITUATED IN COLLEGE STATION, BRAZOS COUNTY, TEXAS. SAID TRACT BEING A PORTION OF A 15' ALLEY, BLOCK 'B', COLLEGE HEIGHTS ACCORDING TO THE PLAT RECORDED IN VOLUME 124, PAGE 259 OF THE DEED RECORDS OF BRAZOS COUNTY, TEXAS AND A PORTION OF A CALLED 0.316 ACRE TRACT OF LAND AS DESCRIBED BY A DEED TO KALGROUP PROPERTIES, LP RECORDED IN VOLUME 8579, PAGE 45 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 NORTHWEST LINE OF UNIVERSITY DRIVE MARKING THE SOUTH CORNER OF SAID 0.316 ACRE TRACT AND THE EAST CORNER OF A CALLED 0.213 ACRE PORTION OF LOT 12, BLOCK 'B' AS DESCRIBED BY A DEED TO 303A PROPERTIES, LLC RECORDED IN VOLUME 8579, PAGE 27 OF THE OFFICIAL PUBLIC RECORDS OF BRAZOS COUNTY, TEXAS. FOR REFERENCE, A ½ INCH IRON ROD FOUND MARKING THE SOUTH CORNER OF SAID LOT 12 BEARS: S 41° 21' 48" W FOR A DISTANCE OF 137.40 FEET (PLAT CALL DISTANCE: 137.50 FEET);

THENCE: N 49° 36' 26" W ALONG THE NORTHEAST LINE OF SAID LOT 12 FOR A DISTANCE OF 67.53 FEET (DEED CALL DISTANCE: 67.50 FEET, 8579/27) TO A POINT MARKING THE NORTH CORNER OF SAID 0.213 ACRE TRACT. FOR REFERENCE, A ½ INCH IRON ROD FOUND ON THE NORTHEAST LINE OF EISENHOWER STREET MARKING THE WEST CORNER OF SAID 0.213 ACRE TRACT BEARS: S 41° 21' 48" W FOR A DISTANCE OF 137.44 FEET (DEED CALL DISTANCE: 137.50 FEET, 8579/27);

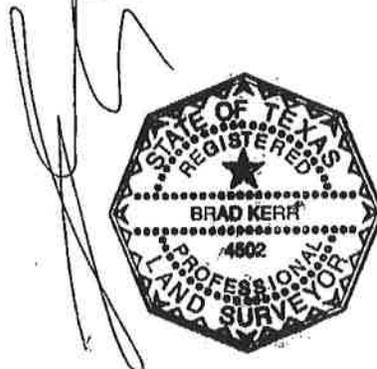
THENCE: N 41° 23' 53" E THROUGH SAID ALLEY AND ALONG THE WEST LINE OF SAID 0.316 ACRE TRACT FOR A DISTANCE OF 15.00 FEET TO A POINT ON THE SOUTHWEST LINE OF LOT 1 OF SAID BLOCK 'B'. FOR REFERENCE, A ½ INCH IRON ROD FOUND MARKING THE NORTHWEST CORNER OF SAID 0.316 ACRE TRACT BEARS: N 49° 36' 26" W FOR A DISTANCE OF 24.96 FEET;

THENCE: S 49° 36' 26" E ALONG THE SOUTHWEST LINE OF SAID LOT 1 AND THROUGH SAID 0.316 ACRE TRACT FOR A DISTANCE OF 67.53 FEET TO A POINT ON THE NORTHWEST LINE OF UNIVERSITY DRIVE MARKING THE SOUTH CORNER OF SAID LOT 1. FOR REFERENCE, A ½ INCH IRON ROD FOUND MARKING THE EAST CORNER OF SAID LOT 1 BEARS: N 41° 23' 53" E FOR A DISTANCE OF 137.76 FEET (PLAT CALL DISTANCE: 137.50 FEET);

THENCE: S 41° 23' 53" W ALONG THE NORTHWEST LINE OF UNIVERSITY DRIVE FOR A DISTANCE OF 15.00 FEET TO THE POINT OF BEGINNING CONTAINING 0.02 OF AN ACRE OF LAND (1013 SQ. FT.), AS SURVEYED ON THE GROUND JULY, 2012. SEE PLAT PREPARED NOVEMBER, 2012, FOR MORE DESCRIPTIVE INFORMATION. BEARING SYSTEM SHOWN HEREIN IS BASED ON GRID NORTH AS ESTABLISHED BY GPS OBSERVATION.

BRAD KERR
REGISTERED PROFESSIONAL
LAND SURVEYOR No. 4502

C:/WORK/MAB/12-456B



November 19, 2012
Regular Agenda Item No. 8
Joint Relief Funding Review Committee Appointment

To: Frank Simpson, Interim City Manager

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

Agenda Caption: Presentation, possible action, and discussion on an appointment to the Joint Relief Funding Review Committee.

Relationship to Strategic Goals: Diverse Growing Economy

Recommendation(s): N/A

Summary: A vacancy currently exists on the Joint Relief Funding Review Committee. Advertising for applicants to fill the vacancy began in mid-November. The deadline to receive applications was December 24, 2012. Staff received one application for the Joint Relief Funding Review Committee.

The Joint Relief Funding Review Committee (JRFRC) meets on a weekly basis in April and May to review applications received from local non-profit agencies for Community Development Block Grant Public Service funding. The JRFRC makes funding allocation recommendations that will be included in the Community Development Action Plan and presented to City Council for approval prior to August 16th.

Budget & Financial Summary: N/A

Attachments:

1. Applications Received