



# College Station, TX

City Hall  
1101 Texas Ave  
College Station, TX 77840

## Meeting Agenda - Final

### City Council Regular

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**Thursday, March 10, 2016**

**7:00 PM**

**City Hall Council Chambers**

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

#### **Presentation:**

Presentation of award of Executive Fire Officer Designation to Battalion Chief Christopher Kelly for the completion of The National Fire Academy capstone program.

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.

- 2a. [16-0133](#) Presentation, possible action, and discussion of minutes for:
- February 25, 2016 Workshop
  - February 25, 2016 Regular Meeting

**Sponsors:** Mashburn

**Attachments:** [WKSHPO22516 DRAFT Minutes](#)  
[RM022516 DRAFT Minutes](#)

- 2b. [15-0398](#) Presentation, possible action, and discussion regarding a resolution approving an Advanced Funding Agreement with the State of Texas acting through the Texas Department of Transportation ("TxDot") authorizing the contribution of \$450,000 to

TxDOT for improvements to Farm to Market Road 2154 (aka Wellborn Road) at its intersection with Greens Prairie Trail Road within the City limits.

**Sponsors:**

Harmon

**Attachments:**

[Rev 02122016 Partially Execute AFA\\_FM2154\\_0540-04-072\\_CoCS.pdf](#)  
[Project Map.pdf](#)  
[2 RES TXDOT .docx](#)

2c. [16-0119](#)

Presentation, possible action, and discussion on a Public Highway At-Grade Crossing Agreement between Union Pacific Railroad, Brazos County and the City of College Station which will allow College Station to operate & maintain an At-Grade Crossing at Greens Prairie Trail contingent on Brazos County closing its At-Grade Crossings at Wade and Straub.

**Sponsors:**

Harmon

**Attachments:**

[2908-58 5New At-Grade rev\(3-1-13\).pdf](#)  
[Project Map.pdf](#)

2d. [16-0102](#)

Presentation, possible action, and discussion of an interlocal agreement with Blinn College for the City Fire Department to provide clinical sites to Blinn EMS students.

**Sponsors:**

Hurt

**Attachments:**

[K CS Fire Dept. Affil Agreement 4..pdf](#)

2e. [16-0117](#)

Presentation, possible action, and discussion regarding the award of Bid 16-044 to Techline, Inc. in the amount of \$58,670 for the purchase of Cleaveland Price Motor Operators.

**Sponsors:**

Crabb

**Attachments:**

[Tabulation.pdf](#)

2f. [16-0118](#)

Presentation, possible action, and discussion on the first amendment to the FY16 Arts Council of the Brazos Valley Hotel Occupancy Tax Funding Agreement in the amount of \$386,400 for Affiliate funding and Annual Program and Marketing funding.

**Sponsors:**

Kersten

**Attachments:**

[ACBV Funding Agreement Amend](#)

2g. [16-0120](#)

Presentation, possible action, and discussion regarding a Professional Services Contract (Contract No. 16300289) with Binkley & Barfield, Inc. in the amount of \$1,013,360 for the professional engineering services related to the design of the Holleman South Widening Project.

**Sponsors:** Harmon

**Attachments:** [HollemanProjectLocation.pdf](#)

- 2h. [16-0121](#) Presentation, possible action, and discussion regarding a contract (Contract No. 15-157-2) with Iteris Inc. to purchase services, equipment, and maintenance of hardware and software associated with the second year (FY16) of the implementation plan. The total cost of this contract is not to exceed \$811,413.

**Sponsors:** Rother

**Attachments:** [Iteis Agreement 2-26-16](#)

## 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. [16-0131](#) Public Hearing, presentation, possible action, and discussion regarding an ordinance amending the Comprehensive Plan - Future Land Use & Character Map from Business Park to Urban and General Commercial for approximately 17 acres located at 4098 Raymond Stotzer Parkway, more generally located at the corner of Turkey Creek Road and Raymond Stotzer Parkway frontage road.

**Sponsors:** Bombek

**Attachments:**      [Amendment Map](#)  
[Background](#)  
[Aerial](#)  
[Ordinance](#)

2.    [16-0132](#)      Public Hearing, presentation, possible action, and discussion regarding an ordinance amending Chapter 12, "Unified Development Ordinance," Section 12-4.2, "Official Zoning Map," of the Code of Ordinances of the City of College Station, Texas by changing the zoning district boundaries from R Rural to MF Multi-Family and GC General Commercial for approximately 17.788 acres lying and being situated in the John H. Jones League Abstract No. 26 in College Station, Brazos County, Texas and being a part of the 17.788 acre tract described in the deed from William Charles Gilmore, Walter Edgar Gilmore, II, Peter Lee Gilmore and Edith Ann Gilmore to BCS Turkey Creek, L.P. recorded in Volume 11640, Page 259 of the Official Records, Brazos County, Texas, and more generally located at the intersection of Turkey Creek Road and Raymond Stotzer Frontage Road.

**Sponsors:**      Bombek

**Attachments:**      [Background](#)  
[Aerial & Small Aerial Map](#)  
[Ordinance](#)

3.    [16-0130](#)      Public Hearing, presentation, possible action, and discussion regarding an ordinance amending Chapter 12, "Unified Development Ordinance," Section 12-4.2, "Official Zoning Map," of the Code of Ordinances of the City of College Station, Texas by changing the zoning district boundaries from O Office and GC General Commercial to MF Multi-Family and NAP Natural Areas Protected with the condition that no residential structures be constructed within the 135-foot buffer from the heater-treater equipment on the abutting site containing oil and gas uses for approximately 17.66 acres being Lot 1, Block 5 of the Tower Point Phase 5 subdivision, generally located at 1110 Arrington Road, more generally located south of the intersection of Arrington Road and Decatur Drive.

**Sponsors:**      Walker

**Attachments:**      [Aerial and Small Area Map](#)  
[Background](#)  
[Ordinance](#)

**4. Adjourn.**

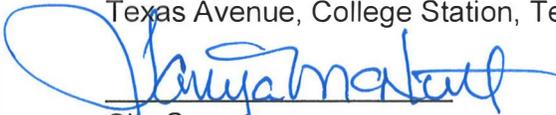
The City Council may adjourn into Executive Session to consider any item listed on this agenda if a matter is raised that is appropriate for Executive Session discussion. An announcement will be made of the basis for the Executive Session discussion.

APPROVED



City Manager

I certify that the above Notice of Meeting was posted at College Station City Hall, 1101 Texas Avenue, College Station, Texas, on March 4, 2016 at 5:00 p.m.



City Secretary

This 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) 764-3541 or (TDD) 1-800-735-2989. Agendas may be viewed on [www.cstx.gov](http://www.cstx.gov). Council meetings are broadcast live on Cable Access Channel 19.

**Penal Code § 30.07. Trespass by License Holder with an Openly Carried Handgun.**

"Pursuant to Section 30.07, Penal Code (Trespass by License Holder with an Openly Carried Handgun) A Person Licensed under Subchapter H, Chapter 411, Government Code (Handgun Licensing Law), may not enter this Property with a Handgun that is Carried Openly."

**Codigo Penal § 30.07. Traspasar Portando Armas de Mano al Aire Libre con Licencia.**

"Conforme a la Seccion 30.07 del codigo penal (traspasar portando armas de mano al aire libre con licencia), personas con licencia bajo del Sub-Capitulo H, Capitulo 411, Codigo de Gobierno (Ley de licencias de arma de mano), no deben entrar a esta propiedad portando arma de mano al aire libre."



## Legislation Details (With Text)

**File #:** 16-0133      **Version:** 1      **Name:** Minutes  
**Type:** Minutes      **Status:** Consent Agenda  
**File created:** 2/26/2016      **In control:** City Council Regular  
**On agenda:** 3/10/2016      **Final action:**  
**Title:** Presentation, possible action, and discussion of minutes for:  
· February 25, 2016 Workshop  
· February 25, 2016 Regular Meeting  
**Sponsors:** Sherry Mashburn  
**Indexes:**  
**Code sections:**  
**Attachments:** [WKSHP022516 DRAFT Minutes](#)  
[RM022516 DRAFT Minutes](#)

Date	Ver.	Action By	Action	Result
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Presentation, possible action, and discussion of minutes for:

- February 25, 2016 Workshop
- February 25, 2016 Regular Meeting

Relationship to Strategic Goals:

- Good Governance

Recommendation(s): Approval

Summary: None

Budget & Financial Summary: None

Attachments:

- February 25, 2016 Workshop
- February 25, 2016 Regular Meeting

MINUTES OF THE CITY COUNCIL WORKSHOP  
CITY OF COLLEGE STATION  
FEBRUARY 25, 2016

STATE OF TEXAS           §  
  §  
COUNTY OF BRAZOS       §

**Present:**

Nancy Berry, Mayor

**Council:**

Blanche Brick  
Steve Aldrich  
Karl Mooney, absent  
John Nichols  
Julie Schultz, absent  
James Benham

**TAMU Student Liaison**

Wayne Beckermann, VP/Municipal Affairs  
arrived after roll call

**City Staff:**

Kelly Templin, City Manager  
Chuck Gilman, 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 Berry at 4:36 p.m. on Thursday, February 25, 2016 in the Council Chambers of the City of College Station City Hall, 1101 Texas Avenue, College Station, Texas 77840.

**2. Executive Session**

In accordance with the Texas Government Code §551.071-Consultation with Attorney, §551.074-Personnel, §551.086-Competitive Matters, and §551.087-Economic Incentive Negotiations, the College Station City Council convened into Executive Session at 4:37 p.m. on Thursday, February 25, 2016 in order to continue discussing matters pertaining to:

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

- Juliao v. City of College Station, Cause No. 14-002168-CV-272, in the 272<sup>nd</sup> District Court of Brazos County, Texas

- City of College Station, Texas, v. Embrace Brazos Valley, Inc., Cause No. 15-000804-CV-85, In the 85th Judicial District Court, Brazos County, Texas.

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

- Legal advice regarding Texas Local Government Code, Chapter 171, Conflicts of Interest
- Legal advice related to a pole attachment collection matter

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

- Construction Board of Adjustments
- Design Review Board
- Parks & Recreation Advisory Board
- Planning & Zoning Commission
- Zoning Board of Adjustments
- Council Self Evaluation
- City Manager

D. Deliberation on a competitive matter as defined in Gov't Code §552.133; to wit:

- Power Supply

E. Deliberation on commercial or financial information that the City Council has received from a business prospect that the City Council seeks to have locate, stay or expand in or near the city; to wit:

- Economic incentives for a proposed development located generally near the intersection of University Drive and Macarthur Street in College Station.

The Executive Session adjourned at 5:58 p.m.

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

There was no action required from Executive Session.

### **4. Presentation, possible action, and discussion on items listed on the consent agenda.**

Items 2g, 2j, 2k, 2l, and 2m were pulled for clarification.

(2g): Jeff Kersten, Assistant City Manager, said. The first year of outsourcing should be around \$470,000 - \$480,000. The cost is fairly comparable to what is the cost is now.

(2j): Donald Harmon, Director of Public Works, clarified that improvements will be done of both sides of Wellborn Road and will provide better capacity west of Wellborn Road.

(2k): Chuck Gilman, Deputy City Manager, provided a brief presentation. Staff looked at property that was already in the City's inventory. He provided an updated version of Site C. Public parking would be more contiguous to Central Park. This space would accommodate the growth of the facility. There are two options for Site B. There are three properties on the site

along Krenek Tap that do not belong to the City. For Option 1, without the three properties, there is not adequate space for an annex, and there is no room for expansion. Option 2 (after acquisition of the three properties) allows for an annex and future expansion, but will require a parking garage, which carries a much higher cost.

Debe Shafer, 117 Pershing, spoke as a member of the Parks Board. She stated she would have appreciated hearing about the proposal. As an advisory board, they would have appreciated being part of the discussion. The Parks Board did talk about that space being used as a recreation center.

Scott Shafer, 117 Pershing, reiterated Ms. Shafer's remarks. There is no question that the Police Department needs a new facility, but adjacency is a big deal. We need to be careful how we put facilities such as these next to recreational areas. He is concerned with how it will look on the ground.

Jerry Cooper, 602 Bell, said he is concerned with the process. He does not know what can be done at this stage that won't delay the facility. This location will have a detrimental effect on the park. There are other areas that future expansion could occur.

Don Hellriegel, 13-5 Wilshire, his disagrees with Site C. Central Park is the crown jewel of the City, and there is no need to impose this facility and all the parking upon the park. Site B requires the purchase of three homes and is inadequate for expansion. Does anyone think the City will not purchase these homes at some point, even if not for the facility. He provided written comments, attached.

Sherry Ellison, 2705 Brookway, said she served on the CIP committee and they did not talk about a site. These sites were bought for a City Hall or other facilities. Ingress and egress from Site C will affect the safety of citizens. The citizens should have been a part of this decision.

Thomas Taylor, 713 Royal Adelaide, said he served as chair of the CIP Facilities committee. They did not discuss location. This is the one shot we have to do the Police Department. We need to provide for them for the next 30 years. Site C seems to be the only one to do that.

Jon & Karen Pitts, 4580 Cricket Pass, provided written comments, attached.

*(2l):* Aubrey Nettles, Special Projects Coordinator, stated the location is in the shopping center with the Fox and Hound. It is the building on stilts. Community Services and Community Enhancement from Police will occupy the space. The rent is \$18 per square foot and goes up 3% the next two years. We are getting 6,299 square feet, with 1,500 common and hallway space. There is some room for expansion.

*(2m):* Amy Atkins, Assistant Director of Parks and Recreation, clarified the electrical upgrades in Veterans Park and noted the upgrades in Bachmann and Central Park.

**5. Presentation, possible action, and discussion regarding the College Station Utilities (CSU) Underground Asset Management (padmount equipment) program.**

This item was moved to a later date.

Workshop recessed at 7:10 p.m.

At 8:19 p.m., Council reconvened into Executive Session to finish deliberation on §551.074-Personnel and §551.087-Economic Incentive Negotiations, as referenced above.

Executive Session was adjourned at 9:08 p.m.

Workshop reconvened at 9:09 p.m.

## **6. Council Calendar**

Council reviewed the calendar.

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

Councilmember Benham asked to revisit the makeup of our citizen committees.

Councilmember Aldrich asked to have a presentation by Chief Hurt.

**8. Discussion, review and possible action regarding the following meetings: Animal Shelter Board, Annexation Task Force, Arts Council of Brazos Valley, Arts Council Subcommittee, Audit Committee, Bicycle, Pedestrian, and Greenways Advisory Board, Bio-Corridor Board of Adjustments, Blinn College Brazos Valley Advisory Committee, Brazos County Health Dept., Brazos Valley Council of Governments, Bryan/College Station Chamber of Commerce, Budget and Finance Committee, BVSWMA, BVWACS, Compensation and Benefits Committee, Convention & Visitors Bureau, Design Review Board, Economic Development Committee, Gigabit Broadband Initiative, Historic Preservation Committee, Interfaith Dialogue Association, Intergovernmental Committee, Joint Relief Funding Review Committee, Landmark Commission, Library Board, Metropolitan Planning Organization, Parks and Recreation Board, Planning and Zoning Commission, Research Valley Partnership, Research Valley Technology Council, Regional Transportation Committee for Council of Governments, Sister Cities Association, Transportation and Mobility Committee, TAMU Student Senate, Texas Municipal League, Twin City Endowment, Youth Advisory Council, Zoning Board of Adjustments.**

Councilmember Aldrich reported on the BioCorridor Board.

Councilmember Nichols reported on the CVB.

Councilmember Brick reported on the Chamber Transportation Committee and on the College Station Transportation Committee.

Mayor Berry reported on the Annexation Task Force and the MPO.

**9. Adjournment**

There being no further business, Mayor Berry adjourned the workshop of the College Station City Council at 9:16 p.m. on Thursday, February 25, 2016.

\_\_\_\_\_  
Nancy Berry, Mayor

ATTEST:

\_\_\_\_\_  
Sherry Mashburn, City Secretary

MINUTES OF THE REGULAR CITY COUNCIL MEETING  
CITY OF COLLEGE STATION  
FEBRUARY 25, 2016

STATE OF TEXAS           §  
  §  
COUNTY OF BRAZOS       §

**Present:**

Nancy Berry, Mayor

**Council:**

Blanche Brick  
Steve Aldrich  
Karl Mooney, absent  
John Nichols  
Julie Schultz, absent  
James Benham

**City Staff:**

Kelly Templin, City Manager  
Affairs  
Carla Robinson, City Attorney  
Chuck Gilman, Deputy City Manager  
Sherry Mashburn, City Secretary  
Tanya McNutt, Deputy City Secretary

**TAMU Student Liaison**

Wayne Beckermann, VP/Municipal

**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 Berry at 7:17 p.m. on Thursday, February 25, 2016 in the Council Chambers of the City of College Station City Hall, 1101 Texas Avenue, College Station, Texas 77840.

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

**MOTION:** Upon a motion made by Councilmember Benham and a second by Councilmember Nichols, the City Council voted five (5) for and none (0) opposed, to approve the Absence Requests from councilmembers Mooney and Schultz. The motion carried unanimously.

**Hear Visitors Comments**

Ben Roper, 5449 Prairie Dawn Ct., came before Council to honor the service and sacrifice of Captain Ernesto M. Blanco.

## CONSENT AGENDA

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

- **February 11, 2016 Workshop**
- **February 11, 2016 Regular Meeting**
- **February 15, 2016 Council Retreat**

**2b. Presentation, possible action, and discussion regarding a City Sponsorship Policy.**

**2c. Presentation, possible action, and discussion concerning the City Internal Auditor's College Station Police Department Inventory Audit.**

**2d. Presentation, possible action, and discussion regarding the annual price agreement with Mustang Rental Services for heavy machinery rentals not to exceed \$75,000.**

**2e. Presentation, possible action, and discussion regarding the annual traffic contact report required annually by Senate Bill 1074, of the Texas 77th legislative session.**

**2f. Presentation, possible action, and discussion of proposed Community Development Block Grant Economic Development Program Guidelines.**

**2g. Presentation, possible action, and discussion regarding the award of a three year general services contract (contract no. 16300021; RFP no. 16-005) for Electric and Water Meter Reading Services to Alexander's Contract Services, Inc. in an amount not to exceed \$550,000 per year, or \$1,650,000 over the three year period.**

**2h. Presentation, possible action, and discussion on a professional services contract (Contract No. 16300247) with Halff Associates in the amount of \$81,676 for the professional engineering services related to the preliminary engineering report associated with the design of the Capstone & Barron Alignment project.**

**2i. Presentation, possible action, and discussion regarding the approval of a construction contract (Contract No. 16300178) with Norman Concrete Services, LLC in the amount of \$198,786 for the construction of sidewalk improvements along FM 2154 (Bid No. 16-035) and presentation, possible action and discussion regarding the rejection of Bid No. 15-041.**

**2j. Presentation, possible action, and discussion on a professional services contract (Contract No. 16300246) with Binkley & Barfield in the amount of \$194,485.50 for the preliminary engineering report associated with the Rock Prairie Road West - FM 2154 to City Limits Project.**

**2k. Presentation, possible action, and discussion regarding a professional services contract (Contract No. 16300279) with Pierce, Goodwin, Alexander and Linville (PGAL) in the amount of \$1,960,000 for the design of a new police station, and presentation, possible action and discussion regarding approval of Resolution 02-25-16-2k, declaring intention to reimburse certain expenditures with proceeds from debt.**

**2l. Presentation, possible action, and discussion regarding a three year lease agreement between The City of College Station and JAR Capital Investments, LLC, in the total amount of \$350,413.44 for office lease space at 511 University Drive East.**

**2m. Presentation, possible action, and discussion on a construction contract with All Star I&E, Inc; in the amount of \$60,011.68, for the replacement of electrical panels and boxes that operate six athletic field lights at Veterans Park.**

**2n. Presentation, possible action, and discussion of an interlocal agreement with Blinn College for the City Fire Department to provide clinical sites to Blinn EMS students.**

Item 2k was pulled from Consent for a separate vote.

**MOTION:** Upon a motion made by Councilmember Aldrich and a second by Councilmember Nichols, the City Council voted five (5) for and none (0) opposed, to approve the Consent Agenda, less item 2k. The motion carried unanimously.

**(2k)MOTION:** Upon a motion made by Councilmember Aldrich and a second by Councilmember Brick, the City Council voted two (2) for and three (3) opposed, with Mayor Berry and Councilmembers Nichols and Benham voting against, to postpone this item until the March 31 meeting. The motion failed.

**(2k)MOTION:** Upon a motion made by Councilmember Benham and a second by Mayor Berry, the City Council voted three (3) for and one (1) opposed, with Councilmember Brick voting against, to approve a professional services contract (Contract No. 16300279) with Pierce, Goodwin, Alexander and Linville (PGAL) in the amount of \$1,960,000 for the design of a new police station, and presentation, possible action and discussion regarding approval of Resolution 02-25-16-2k, declaring intention to reimburse certain expenditures with proceeds from debt. The motion carried.

**MOTION:** Upon a motion made by Councilmember Nichols and a second by Councilmember Aldrich, the City Council voted five (5) for and none (0) opposed, to reconsider the motion to approve the Consent Agenda, less item 2k. The motion carried unanimously.

**MOTION:** Upon a motion made by Councilmember Aldrich and a second by Councilmember Benham, the City Council voted five (5) for and none (0) opposed, to approve the Consent Agenda, less items 2k and 2n. The motion carried unanimously.

## **REGULAR AGENDA**

**1. Public Hearing, presentation, possible action, and discussion regarding Ordinance 2016-3751, amending Chapter 12, "Unified Development Ordinance," Section 12-4.2, "Official Zoning Map," of the Code of Ordinances of the City of College Station, Texas by changing the zoning district boundaries from O Office to PDD Planned Development District for approximately 7 acres being situated in the Thomas Caruthers League, abstract no. 9, in College Station, Brazos County, Texas, being the northern portion of that 25.79 acre tract conveyed to Brian Howard Perry by deed recorded in volume 10459, page 34 of the Official Public Records of Brazos County, Texas, generally located at 3600 Rock Prairie Road,**

**more generally located at the intersection of Rock Prairie Road and Medical Avenue, to the east of Scott and White Hospital.**

Jessica Bullock, Planning and Development, reported that the applicant is requesting a Planned Development District zoning on approximately seven acres to build a Nursing Home. The PDD uses a base zoning district of Office.

The Planning and Zoning Commission considered this item on February 4, and voted 5-0 to recommend approval.

At approximately 8:04 p.m., Mayor Berry opened the Public Hearing.

There being no comments, the Public Hearing was closed at 8:04 p.m.

**MOTION:** Upon a motion made by Councilmember Benham and a second by Councilmember Aldrich, the City Council voted five (5) for and none (0) opposed, to adopt Ordinance 2016-3751, amending Chapter 12, "Unified Development Ordinance," Section 12-4.2, "Official Zoning Map," of the Code of Ordinances of the City of College Station, Texas by changing the zoning district boundaries from O Office to PDD Planned Development District for approximately 7 acres being situated in the Thomas Caruthers League, abstract no. 9, in College Station, Brazos County, Texas, being the northern portion of that 25.79 acre tract conveyed to Brian Howard Perry by deed recorded in volume 10459, page 34 of the Official Public Records of Brazos County, Texas, generally located at 3600 Rock Prairie Road, more generally located at the intersection of Rock Prairie Road and Medical Avenue, to the east of Scott and White Hospital. The motion carried unanimously.

**2. Presentation, possible action and discussion regarding appointments to the following boards and commissions:**

- **B/CS Library Committee**
- **Bicycle, Pedestrian, and Greenways Advisory Board**
- **Construction Board of Adjustments**
- **Design Review Board**
- **Historic Preservation Committee**
- **Joint Relief Funding Review Committee**
- **Landmark Commission**
- **Parks and Recreation Board**
- **Planning and Zoning Commission**
- **Zoning Board of Adjustments**

**MOTION:** Upon a motion made by Councilmember Benham and a second by Councilmember Aldrich, the City Council voted five (5) for and none (0) opposed, to appoint Jane Kee, Casey Oldham, Jerome Rektorik, Jim Ross, and Johnny Burns for an unexpired term to the Planning and Zoning Commission. The motion carried unanimously.

Upon a motion made by Councilmember Nichols and a second by Councilmember Benham, the City Council voted five (5) for and none (0) opposed, to appoint Jane Kee as chair to the Planning and Zoning Commission. The motion carried unanimously.

**MOTION:** Upon a motion made by Councilmember Nichols and a second by Councilmember Benham, the City Council voted five (5) for and none (0) opposed, to appoint Sherri Echols, Justin Lopez, Keith Roberts, Johnny Burns as alternate, and Troy Smith as alternate to the Zoning Board of Adjustments. The motion carried unanimously.

**MOTION:** Upon a motion made by Councilmember Aldrich and a second by Councilmember Benham, the City Council voted five (5) for and none (0) opposed, to appoint Tom Jackson, Bill Mather, Troy Smith, Johnny Burns as alternate, Elianor Vessali as alternate, and Megan Hardy as alternate to the Construction Board of Adjustments. The motion carried unanimously.

**MOTION:** Upon a motion made by Councilmember Brick and a second by Councilmember Nichols, the City Council voted five (5) for and none (0) opposed, to appoint Mary Edwards, Elizabeth Natsios, and Troy Smith to the Design Review Board. The motion carried unanimously.

**MOTION:** Upon a motion made by Mayor Berry and a second by Councilmember Benham, the City Council voted five (5) for and none (0) opposed, to appoint Marc Chaloupka, Paul Dyson, Gary Erwin, Ann Hays, Andrew Middleton, and Keith Roberts to the Parks and Recreation Board. The motion carried unanimously.

Appointments to the remaining boards were as follows:

- B/CS Library Committee: Gary Ives, Larry Ringer
- Bicycle, Pedestrian, and Greenways Advisory Board: Jon Denton, Tina Evans, Molly Fierro, Andrew Middleton
- Historic Preservation Committee: Gerald Burgner, Katherine Edwards, Michael Hardy, Louis Hodges, Charlie Jones, and Justin Lopez to the unexpired term
- Joint Relief Funding Review Committee: Kay Parker
- Landmark Commission: Mark Browning, Gerald Burgner, Tina Evans, Justin Lopez, Ian Muise, Tony Smith

### **3. Adjournment.**

There being no further business, Mayor Berry adjourned the Regular Meeting of the City Council at 8:17 p.m. on Thursday, February 25, 2016.

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Nancy Berry, Mayor

ATTEST:

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Sherry Mashburn, City Secretary



## Legislation Details (With Text)

<b>File #:</b>	15-0398	<b>Version:</b>	1	<b>Name:</b>	Greens Prairie Trail - FM 2154 Intersection Funding Agreement
<b>Type:</b>	Agreement	<b>Status:</b>		<b>Status:</b>	Consent Agenda
<b>File created:</b>	7/14/2015	<b>In control:</b>		<b>In control:</b>	City Council Regular
<b>On agenda:</b>	3/10/2016	<b>Final action:</b>		<b>Final action:</b>	
<b>Title:</b>	Presentation, possible action, and discussion regarding a resolution approving an Advanced Funding Agreement with the State of Texas acting through the Texas Department of Transportation ("TxDot") authorizing the contribution of \$450,000 to TxDOT for improvements to Farm to Market Road 2154 (aka Wellborn Road) at its intersection with Greens Prairie Trail Road within the City limits.				
<b>Sponsors:</b>	Donald Harmon				
<b>Indexes:</b>					
<b>Code sections:</b>					
<b>Attachments:</b>	<a href="#">Rev 02122016 Partially Execute AFA FM2154 0540-04-072 CoCS.pdf</a> <a href="#">Project Map.pdf</a> <a href="#">2 RES TXDOT .pdf</a>				

Date	Ver.	Action By	Action	Result
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Presentation, possible action, and discussion regarding a resolution approving an Advanced Funding Agreement with the State of Texas acting through the Texas Department of Transportation ("TxDot") authorizing the contribution of \$450,000 to TxDOT for improvements to Farm to Market Road 2154 (aka Wellborn Road) at its intersection with Greens Prairie Trail Road within the City limits.

### Relationship to Strategic Goals:

- Core Services and Infrastructure
- Improving Mobility

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

Summary: This project is for the improvements to Greens Prairie Trail and FM 2154. It is anticipated that this project will be completed in coordination with Brazos County and TxDOT. Phase 1 will be bid by the County with participation from the City for traffic signal items. Phase II will be bid by TxDOT with participation from the County and the COCS. The project is for the construction of an extension of Greens Prairie Trail located within College Station city limits extending from FM 2154 at its intersection with Greens Prairie Trail west to the City of College Station city limits.

Budget & Financial Summary: A total project budget of \$600,000 is included for this project in the Streets Capital Improvement Projects Fund.

Legal Review: Yes.

### Attachments:

1. Agreement

2. Project Map

CSJ # 0540-04-072  
District # 17-Bryan  
Code Chart 64 # 09050  
Project: FM 2154 Misc. Improvement Project  
Federal Highway Administration  
CFDA # 20.205  
Not Research and Development

STATE OF TEXAS §

COUNTY OF TRAVIS §

**ADVANCE FUNDING AGREEMENT**  
**For A**  
**MISCELLANEOUS REHABILITATION /PREVENTATIVE MAINTENANCE**  
**IMPROVEMENT PROJECT**  
**ON-SYSTEM**

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

**WITNESSETH**

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

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

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

**WHEREAS**, the Texas Transportation Commission passed Minute Order Number 114335, authorizing the State to undertake and complete a highway improvement generally described as improving the intersection of FM 2154 (Wellborn Road) at Greens Prairie Trail called the "Project"; and,

**WHEREAS**, the Governing Body of the Local Government has approved entering into this agreement by resolution or ordinance dated \_\_\_\_\_, 2016, which is attached to and made a part of this agreement as Attachment "A" for the improvement covered by this agreement. A map showing the Project location appears in Attachment "B," which is attached to and made a part of this agreement.

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

## AGREEMENT

### 1. Period of the Agreement

This agreement becomes effective when signed by the last party whose signing makes the agreement fully executed. This agreement shall remain in effect until the Project is completed or unless terminated as provided below.

### 2. Scope of Work

The State will let and construct a project to improve the intersection of FM 2154 at Greens Prairie Trail consisting of grading, base, surface, pavement markings and markers. In addition, left turn lanes and right turn lanes will be constructed on FM 2154 along with the installation of traffic signals at this intersection.

### 3. Local Project Sources and Uses of Funds

- A.** The total estimated cost of the Project is shown in the Project Budget – Attachment “C”, which is attached to and made a part of this agreement. The expected cash contributions from the Federal or State government, the Local Government, or other parties are shown in Attachment “C”. The State will pay for only those project costs that have been approved by the Texas Transportation Commission. The State and the Federal Government will not reimburse the Local Government for any work performed before the federal spending authority is formally obligated to the Project by the Federal Highway Administration. After federal funds have been obligated, the State will send to the Local Government a copy of the formal documentation showing the obligation of funds including federal award information. The Local Government is responsible for 100% of the cost of any work performed under its direction or control before the federal spending authority is formally obligated.
- B.** If the Local Government will perform any work under this contract for which reimbursement will be provided by or through the State, the Local Government must complete training before federal spending authority is obligated. Training is complete when at least one individual who is working actively and directly on the Project successfully completes and receives a certificate for the course entitled *Local Government Project Procedures Qualification for the Texas Department of Transportation*. The Local Government shall provide the certificate of qualification to the State. The individual who receives the training certificate may be an employee of the Local Government or an employee of a firm that has been contracted by the Local Government to perform oversight of the Project. The State in its discretion may deny reimbursement if the Local Government has not designated a qualified individual to oversee the Project.
- C.** The Project cost estimate shows how necessary resources for completing the Project will be provided by major cost categories. These categories may include but are not limited to: (1) costs of real property; (2) costs of utility work; (3) costs of environmental assessment and remediation; (4) cost of preliminary engineering and design; (5) cost of construction and construction management; and (6) any other local project costs.
- D.** The State will be responsible for securing the Federal and State share of the funding required for the development and construction of the local Project. If the Local Government is due funds for expenses incurred, these funds will be reimbursed to the Local Government on a cost basis.

- E.** The Local Government will be responsible for all non-federal or non-state participation costs associated with the Project, otherwise provided for in this agreement or approved otherwise in an amendment to this agreement. Where a Special Approval has been signed by the State, the Local Government shall only in that instance be responsible for overruns in excess of the amount to be paid by the Local Government.
- F.** Upon successful completion of the engineering plans by the County of Brazos and 60 days prior to the receipt of construction bids by the State, the Local Government will pay to the State the amount specified in Attachment C.
- G.** Whenever funds are paid by the Local Government to the State under this agreement, the Local Government shall remit a check or warrant made payable to the "Texas Department of Transportation." The check or warrant shall be deposited by the State and managed by the State. The funds may only be applied by the State to the Project.
- H.** Upon completion of the Project, the State will perform an audit of the Project costs. Any funds due by the Local Government, the State, or the Federal government will be promptly paid by the owing party. If after final Project accounting any excess funds remain, those funds may be applied by the State to the Local Government's contractual obligations to the State under another advance funding agreement with approval by appropriate personnel of the Local Government.
- I.** The State will not pay interest on any funds provided by the Local Government.
- J.** If a waiver has been granted, the State will not charge the Local Government for the indirect costs the State incurs on the local Project, unless this agreement is terminated at the request of the Local Government prior to completion of the Project.
- K.** If the Project has been approved for a specified percentage or a "periodic payment" non-standard funding or payment arrangement under 43 TAC §15.52, the budget in Attachment C will clearly state the specified percentage or the periodic payment schedule.
- L.** If the Local government is an Economically Disadvantaged County (EDC) and if the State has approved adjustments to the standard financing arrangement, this agreement reflects those adjustments.
- M.** When a Special Approval has been signed by the State so that the Local Government bears the responsibility for paying cost overruns, the Local Government shall make payment to the State within thirty (30) days from the receipt of the State's written notification of those amounts.
- N.** The state auditor may conduct an audit or investigation of any entity receiving funds from the State directly under this contract or indirectly through a subcontract under this contract. Acceptance of funds directly under this contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.
- O.** Payment under this contract beyond the end of the current fiscal biennium is subject to availability of appropriated funds. If funds are not appropriated, this contract shall be terminated immediately with no liability to either party.
- P.** The Local Government is authorized to submit requests for reimbursement by submitting the original of an itemized invoice in a form and containing all items required by the State

no more frequently than monthly, and no later than ninety (90) days after costs are incurred. If the Local Government submits invoices more than ninety (90) days after the costs are incurred, and if federal funding is reduced as a result, the State shall have no responsibility to reimburse the Local Government for those costs.

- Q.** The State will not execute the contract for the construction of the Project until the required funding has been made available by the Local Government in accordance with this agreement.

#### **4. Termination of this Agreement**

This agreement shall remain in effect until the project is completed and accepted by all parties, unless:

- A.** The agreement is terminated in writing with the mutual consent of the parties;
- B.** The agreement is terminated by one party because of a breach, in which case any cost incurred because of the breach shall be paid by the breaching party;
- C.** The Local Government elects not to provide funding after the completion of preliminary engineering, specifications, and estimates (PS&E) and the Project does not proceed because of insufficient funds, in which case the Local Government agrees to reimburse the State for its reasonable actual costs incurred during the Project; or
- D.** The Project is inactive for thirty-six (36) months or longer and no expenditures have been charged against federal funds, in which case the State may in its discretion terminate this agreement.

#### **5. Amendments**

Amendments to this agreement due to changes in the character of the work, terms of the agreement, or responsibilities of the parties relating to the Project may be enacted through a mutually agreed upon, written amendment.

#### **6. Remedies**

This agreement shall not be considered as specifying the exclusive remedy for any agreement default, but all remedies existing at law and in equity may be availed of by either party to this agreement and shall be cumulative.

#### **7. Utilities**

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

## **8. Environmental Assessment and Mitigation**

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

- A. The Local Government is responsible for the identification and assessment of any environmental problems associated with the development of a local project governed by this agreement.
- B. The Local Government is responsible for the cost of any environmental problem's mitigation and remediation.
- C. The Local Government is responsible for providing any public meetings or public hearings required for development of the environmental assessment. Public hearings will not be held prior to the approval of project schematic.
- D. The Local Government is responsible for the preparation of the NEPA documents required for the environmental clearance of this Project.
- E. Before the advertisement for bids, the Local Government shall provide to the State written documentation from the appropriate regulatory agency or agencies that all environmental clearances have been obtained.

## **9. Compliance with Texas Accessibility Standards and ADA**

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

## **10. Architectural and Engineering Services**

The State has responsibility for the performance of architectural and engineering services. The engineering plans shall be developed in accordance with the applicable *State's Standard Specifications for Construction and Maintenance of Highways, Streets and Bridges* and the special specifications and special provisions related to it. For projects on the state highway system, the design shall, at a minimum conform to applicable State manuals. For projects not on the state highway system, the design shall, at a minimum, conform to applicable *American Association of State Highway and Transportation Officials* design standards. In procuring professional services, the parties to this agreement must comply with federal requirements cited in 23 CFR Part 172 if the project is federally funded and with Texas Government Code 2254, Subchapter A, in all cases. Professional contracts for federally funded projects must conform to federal requirements, specifically including the provision for participation by Disadvantaged Business Enterprises (DBEs), ADA, and environmental matters.

## **11. Construction Responsibilities**

- A. The State shall advertise for construction bids, issue bid proposals, receive and tabulate the bids, and award and administer the contract for construction of the Project. Administration of the contract includes the responsibility for construction engineering and for issuance of any change orders, supplemental agreements, amendments, or additional work orders that may become necessary subsequent to the award of the construction

contract. In order to ensure federal funding eligibility, projects must be authorized by the State prior to advertising for construction.

- B. The State will use its approved contract letting and award procedures to let and award the construction contract.
- C. Upon completion of the Project, the party constructing the Project will issue and sign a "Notification of Completion" acknowledging the Project's construction completion.
- D. For federally funded contracts, the parties to this agreement will comply with federal construction requirements cited in 23 CFR Part 635 and with requirements cited in 23 CFR Part 633, and shall include the latest version of Form "FHWA-1273" in the contract bidding documents. If force account work will be performed, a finding of cost effectiveness shall be made in compliance with 23 CFR 635, Subpart B.

**12. Project Maintenance**

The Local Government shall be responsible for maintenance of locally owned roads after completion of the work and the State shall be responsible for maintenance of state highway system after completion of the work if the work was on the state highway system, unless otherwise provided for in existing maintenance agreements with the Local Government.

**13. Right of Way and Real Property**

The State is responsible for the provision and acquisition of any needed right of way or real property.

**14. Notices**

All notices to either party shall be delivered personally or sent by certified or U.S. mail, postage prepaid, addressed to that party at the following address:

<b>Local Government:</b>	<b>State:</b>
City of College Station	Director of Contract Services Office
Department of Public Works	Texas Department of Transportation
PO Box 9960	125 E. 11 <sup>th</sup> Street
College Station, Texas 77842	Austin, Texas 78701

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

**15. Legal Construction**

If one or more of the provisions contained in this agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability

shall not affect any other provisions and this agreement shall be construed as if it did not contain the invalid, illegal, or unenforceable provision.

**16. Responsibilities of the Parties**

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

**17. Ownership of Documents**

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

**18. Compliance with Laws**

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

**19. Sole Agreement**

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

**20. Cost Principles**

In order to be reimbursed with federal funds, the parties shall comply with the Cost Principles established in 2 CFR 200 that specify that all reimbursed costs are allowable, reasonable, and allocable to the Project to the degree applicable and required.

**21. Procurement and Property Management Standards**

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

**22. Inspection of Books and Records**

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

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

### **23. Civil Rights Compliance**

The Local Government shall comply with the regulations of the United States Department of Transportation as they relate to non-discrimination (49 CFR Part 21 and 23 CFR Part 200), and Executive Order 11246 titled "Equal Employment Opportunity," as amended by Executive Order 11375 and supplemented in the Department of Labor Regulations (41 CFR Part 60).

### **24. Disadvantaged Business Enterprise (DBE) Program Requirements**

- A.** To the degree required by applicable law, the parties shall comply with the Disadvantaged Business Enterprise Program requirements established in 49 CFR Part 26.
- B.** The Local Government shall adopt, in its totality, the State's federally approved DBE program.
- C.** The Local Government shall set an appropriate DBE goal consistent with the State's DBE guidelines and in consideration of the local market, project size, and nature of the goods or services to be acquired. The Local Government shall have final decision-making authority regarding the DBE goal and shall be responsible for documenting its actions.
- D.** The Local Government shall follow all other parts of the State's DBE program referenced in TxDOT Form 2395, Memorandum of Understanding Regarding the Adoption of the Texas Department of Transportation's Federally-Approved Disadvantaged Business Enterprise by Entity, and attachments found at web address [http://ftp.dot.state.tx.us/pub/txdot-info/bop/dbe/mou/mou\\_attachments.pdf](http://ftp.dot.state.tx.us/pub/txdot-info/bop/dbe/mou/mou_attachments.pdf).
- E.** The Local Government shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any U.S. Department of Transportation (DOT)-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The Local Government shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure non-discrimination in award and administration of DOT-assisted contracts. The State's DBE program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Local Government of its failure to carry out its approved program, the State may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).
- F.** Each contract the Local Government signs with a contractor (and each subcontract the prime contractor signs with a sub-contractor) must include the following assurance: *The contractor, sub-recipient, or sub-contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this agreement, which may result in the termination of this agreement or such other remedy as the recipient deems appropriate.*

## 25. Debarment Certifications

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

## 26. Lobbying Certification

In executing this agreement, each signatory certifies to the best of that signatory's knowledge and belief, that:

- A. No federal appropriated funds have been paid or will be paid by or on behalf of the parties to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- B. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with federal contracts, grants, loans, or cooperative agreements, the signatory for the Local Government shall complete and submit the Federal Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- C. The parties shall require that the language of this certification shall be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and all sub-recipients shall certify and disclose accordingly. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Title 31 U.S.C. §1352. 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.

## 27. Insurance

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

right of way shall cease immediately, and the State may recover damages and all costs of completing the work.

## **28. Federal Funding Accountability and Transparency Act Requirements**

- A.** Any recipient of funds under this agreement agrees to comply with the Federal Funding Accountability and Transparency Act (FFATA) and implementing regulations at 2 CFR Part 170, including Appendix A. This agreement is subject to the following award terms: <http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22705.pdf> and <http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22706.pdf>.
- B.** The Local Government agrees that it shall:
1. Obtain and provide to the State a System for Award Management (SAM) number (Federal Acquisition Regulation, Part 4, Sub-part 4.11) if this award provides more than \$25,000 in Federal funding. The SAM number may be obtained by visiting the SAM website whose address is: <https://www.sam.gov/portal/public/SAM/>
  2. Obtain and provide to the State a Data Universal Numbering System (DUNS) number, a unique nine-character number that allows Federal government to track the distribution of federal money. The DUNS may be requested free of charge for all businesses and entities required to do so by visiting the Dun & Bradstreet (D&B) on-line registration website <http://fedgov.dnb.com/webform>; and
  3. Report the total compensation and names of its top five (5) executives to the State if:
    - i. More than 80% of annual gross revenues are from the Federal government, and those revenues are greater than \$25,000,000; and
    - ii. The compensation information is not already available through reporting to the U.S. Securities and Exchange Commission.

## **29. Single Audit Report**

- A.** The parties shall comply with the requirements of the Single Audit Act of 1984, P.L. 98-502, ensuring that the single audit report includes the coverage stipulated in 2 CFR 200.
- B.** If threshold expenditures are met during the Local Government's fiscal year, the Local Government must submit a Single Audit Report and Management Letter (if applicable) to TxDOT's Audit Office, 125 E. 11th Street, Austin, TX 78701 or contact TxDOT's Audit Office at <http://www.txdot.gov/inside-txdot/office/audit/contact.html>. The expenditure threshold for fiscal years beginning prior to December 31, 2014 is \$500,000; the expenditure threshold for fiscal years beginning on or after December 31, 2014 is \$750,000.
- C.** If expenditures are less than the threshold during the Local Government's fiscal year, the Local Government must submit a statement to TxDOT's Audit Office as follows: "We did not meet the \$\_\_\_\_\_ expenditure threshold and therefore, are not required to have a single audit performed for FY \_\_\_\_\_."
- D.** For each year the project remains open for federal funding expenditures, the Local Government will be responsible for filing a report or statement as described above. The required annual filing shall extend throughout the life of the agreement, unless otherwise amended or the project has been formally closed out and no charges have been incurred within the current fiscal year.

CSJ # 0540-04-072  
District # 17-Bryan  
Code Chart 64 # 09050  
Project: FM 2154 Misc. Improvement Project  
Federal Highway Administration  
CFDA # 20.205  
Not Research and Development

**30. Signatory Warranty**

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

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

**THE LOCAL GOVERNMENT**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Typed or Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**THE STATE OF TEXAS**

\_\_\_\_\_  
Kenneth Stewart  
Director of Contract Services  
Texas Department of Transportation

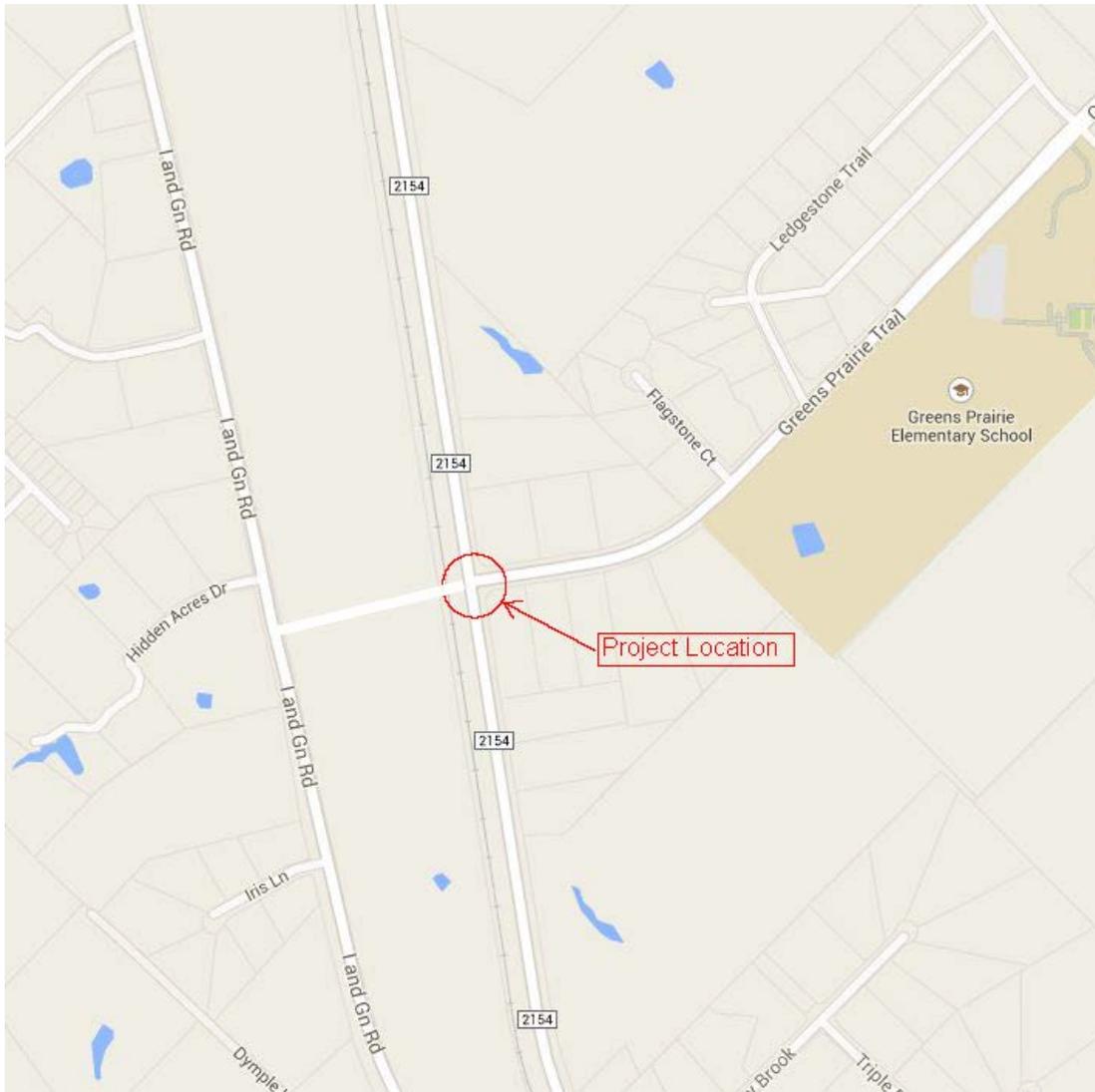
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Date

CSJ # 0540-04-072  
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**ATTACHMENT A**  
**RESOLUTION OR ORDINANCE**

CSJ # 0540-04-072  
District # 17-Bryan  
Code Chart 64 # 09050  
Project: FM 2154 Misc. Improvement Project  
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## ATTACHMENT B Location Map Showing Project



CSJ # 0540-04-072  
 District # 17-Bryan  
 Code Chart 64 # 09050  
 Project: FM 2154 Misc. Improvement Project  
 Federal Highway Administration  
 CFDA # 20.205  
 Not Research and Development

## ATTACHMENT C PROJECT BUDGET

Costs will be allocated based on applicable Federal/State funding and a fixed amount of Local Government funding until Local Government funding reaches the maximum obligated amount. The State will then be responsible for 100% of the costs.

Description	Cost	Federal Participation	State Participation	Local Participation
		Cost	Cost	Cost
<b>Construction (By State)</b>	\$1,800,000.00	\$1,350,000.00	\$0.00	\$450,000.00
<b>Utilities (By LG)</b>	\$150,000.00	\$0.00	\$0.00	\$150,000.00
Subtotal	\$1,950,000.00	\$1,350,000.00	\$0.00	\$600,000.00
<b>Construction (Direct State Cost)</b>	\$100,000.00	\$0.00	\$100,000.00	\$0.00
<b>Utilities (Direct State Cost)</b>	\$5,000.00	\$0.00	\$5,000.00	\$0.00
<b>Environmental (Direct State Cost)</b>	\$5,000.00	\$0.00	\$5,000.00	\$0.00
<b>Engineering (Direct State Cost)</b>	\$20,000.00	\$0.00	\$20,000.00	\$0.00
<b>Right of Way (Direct State Cost)</b>	\$1,000.00	\$0.00	\$1,000.00	\$0.00
<b>Indirect State Costs</b>	\$10,000.00	\$0.00	\$10,000.00	\$0.00
<b>TOTAL</b>	<b>\$2,091,000.00</b>	<b>\$1,350,000.00</b>	<b>\$141,000.00</b>	<b>\$600,000.00</b>

*\*The Utilities (by Local Government) cost shown above is for Utility Relocations only within Greens Prairie Trail Right of Way.*

Initial Payment by the Local Government to the State: \$0.00

Payment by the Local government to the State before construction: \$450,000.00

Total payment by the Local Government to the State: \$450,000.00

The total amount of Local Government participation shall not exceed the amount appearing above.



Greens Prairie Trail Project



CLAYTON

LEDGESTONE TR

FLAGSTONE CT

HIDDEN ACRES DR  
I & GN RD

FM 2154

GREENS PRAIRIE TR

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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COLLEGE STATION, TEXAS, APPROVING AN ADVANCED FUNDING AGREEMENT WITH THE STATE OF TEXAS ACTING THROUGH THE TEXAS DEPARTMENT OF TRANSPORTATION (“TXDoT”) AUTHORIZING THE CONTRIBUTION OF \$450,000 TO TXDoT FOR IMPROVEMENTS TO THE INTERSECTION OF FARM TO MARKET ROAD 2154 (AKA WELLBORN ROAD) AT ITS INTERSECTION WITH GREENS PRAIRIE TRAIL ROAD WITHIN THE CITY LIMITS AND CONTAINING OTHER PROVISIONS RELATED TO THE SUBJECT MATTER.

WHEREAS, TXDoT has deemed it necessary to make certain highway improvements on FM 2154 (aka Wellborn Road) at its intersection with Greens Prairie Trail in College Station, Texas (the “Project”); and

WHEREAS, the City Council of the City of College Station, Texas, desires to enter into a fixed price joint participation agreement with TXDoT to contribute to some of the cost of construction including all costs to relocate and adjust utilities related to the Project; now, therefore,

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

PART 1: That the City Council hereby approves an agreement with TXDoT to contribute an amount not to exceed \$450,000.00 for the costs associated with some of the construction including all costs to relocate and adjust utilities related to the Project as set forth in the Advance Funding Agreement for a Miscellaneous Rehabilitation/Preventative Maintenance Improvement Project on System as set forth in Exhibit “A” attached hereto.

PART 2: That this resolution shall take effect immediately from and after its passage.

ADOPTED this 10th day of March, A.D. 2016.

ATTEST:

APPROVED:

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

\_\_\_\_\_  
MAYOR

APPROVED:

---

City Attorney



## Legislation Details (With Text)

**File #:** 16-0119      **Version:** 1      **Name:** Greens Prairie Trail - FM 2154 UPRR Crossing Agreement

**Type:** Agreement      **Status:** Consent Agenda

**File created:** 2/23/2016      **In control:** City Council Regular

**On agenda:** 3/10/2016      **Final action:**

**Title:** Presentation, possible action, and discussion on a Public Highway At-Grade Crossing Agreement between Union Pacific Railroad, Brazos County and the City of College Station which will allow College Station to operate & maintain an At-Grade Crossing at Greens Prairie Trail contingent on Brazos County closing its At-Grade Crossings at Wade and Straub.

**Sponsors:** Donald Harmon

**Indexes:**

**Code sections:**

**Attachments:** [2908-58 5New At-Grade rev\(3-1-13\).pdf](#)  
[Project Map.pdf](#)

Date	Ver.	Action By	Action	Result
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Presentation, possible action, and discussion on a Public Highway At-Grade Crossing Agreement between Union Pacific Railroad, Brazos County and the City of College Station which will allow College Station to operate & maintain an At-Grade Crossing at Greens Prairie Trail contingent on Brazos County closing its At-Grade Crossings at Wade and Straub.

### Relationship to Strategic Goals:

- Core Services and Infrastructure
- Improving Mobility

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

Summary: This project is for the improvements to Greens Prairie Trail and FM 2154. It is anticipated that this project will be completed in coordination with Brazos County and TxDOT. Phase 1 will be bid by the County with participation from the City for traffic signal items. Phase II will be bid by TxDOT with participation from the County and the COCS. The project is for the construction of an extension of Greens Prairie Trail located within College Station city limits extending from FM 2154 at its intersection with Greens Prairie Trail west to the City of College Station city limits.

Budget & Financial Summary: A total project budget of \$600,000 is included for this project in the Streets Capital Improvement Projects Fund.

Legal Review: Yes.

### Attachments:

1. Agreement
2. Project Map



February 19, 2016

UPRR Folder No. 2908-58

**CITY OF COLLEGE STATION  
DEPARTMENT OF PUBLIC WORKS  
PO BOX 9960  
COLLEGE STATION TEXAS 77842**

Dear Sirs:

RE: Proposed construction, maintenance and use of the new Green Prairie Trail road crossing in or near College Station, Brazos County, Texas with the closing of two current at grade crossings.

Attached are duplicate originals of a Public Highway At-Grade Crossing Agreement covering your use of the Railroad Company's property. To properly document your use of the Railroad Company's property, it is necessary that you execute the attached documents. Please return to me the following:

1. **ALL** of the executed documents. If a Contractor's Right-of-Entry Agreement is attached hereto, you may submit the executed Contractor's Right-of-Entry documentation upon selection of a contractor.
2. Certificate of Insurance, if required.
3. Resolution for document execution, if required.

If I have not received the executed documents within six months from the date of this letter, this proposed offer of an agreement is withdrawn and becomes null and void. If you have any questions, please contact me.

Sincerely yours,

KATHY NESSER  
Manager Real Estate  
phone: (402) 544-8579  
e-mail: [klnesser@up.com](mailto:klnesser@up.com)



Real Estate Department  
**UNION PACIFIC RAILROAD COMPANY**  
1400 Douglas Street, Mail Stop 1690, Omaha, Nebraska 68179-1690

BCC:

Name of MIPP – Engineering (Public Projects) – Location of MIPP

Attached are duplicate originals of the subject agreement. Please handle with the Public Body for execution and return both originals to me for handling for Railroad execution. A fully executed copy will be made available to you when finalized.



# PUBLIC HIGHWAY AT-GRADE CROSSING AGREEMENT

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BETWEEN

UNION PACIFIC RAILROAD COMPANY

AND THE

CITY OF COLLEGE STATION

AND THE

COUNTY OF BRAZOS

COVERING THE

A NEW AT GRADE CROSSING WITH TWO AT GRADE CROSSING  
CLOSURES  
(DOT NO.: 441021K)

AT

RAILROAD MILE POST 65.75 – NAVASOTA SUBDIVISION

IN OR NEAR

COLLEGE STATION,  
BRAZO COUNTY,  
TEXAS

UPRR Folder No.: 2908-58

UPRR Audit No.: \_\_\_\_\_

## PUBLIC HIGHWAY AT-GRADE CROSSING AGREEMENT

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Green Prairie Trail – DOT No. 441021K  
Railroad Mile Post 65.75 – Navasota Subdivision  
College Station, Brazos County, Texas

THIS AGREEMENT ("Agreement") is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ ("Effective Date"), by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, to be addressed at Real Estate Department, 1400 Douglas Street, Mail Stop 1690, Omaha, Nebraska 68179 ("Railroad") and the **CITY OF COLLEGE STATION**, a municipal corporation or political subdivision of the State of Texas to be addressed at City of College Station, department of Public Works, PO Box 9960, College Station TX 77842 ("Public Body").and the **COUNTY OF BRAZOS** to be addressed at 200 S Texas Ave, Suite 332, Bryan TX 77803 ("County")

### RECITALS:

The Public Body desires to undertake as its project (the "Project") the construction of a new at grade public road crossing for Greens Prairie Trail, (DOT No. 441021K), at Railroad's Mile Post 65.75 on the Railroad's Navasota Subdivision at or near College Station, Brazos County Texas (the "Roadway"). The Roadway is shown on the Railroad Location Print marked **Exhibit A** being attached hereto and hereby made a part hereof. The portion of the Roadway located within the Railroad's right of way is the "Crossing Area". As part of this agreement the County agrees to permanently close two at-grade crossings, DOT 743229J, MP 64.66 Navasota Subdivision and DOT 743228C MP 65.31 Navasota Subdivision per the January 13, 2015 agreement between the Railroad and the Public Body marked **Exhibit D**.

Under this Agreement, the Railroad will be granting rights to the Public Body to facilitate the construction of the Roadway. The portion of Railroad's property that Public Body needs to use in connection with the Roadway is described in the Legal Description marked **Exhibit A-1** and also shown on the Survey Print marked **Exhibit A-2**, with each exhibit being attached hereto and hereby made a part hereof (the "Crossing Area").

The Railroad, the Public Body and the County are entering into this Agreement to cover the above.

### AGREEMENT:

NOW, THEREFORE, it is mutually agreed by and between the parties hereto as follows:

**ARTICLE 1. EXHIBIT B**

The General Terms and Conditions marked **Exhibit B**, are attached hereto and hereby made a part hereof.

**ARTICLE 2. RAILROAD GRANTS RIGHT**

For consideration of the Political Body's agreement to perform and comply with the terms of this Agreement, the Railroad hereby grants to the Political Body the right to construct, maintain and repair the Roadway over and across the Crossing Area.

**ARTICLE 3. DEFINITION OF CONTRACTOR**

For purposes of this Agreement the term "Contractor" shall mean the contractor or contractors hired by the Public Body to perform any Project work on any portion of the Railroad's property and shall also include the Contractor's subcontractors and the Contractor's and subcontractor's respective employees, officers and agents, and others acting under its or their authority.

**ARTICLE 4. CONTRACTOR'S RIGHT OF ENTRY AGREEMENT - INSURANCE**

- A. Prior to Contractor performing any work within the Crossing Area and any subsequent maintenance and repair work, the Public Body shall require the Contractor to:
- i. execute the Railroad's then current Contractor's Right of Entry Agreement
  - ii. obtain the then current insurance required in the Contractor's Right of Entry Agreement; and
  - iii. provide such insurance policies, certificates, binders and/or endorsements to the Railroad.
- B. The Railroad's current Contractor's Right of Entry Agreement is marked **Exhibit C**, attached hereto and hereby made a part hereof. The Public Body confirms that it will inform its Contractor that it is required to execute such form of agreement and obtain the required insurance before commencing any work on any Railroad property. Under no circumstances will the Contractor be allowed on the Railroad's property without first executing the Railroad's Contractor's Right of Entry Agreement and obtaining the insurance set forth therein and also providing to the Railroad the insurance policies, binders, certificates and/or endorsements described therein.
- C. All insurance correspondence, binders, policies, certificates and/or endorsements shall be sent to:
- Union Pacific Railroad Company  
Real Estate Department  
1400 Douglas Street, Mail Stop 1690  
Omaha, NE 68179-1690  
UPRR Folder No. 2908-58*
- D. If the Public Body's own employees will be performing any of the Project work, the Public Body may self-insure all or a portion of the insurance coverage subject to the Railroad's prior review and approval.

## **ARTICLE 5. FEDERAL AID POLICY GUIDE**

If the Public Body will be receiving any federal funding for the Project, the current rules, regulations and provisions of the Federal Aid Policy Guide as contained in 23 CFR 140, Subpart I and 23 CFR 646, Subparts A and B are incorporated into this Agreement by reference.

## **ARTICLE 6. PROJECT EXPENSES TO BE BORNE BY RAILROAD**

The Railroad will fund and install the new planking, signals and preemption at this location. Public Body agrees that all other Project costs and expenses are not to be borne by the Railroad. In addition, the Railroad is not required to contribute any funding for the Project other than stated above.

## **ARTICLE 7. PLANS**

- A. The Public Body, at its expense, shall prepare, or cause to be prepared by others, the detailed plans and specifications for the Project and submit such plans and specifications to the Railroad's Assistant Vice President Engineering-Design, or his authorized representative, for prior review and approval. The plans and specifications shall include all Roadway layout specifications, cross sections and elevations, associated drainage, and other appurtenances.
- B. The final one hundred percent (100%) completed plans that are approved in writing by the Railroad's Assistant Vice President Engineering-Design, or his authorized representative, are hereinafter referred to as the "Plans". The Plans are hereby made a part of this Agreement by reference.
- C. No changes in the Plans shall be made unless the Railroad has consented to such changes in writing.
- D. The Railroad's review and approval of the Plans will in no way relieve the Public Body or the Contractor from their responsibilities, obligations and/or liabilities under this Agreement, and will be given with the understanding that the Railroad makes no representations or warranty as to the validity, accuracy, legal compliance or completeness of the Plans and that any reliance by the Public Body or Contractor on the Plans is at the risk of the Public Body and Contractor.

## **ARTICLE 8. NON-RAILROAD IMPROVEMENTS**

- A. Submittal of plans and specifications for protecting, encasing, reinforcing, relocating, replacing, removing and abandoning in place all non-railroad owned facilities (the "Non Railroad Facilities") affected by the Project including, without limitation, utilities, fiber optics, pipelines, wirelines, communication lines and fences is required under Section 8. The Non Railroad Facilities plans and specifications shall comply with Railroad's standard specifications and requirements, including, without limitation, American Railway Engineering and Maintenance-of-Way Association ("AREMA") standards and guidelines. Railroad has no obligation to supply additional land for any Non Railroad Facilities and does not waive its right to assert preemption defenses, challenge the right-to-take, or pursue compensation in any condemnation action, regardless if the submitted Non Railroad

Facilities plans and specifications comply with Railroad's standard specifications and requirements. Railroad has no obligation to permit any Non Railroad Facilities to be abandoned in place or relocated on Railroad's property.

- B. Upon Railroad's approval of submitted Non Railroad Facilities plans and specifications, Railroad will attempt to incorporate them into new agreements or supplements of existing agreements with Non Railroad Facilities owners or operators. Railroad may use its standard terms and conditions, including, without limitation, its standard license fee and administrative charges when requiring supplements or new agreements for Non Railroad Facilities. Non Railroad Facilities work shall not commence before a supplement or new agreement has been fully executed by Railroad and the Non Railroad Facilities owner or operator, or before Railroad and Public Body mutually agree in writing to:
- i. deem the approved Non Railroad Facilities plans and specifications to be Plans pursuant to Section 8B,
  - ii. deem the Non Railroad Facilities part of the Structure, and
  - iii. supplement this Agreement with terms and conditions covering the Non Railroad Facilities.

**ARTICLE 9. EFFECTIVE DATE; TERM; TERMINATION**

- A. This Agreement is effective as of the Effective Date first herein written and shall continue in full force and effect for as long as the Roadway remains on the Railroad's property.
- B. The Railroad, if it so elects, may terminate this Agreement effective upon delivery of written notice to the Public Body in the event the Public Body does not commence construction on the portion of the Project located on the Railroad's property within twelve (12) months from the Effective Date.
- C. If the Agreement is terminated as provided above, or for any other reason, the Public Body shall pay to the Railroad all actual costs incurred by the Railroad in connection with the Project up to the date of termination, including, without limitation, all actual costs incurred by the Railroad in connection with reviewing any preliminary or final Project Plans.

**ARTICLE 10. CONDITIONS TO BE MET BEFORE PUBLIC BODY CAN COMMENCE WORK**

Neither the Public Body nor the Contractor may commence any work within the Crossing Area or on any other Railroad property until:

- i. The Railroad, Public Body and County have executed this Agreement.
- ii. The Railroad has provided to the Public Body and County the Railroad's written approval of the Plans.
- iii. Each Contractor has executed Railroad's Contractor's Right of Entry Agreement and has obtained and/or provided to the Railroad the insurance policies, certificates, binders, and/or endorsements required under the Contractor's Right of Entry Agreement.
- iv. Each Contractor has given the advance notice(s) required under the Contractor's Right of Entry Agreement to the Railroad Representative named in the Contractor's Right of Entry Agreement.

**ARTICLE 11. FUTURE PROJECTS**

Future projects involving substantial maintenance, repair, reconstruction, renewal and/or demolition of the Roadway shall not commence until Railroad and Public Body agree on the plans for such future projects, cost allocations, right of entry terms and conditions and temporary construction rights, terms and conditions.

**ARTICLE 12. ASSIGNMENT; SUCCESSORS AND ASSIGNS**

- A. Neither Public Body nor County shall not assign this Agreement without the prior written consent of Railroad.
- B. Subject to the provisions of Paragraph A above, this Agreement shall inure to the benefit of and be binding upon the successors and assigns of Railroad and Public Body.

**ARTICLE 13. SPECIAL PROVISIONS PERTAINING TO AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009**

If the Public Body will be receiving American Recovery and Reinvestment Act ("ARRA") funding for the Project, the Public Body agrees that it is responsible in performing and completing all ARRA reporting documents for the Project. The Public Body confirms and acknowledges that Section 1512 of the ARRA provisions applies only to a "recipient" receiving ARRA funding directing from the federal government and, therefore,

- (i) the ARRA reporting requirements are the responsibility of the Public Body and not of the Railroad, and
- (ii) the Public Body shall not delegate any ARRA reporting responsibilities to the Railroad.

The Public Body also confirms and acknowledges that

- (i) the Railroad shall provide to the Public Body the Railroad's standard and customary billing for expenses incurred by the Railroad for the Project including the Railroad's standard and customary documentation to support such billing, and
- (ii) such standard and customary billing and documentation from the Railroad provides the information needed by the Public Body to perform and complete the ARRA reporting documents.

The Railroad confirms that the Public Body and the Federal Highway Administration shall have the right to audit the Railroad's billing and documentation for the Project as provided in **Exhibit B** of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the Effective Date first herein written.

**UNION PACIFIC RAILROAD COMPANY**  
*(Federal Tax ID #94-6001323)*

By: \_\_\_\_\_  
DANIEL A. LEIS  
General Director Real Estate

ATTEST:

**CITY OF COLLEGE STATION**

By \_\_\_\_\_

(SEAL)

ATTEST:

**COUNTY OF BRAZOS**

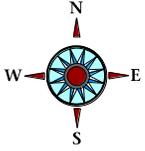
By \_\_\_\_\_

(SEAL)

# EXHIBIT A

To Public Highway At-Grade Crossing  
Agreement

Cover Sheet for the  
Railroad Location Print



# EXHIBIT "A"

## RAILROAD LOCATION PRINT FOR NEW AT GRADE PUBLIC ROAD CROSSING AGREEMENT



DOT No. 441021K  
M.P. 65.75 Navasota Subdivision  
College Station, Brazos County, Texas  
At Grade Public Road Crossing.

### UNION PACIFIC RAILROAD COMPANY

NAVASOTA SUBDIVISION  
RAILROAD MILE POST 65.75  
COLLEGE STATION, BRAZOS COUNTY, TEXAS

To accompany an agreement with  
**THE CITY OF COLLEGE STATION, COUNTY OF  
BRAZOS AND ITS CONTRACTOR**  
covering an At Grade Public Road Crossing.

Folder No. 2908-58

Date: January 12, 2016

### WARNING

IN ALL OCCASIONS, U.P. COMMUNICATIONS DEPARTMENT MUST BE CONTACTED IN  
ADVANCE OF ANY WORK TO DETERMINE EXISTENCE AND LOCATION OF FIBER OPTIC CABLE.  
PHONE: 1-(800) 336-9193

# EXHIBIT A-1

To Public Highway At-Grade Crossing  
Agreement

Cover Sheet for the  
Legal Description

**EXHIBIT " B "**

**FIELD NOTES  
CITY OF COLLEGE STATION  
UNION PACIFIC RAILROAD CROSSING  
0.37 OF ONE ACRE  
BEING OUT OF  
BLOCK 17  
OF THE MAP OF THE  
SUBDIVISION OF SAMUEL DAVIDSON LEAGUE  
VOLUME " N " , PAGE 117  
SAMUEL DAVIDSON LEAGUE, A-13  
DECEMBER 8, 2015**

All that certain lot, tract or parcel of land being 0.37 of one acre situated in the SAMUEL DAVIDSON LEAGUE, Abstract No. 13, Brazos County, Texas, and being a part of a 100' wide right-of-way as shown on RIGHT-OF-WAY TRACK MAP of HOUSTON & TEXAS CENTRAL R.R. Wellborn Map Page V.2/23, same being a part of Block 17 of the Map of Samuel Davidson League as described in Volume " N " , Page 117, Deed records of Brazos County, Texas, said 0.37 of one acre tract being more particularly described by metes and bounds as follows:

BEGINNING at a 1/2" Iron Rod set for the most westerly corner, said corner being in the easterly line of the Santana Revocable Trust Called 83.34 acre tract as described in Volume 7145, Page 286, said corner also being located in the westerly right-of-way line of the Union Pacific Railroad, the Calculated northeast corner of said Called 83.34 acre tract bears N 10°55'09" W a distance of 2691.16 feet, a 1/2" Iron Rod found near the Calculated northeast corner of said Called 83.34 acre tract found for reference bears N 10 ° 52 ' 37 " W a distance of 2691.17 feet;

THENCE N 79° 04' 51" E, across said Union Pacific Railroad right-of-way a distance of 100.00 feet to a 1/2" Iron Rod with Cap set for the most northerly corner, said corner being located in the easterly right-of-way line of said Union Pacific Railroad, said corner also being located in the westerly right-of-way line of Wellborn Road;

THENCE S 10°55'09" E, along the easterly right-of-way line of said Union Pacific Railroad and the westerly right-of-way line of said Wellborn Road a distance of 160.00 feet to a 1/2" Iron Rod with Cap set for the most easterly corner;

THENCE S 79°04'51" W, across said Union Pacific Railroad right-of-way a distance of 100.00 feet to a 1/2" Iron Rod with Cap set for the most southerly corner, said corner being in the easterly line of said Called 83.34 acre tract, said corner also being located in the westerly right-of-way line of said Union Pacific Railroad;

THENCE N 10°55'09" W, at a distance of 30.00 feet pass a 1/2" Iron Rod with Cap found in the southerly right-of-way line of Greens Prairie Trail as described in Volume 12684, Page 116 and at a distance of 130.00 feet pass a 1/2" Iron Rod with Cap found in the northerly right-of-way line of said Greens Prairie Trail and continuing for a total distance of 160.00 feet to the PLACE OF BEGINNING CONTAINING AN AREA OF 0.37 OF ONE ACRE OF LAND MORE OR LESS, according to a survey performed on the ground during the month of January, 2015 under the supervision of H. Curtis Strong, Registered Professional Land Surveyor No. 4961 and working under Firm No. 10093500. North Orientation is based on rotating the northeast line of said Called 83.34 acre tract to grid north, NAD83(2011)epoch 2010.00 Texas State Plane Central Zone as derived by GPS observations. For other information see accompanying plat.

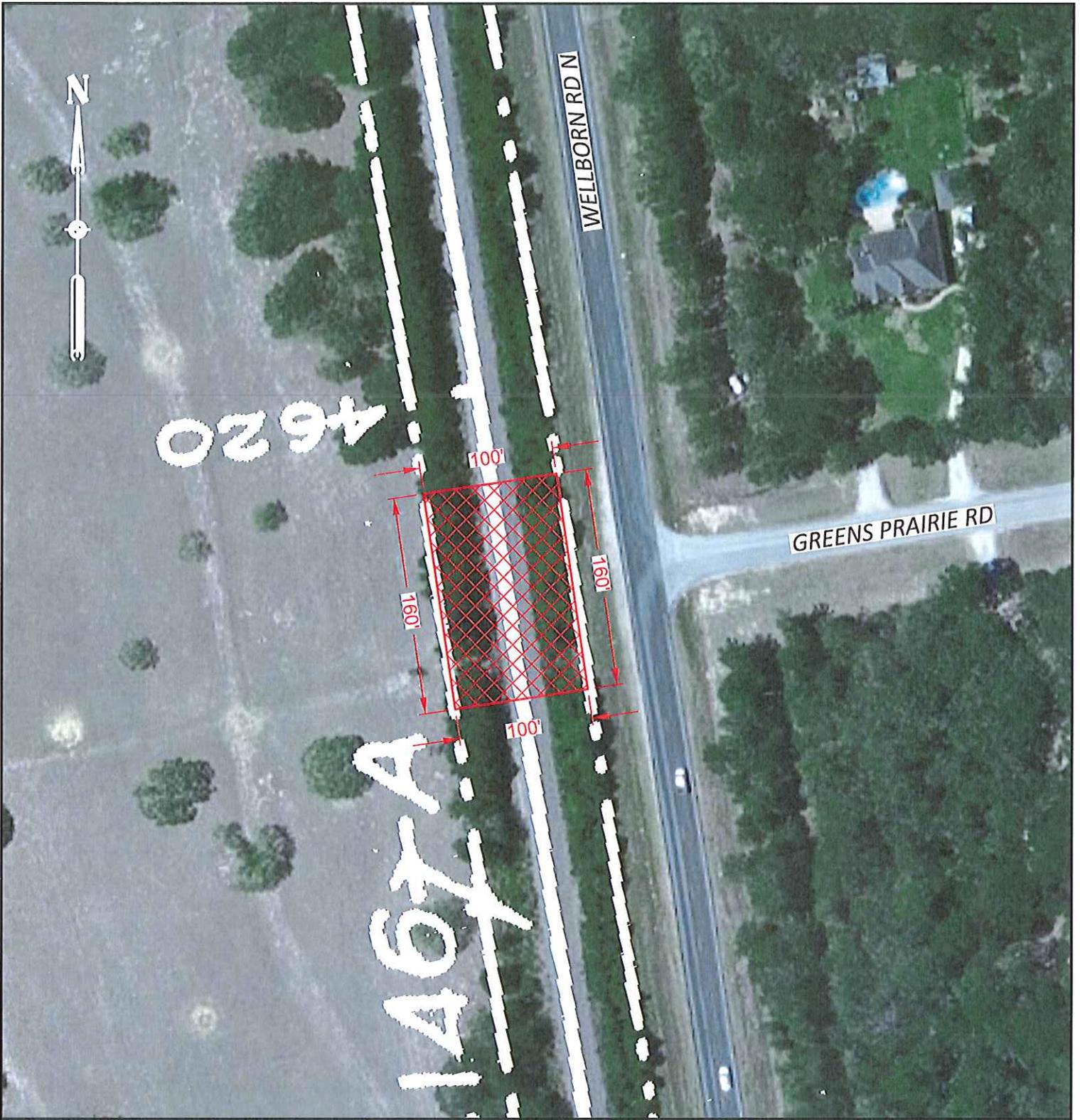


Ex A-1

# EXHIBIT A-2

To Public Highway At-Grade Crossing  
Agreement

Cover Sheet for the  
Survey Print



**LEGEND:**

CROSSING AREA ..... 

UPRRCO. R/W OUTLINED ..... - - - - -

CROSSING AREA = 0.37 ACRE +/-

NOTE: BEFORE YOU BEGIN ANY WORK, SEE AGREEMENT FOR FIBER OPTIC PROVISIONS.

EXHIBIT "A-2"

**UNION PACIFIC RAILROAD COMPANY**

COLLEGE STATION, BRAZOS COUNTY, TEXAS

M.P. 65.75 - NAVASOTA SUB.

TO ACCOMPANY AGREEMENT WITH

CITY OF COLLEGE STATION

MAP HTC V-2 / 23

SCALE: 1" = 100'

OFFICE OF REAL ESTATE

OMAHA, NEBRASKA DATE: 2-4-2016

PJB FILE: 0290858

CADD FILENAME	0290858
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SCAN FILENAME	TXV20X23-290858.TIF
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# EXHIBIT B

To Public Highway At-Grade Crossing  
Agreement

Cover Sheet for the  
General Terms and Conditions

## **EXHIBIT B**

### TO PUBLIC HIGHWAY AT GRADE CROSSING AGREEMENT

#### **GENERAL TERMS AND CONDITIONS**

##### **SECTION 1. CONDITIONS AND COVENANTS**

- A. The Railroad makes no covenant or warranty of title for quiet possession or against encumbrances. The Public Body shall not use or permit use of the Crossing Area for any purposes other than those described in this Agreement. Without limiting the foregoing, the Public Body shall not use or permit use of the Crossing Area for railroad purposes, or for gas, oil or gasoline pipe lines. Any lines constructed on the Railroad's property by or under authority of the Public Body for the purpose of conveying electric power or communications incidental to the Public Body's use of the property for highway purposes shall be constructed in accordance with specifications and requirements of the Railroad, and in such manner as not adversely to affect communication or signal lines of the Railroad or its licensees now or hereafter located upon said property. No nonparty shall be admitted by the Public Body to use or occupy any part of the Railroad's property without the Railroad's written consent. Nothing herein shall obligate the Railroad to give such consent.
- B. The Railroad reserves the right to cross the Crossing Area with such railroad tracks as may be required for its convenience or purposes. In the event the Railroad shall place additional tracks upon the Crossing Area, the Public Body shall, at its sole cost and expense, modify the Roadway to conform with all tracks within the Crossing Area.
- C. The right hereby granted is subject to any existing encumbrances and rights (whether public or private), recorded or unrecorded, and also to any renewals thereof. The Public Body shall not damage, destroy or interfere with the property or rights of nonparties in, upon or relating to the Railroad's property, unless the Public Body at its own expense settles with and obtains releases from such nonparties.
- D. The Railroad reserves the right to use and to grant to others the right to use the Crossing Area for any purpose not inconsistent with the right hereby granted, including, but not by way of limitation, the right to construct, reconstruct, maintain, operate, repair, alter, renew and replace tracks, facilities and appurtenances on the property; and the right to cross the Crossing Area with all kinds of equipment.
- E. So far as it lawfully may do so, the Public Body will assume, bear and pay all taxes and assessments of whatsoever nature or kind (whether general, local or special) levied or assessed upon or against the Crossing Area, excepting taxes levied upon and against the property as a component part of the Railroad's operating property.
- F. If any property or rights other than the right hereby granted are necessary for the construction, maintenance and use of the Roadway and its appurtenances, or for the performance of any work in connection with the Project, the Public Body will acquire all such other property and rights at its own expense and without expense to the Railroad.

##### **SECTION 2. CONSTRUCTION OF ROADWAY**

- A. The Public Body, at its expense, will apply for and obtain all public authority required by law, ordinance, rule or regulation for the Project, and will furnish the Railroad upon request with satisfactory evidence that such authority has been obtained.
- B. Except as may be otherwise specifically provided herein, the Public Body, at its expense, will furnish all necessary labor, material and equipment, and shall construct and complete the Roadway and all appurtenances thereof. The appurtenances shall include, without limitation, all necessary and proper highway warning devices (except those installed by the Railroad within its right of way) and all necessary drainage facilities, guard rails or barriers, and right of way fences between the Roadway and the railroad tracks. Upon completion of the Project, the Public Body shall remove from the Railroad's property all temporary structures and false work, and will leave the Crossing Area in a condition satisfactory to the Railroad.
- C. All construction work of the Public Body upon the Railroad's property (including, but not limited to, construction of the Roadway and all appurtenances and all related and incidental work) shall be performed and completed in a manner satisfactory to the Assistant Vice President Engineering-Design of the Railroad or his authorized representative and in

compliance with the Plans, and other guidelines furnished by the Railroad.

- D. All construction work of the Public Body shall be performed diligently and completed within a reasonable time. No part of the Project shall be suspended, discontinued or unduly delayed without the Railroad's written consent, and subject to such reasonable conditions as the Railroad may specify. It is understood that the Railroad's tracks at and in the vicinity of the work will be in constant or frequent use during progress of the work and that movement or stoppage of trains, engines or cars may cause delays in the work of the Public Body. The Public Body hereby assumes the risk of any such delays and agrees that no claims for damages on account of any delay shall be made against the Railroad by the State and/or the Contractor.

### **SECTION 3. INJURY AND DAMAGE TO PROPERTY**

If the Public Body, in the performance of any work contemplated by this Agreement or by the failure to do or perform anything for which the Public Body is responsible under the provisions of this Agreement, shall injure, damage or destroy any property of the Railroad or of any other person lawfully occupying or using the property of the Railroad, such property shall be replaced or repaired by the Public Body at the Public Body's own expense, or by the Railroad at the expense of the Public Body, and to the satisfaction of the Railroad's Assistant Vice President Engineering-Design.

### **SECTION 4. RAILROAD MAY USE CONTRACTORS TO PERFORM WORK**

The Railroad may contract for the performance of any of its work by other than the Railroad forces. The Railroad shall notify the Public Body of the contract price within ninety (90) days after it is awarded. Unless the Railroad's work is to be performed on a fixed price basis, the Public Body shall reimburse the Railroad for the amount of the contract.

### **SECTION 5. MAINTENANCE AND REPAIRS**

- A. The Public Body shall, at its own sole expense, maintain, repair, and renew, or cause to be maintained, repaired and renewed, the entire Crossing Area and Roadway, except the portions between the track tie ends, which shall be maintained by and at the expense of the Railroad.
- B. If, in the future, the Public Body elects to have the surfacing material between the track tie ends, or between tracks if there is more than one railroad track across the Crossing Area, replaced with paving or some surfacing material other than timber planking, the Railroad, at the Public Body's expense, shall install such replacement surfacing, and in the future, to the extent repair or replacement of the surfacing is necessitated by repair or rehabilitation of the Railroad's tracks through the Crossing Area, the Public Body shall bear the expense of such repairs or replacement.

### **SECTION 6. CHANGES IN GRADE**

If at any time the Railroad shall elect, or be required by competent authority to, raise or lower the grade of all or any portion of the track(s) located within the Crossing Area, the Public Body shall, at its own expense, conform the Roadway to conform with the change of grade of the trackage.

### **SECTION 7. REARRANGEMENT OF WARNING DEVICES**

If the change or rearrangement of any warning device installed hereunder is necessitated for public or Railroad convenience or on account of improvements for either the Railroad, highway or both, the parties will apportion the expense incidental thereto between themselves by negotiation, agreement or by the order of a competent authority before the change or rearrangement is undertaken.

### **SECTION 8. SAFETY MEASURES; PROTECTION OF RAILROAD COMPANY OPERATIONS**

It is understood and recognized that safety and continuity of the Railroad's operations and communications are of the utmost importance; and in order that the same may be adequately safeguarded, protected and assured, and in order that accidents may be prevented and avoided, it is agreed with respect to all of said work of the Public Body that the work will be performed in a safe manner and in conformity with the following standards:

- A. **Definitions.** All references in this Agreement to the Public Body shall also include the Contractor and their respective officers, agents and employees, and others acting under its or their authority; and all references in this Agreement to work

of the Public Body shall include work both within and outside of the Railroad's property.

**B. Entry on to Railroad's Property by Public Body.** If the Public Body's employees need to enter Railroad's property in order to perform an inspection of the Roadway, minor maintenance or other activities, the Public Body shall first provide at least ten (10) working days advance notice to the Railroad Representative. With respect to such entry on to Railroad's property, the Public Body, to the extent permitted by law, agrees to release, defend and indemnify the Railroad from and against any loss, damage, injury, liability, claim, cost or expense incurred by any person including, without limitation, the Public Body's employees, or damage to any property or equipment (collectively the "Loss") that arises from the presence or activities of Public Body's employees on Railroad's property, except to the extent that any Loss is caused by the sole direct negligence of Railroad.

**C. Flagging.**

- i. If the Public Body's employees need to enter Railroad's property as provided in Paragraph B above, the Public Body agrees to notify the Railroad Representative at least thirty (30) working days in advance of proposed performance of any work by Public Body in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within twenty-five (25) feet of any of Railroad's track(s) at any time, for any reason, unless and until a Railroad flagman is provided to watch for trains. Upon receipt of such thirty (30) day notice, the Railroad Representative will determine and inform Public Body whether a flagman need be present and whether Public Body needs to implement any special protective or safety measures. If flagging or other special protective or safety measures are performed by Railroad, Railroad will bill Public Body for such expenses incurred by Railroad. If Railroad performs any flagging, or other special protective or safety measures are performed by Railroad, Public Body agrees that Public Body is not relieved of any of its responsibilities or liabilities set forth in this Agreement.
- ii. The rate of pay per hour for each flagman will be the prevailing hourly rate in effect for an eight-hour day for the class of flagmen used during regularly assigned hours and overtime in accordance with Labor Agreements and Schedules in effect at the time the work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health and welfare, supplemental sickness, Railroad Retirement and unemployment compensation, supplemental pension, Employees Liability and Property Damage and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect at the time the work is performed. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays, and two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between Railroad and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized governmental agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, Public Body shall pay on the basis of the new rates and charges.
- iii. Reimbursement to Railroad will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman can be assigned to other Railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other Railroad work. Reimbursement will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which Railroad is required to pay the flagman and which could not reasonably be avoided by Railroad by assignment of such flagman to other work, even though Public Body may not be working during such time. When it becomes necessary for Railroad to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, Public Body must provide Railroad a minimum of five (5) days notice prior to the cessation of the need for a flagman. If five (5) days notice of cessation is not given, Public Body will still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional thirty (30) days notice must then be given to Railroad if flagging services are needed again after such five day cessation notice has been given to Railroad.

**D. Compliance With Laws.** The Public Body shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work. The Public Body shall use only such methods as are consistent with safety, both as concerns the Public Body, the Public Body's agents and employees, the officers, agents, employees and property of the Railroad and the public in general. The Public Body (without limiting the generality of the foregoing) shall comply with all applicable state and federal occupational safety and health acts and regulations. All Federal Railroad Administration regulations shall be followed when work is performed on the Railroad's premises. If any failure by the Public Body to comply with any such laws, regulations, and enactments, shall result in any fine, penalty, cost or charge being assessed, imposed or charged against the Railroad, the Public Body shall reimburse, and to the extent it may lawfully do so,

indemnify the Railroad for any such fine, penalty, cost, or charge, including without limitation attorney's fees, court costs and expenses. The Public Body further agrees in the event of any such action, upon notice thereof being provided by the Railroad, to defend such action free of cost, charge, or expense to the Railroad.

- E. **No Interference or Delays.** The Public Body shall not do, suffer or permit anything which will or may obstruct, endanger, interfere with, hinder or delay maintenance or operation of the Railroad's tracks or facilities, or any communication or signal lines, installations or any appurtenances thereof, or the operations of others lawfully occupying or using the Railroad's property or facilities.
- F. **Supervision.** The Public Body, at its own expense, shall adequately police and supervise all work to be performed by the Public Body, and shall not inflict injury to persons or damage to property for the safety of whom or of which the Railroad may be responsible, or to property of the Railroad. The responsibility of the Public Body for safe conduct and adequate policing and supervision of the Project shall not be lessened or otherwise affected by the Railroad's approval of plans and specifications, or by the Railroad's collaboration in performance of any work, or by the presence at the work site of the Railroad's representatives, or by compliance by the Public Body with any requests or recommendations made by such representatives. If a representative of the Railroad is assigned to the Project, the Public Body will give due consideration to suggestions and recommendations made by such representative for the safety and protection of the Railroad's property and operations.
- G. **Suspension of Work.** If at any time the Public Body's engineers or the Vice President-Engineering Services of the Railroad or their respective representatives shall be of the opinion that any work of the Public Body is being or is about to be done or prosecuted without due regard and precaution for safety and security, the Public Body shall immediately suspend the work until suitable, adequate and proper protective measures are adopted and provided.
- H. **Removal of Debris.** The Public Body shall not cause, suffer or permit material or debris to be deposited or cast upon, or to slide or fall upon any property or facilities of the Railroad; and any such material and debris shall be promptly removed from the Railroad's property by the Public Body at the Public Body's own expense or by the Railroad at the expense of the Public Body. The Public Body shall not cause, suffer or permit any snow to be plowed or cast upon the Railroad's property during snow removal from the Crossing Area.
- I. **Explosives.** The Public Body shall not discharge any explosives on or in the vicinity of the Railroad's property without the prior consent of the Railroad's Vice President-Engineering Services, which shall not be given if, in the sole discretion of the Railroad's Vice President-Engineering Services, such discharge would be dangerous or would interfere with the Railroad's property or facilities. For the purposes hereof, the "vicinity of the Railroad's property" shall be deemed to be any place on the Railroad's property or in such close proximity to the Railroad's property that the discharge of explosives could cause injury to the Railroad's employees or other persons, or cause damage to or interference with the facilities or operations on the Railroad's property. The Railroad reserves the right to impose such conditions, restrictions or limitations on the transportation, handling, storage, security and use of explosives as the Railroad, in the Railroad's sole discretion, may deem to be necessary, desirable or appropriate.
- J. **Excavation.** The Public Body shall not excavate from existing slopes nor construct new slopes which are excessive and may create hazards of slides or falling rock, or impair or endanger the clearance between existing or new slopes and the tracks of the Railroad. The Public Body shall not do or cause to be done any work which will or may disturb the stability of any area or adversely affect the Railroad's tracks or facilities. The Public Body, at its own expense, shall install and maintain adequate shoring and cribbing for all excavation and/or trenching performed by the Public Body in connection with construction, maintenance or other work. The shoring and cribbing shall be constructed and maintained with materials and in a manner approved by the Railroad's Assistant Vice President Engineering - Design to withstand all stresses likely to be encountered, including any stresses resulting from vibrations caused by the Railroad's operations in the vicinity.
- K. **Drainage.** The Public Body, at the Public Body's own expense, shall provide and maintain suitable facilities for draining the Roadway and its appurtenances, and shall not suffer or permit drainage water therefrom to flow or collect upon property of the Railroad. The Public Body, at the Public Body's own expense, shall provide adequate passageway for the waters of any streams, bodies of water and drainage facilities (either natural or artificial, and including water from the Railroad's culvert and drainage facilities), so that said waters may not, because of any facilities or work of the Public Body, be impeded, obstructed, diverted or caused to back up, overflow or damage the property of the Railroad or any part thereof, or property of others. The Public Body shall not obstruct or interfere with existing ditches or drainage facilities.

- L. **Notice.** Before commencing any work, the Public Body shall provide the advance notice to the Railroad that is required under the Contractor's Right of Entry Agreement.
- M. **Fiber Optic Cables.** Fiber optic cable systems may be buried on the Railroad's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Public Body shall telephone the Railroad during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried anywhere on the Railroad's premises to be used by the Public Body. If it is, Public Body will telephone the telecommunications company(ies) involved, arrange for a cable locator, and make arrangements for relocation or other protection of the fiber optic cable prior to beginning any work on the Railroad's premises.

#### **SECTION 9. INTERIM WARNING DEVICES**

If at anytime it is determined by a competent authority, by the Public Body, or by agreement between the parties, that new or improved train activated warning devices should be installed at the Crossing Area, the Public Body shall install adequate temporary warning devices or signs and impose appropriate vehicular control measures to protect the motoring public until the new or improved devices have been installed.

#### **SECTION 10. OTHER RAILROADS**

All protective and indemnifying provisions of this Agreement shall inure to the benefit of the Railroad and any other railroad company lawfully using the Railroad's property or facilities.

#### **SECTION 11. BOOKS AND RECORDS**

The books, papers, records and accounts of Railroad, so far as they relate to the items of expense for the materials to be provided by Railroad under this Project, or are associated with the work to be performed by Railroad under this Project, shall be open to inspection and audit at Railroad's offices in Omaha, Nebraska, during normal business hours by the agents and authorized representatives of Public Body for a period of three (3) years following the date of Railroad's last billing sent to Public Body.

#### **SECTION 12. REMEDIES FOR BREACH OR NONUSE**

- A. If the Public Body shall fail, refuse or neglect to perform and abide by the terms of this Agreement, the Railroad, in addition to any other rights and remedies, may perform any work which in the judgment of the Railroad is necessary to place the Roadway and appurtenances in such condition as will not menace, endanger or interfere with the Railroad's facilities or operations or jeopardize the Railroad's employees; and the Public Body will reimburse the Railroad for the expenses thereof.
- B. Nonuse by the Public Body of the Crossing Area for public highway purposes continuing at any time for a period of eighteen (18) months shall, at the option of the Railroad, work a termination of this Agreement and of all rights of the Public Body hereunder.
- C. The Public Body will surrender peaceable possession of the Crossing Area and Roadway upon termination of this Agreement. Termination of this Agreement shall not affect any rights, obligations or liabilities of the parties, accrued or otherwise, which may have arisen prior to termination.

#### **SECTION 13. MODIFICATION - ENTIRE AGREEMENT**

No waiver, modification or amendment of this Agreement shall be of any force or effect unless made in writing, signed by the Public Body and the Railroad and specifying with particularity the nature and extent of such waiver, modification or amendment. Any waiver by the Railroad of any default by the Public Body shall not affect or impair any right arising from any subsequent default. This Agreement and Exhibits attached hereto and made a part hereof constitute the entire understanding between the Public Body and the Railroad and cancel and supersede any prior negotiations, understandings or agreements, whether written or oral, with respect to the work or any part thereof.

# EXHIBIT C

To Public Highway At-Grade Crossing  
Agreement

Cover Sheet for the  
Railroad's Form of  
Contractor's Right of Entry Agreement

UPRR Folder No.   2908-58    
(Folder Number)

UPRR Audit No.: \_\_\_\_\_  
(Audit Number)

## CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

**THIS AGREEMENT** is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation ("Railroad"); and

\_\_\_\_\_  
(NAME OF CONTRACTOR)  
a \_\_\_\_\_ corporation ("Contractor").  
(State of Incorporation)

### RECITALS:

Contractor has been hired by \_\_\_\_\_  
(Name of Public Agency)  
("Public Agency") to perform work relating to

\_\_\_\_\_  
(Work to be Performed)  
(the "work"), with all or a portion of such work to be performed on property of Railroad in the vicinity of Railroad Mile Post \_\_\_\_\_ on Railroad's \_\_\_\_\_,  
(Mile Post) (Name of Subdivision)  
DOT No. \_\_\_\_\_, located at or near \_\_\_\_\_, in \_\_\_\_\_ County,  
(DOT Number) (City) (County)  
State of \_\_\_\_\_, as such location is in the general location shown on the Railroad Location

Print marked **Exhibit A**, and as detailed on the Detailed Prints collectively marked **Exhibit A-1**, each attached hereto and hereby made a part hereof, which work is the subject of a contract dated \_\_\_\_\_ between Railroad and the Public Agency.  
(Date of C&M Agreement)

The Railroad is willing to permit Contractor to perform the work described above at the location described above subject to the terms and conditions contained in this Agreement

### AGREEMENT:

**NOW, THEREFORE**, it is mutually agreed by and between Railroad and Contractor, as follows:

**ARTICLE 1 - DEFINITION OF CONTRACTOR.**

For purposes of this Agreement, all references in this agreement to Contractor shall include Contractor's contractors, subcontractors, officers, agents and employees, and others acting under its or their authority.

**ARTICLE 2 - RIGHT GRANTED; PURPOSE.**

Railroad hereby grants to Contractor the right, during the term hereinafter stated and upon and subject to each and all of the terms, provisions and conditions herein contained, to enter upon and have ingress to and egress from the property described in the Recitals for the purpose of performing the work described in the Recitals above. The right herein granted to Contractor is limited to those portions of Railroad's property specifically described herein, or as designated by the Railroad Representative named in Article 4B below.

**ARTICLE 3 - TERMS AND CONDITIONS CONTAINED IN EXHIBITS B, C AND D.**

The terms and conditions contained in **Exhibit B, Exhibit C and Exhibit D**, attached hereto, are hereby made a part of this Agreement.

**ARTICLE 4 - ALL EXPENSES TO BE BORNE BY CONTRACTOR; RAILROAD REPRESENTATIVE.**

- A. Contractor shall bear any and all costs and expenses associated with any work performed by Contractor, or any costs or expenses incurred by Railroad relating to this Agreement.
- B. Contractor shall coordinate all of its work with the following Railroad representative(s) or his or her duly authorized representative (the "Railroad Representative"):

*Name & Address of MTM*

*Name & Address of MSM*

- C. Contractor, at its own expense, shall adequately police and supervise all work to be performed by Contractor and shall ensure that such work is performed in a safe manner as set forth in Section 7 of **Exhibit B**. The responsibility of Contractor for safe conduct and adequate policing and supervision of Contractor's work shall not be lessened or otherwise affected by Railroad's approval of plans and specifications involving the work, or by Railroad's collaboration in performance of any work, or by the presence at the work site of a Railroad Representative, or by compliance by Contractor with any requests or recommendations made by Railroad Representative.

**ARTICLE 5 - SCHEDULE OF WORK ON A MONTHLY BASIS.**

The Contractor, at its expense, shall provide on a monthly basis a detailed schedule of work to the Railroad Representative named in Article 4B above. The reports shall start at the execution of this Agreement and continue until this Agreement is terminated as provided in this Agreement or until the Contractor has completed all work on Railroad's property.

**ARTICLE 6 - TERM; TERMINATION.**

- A. The grant of right herein made to Contractor shall commence on the date of this Agreement, and continue until \_\_\_\_\_, unless sooner terminated as herein provided,  
*(Expiration Date)*  
or at such time as Contractor has completed its work on Railroad's property, whichever is earlier. Contractor agrees to notify the Railroad Representative in writing when it has completed its work on Railroad's property.
- B. This Agreement may be terminated by either party on ten (10) days written notice to the other party.

**ARTICLE 7 - CERTIFICATE OF INSURANCE.**

- A. Before commencing any work, Contractor will provide Railroad with the (i) insurance binders, policies, certificates and endorsements set forth in **Exhibit C** of this Agreement, and (ii) the insurance endorsements obtained by each subcontractor as required under Section 12 of **Exhibit B** of this Agreement.
- B. All insurance correspondence, binders, policies, certificates and endorsements shall be sent to:

*Union Pacific Railroad Company  
1400 Douglas Street, Mail Stop 1690  
Omaha, Nebraska 68179-1690  
UPRR Folder No. \_\_\_\_\_  
(Folder Number)*

**ARTICLE 8 - DISMISSAL OF CONTRACTOR'S EMPLOYEE.**

At the request of Railroad, Contractor shall remove from Railroad's property any employee of Contractor who fails to conform to the instructions of the Railroad Representative in connection with the work on Railroad's property, and any right of Contractor shall be suspended until such removal has occurred. Contractor shall indemnify Railroad against any claims arising from the removal of any such employee from Railroad's property.

**ARTICLE 9- ADMINISTRATIVE FEE.**

Upon the execution and delivery of this Agreement, Contractor shall pay to Railroad **FIVE HUNDRED DOLLARS (\$500.00)** as reimbursement for clerical, administrative and handling expenses in connection with the processing of this Agreement.

**ARTICLE 10 - CROSSINGS; COMPLIANCE WITH MUTCD AND FRA GUIDELINES.**

- A. No additional vehicular crossings (including temporary haul roads) or pedestrian crossings over Railroad's trackage shall be installed or used by Contractor without the prior written permission of Railroad.
- B. Any permanent or temporary changes, including temporary traffic control, to crossings must conform to the Manual of Uniform Traffic Control Devices (MUTCD) and any applicable

Federal Railroad Administration rules, regulations and guidelines, and must be reviewed by the Railroad prior to any changes being implemented. In the event the Railroad is found to be out of compliance with federal safety regulations due to the Contractor's modifications, negligence, or any other reason arising from the Contractor's presence on the Railroad's property, the Contractor agrees to assume liability for any civil penalties imposed upon the Railroad for such noncompliance.

**ARTICLE 11 - EXPLOSIVES.**

Explosives or other highly flammable substances shall not be stored or used on Railroad's property without the prior written approval of Railroad.

**IN WITNESS WHEREOF**, the parties hereto have duly executed this agreement in duplicate as of the date first herein written.

**UNION PACIFIC RAILROAD COMPANY**  
(Federal Tax ID No. 94-6001323)

**Signed By:** \_\_\_\_\_

Kathy Nesser  
Manager Real Estate

\_\_\_\_\_  
*(Name of Contractor)*

**Signed By:** \_\_\_\_\_

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

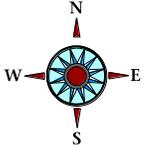
Title: \_\_\_\_\_

**EXHIBITS A & A-1**

TO CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

Shall be the Railroad Location Print & Detailed Prints

SAMPLE



# EXHIBIT "A"

## RAILROAD LOCATION PRINT FOR NEW AT GRADE PUBLIC ROAD CROSSING AGREEMENT



DOT No. 441021K  
M.P. 65.75 Navasota Subdivision  
College Station, Brazos County, Texas  
At Grade Public Road Crossing.

### UNION PACIFIC RAILROAD COMPANY

NAVASOTA SUBDIVISION  
RAILROAD MILE POST 65.75  
COLLEGE STATION, BRAZOS COUNTY, TEXAS

To accompany an agreement with  
**THE CITY OF COLLEGE STATION, COUNTY OF  
BRAZOS AND ITS CONTRACTOR**  
covering an At Grade Public Road Crossing.

Folder No. 2908-58

Date: January 12, 2016

### WARNING

IN ALL OCCASIONS, U.P. COMMUNICATIONS DEPARTMENT MUST BE CONTACTED IN  
ADVANCE OF ANY WORK TO DETERMINE EXISTENCE AND LOCATION OF FIBER OPTIC CABLE.  
PHONE: 1-(800) 336-9193

## **EXHIBIT B**

### TO CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

#### GENERAL TERMS AND CONDITIONS

##### **Section 1. NOTICE OF COMMENCEMENT OF WORK - FLAGGING.**

- A. Contractor agrees to notify the Railroad Representative at least ten (10) working days in advance of Contractor commencing its work and at least thirty (30) working days in advance of proposed performance of any work by Contractor in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within twenty-five (25) feet of any of Railroad's track(s) at any time, for any reason, unless and until a Railroad flagman is provided to watch for trains. Upon receipt of such thirty (30)-day notice, the Railroad Representative will determine and inform Contractor whether a flagman need be present and whether Contractor needs to implement any special protective or safety measures. If flagging or other special protective or safety measures are performed by Railroad, Railroad will bill Contractor for such expenses incurred by Railroad, unless Railroad and a federal, state or local governmental entity have agreed that Railroad is to bill such expenses to the federal, state or local governmental entity. If Railroad will be sending the bills to Contractor, Contractor shall pay such bills within thirty (30) days of Contractor's receipt of billing. If Railroad performs any flagging, or other special protective or safety measures are performed by Railroad, Contractor agrees that Contractor is not relieved of any of its responsibilities or liabilities set forth in this Agreement.
- B. The rate of pay per hour for each flagman will be the prevailing hourly rate in effect for an eight-hour day for the class of flagmen used during regularly assigned hours and overtime in accordance with Labor Agreements and Schedules in effect at the time the work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health and welfare, supplemental sickness, Railroad Retirement and unemployment compensation, supplemental pension, Employees Liability and Property Damage and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect at the time the work is performed. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays, and two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between Railroad and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized governmental agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, Contractor (or the governmental entity, as applicable) shall pay on the basis of the new rates and charges.
- C. Reimbursement to Railroad will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman can be assigned to other Railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other Railroad work. Reimbursement will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which Railroad is required to pay the flagman and which could not reasonably be avoided by Railroad by assignment of such flagman to other work, even though Contractor may not be working during such time. When it becomes necessary for Railroad to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, Contractor must provide Railroad a minimum of five (5) days notice prior to the cessation of the need for a flagman. If five (5) days notice of cessation is not given, Contractor will still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional thirty (30) days notice must then be given to Railroad if flagging services are needed again after such five day cessation notice has been given to Railroad.

##### **Section 2. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED**

- A. The foregoing grant of right is subject and subordinate to the prior and continuing right and obligation of the Railroad to use and maintain its entire property including the right and power of Railroad to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, roadways, signal, communication, fiber optics, or other wirelines, pipelines and other facilities upon, along or across any or all parts of its property, all or any of which may be freely done at any time or times by Railroad without liability to Contractor or to any other party for compensation or damages.

- B. The foregoing grant is also subject to all outstanding superior rights (whether recorded or unrecorded and including those in favor of licensees and lessees of Railroad's property, and others) and the right of Railroad to renew and extend the same, and is made without covenant of title or for quiet enjoyment.

**Section 3. NO INTERFERENCE WITH OPERATIONS OF RAILROAD AND ITS TENANTS.**

- A. Contractor shall conduct its operations so as not to interfere with the continuous and uninterrupted use and operation of the railroad tracks and property of Railroad, including without limitation, the operations of Railroad's lessees, licensees or others, unless specifically authorized in advance by the Railroad Representative. Nothing shall be done or permitted to be done by Contractor at any time that would in any manner impair the safety of such operations. When not in use, Contractor's machinery and materials shall be kept at least fifty (50) feet from the centerline of Railroad's nearest track, and there shall be no vehicular crossings of Railroads tracks except at existing open public crossings.
- B. Operations of Railroad and work performed by Railroad personnel and delays in the work to be performed by Contractor caused by such railroad operations and work are expected by Contractor, and Contractor agrees that Railroad shall have no liability to Contractor, or any other person or entity for any such delays. The Contractor shall coordinate its activities with those of Railroad and third parties so as to avoid interference with railroad operations. The safe operation of Railroad train movements and other activities by Railroad takes precedence over any work to be performed by Contractor.

**Section 4. LIENS.**

Contractor shall pay in full all persons who perform labor or provide materials for the work to be performed by Contractor. Contractor shall not create, permit or suffer any mechanic's or materialmen's liens of any kind or nature to be created or enforced against any property of Railroad for any such work performed. Contractor shall indemnify and hold harmless Railroad from and against any and all liens, claims, demands, costs or expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials furnished. If Contractor fails to promptly cause any lien to be released of record, Railroad may, at its election, discharge the lien or claim of lien at Contractor's expense.

**Section 5. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.**

- A. Fiber optic cable systems may be buried on Railroad's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Contractor shall telephone Railroad during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried anywhere on Railroad's property to be used by Contractor. If it is, Contractor will telephone the telecommunications company(ies) involved, make arrangements for a cable locator and, if applicable, for relocation or other protection of the fiber optic cable. Contractor shall not commence any work until all such protection or relocation (if applicable) has been accomplished.
- B. In addition to other indemnity provisions in this Agreement, Contractor shall indemnify, defend and hold Railroad harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) arising out of any act or omission of Contractor, its agents and/or employees, that causes or contributes to (1) any damage to or destruction of any telecommunications system on Railroad's property, and/or (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents and/or employees, on Railroad's property. Contractor shall not have or seek recourse against Railroad for any claim or cause of action for alleged loss of profits or revenue or loss of service or other consequential damage to a telecommunication company using Railroad's property or a customer or user of services of the fiber optic cable on Railroad's property.

**Section 6. PERMITS - COMPLIANCE WITH LAWS.**

In the prosecution of the work covered by this Agreement, Contractor shall secure any and all necessary permits and shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work including, without limitation, all applicable Federal Railroad Administration regulations.

**Section 7. SAFETY.**

- A. Safety of personnel, property, rail operations and the public is of paramount importance in the prosecution of the work performed by Contractor. Contractor shall be responsible for initiating, maintaining and supervising all safety, operations and programs in connection with the work. Contractor shall at a minimum comply with Railroad's safety standards listed in

**Exhibit D**, hereto attached, to ensure uniformity with the safety standards followed by Railroad's own forces. As a part of Contractor's safety responsibilities, Contractor shall notify Railroad if Contractor determines that any of Railroad's safety standards are contrary to good safety practices. Contractor shall furnish copies of **Exhibit D** to each of its employees before they enter the job site.

- B. Without limitation of the provisions of paragraph A above, Contractor shall keep the job site free from safety and health hazards and ensure that its employees are competent and adequately trained in all safety and health aspects of the job.
- C. Contractor shall have proper first aid supplies available on the job site so that prompt first aid services may be provided to any person injured on the job site. Contractor shall promptly notify Railroad of any U.S. Occupational Safety and Health Administration reportable injuries. Contractor shall have a nondelegable duty to control its employees while they are on the job site or any other property of Railroad, and to be certain they do not use, be under the influence of, or have in their possession any alcoholic beverage, drug or other substance that may inhibit the safe performance of any work.
- D. If and when requested by Railroad, Contractor shall deliver to Railroad a copy of Contractor's safety plan for conducting the work (the "Safety Plan"). Railroad shall have the right, but not the obligation, to require Contractor to correct any deficiencies in the Safety Plan. The terms of this Agreement shall control if there are any inconsistencies between this Agreement and the Safety Plan.

#### **Section 8. INDEMNITY.**

- A. To the extent not prohibited by applicable statute, Contractor shall indemnify, defend and hold harmless Railroad, its affiliates, and its and their officers, agents and employees (individually an "Indemnified Party" or collectively "Indemnified Parties") from and against any and all loss, damage, injury, liability, claim, demand, cost or expense (including, without limitation, attorney's, consultant's and expert's fees, and court costs), fine or penalty (collectively, "Loss") incurred by any person (including, without limitation, any Indemnified Party, Contractor, or any employee of Contractor or of any Indemnified Party) arising out of or in any manner connected with (i) any work performed by Contractor, or (ii) any act or omission of Contractor, its officers, agents or employees, or (iii) any breach of this Agreement by Contractor.
- B. The right to indemnity under this Section 8 shall accrue upon occurrence of the event giving rise to the Loss, and shall apply regardless of any negligence or strict liability of any Indemnified Party, except where the Loss is caused by the sole active negligence of an Indemnified Party as established by the final judgment of a court of competent jurisdiction. The sole active negligence of any Indemnified Party shall not bar the recovery of any other Indemnified Party.
- C. **Contractor expressly and specifically assumes potential liability under this Section 8 for claims or actions brought by Contractor's own employees. Contractor waives any immunity it may have under worker's compensation or industrial insurance acts to indemnify the Indemnified Parties under this Section 8. Contractor acknowledges that this waiver was mutually negotiated by the parties hereto.**
- D. No court or jury findings in any employee's suit pursuant to any worker's compensation act or the Federal Employers' Liability Act against a party to this Agreement may be relied upon or used by Contractor in any attempt to assert liability against any Indemnified Party.
- E. The provisions of this Section 8 shall survive the completion of any work performed by Contractor or the termination or expiration of this Agreement. In no event shall this Section 8 or any other provision of this Agreement be deemed to limit any liability Contractor may have to any Indemnified Party by statute or under common law.

#### **Section 9. RESTORATION OF PROPERTY.**

In the event Railroad authorizes Contractor to take down any fence of Railroad or in any manner move or disturb any of the other property of Railroad in connection with the work to be performed by Contractor, then in that event Contractor shall, as soon as possible and at Contractor's sole expense, restore such fence and other property to the same condition as the same were in before such fence was taken down or such other property was moved or disturbed. Contractor shall remove all of Contractor's tools, equipment, rubbish and other materials from Railroad's property promptly upon completion of the work, restoring Railroad's property to the same state and condition as when Contractor entered thereon.

**Section 10. WAIVER OF DEFAULT.**

Waiver by Railroad of any breach or default of any condition, covenant or agreement herein contained to be kept, observed and performed by Contractor shall in no way impair the right of Railroad to avail itself of any remedy for any subsequent breach or default.

**Section 11. MODIFICATION - ENTIRE AGREEMENT.**

No modification of this Agreement shall be effective unless made in writing and signed by Contractor and Railroad. This Agreement and the exhibits attached hereto and made a part hereof constitute the entire understanding between Contractor and Railroad and cancel and supersede any prior negotiations, understandings or agreements, whether written or oral, with respect to the work to be performed by Contractor.

**Section 12. ASSIGNMENT - SUBCONTRACTING.**

Contractor shall not assign or subcontract this Agreement, or any interest therein, without the written consent of the Railroad. Contractor shall be responsible for the acts and omissions of all subcontractors. Before Contractor commences any work, the Contractor shall, except to the extent prohibited by law; (1) require each of its subcontractors to include the Contractor as "Additional Insured" in the subcontractor's Commercial General Liability policy and Business Automobile policies with respect to all liabilities arising out of the subcontractor's performance of work on behalf of the Contractor by endorsing these policies with ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage; (2) require each of its subcontractors to endorse their Commercial General Liability Policy with "Contractual Liability Railroads" ISO Form CG 24 17 10 01 (or a substitute form providing equivalent coverage) for the job site; and (3) require each of its subcontractors to endorse their Business Automobile Policy with "Coverage For Certain Operations In Connection With Railroads" ISO Form CA 20 70 10 01 (or a substitute form providing equivalent coverage) for the job site.

## EXHIBIT C

### TO CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

#### INSURANCE PROVISIONS

Contractor shall, at its sole cost and expense, procure and maintain during the course of the Project and until all Project work on Railroad's property has been completed and the Contractor has removed all equipment and materials from Railroad's property and has cleaned and restored Railroad's property to Railroad's satisfaction, the following insurance coverage:

- A. Commercial General Liability Insurance.** Commercial general liability (CGL) with a limit of not less than \$5,000,000 each occurrence and an aggregate limit of not less than \$10,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage).

The policy must also contain the following endorsement, which must be stated on the certificate of insurance:

- Contractual Liability Railroads ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" as the Designated Job Site.
- Designated Construction Project(s) General Aggregate Limit ISO Form CG 25 03 03 97 (or a substitute form providing equivalent coverage) showing the project on the form schedule.

- B. Business Automobile Coverage Insurance.** Business auto coverage written on ISO form CA 00 01 10 01 (or a substitute form providing equivalent liability coverage) with a combined single limit of not less \$5,000,000 for each accident and coverage must include liability arising out of any auto (including owned, hired and non-owned autos).

The policy must contain the following endorsements, which must be stated on the certificate of insurance:

- Coverage For Certain Operations In Connection With Railroads ISO form CA 20 70 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Property" as the Designated Job Site.
- Motor Carrier Act Endorsement - Hazardous materials clean up (MCS-90) if required by law.

- C. Workers' Compensation and Employers' Liability insurance.** Coverage must include but not be limited to:

- Contractor's statutory liability under the workers' compensation laws of the state where the work is being performed.
- Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 disease policy limit \$500,000 each employee.

If Contractor is self-insured, evidence of state approval and excess workers compensation coverage must be provided. Coverage must include liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

The policy must contain the following endorsement, which must be stated on the certificate of insurance:

- Alternate Employer endorsement ISO form WC 00 03 01 A (or a substitute form providing equivalent coverage) showing Railroad in the schedule as the alternate employer (or a substitute form providing equivalent coverage).

- D. Railroad Protective Liability Insurance.** Contractor must maintain "Railroad Protective Liability" (RPL) insurance written on ISO occurrence form CG 00 35 12 04 (or a substitute form providing equivalent coverage) on behalf of Railroad as named insured, with a limit of not less than \$2,000,000 per occurrence and an aggregate of \$6,000,000. The definition of "JOB LOCATION" and "WORK" on the declaration page of the policy shall refer to this Agreement and shall describe all WORK or OPERATIONS performed under this agreement. Contractor shall provide this Agreement to Contractor's insurance agent(s) and/or broker(s) and Contractor shall instruct such agent(s) and/or broker(s) to procure the insurance coverage required by this Agreement. A BINDER STATING THE POLICY IS IN PLACE MUST BE SUBMITTED TO RAILROAD BEFORE THE WORK MAY COMMENCE AND UNTIL THE ORIGINAL POLICY IS FORWARDED TO UNION PACIFIC RAILROAD.

- E. Umbrella Or Excess Insurance.** If Contractor utilizes umbrella or excess policies, these policies must "follow form" and afford no less coverage than the primary policy.

- F. Pollution Liability Insurance.** Pollution liability coverage must be included when the scope of the work as defined in the Agreement includes installation, temporary storage, or disposal of any "hazardous" material that is injurious in or upon land, the atmosphere, or any watercourses; or may cause bodily injury at any time.

If required, coverage may be provided in separate policy form or by endorsement to Contractors CGL or RPL. Any form coverage must be equivalent to that provided in ISO form CG 24 15 "Limited Pollution Liability Extension Endorsement" or CG 28 31 "Pollution Exclusion Amendment" with limits of at least \$5,000,000 per occurrence and an aggregate limit of \$10,000,000.

If the scope of work as defined in this Agreement includes the disposal of any hazardous or non-hazardous materials from the job site, Contractor must furnish to Railroad evidence of pollution legal liability insurance maintained by the disposal site operator for losses arising from the insured facility accepting the materials, with coverage in minimum amounts of \$1,000,000 per loss, and an annual aggregate of \$2,000,000.

#### **Other Requirements**

- G.** All policy(ies) required above (except worker's compensation and employers liability) must include Railroad as "Additional Insured" using ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage). The coverage provided to Railroad as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 26, and CA 20 48 provide coverage for Railroad's negligence whether sole or partial, active or passive, and shall not be limited by Contractor's liability under the indemnity provisions of this Agreement.
- H.** Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless the law governing this Agreement prohibits all punitive damages that might arise under this Agreement.
- I.** Contractor waives all rights of recovery, and its insurers also waive all rights of subrogation of damages against Railroad and its agents, officers, directors and employees. This waiver must be stated on the certificate of insurance.
- J.** Prior to commencing the work, Contractor shall furnish Railroad with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements in this Agreement.
- K.** All insurance policies must be written by a reputable insurance company acceptable to Railroad or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state where the work is being performed.
- L.** The fact that insurance is obtained by Contractor or by Railroad on behalf of Contractor will not be deemed to release or diminish the liability of Contractor, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railroad from Contractor or any third party will not be limited by the amount of the required insurance coverage.

## **EXHIBIT D**

### TO CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

#### **MINIMUM SAFETY REQUIREMENTS**

The term "employees" as used herein refer to all employees of Contractor as well as all employees of any subcontractor or agent of Contractor.

#### **I. CLOTHING**

A. All employees of Contractor will be suitably dressed to perform their duties safely and in a manner that will not interfere with their vision, hearing, or free use of their hands or feet.

Specifically, Contractor's employees must wear:

- i. Waist-length shirts with sleeves.
- ii. Trousers that cover the entire leg. If flare-legged trousers are worn, the trouser bottoms must be tied to prevent catching.
- iii. Footwear that covers their ankles and has a defined heel. Employees working on bridges are required to wear safety-toed footwear that conforms to the American National Standards Institute (ANSI) and FRA footwear requirements.

B. Employees shall not wear boots (other than work boots), sandals, canvas-type shoes, or other shoes that have thin soles or heels that are higher than normal.

C. Employees must not wear loose or ragged clothing, neckties, finger rings, or other loose jewelry while operating or working on machinery.

#### **II. PERSONAL PROTECTIVE EQUIPMENT**

Contractor shall require its employees to wear personal protective equipment as specified by Railroad rules, regulations, or recommended or requested by the Railroad Representative.

- i. Hard hat that meets the American National Standard (ANSI) Z89.1 – latest revision. Hard hats should be affixed with Contractor's company logo or name.
- ii. Eye protection that meets American National Standard (ANSI) for occupational and educational eye and face protection, Z87.1 – latest revision. Additional eye protection must be provided to meet specific job situations such as welding, grinding, etc.
- iii. Hearing protection, which affords enough attenuation to give protection from noise levels that will be occurring on the job site. Hearing protection, in the form of plugs or muffs, must be worn when employees are within:
  - 100 feet of a locomotive or roadway/work equipment
  - 15 feet of power operated tools
  - 150 feet of jet blowers or pile drivers
  - 150 feet of retarders in use (when within 10 feet, employees must wear dual ear protection – plugs and muffs)
- iv. Other types of personal protective equipment, such as respirators, fall protection equipment, and face shields, must be worn as recommended or requested by the Railroad Representative.

#### **III. ON TRACK SAFETY**

Contractor is responsible for compliance with the Federal Railroad Administration's Roadway Worker Protection regulations – 49CFR214, Subpart C and Railroad's On-Track Safety rules. Under 49CFR214, Subpart C, railroad contractors are responsible for the training of their employees on such regulations. In addition to the instructions contained in Roadway Worker Protection regulations, all employees must:

- i. Maintain a distance of twenty-five (25) feet to any track unless the Railroad Representative is present to authorize movements.
- ii. Wear an orange, reflectorized workwear approved by the Railroad Representative.

- iii. Participate in a job briefing that will specify the type of On-Track Safety for the type of work being performed. Contractor must take special note of limits of track authority, which tracks may or may not be fouled, and clearing the track. Contractor will also receive special instructions relating to the work zone around machines and minimum distances between machines while working or traveling.

#### **IV. EQUIPMENT**

- A. It is the responsibility of Contractor to ensure that all equipment is in a safe condition to operate. If, in the opinion of the Railroad Representative, any of Contractor's equipment is unsafe for use, Contractor shall remove such equipment from Railroad's property. In addition, Contractor must ensure that the operators of all equipment are properly trained and competent in the safe operation of the equipment. In addition, operators must be:
  - i. Familiar and comply with Railroad's rules on lockout/tagout of equipment.
  - ii. Trained in and comply with the applicable operating rules if operating any hy-rail equipment on-track.
  - iii. Trained in and comply with the applicable air brake rules if operating any equipment that moves rail cars or any other railbound equipment.
- B. All self-propelled equipment must be equipped with a first-aid kit, fire extinguisher, and audible back-up warning device.
- C. Unless otherwise authorized by the Railroad Representative, all equipment must be parked a minimum of twenty-five (25) feet from any track. Before leaving any equipment unattended, the operator must stop the engine and properly secure the equipment against movement.
- D. Cranes must be equipped with three orange cones that will be used to mark the working area of the crane and the minimum clearances to overhead powerlines.

#### **V. GENERAL SAFETY REQUIREMENTS**

- A. Contractor shall ensure that all waste is properly disposed of in accordance with applicable federal and state regulations.
- B. Contractor shall ensure that all employees participate in and comply with a job briefing conducted by the Railroad Representative, if applicable. During this briefing, the Railroad Representative will specify safe work procedures, (including On-Track Safety) and the potential hazards of the job. If any employee has any questions or concerns about the work, the employee must voice them during the job briefing. Additional job briefings will be conducted during the work as conditions, work procedures, or personnel change.
- C. All track work performed by Contractor meets the minimum safety requirements established by the Federal Railroad Administration's Track Safety Standards 49CFR213.
- D. All employees comply with the following safety procedures when working around any railroad track:
  - i. Always be on the alert for moving equipment. Employees must always expect movement on any track, at any time, in either direction.
  - ii. Do not step or walk on the top of the rail, frog, switches, guard rails, or other track components.
  - iii. In passing around the ends of standing cars, engines, roadway machines or work equipment, leave at least 20 feet between yourself and the end of the equipment. Do not go between pieces of equipment of the opening is less than one car length (50 feet).
  - iv. Avoid walking or standing on a track unless so authorized by the employee in charge.
  - v. Before stepping over or crossing tracks, look in both directions first.
  - vi. Do not sit on, lie under, or cross between cars except as required in the performance of your duties and only when track and equipment have been protected against movement.
- E. All employees must comply with all federal and state regulations concerning workplace safety.

# EXHIBIT D

To Public Highway At-Grade Crossing  
Agreement

Cover Sheet for the  
January 13, 2015 Agreement for Closure of two  
at grade crossings

## AGREEMENT

RAILROAD HIGHWAY GRADE CROSSING CLOSURE  
PUBLIC GRADE CROSSING USDOT NO. 743229J AND USDOT NO. 743228C  
WADE ROAD  
STRAUB ROAD  
RAILROAD MILEPOST 64.66 AND 65.31,  
NAVASOTA SUBDIVISION,  
COUNTY OF BRAZOS, STATE OF TEXAS

### {TEXAS FORM}

THIS AGREEMENT ("Agreement") is made and entered into this 13<sup>th</sup> day of January, 2015 ("Effective Date") by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation ("Railroad"), and **COUNTY OF BRAZOS**, a political subdivision of the State of Texas ("Public Authority").

### RECITALS

The Public Authority desires to permanently close the at-grade public road crossing for Wade Road at Railroad Milepost 64.66, DOT No. 743229J, in the County of Brazos, State of Texas, on Railroad's Navasota Subdivision.

The Public Authority desires to permanently close the at-grade public road crossing for Straub Road at Railroad Milepost 65.31, DOT No. 743228C, in the County of Brazos, State of Texas, on Railroad's Navasota Subdivision.

The Public Authority desires to establish a new at-grade public road crossing for Greens Prairie Trail at Railroad Milepost 65.76, DOT No. to be assigned, in the County of Brazos, State of Texas, on Railroad's Navasota Subdivision.

### AGREEMENT

NOW THEREFORE, It is mutually agreed by and between the Railroad and the Public Authority as follows:

**SECTION 1.** The railroad, upon execution of this agreement, consents to the issuance of a license agreement for the at grade, public crossing for the to be constructed Green Prairie Trail at railroad milepost 65.76 of the railroad's Navasota Subdivision.

**SECTION 2.** The public road authority agrees to permanently close and vacate the at grade, public road crossing for Wade Road at Railroad Milepost 64.66, DOT No. 743229J in the county of Brazos, located on the Railroad's Navasota Subdivision.

**SECTION 3.** The public road authority agrees to permanently close and vacate the at grade, public road crossing for Straub Road at Railroad Milepost 65.31, DOT No. 743228C in the county of Brazos, located on the Railroad's Navasota Subdivision.

**SECTION 4.** The Railroad agrees to not close and remove the at grade, public crossings at Wade Road and Straub Road until after the construction of Greens Prairie Trail is complete and the new roadway is open for public travel.

**SECTION 5.** The Railroad, at its expense, further agrees to remove the railroad crossing surface and warning devices (crossbuck signs, etc.) which currently exist on the Railroad's right-of-way, at Wade Road and Straub Road, upon the receipt of the above mentioned statement and copy of the Ordinance or Resolution.

**SECTION 6.**

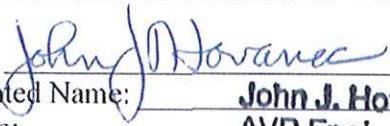
A. Prior to the Railroad's removal of the crossing surface and warning devices at Wade Road and Straub Road, the Public Authority, at its expense, shall install, maintain, repair and renew permanent barricades on both sides of the Wade Road and Straub Road with such barricades to be located off of the Railroad's property and to be in compliance with the plans marked **Exhibit A**, attached hereto and hereby made a part hereof, and also all applicable standards and guidelines contained in the current Manual on Uniform Traffic Control Devices ("MUTCD").

B. The Public Authority, at its expense, shall also (i) provide new advance street signs and pavement markings to indicate that the Wade Road and Straub Road is closed, with such signage to be in compliance with applicable current MUTCD standards and guidelines, (ii) remove all Wade Road and Straub Road approach surfaces up to the track tie ends, and (iii) require its contractor to execute the Railroad's Contractor's Right of Entry Agreement marked **Exhibit B**, attached hereto and hereby made a part hereof, and for the contractor to provide to Railroad the insurance policies, certificates and endorsements required therein before allowing any contractor to commence any work on Railroad's property.

Public Road Closure - Texas 11/01/2012  
Form Approved, AVP - Law

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the Effective Date first herein written.

UNION PACIFIC RAILROAD COMPANY

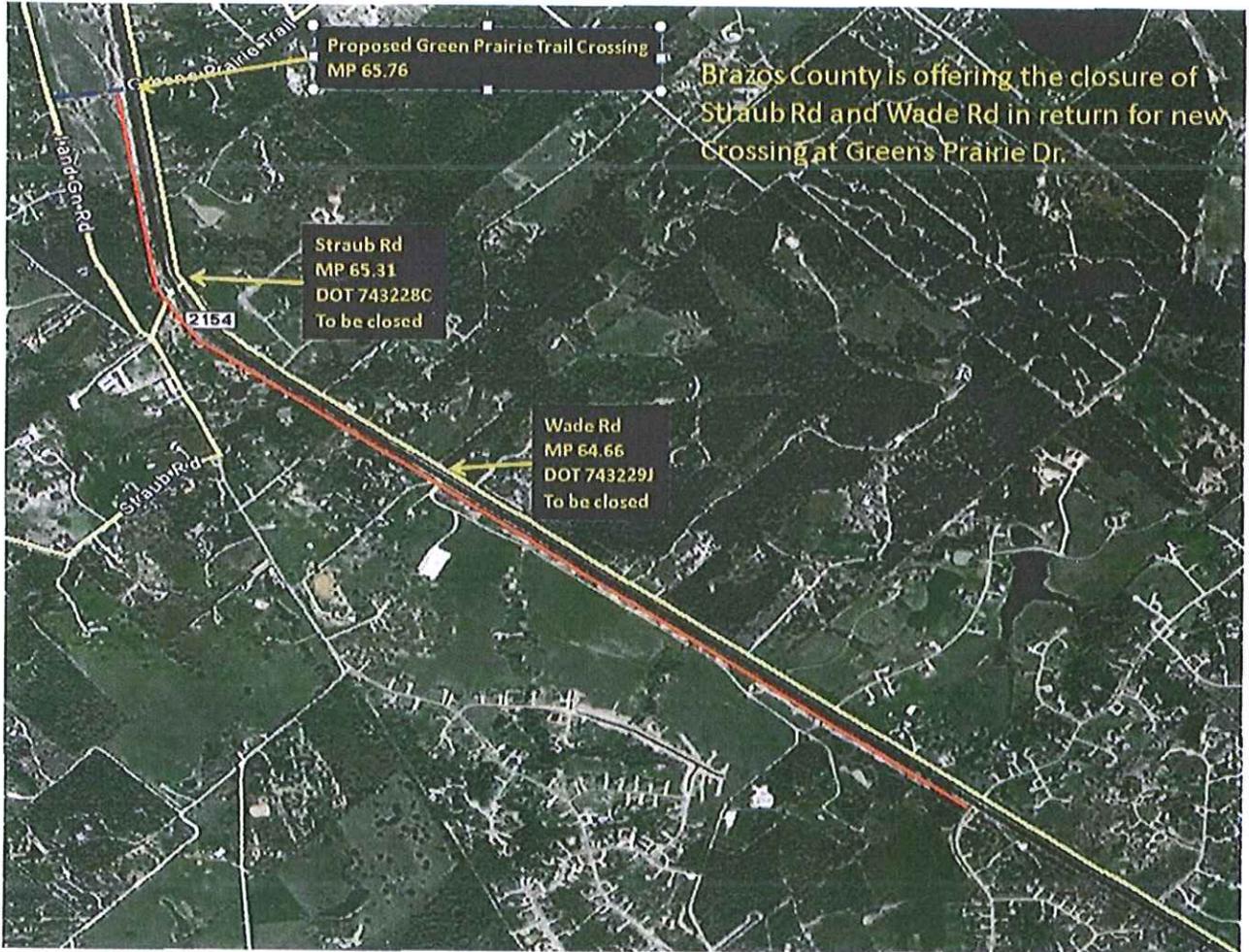
By:   
Printed Name: John J. Hovaneq  
Title: AVP Engineering

COUNTY OF BRAZOS  
By:   
Printed Name: Duane Peters  
Title: County Judge

**APPROVED**  
*Beutel-Guthrie*  
*Sr. General Attorney*  
*Union Pacific 3*

EXHIBIT A

Exhibit A is the plans referenced in Section 4A.



**Contractor's  
Right of Entry Agreement**

THIS AGREEMENT is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between UNION PACIFIC RAILROAD COMPANY, a Delaware corporation ("Railroad"); and, \_\_\_\_\_ a corporation ("Contractor").

**RECITALS**

Contractor has been hired by \_\_\_\_\_  
to perform work relating to \_\_\_\_\_  
\_\_\_\_\_  
(the "work"), with all or a portion of such work to be performed on property of Railroad in the vicinity of Railroad's

US DOT #: \_\_\_\_\_ Milepost: \_\_\_\_\_  
Subdivision: \_\_\_\_\_  
County: \_\_\_\_\_  
City/State: \_\_\_\_\_

as such location is in the general location shown on the Railroad Location Print marked **Exhibit A**, attached hereto and hereby made a part hereof, which work is the subject of a contract dated \_\_\_\_\_ between Railroad and \_\_\_\_\_

Railroad is willing to permit Contractor to perform the work described above at the location described above subject to the terms and conditions contained in this Agreement.

**AGREEMENT**

NOW, THEREFORE, it is mutually agreed by and between Railroad and Contractor, as follows:

**ARTICLE 1 - DEFINITION OF CONTRACTOR**

For purposes of this Agreement, all references in this agreement to Contractor shall include Contractor's contractors, subcontractors, officers, agents and employees, and others acting under its or their authority.

**ARTICLE 2 - RIGHT GRANTED; PURPOSE**

Railroad hereby grants to Contractor the right, during the term hereinafter stated and upon and subject to each and all of the terms, provisions and conditions herein contained, to enter upon and have ingress to and egress from the property described in the Recitals for the purpose of performing the work described in the Recitals above. The right herein granted to Contractor is limited to those portions of Railroad's property specifically described herein, or as designated by the Railroad Representative named in Article 4.

**ARTICLE 3 - TERMS AND CONDITIONS CONTAINED IN EXHIBITS B, C AND D**

The terms and conditions contained in **Exhibit B**, **Exhibit C** and **Exhibit D**, attached hereto, are hereby made a part of this Agreement.

**ARTICLE 4 - ALL EXPENSES TO BE BORNE BY CONTRACTOR; RAILROAD REPRESENTATIVE**

A. Contractor shall bear any and all costs and expenses associated with any work performed by Contractor, or any costs or expenses incurred by Railroad relating to this Agreement.

B. Contractor shall coordinate all of its work with the following Railroad representative or his or her duly authorized representative (the "Railroad Representative"):

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C. Contractor, at its own expense, shall adequately police and supervise all work to be performed by Contractor and shall ensure that such work is performed in a safe manner as set forth in Section 7 of **Exhibit B**. The responsibility of Contractor for safe conduct and adequate policing and supervision of Contractor's work shall not be lessened or otherwise affected by Railroad's approval of plans and specifications involving the work, or by Railroad's collaboration in performance of any work, or by the presence at the work site of a Railroad Representative, or by compliance by Contractor with any requests or recommendations made by Railroad Representative.

**ARTICLE 5 - SCHEDULE OF WORK ON A MONTHLY BASIS**

The Contractor, at its expense, shall provide on a monthly basis a detailed schedule of work to the Railroad Representative named in Article 4B above. The reports shall start at the execution of this Agreement and continue until this Agreement is terminated as provided in this Agreement or until the Contractor has completed all work on Railroad's property.

**ARTICLE 6 - TERM; TERMINATION**

A. The grant of right herein made to Contractor shall commence on the date of this Agreement, and continue until \_\_\_\_\_, unless sooner terminated as herein provided, or at such time as Contractor has completed its work on Railroad's property, whichever is earlier. Contractor agrees to notify the Railroad Representative in writing when it has completed its work on Railroad's property.

B. This Agreement may be terminated by either party on ten (10) days written notice to the other party.

**ARTICLE 7 - CERTIFICATE OF INSURANCE**

A. Before commencing any work, Contractor will provide Railroad with the (i) insurance binders, policies, certificates and endorsements set forth in **Exhibit C** of this Agreement, and (ii) the insurance endorsements obtained by each subcontractor as required under Section 12 of **Exhibit B** of this Agreement.

B. All insurance correspondence, binders, policies, certificates and endorsements shall be sent to:

Union Pacific Railroad Company  
Real Estate Department  
1400 Douglas Street, MS 1690  
Omaha, NE 68179-1690

**ARTICLE 8 - DISMISSAL OF CONTRACTOR'S EMPLOYEE**

At the request of Railroad, Contractor shall remove from Railroad's property any employee of Contractor who fails to conform to the instructions of the Railroad Representative in connection with the work on Railroad's property, and any right of Contractor shall be suspended until such removal has occurred. Contractor shall indemnify Railroad against any claims arising from the removal of any such employee from Railroad's property.

**ARTICLE 9 - ADMINISTRATIVE FEE**

Upon the execution and delivery of this Agreement, Contractor shall pay to Railroad \_\_\_\_\_  
\_\_\_\_\_ DOLLARS (\$\_\_\_\_\_) as reimbursement for clerical, administrative and handling  
expenses in connection with the processing of this Agreement.

**ARTICLE 10 - CROSSINGS; COMPLIANCE WITH MUTCD AND FRA GUIDELINES**

A. No additional vehicular crossings (including temporary haul roads) or pedestrian crossings over Railroad's  
trackage shall be installed or used by Contractor without the prior written permission of Railroad.

B. Any permanent or temporary changes, including temporary traffic control, to crossings must conform to  
the Manual of Uniform Traffic Control Devices (MUTCD) and any applicable Federal Railroad Administration rules,  
regulations and guidelines, and must be reviewed by the Railroad prior to any changes being implemented. In the event  
the Railroad is found to be out of compliance with federal safety regulations due to the Contractor's modifications,  
negligence, or any other reason arising from the Contractor's presence on the Railroad's property, the Contractor agrees  
to assume liability for any civil penalties imposed upon the Railroad for such noncompliance.

**ARTICLE 11 - EXPLOSIVES**

Explosives or other highly flammable substances shall not be stored or used on Railroad's property without the  
prior written approval of Railroad.

**IN WITNESS WHEREOF**, the parties hereto have duly executed this agreement in duplicate as of the date first  
herein written.

**UNION PACIFIC RAILROAD COMPANY**  
(Federal Tax ID #94-6001323)

By \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

**CONTRACTOR NAME**

By \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

**EXHIBIT A**

TO CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

**RAILROAD LOCATION PRINT**

Exhibit A will be a print showing the general location of the work site.

SAMPLE

## EXHIBIT B

### TO CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

#### GENERAL TERMS & CONDITIONS

#### **Section 1. NOTICE OF COMMENCEMENT OF WORK - FLAGGING**

A. Contractor agrees to notify the Railroad Representative at least ten (10) working days in advance of Contractor commencing its work and at least thirty (30) working days in advance of proposed performance of any work by Contractor in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within twenty-five (25) feet of any of Railroad's track(s) at any time, for any reason, unless and until a Railroad flagman is provided to watch for trains. Upon receipt of such thirty (30)-day notice, the Railroad Representative will determine and inform Contractor whether a flagman need be present and whether Contractor needs to implement any special protective or safety measures. If flagging or other special protective or safety measures are performed by Railroad, Railroad will bill Contractor for such expenses incurred by Railroad, unless Railroad and a federal, state or local governmental entity have agreed that Railroad is to bill such expenses to the federal, state or local governmental entity. If Railroad will be sending the bills to Contractor, Contractor shall pay such bills within thirty (30) days of Contractor's receipt of billing. If Railroad performs any flagging, or other special protective or safety measures are performed by Railroad, Contractor agrees that Contractor is not relieved of any of its responsibilities or liabilities set forth in this Agreement.

B. The rate of pay per hour for each flagman will be the prevailing hourly rate in effect for an eight-hour day for the class of flagmen used during regularly assigned hours and overtime in accordance with Labor Agreements and Schedules in effect at the time the work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health and welfare, supplemental sickness, Railroad Retirement and unemployment compensation, supplemental pension, Employees Liability and Property Damage and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect at the time the work is performed. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays, and two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between Railroad and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized governmental agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, Contractor (or the governmental entity, as applicable) shall pay on the basis of the new rates and charges.

C. Reimbursement to Railroad will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman can be assigned to other Railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other Railroad work. Reimbursement will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which Railroad is required to pay the flagman and which could not reasonably be avoided by Railroad by assignment of such flagman to other work, even though Contractor may not be working during such time. When it becomes necessary for Railroad to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, Contractor must provide Railroad a minimum of five (5) days notice prior to the cessation of the need for a flagman. If five (5) days notice of cessation is not given, Contractor will still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional thirty (30) days notice must then be given to Railroad if flagging services are needed again after such five day cessation notice has been given to Railroad.

#### **Section 2. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED**

A. The foregoing grant of right is subject and subordinate to the prior and continuing right and obligation of the Railroad to use and maintain its entire property including the right and power of Railroad to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, roadways, signal, communication, fiber optics, or other wirelines, pipelines and other facilities upon, along or across any or all parts of its property, all or any of which may be

freely done at any time or times by Railroad without liability to Contractor or to any other party for compensation or damages.

B. The foregoing grant is also subject to all outstanding superior rights (whether recorded or unrecorded and including those in favor of licensees and lessees of Railroad's property, and others) and the right of Railroad to renew and extend the same, and is made without covenant of title or for quiet enjoyment.

### **Section 3. NO INTERFERENCE WITH OPERATIONS OF RAILROAD AND ITS TENANTS**

A. Contractor shall conduct its operations so as not to interfere with the continuous and uninterrupted use and operation of the railroad tracks and property of Railroad, including without limitation, the operations of Railroad's lessees, licensees or others, unless specifically authorized in advance by the Railroad Representative. Nothing shall be done or permitted to be done by Contractor at any time that would in any manner impair the safety of such operations. When not in use, Contractor's machinery and materials shall be kept at least fifty (50) feet from the centerline of Railroad's nearest track, and there shall be no vehicular crossings of Railroad's tracks except at existing open public crossings.

B. Operations of Railroad and work performed by Railroad personnel and delays in the work to be performed by Contractor caused by such railroad operations and work are expected by Contractor, and Contractor agrees that Railroad shall have no liability to Contractor, or any other person or entity for any such delays. The Contractor shall coordinate its activities with those of Railroad and third parties so as to avoid interference with railroad operations. The safe operation of Railroad train movements and other activities by Railroad takes precedence over any work to be performed by Contractor.

### **Section 4. LIENS**

Contractor shall pay in full all persons who perform labor or provide materials for the work to be performed by Contractor. Contractor shall not create, permit or suffer any mechanic's or materialmen's liens of any kind or nature to be created or enforced against any property of Railroad for any such work performed. Contractor shall indemnify and hold harmless Railroad from and against any and all liens, claims, demands, costs or expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials furnished. If Contractor fails to promptly cause any lien to be released of record, Railroad may, at its election, discharge the lien or claim of lien at Contractor's expense.

### **Section 5. PROTECTION OF FIBER OPTIC CABLE SYSTEMS**

A. Fiber optic cable systems may be buried on Railroad's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Contractor shall telephone Railroad during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried anywhere on Railroad's property to be used by Contractor. If it is, Contractor will telephone the telecommunications company(ies) involved, make arrangements for a cable locator and, if applicable, for relocation or other protection of the fiber optic cable. Contractor shall not commence any work until all such protection or relocation (if applicable) has been accomplished.

B. In addition to other indemnity provisions in this Agreement, Contractor shall indemnify, defend and hold Railroad harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) arising out of any act or omission of Contractor, its agents and/or employees, that causes or contributes to (1) any damage to or destruction of any telecommunications system on Railroad's property, and/or (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents and/or employees, on Railroad's property. Contractor shall not have or seek recourse against Railroad for any claim or cause of action for alleged loss of profits or revenue or loss of service or other consequential damage to a telecommunication company using Railroad's property or a customer or user of services of the fiber optic cable on Railroad's property.

**Section 6. PERMITS - COMPLIANCE WITH LAWS**

In the prosecution of the work covered by this Agreement, Contractor shall secure any and all necessary permits and shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work including, without limitation, all applicable Federal Railroad Administration regulations.

**Section 7. SAFETY**

A. Safety of personnel, property, rail operations and the public is of paramount importance in the prosecution of the work performed by Contractor. Contractor shall be responsible for initiating, maintaining and supervising all safety, operations and programs in connection with the work. Contractor shall at a minimum comply with Railroad's safety standards listed in **Exhibit D**, hereto attached, to ensure uniformity with the safety standards followed by Railroad's own forces. As a part of Contractor's safety responsibilities, Contractor shall notify Railroad if Contractor determines that any of Railroad's safety standards are contrary to good safety practices. Contractor shall furnish copies of **Exhibit D** to each of its employees before they enter the job site.

B. Without limitation of the provisions of paragraph A above, Contractor shall keep the job site free from safety and health hazards and ensure that its employees are competent and adequately trained in all safety and health aspects of the job.

C. Contractor shall have proper first aid supplies available on the job site so that prompt first aid services may be provided to any person injured on the job site. Contractor shall promptly notify Railroad of any U.S. Occupational Safety and Health Administration reportable injuries. Contractor shall have a nondelegable duty to control its employees while they are on the job site or any other property of Railroad, and to be certain they do not use, be under the influence of, or have in their possession any alcoholic beverage, drug or other substance that may inhibit the safe performance of any work.

D. If and when requested by Railroad, Contractor shall deliver to Railroad a copy of Contractor's safety plan for conducting the work (the "Safety Plan"). Railroad shall have the right, but not the obligation, to require Contractor to correct any deficiencies in the Safety Plan. The terms of this Agreement shall control if there are any inconsistencies between this Agreement and the Safety Plan.

**Section 8. INDEMNITY**

A. To the extent not prohibited by applicable statute, Contractor shall indemnify, defend and hold harmless Railroad, its affiliates, and its and their officers, agents and employees (individually an "Indemnified Party" or collectively "Indemnified Parties") from and against any and all loss, damage, injury, liability, claim, demand, cost or expense (including, without limitation, attorney's, consultant's and expert's fees, and court costs), fine or penalty (collectively, "Loss") incurred by any person (including, without limitation, any Indemnified Party, Contractor, or any employee of Contractor or of any Indemnified Party) arising out of or in any manner connected with (i) any work performed by Contractor, or (ii) any act or omission of Contractor, its officers, agents or employees, or (iii) any breach of this Agreement by Contractor.

B. The right to indemnity under this Section 8 shall accrue upon occurrence of the event giving rise to the Loss, and shall apply regardless of any negligence or strict liability of any Indemnified Party, except where the Loss is caused by the sole active negligence of an Indemnified Party as established by the final judgment of a court of competent jurisdiction. The sole active negligence of any Indemnified Party shall not bar the recovery of any other Indemnified Party.

C. Contractor expressly and specifically assumes potential liability under this Section 8 for claims or actions brought by Contractor's own employees. Contractor waives any immunity it may have under worker's compensation or industrial insurance acts to indemnify the Indemnified Parties under this Section 8. Contractor acknowledges that this waiver was mutually negotiated by the parties hereto.

D. No court or jury findings in any employee's suit pursuant to any worker's compensation act or the Federal Employers' Liability Act against a party to this Agreement may be relied upon or used by Contractor in any attempt to assert liability against any Indemnified Party.

E. The provisions of this Section 8 shall survive the completion of any work performed by Contractor or the termination or expiration of this Agreement. In no event shall this Section 8 or any other provision of this Agreement be deemed to limit any liability Contractor may have to any Indemnified Party by statute or under common law.

**Section 9. RESTORATION OF PROPERTY**

In the event Railroad authorizes Contractor to take down any fence of Railroad or in any manner move or disturb any of the other property of Railroad in connection with the work to be performed by Contractor, then in that event Contractor shall, as soon as possible and at Contractor's sole expense, restore such fence and other property to the same condition as the same were in before such fence was taken down or such other property was moved or disturbed. Contractor shall remove all of Contractor's tools, equipment, rubbish and other materials from Railroad's property promptly upon completion of the work, restoring Railroad's property to the same state and condition as when Contractor entered thereon.

**Section 10. WAIVER OF DEFAULT**

Waiver by Railroad of any breach or default of any condition, covenant or agreement herein contained to be kept, observed and performed by Contractor shall in no way impair the right of Railroad to avail itself of any remedy for any subsequent breach or default.

**Section 11. MODIFICATION - ENTIRE AGREEMENT**

No modification of this Agreement shall be effective unless made in writing and signed by Contractor and Railroad. This Agreement and the exhibits attached hereto and made a part hereof constitute the entire understanding between Contractor and Railroad and cancel and supersede any prior negotiations, understandings or agreements, whether written or oral, with respect to the work to be performed by Contractor.

**Section 12. ASSIGNMENT - SUBCONTRACTING**

Contractor shall not assign or subcontract this Agreement, or any interest therein, without the written consent of the Railroad. Contractor shall be responsible for the acts and omissions of all subcontractors. Before Contractor commences any work, the Contractor shall, except to the extent prohibited by law; (1) require each of its subcontractors to include the Contractor as "Additional Insured" in the subcontractor's Commercial General Liability policy and Business Automobile policies with respect to all liabilities arising out of the subcontractor's performance of work on behalf of the Contractor by endorsing these policies with ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage); (2) require each of its subcontractors to endorse their Commercial General Liability Policy with "Contractual Liability Railroads" ISO Form CG 24 17 10 01 (or a substitute form providing equivalent coverage) for the job site; and (3) require each of its subcontractors to endorse their Business Automobile Policy with "Coverage For Certain Operations In Connection With Railroads" ISO Form CA 20 70 10 01 (or a substitute form providing equivalent coverage) for the job site.

## EXHIBIT C

### TO CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

#### INSURANCE REQUIREMENTS

Contractor shall, at its sole cost and expense, procure and maintain during the course of the Project and until all Project work on Railroad's property has been completed and the Contractor has removed all equipment and materials from Railroad's property and has cleaned and restored Railroad's property to Railroad's satisfaction, the following insurance coverage:

A. **COMMERCIAL GENERAL LIABILITY INSURANCE**

Commercial general liability (CGL) with a limit of not less than \$5,000,000 each occurrence and an aggregate limit of not less than \$10,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage).

The policy must also contain the following endorsement, which must be stated on the certificate of insurance:

- Contractual Liability Railroads ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" as the Designated Job Site.
- Designated Construction Project(s) General Aggregate Limit ISO Form CG 25 03 03 97 (or a substitute form providing equivalent coverage) showing the project on the form schedule.

B. **BUSINESS AUTOMOBILE COVERAGE INSURANCE**

Business auto coverage written on ISO form CA 00 01 10 01 (or a substitute form providing equivalent liability coverage) with a combined single limit of not less \$5,000,000 for each accident and coverage must include liability arising out of any auto (including owned, hired and non-owned autos).

The policy must contain the following endorsements, which must be stated on the certificate of insurance:

- Coverage For Certain Operations In Connection With Railroads ISO form CA 20 70 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Property" as the Designated Job Site.
- Motor Carrier Act Endorsement - Hazardous materials clean up (MCS-90) if required by law.

C. **WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE**

Coverage must include but not be limited to:

- Contractor's statutory liability under the workers' compensation laws of the state where the work is being performed.
- Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 disease policy limit \$500,000 each employee.

If Contractor is self-insured, evidence of state approval and excess workers compensation coverage must be provided.

Coverage must include liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

The policy must contain the following endorsement, which must be stated on the certificate of insurance:

- Alternate Employer endorsement ISO form WC 00 03 01 A (or a substitute form providing equivalent coverage) showing Railroad in the schedule as the alternate employer (or a substitute form providing equivalent coverage).

D. **RAILROAD PROTECTIVE LIABILITY INSURANCE**

Contractor must maintain "Railroad Protective Liability" (RPL) insurance written on ISO occurrence form CG 00 35 12 04 (or a substitute form providing equivalent coverage) on behalf of Railroad as named insured, with a limit of not less than \$2,000,000 per occurrence and an aggregate of \$6,000,000. The definition of "JOB LOCATION" and "WORK" on the declaration page of the policy shall refer to this Agreement and shall describe all WORK or OPERATIONS performed under this agreement. Contractor shall provide this Agreement to Contractor's insurance agent(s) and/or broker(s) and Contractor shall instruct such agent(s) and/or broker(s) to procure the insurance coverage required by this Agreement. A BINDER STATING THE POLICY IS IN PLACE MUST BE SUBMITTED TO RAILROAD BEFORE THE WORK MAY COMMENCE AND UNTIL THE ORIGINAL POLICY IS FORWARDED TO UNION PACIFIC RAILROAD.

E. **UMBRELLA OR EXCESS INSURANCE**

If Contractor utilizes umbrella or excess policies, these policies must "follow form" and afford no less coverage than the primary policy.

F. **POLLUTION LIABILITY INSURANCE**

Pollution liability coverage must be included when the scope of the work as defined in the Agreement includes installation, temporary storage, or disposal of any "hazardous" material that is injurious in or upon land, the atmosphere, or any watercourses; or may cause bodily injury at any time.

If required, coverage may be provided in separate policy form or by endorsement to Contractors CGL or RPL. Any form coverage must be equivalent to that provided in ISO form CG 24 15 "Limited Pollution Liability Extension Endorsement" or CG 28 31 "Pollution Exclusion Amendment" with limits of at least \$5,000,000 per occurrence and an aggregate limit of \$10,000,000.

If the scope of work as defined in this Agreement includes the disposal of any hazardous or non-hazardous materials from the job site, Contractor must furnish to Railroad evidence of pollution legal liability insurance maintained by the disposal site operator for losses arising from the insured facility accepting the materials, with coverage in minimum amounts of \$1,000,000 per loss, and an annual aggregate of \$2,000,000.

**OTHER REQUIREMENTS**

- G. All policy(ies) required above (except worker's compensation and employers liability) must include Railroad as "Additional Insured" using ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage). The coverage provided to Railroad as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 26, and CA 20 48 provide coverage for Railroad's negligence whether sole or partial, active or passive, and shall not be limited by Contractor's liability under the indemnity provisions of this Agreement.
- H. Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless the law governing this Agreement prohibits all punitive damages that might arise under this Agreement.

- I. Contractor waives all rights of recovery, and its insurers also waive all rights of subrogation of damages against Railroad and its agents, officers, directors and employees. This waiver must be stated on the certificate of insurance.
- J. Prior to commencing the work, Contractor shall furnish Railroad with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements in this Agreement.
- K. All insurance policies must be written by a reputable insurance company acceptable to Railroad or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state where the work is being performed.
- L. The fact that insurance is obtained by Contractor or by Railroad on behalf of Contractor will not be deemed to release or diminish the liability of Contractor, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railroad from Contractor or any third party will not be limited by the amount of the required insurance coverage.

SAMPLE

## EXHIBIT D

### TO CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

#### MINIMUM SAFETY REQUIREMENTS

The term "employees" as used herein refer to all employees of Contractor as well as all employees of any subcontractor or agent of Contractor.

#### I. CLOTHING

- A. All employees of Contractor will be suitably dressed to perform their duties safely and in a manner that will not interfere with their vision, hearing, or free use of their hands or feet.

Specifically, Contractor's employees must wear:

- (i) Waist-length shirts with sleeves.
- (ii) Trousers that cover the entire leg. If flare-legged trousers are worn, the trouser bottoms must be tied to prevent catching.
- (iii) Footwear that covers their ankles and has a defined heel. Employees working on bridges are required to wear safety-toed footwear that conforms to the American National Standards Institute (ANSI) and FRA footwear requirements.

- B. Employees shall not wear boots (other than work boots), sandals, canvas-type shoes, or other shoes that have thin soles or heels that are higher than normal.

- C. Employees must not wear loose or ragged clothing, neckties, finger rings, or other loose jewelry while operating or working on machinery.

#### II. PERSONAL PROTECTIVE EQUIPMENT

Contractor shall require its employees to wear personal protective equipment as specified by Railroad rules, regulations, or recommended or requested by the Railroad Representative.

- (i) Hard hat that meets the American National Standard (ANSI) Z89.1 – latest revision. Hard hats should be affixed with Contractor's company logo or name.
- (i) Eye protection that meets American National Standard (ANSI) for occupational and educational eye and face protection, Z87.1 – latest revision. Additional eye protection must be provided to meet specific job situations such as welding, grinding, etc.
- (ii) Hearing protection, which affords enough attenuation to give protection from noise levels that will be occurring on the job site. Hearing protection, in the form of plugs or muffs, must be worn when employees are within:
  - 100 feet of a locomotive or roadway/work equipment
  - 15 feet of power operated tools
  - 150 feet of jet blowers or pile drivers
  - 150 feet of retarders in use (when within 10 feet, employees must wear dual ear protection – plugs and muffs)
- (iv) Other types of personal protective equipment, such as respirators, fall protection equipment, and face shields, must be worn as recommended or requested by the Railroad Representative.

### III. ON TRACK SAFETY

Contractor is responsible for compliance with the Federal Railroad Administration's Roadway Worker Protection regulations – 49CFR214, Subpart C and Railroad's On-Track Safety rules. Under 49CFR214, Subpart C, railroad contractors are responsible for the training of their employees on such regulations. In addition to the instructions contained in Roadway Worker Protection regulations, all employees must:

- (i) Maintain a distance of twenty-five (25) feet to any track unless the Railroad Representative is present to authorize movements.
- (ii) Wear an orange, reflectorized workwear approved by the Railroad Representative.
- (iii) Participate in a job briefing that will specify the type of On-Track Safety for the type of work being performed. Contractor must take special note of limits of track authority, which tracks may or may not be fouled, and clearing the track. Contractor will also receive special instructions relating to the work zone around machines and minimum distances between machines while working or traveling.

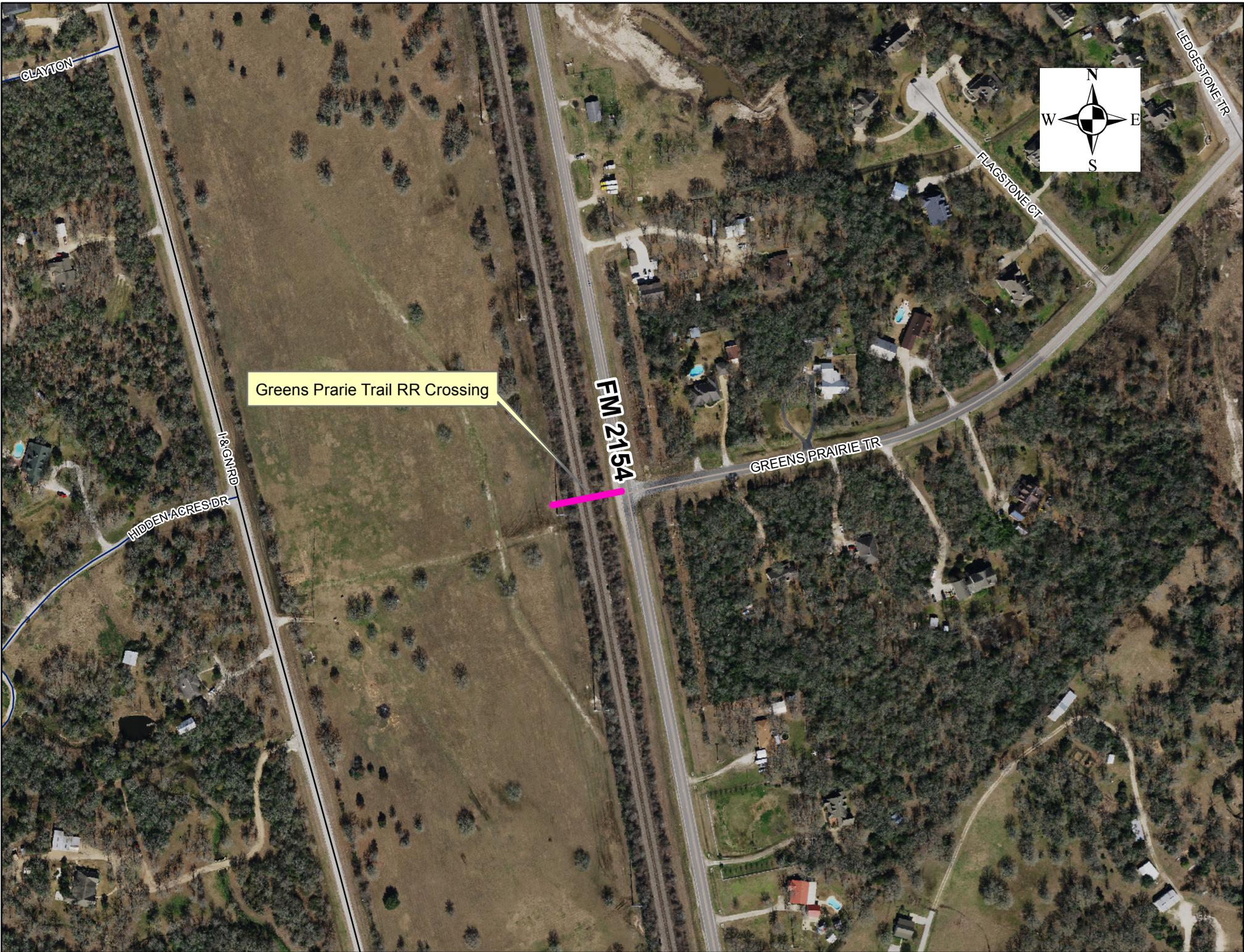
### IV. EQUIPMENT

- A. It is the responsibility of Contractor to ensure that all equipment is in a safe condition to operate. If, in the opinion of the Railroad Representative, any of Contractor's equipment is unsafe for use, Contractor shall remove such equipment from Railroad's property. In addition, Contractor must ensure that the operators of all equipment are properly trained and competent in the safe operation of the equipment. In addition, operators must be:
  - (i) Familiar and comply with Railroad's rules on lockout/tagout of equipment.
  - (ii) Trained in and comply with the applicable operating rules if operating any hy-rail equipment on-track.
  - (iii) Trained in and comply with the applicable air brake rules if operating any equipment that moves rail cars or any other railbound equipment.
- B. All self-propelled equipment must be equipped with a first-aid kit, fire extinguisher, and audible back-up warning device.
- C. Unless otherwise authorized by the Railroad Representative, all equipment must be parked a minimum of twenty-five (25) feet from any track. Before leaving any equipment unattended, the operator must stop the engine and properly secure the equipment against movement.
- D. Cranes must be equipped with three orange cones that will be used to mark the working area of the crane and the minimum clearances to overhead powerlines.

### V. GENERAL SAFETY REQUIREMENTS

- A. Contractor shall ensure that all waste is properly disposed of in accordance with applicable federal and state regulations.
- B. Contractor shall ensure that all employees participate in and comply with a job briefing conducted by the Railroad Representative, if applicable. During this briefing, the Railroad Representative will specify safe work procedures, (including On-Track Safety) and the potential hazards of the job. If any employee has any questions or concerns about the work, the employee must voice them during the job briefing. Additional job briefings will be conducted during the work as conditions, work procedures, or personnel change.

- C. All track work performed by Contractor meets the minimum safety requirements established by the Federal Railroad Administration's Track Safety Standards 49CFR213.
- D. All employees comply with the following safety procedures when working around any railroad track:
  - (i) Always be on the alert for moving equipment. Employees must always expect movement on any track, at any time, in either direction.
  - (ii) Do not step or walk on the top of the rail, frog, switches, guard rails, or other track components.
  - (iii) In passing around the ends of standing cars, engines, roadway machines or work equipment, leave at least 20 feet between yourself and the end of the equipment. Do not go between pieces of equipment if the opening is less than one car length (50 feet).
  - (iv) Avoid walking or standing on a track unless so authorized by the employee in charge.
  - (v) Before stepping over or crossing tracks, look in both directions first.
  - (vi) Do not sit on, lie under, or cross between cars except as required in the performance of your duties and only when track and equipment have been protected against movement.
- E. All employees must comply with all federal and state regulations concerning workplace safety.



CLAYTON

LEDGESTONE TR



FLAGSTONE CT

Greens Prairie Trail RR Crossing

I & G N R B

HIDDEN ACRES DR

FM 2154

GREENS PRAIRIE TR



## Legislation Details (With Text)

**File #:** 16-0102      **Version:** 1      **Name:** Interlocal Agreement with Blinn College  
**Type:** Contract      **Status:** Consent Agenda  
**File created:** 2/10/2016      **In control:** City Council Regular  
**On agenda:** 3/10/2016      **Final action:**  
**Title:** Presentation, possible action, and discussion of an interlocal agreement with Blinn College for the City Fire Department to provide clinical sites to Blinn EMS students.  
**Sponsors:** Eric Hurt  
**Indexes:**  
**Code sections:**  
**Attachments:** [K CS Fire Dept. Affil Agreement 4..pdf](#)

Date	Ver.	Action By	Action	Result
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Presentation, possible action, and discussion of an interlocal agreement with Blinn College for the City Fire Department to provide clinical sites to Blinn EMS students.

### Relationship to Strategic Goals:

- Good Governance
- Core Services and Infrastructure
- Improving Mobility
- Sustainable City

Recommendation(s): Staff recommends approval of this Interlocal Agreement

Summary: The College Station Fire Department will provide clinical sites to Blinn College EMS students that are required to do EMS rideouts as part of their curriculum. College Station Fire Department also uses Blinn College to teach and certify our paramedics.

Budget & Financial Summary: N/A

Legal Review: Yes.

### Attachments:

Copy of Interlocal Agreement

## CLINICAL AFFILIATION AGREEMENT

This Clinical Affiliation Agreement ("Agreement") is made and entered into by and between **Blinn College**, a public community college district established under Chapter 130 of the Texas Education Code and political subdivision of the State of Texas ("Blinn College" or "College") and the **City of College Station, Texas** a Texas home-rule municipal corporation ("City"), relating to the following Blinn College Health Sciences Program(s): Emergency Medical Services Program.

### WITNESSETH THAT:

**WHEREAS**, Blinn College is a public junior college, duly organized and established under the laws of the State of Texas; and,

**WHEREAS**, in its efforts to provide a comprehensive community college program, including courses in occupational, semi-technical, or technical fields leading directly to employment, Blinn College has established various programs relative to health sciences care; and,

**WHEREAS**, in the proper operations of such programs, it is necessary that students obtain appropriate clinical experience, including but not limited to the assessment, planning, implementation, and evaluation of care to individuals, families, and groups; and,

**WHEREAS**, the City has a fire department, which can provide clinical practice and serve as a clinical laboratory for the provision of such necessary appropriate clinical experience for students of Blinn College, and,

**WHEREAS**, Blinn College, through its Board of Trustees or its administrative designee, is empowered by virtue of the laws of the State of Texas to enter into this Agreement with the City for the educational services described in this Agreement, namely the provision of clinical experiences to students of Blinn College; and,

**WHEREAS**, the City considers it in its best interest and to its benefit to encourage, participate, and cooperate in the clinical education of students of Blinn College;

**NOW, THEREFORE**, in consideration of the above recitals, the parties agree that Blinn College shall secure educational services from the City and specifically from its fire department under the following terms and conditions:

### Article I - Definitions

**Section 1-1.** The following terms shall have the meanings respectively prescribed for them except as the context may otherwise require:

(A) "*Clinical Experience*": Clinical Experience refers to the education of Blinn College Students relative to the assessment, planning, implementation, and evaluation of health sciences services and care to individuals, families, and groups.

(B) "*City Fire Chief*": The City's Fire Chief or his designee responsible for coordinating Student clinical experiences at the City's Fire Department.

(C) "*Designated Supervisor and Preceptor*": Designated Supervisor and Preceptor are terms used to describe the City employees who are actively involved in clinical instruction and/or supervision of Students when faculty are unavailable in clinical practice. Designated supervisors in radiology and PTA are referred to as clinical instructors.

(D) "*Director or Coordinator of College Program*": Director or Coordinator of College Program refers, as appropriate, to the director of the Blinn College program or the director's designee, for which clinical experience is provided under this Agreement.

(E) "*Facility, Facilities*": Facility, facilities shall describe the clinical practice location at 300 Krenek Tap Road, College Station, Texas 77840.

(F) "*Faculty, Staff*": Faculty refers to that member of the faculty of a particular Blinn College program who is responsible for the instruction of Students while assigned to the City's Fire Department for clinical practice for clinical experience. The Faculty is directly responsible to the director/coordinator of each respective Blinn College campus. Staff refers to an individual who is an employee of Blinn College within a "program" and whom Blinn College believes requires access to the City's Fire Department under the clinical experience granted under this Agreement.

(G) "*Program*": Program refers to the following Blinn College programs: Associate Degree Nursing (ADN), Dental Assisting, Dental Hygiene, Emergency Medical Services (EMS) Programs, Fire Science Technology (FIRT), Nurse Aide Training, Phlebotomy Training, Physical Therapist Assisting (PTA), Radiologic Technology, Vocational Nursing (VOCN), and Health Information Technology (HIT).

(H) "*Student, Students*": Student or Students refers to Student or Students of any Blinn College Health Sciences Program.

**Section 1-2.** All other terms shall have the meaning prescribed for them in the published rules and regulations relating to the respective program's education, licensure and practice for that field of study in the State of Texas, as adopted or enacted by the examiner of the applicable State licensing agency, unless the context requires otherwise.

## **Article II - General Provisions & Obligations**

**Section 2-1.** The City agrees to grant Faculty, Staff and Students access to its Facilities as are reasonably approved by the City's Fire Department Manager consistent with the purposes of this Agreement. Such access is to be granted without regard to race, color, religion, sex, age, economic status, national origin, disability, or other discriminatory factors prohibited by law.

Notwithstanding such access, it is clearly understood by the parties that the ultimate responsibility for care remains with the City and the individual(s) responsible for the care when the Students are not present. Students will not replace City staff nor provide services to the City's Fire Department clients apart from participating in the Program for its educational value.

The number of Students granted access to the Facility shall be mutually agreed upon by the City Fire Chief and the Director or Coordinator of College Program prior to the beginning of a semester. No changes in numbers granted access should occur during the semester for any assigned clinical group of Students without offering an alternative clinical experience for involved Students. This provision shall

not diminish the rights and obligations of the parties pursuant to Section 2-4. Students shall have the opportunity to complete course objectives.

**Section 2-2.** Blinn College agrees to exercise the above granted right of access to such approved Facilities pursuant to this Agreement and in a manner which does not jeopardize the well-being of the City and its Fire Department, its staff, and patients/clients. The ratio of Students to Faculty members shall meet recommendations of regulatory agencies of each program.

**Section 2-3.** The parties hereto agree that each shall perform its rights and obligations hereunder consistent with their respective applicable provisions of licensing authorities, including the Blinn College Board of Trustees, Blinn College policies and procedures, the Texas Higher Education Coordinating Board rules and guidelines, and any other applicable laws, rules, and regulations.

**Section 2-4.** This Agreement shall be effective on \_\_\_\_\_, 2016, and shall be in full force and effect until August 31, 2017, unless terminated sooner by either party pursuant to the terms of this Agreement. This Agreement may, however, be reviewed and amended as may appear necessary and found mutually agreeable by the parties hereto. Either party may terminate this Agreement without cause or penalty by providing (60) days written notice to the other party. Notwithstanding the foregoing, all Blinn College Students enrolled in a course of study or rotation at the time of notice of termination shall be given the opportunity to complete their clinical rotation. Such Students must complete their clinical rotation within one (1) year of the effective date of termination of this Agreement.

**Section 2-5.** For the duration of this agreement, Blinn College shall carry insurance coverage to protect Blinn College and the City of College Station from liability and/or malpractice claims resulting from Blinn Students' participation in the Emergency Medical Services program. Blinn College shall provide professional liability insurance for its Faculty with insurance carriers licensed and authorized to conduct business in Texas, with limits of liability of not less than \$1,000,000/\$3,000,000. Upon execution of this agreement, Blinn College shall provide the City a certificate of liability insurance issued by the carrier on the most current State of Texas Department of Insurance-approved forms providing evidence of the liability insurance policy.

Blinn College shall inform Students that Students are financially responsible for the Students' personal health care/hospitalization insurance and any costs incurred as a result of participating in the program(s).

**Section 2-6.** The parties hereto agree to assist each other in all acts or steps necessary to gain and maintain approval of all appropriate regulatory agencies necessary to the conduct and continuation of the clinical experiences contemplated by this Agreement.

**Section 2-7.** All parties to this Agreement shall exercise confidentiality with regard to all client and staff information gained during the clinical experience in accordance with the Health Information Portability & Accountability Act ("HIPAA"), the Family Educational and Privacy Rights Act ("FERPA"), and other applicable laws related to confidentiality and sharing of information. Blinn College shall inform its Students, Faculty and Staff of the duty of confidentiality and HIPAA regulations as an integral part of the clinical experience and shall enforce same. The City Fire Department shall inform its staff of the duty of confidentiality and FERPA regulations and shall enforce same.

**Section 2-8.** It is the intent of the parties that they shall work together in good faith in making appropriate in service workshops and seminars available to Students, Faculty, and Staff.

**Section 2-9.** The City Fire Chief of the appropriate clinical area and the respective Director or Coordinator of College Program shall be those individuals primarily responsible for the implementation of this Agreement. They may also consider possible uses of other agency resources in conjunction with the clinical experience provided pursuant to this Agreement. Any problems arising from this Agreement shall first be considered by the City Fire Chief of the appropriate clinical area and such applicable Director or Coordinator of College Program.

### **Article III - Students**

**Section 3-1.** The standards for the admission of Students to any Blinn College Health Sciences Program who shall be authorized to enter a clinical experience at the appropriate clinical Facility shall be determined by Blinn College in accordance with its published admissions criterion, the guidelines established by any applicable licensing or accrediting agencies, Blinn College policies and procedures, and State and Federal law. Admissions shall be granted without regard to race, color, religion, sex, age, economic status, national origin, disability, or other discriminatory facts prohibited by law.

**Section 3-2.** Students shall be required to present to the respective Director or Coordinator of College Program written documentation of a physical examination, current immunizations, drug screening, and criminal background check prior to commencing clinical experiences. Written documentation and/or evidence to the extent not protected as confidential or not prohibited from disclosure under applicable law, as reasonably required by the City Fire Department shall be provided to the appropriate City official before Students begin their clinical experience.

**Section 3-3.** Students shall adhere to the dress code of the respective Blinn College program(s) and the City Fire Department. Except as the City Fire Department rules may otherwise provide, Students shall wear identifying name plates, setting forth the name of the Student and the fact that the individual is a Student of Blinn College.

**Section 3-4.** Unless provided by other applicable law, Students are not employees of the City nor its Fire Department and are not entitled to wages, compensation, or fringe benefits associated with employment as a result of their participation in the clinical experience. This provision shall not, however, be deemed to prevent a Student's participation in or receipt of financial aid available through Blinn College or other sources.

**Section 3-5.** Students shall receive an appropriate orientation to the City Fire Department Facilities. Orientation will be arranged by Faculty with the City Fire Chief.

**Section 3-6.** The City Fire Department shall make available emergency medical care to any Student injured while at its Facilities pursuant to this Agreement. The City shall be relieved of this responsibility when such Student's personal physician, if any, attends to such Student. To the extent the cost of such medical care is not covered by insurance personally carried by the Student or provided as part of the registration fee under Section 2-5, the City shall collect such cost directly from the injured Student and not from Blinn College. Blinn College does not hereby or otherwise undertake any financial responsibility for the payment of such costs.

**Section 3-7.** If any Student's health, conduct, or care is considered by the City Fire Department to have a detrimental effect on its patients or staff, the City Fire Chief shall notify the appropriate Faculty immediately. The Faculty shall take appropriate action consistent with Blinn College policy. In the event that a Faculty member is not readily available and immediate action is necessary, the Student may be withdrawn from the patient/client care situation by the City Fire Chief until the Faculty is notified. A

written report concerning the Student and the related incident shall be provided with reasonable detail to the appropriate Faculty if action is taken by the City Fire Department personnel.

#### **Article IV - Blinn College Faculty Responsibilities**

**Section 4-1.** Blinn College shall provide qualified Faculty sufficient in number to provide supervision of Students or arrange alternate supervision, in accordance with regulatory agencies, and any other requirements applicable to the program, including requirements of Faculty under this Agreement. Faculty shall have such qualifications, preparation, and experience necessary to assume general responsibility for the supervision and instruction of Students. Blinn College agrees to acknowledge and verify to the City Fire Department that Faculty members or the arrangement of alternate supervision have the requisite qualifications and experience. Faculty will be responsible for evaluating the Student performance for the clinical portion of the program, based on criteria provided by the school, and based on those evaluations and additional course requirements. Blinn Faculty will be responsible for assigning a final grade for the clinical experience.

**Section 4-2.** Prior to assuming any responsibilities hereunder as Faculty, Blinn College Faculty members shall be oriented to Facilities and policies of the clinical agency as required by the City Fire Department. Blinn College shall provide the necessary time for its Faculty members to attend such orientation.

**Section 4-3.** Blinn College agrees to provide or cause the Faculty and Students to provide evidence of current immunizations of Faculty and Students as required.

**Section 4-4.** Blinn College agrees that in the operation of its clinical experiences, it will follow the policies and procedures of the City Fire Department.

**Section 4-5.** Blinn College agrees to provide the City Fire Chief with the goals or objectives of the respective programs and any changes thereto.

**Section 4-6.** Blinn College through qualified Faculty members, shall supervise the Student clinical experience in collaboration with City's staff members.

**Section 4-7.** Blinn College Faculty members shall assign Students to particular clinical areas and confer with the City Fire Chief, for selection of specific learning experiences and the number of Students to be assigned to each clinical area. Hours of clinical experience will vary and may include day, evening, or night shifts. Course and clinical objectives, along with schedules, will be submitted prior to the start of each semester and be verified with the City Fire Chief.

**Section 4-8.** Blinn College Faculty, or designated supervisors, will direct Students in the administration of safe care for assigned clients during the hours of clinical experience based on specific course objectives.

**Section 4-9.** Blinn College Faculty, or Designated Supervisors, will review documentation in client records completed by Students. The Blinn College Faculty members will not cosign Student entries in client records.

**Section 4-10.** Blinn College Faculty will maintain records of Student progress and evaluate Student learning.

**Section 4-11.** Blinn College Faculty members will provide for clear channels of communication between Blinn College and the City Fire Department.

**Section 4-12.** Blinn College Faculty will maintain responsibility for withdrawal of Students from the Blinn College program when necessary.

### **Article V – City Responsibilities**

**Section 5-1.** The City through its Fire Department Manager agrees to submit to Blinn College a written copy of its policies and procedures and written copies of any amendments or additions.

**Section 5-2.** The City Fire Chief shall be responsible for coordinating Student clinical experiences with Blinn College Faculty members so that no more Students than can be assigned effectively are in a clinical area at any one time.

**Section 5-3.** The City Fire Department, its managers and Designated Supervisors and Preceptors may attend meetings with Faculty for purposes of discussing specific objectives for Student learning.

**Section 5-4.** The City will provide adequate safeguards, such as safety equipment and enforcement of policies and procedures, to prevent injury and transmission of infectious disease.

**Section 5-5.** The City Fire Chief will provide for clear channels of communication to Blinn College.

**Section 5-6.** In addition to general Facilities of the City Fire Department made available pursuant to this Agreement, where available, the City Fire Department shall provide conference Facilities for Students and Faculty for use during clinical rotations at no cost to Blinn College. Use of conference Facilities shall be coordinated through the City Fire Chief.

**Section 5-7.** If the physical Facilities of the College Fire Department, which are defined in Section 1-1, include a library, the City Fire Department will make available to Blinn College Students its holdings in health sciences literature.

**Section 5-8.** The City Fire Department agrees to work with Faculty to appoint a Designated Supervisor in selected clinical areas where Faculty will not be immediately available.

**Section 5-9.** The City Fire Department personnel who work with Blinn College Students in providing the clinical experience shall hold the required licenses and have such qualifications, preparation, and experience necessary to perform the services and carry out the obligations under this Agreement. The City Fire Department agrees to acknowledge and verify to Blinn College that the City Fire Department personnel have the requisite licenses, qualifications, and experience.

### **Article VI - General Terms & Conditions**

**Section 6-1.** This Agreement may be executed in identical counterparts, each of which will be deemed an original, but both of which will constitute one and the same instrument. Each party may rely on electronic or facsimile signature pages as if such electronic or facsimile pages were originals in accordance with the Texas Electronics Transactions Act.

**Section 6-2.** This Agreement and performance hereunder and all suits and special proceedings hereunder shall be construed in accordance with the laws of the State of Texas without regard to its choice of law or conflicts of law provisions.

**Section 6-3.** This written Agreement contains the sole and entire agreement between the parties and supersedes any and all other contracts between the parties regarding the furnishing of Facilities for the clinical experiences for the Blinn College Programs or the respective obligations of the parties under this Agreement. It is recognized, however, that the parties hereto may enter into collateral contracts regarding other health occupation fields. Such other contracts are not intended to change or alter the terms of this Agreement unless so done in writing.

**Section 6-4.** No waiver or modification of this Agreement or of any covenant, condition or limitation herein contained shall be valid unless in writing or duly executed by the party to be charged therewith. Furthermore, no evidence of any waiver or modification shall be offered or received in any proceeding or litigation between the parties arising out of or affecting this Agreement or the rights or obligations of any party hereunder, unless such waiver or modification is in writing, duly executed as aforesaid. The provisions of this paragraph may not be waived except as herein set forth.

**Section 6-5.** This Agreement shall be binding upon and inure to the benefit of the respective parties and their respective successors and permitted assigns.

**Section 6-6** Both parties to this Agreement expressly acknowledge that both are governmental entities and political subdivisions of the State of Texas and nothing in this Agreement will be construed as a waiver or relinquishment by either party of their respective right to claim such exemptions, privileges, and immunities as may be provided by law. It is understood that both parties are political subdivisions of the State of Texas, and are entitled to immunity from tort claims under Texas law, including, without limitation, the Texas Tort Claims Act and other applicable state and federal statutes. Nothing contained in this Agreement shall be deemed to waive any immunities to which either party is entitled under law.

**Section 6-7.** Public Information: Parties acknowledge and agree that both the City and Blinn College are obligated to strictly comply with the Public Information Act, Chapter 552, *Texas Government Code*, in responding to any request for public information pertaining to this Agreement.

**Section 6-8.** This Agreement is made for the sole benefit of the City and Blinn College and their respective successors and permitted assigns. Nothing in this Agreement will create or be deemed to create a relationship between the parties to this Agreement and any third person, including a relationship in the nature of a third-party beneficiary or fiduciary.

**Section 6-9.** Venue: This Agreement is performable in Brazos County, Texas.

**Section 6-10.** Force Majeure: Neither party is required to perform any term, condition, or covenant of this Agreement, if performance is prevented or delayed by a natural occurrence, a fire, an act of God, an act of terrorism, or other similar occurrence, the cause of which is not reasonably within the control of such party and which by due diligence it is unable to prevent or overcome.

**Section 6-11.** Execution and Modification: This Agreement is binding only when duly approved and signed by both parties. Any modifications or amendments must be in writing and signed by both parties.

**Section 6-12.** Assignment: This Agreement, with the rights and privileges it creates, is assignable only with the written consent of both parties.

**Section 6-13.** Severability: If any of the provision of this Agreement in the application thereof to any person or circumstance is rendered or declared illegal for any reason, or shall be invalid or unenforceable,

the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby, but shall be enforced to the greatest extent permitted by applicable law.

**Section 6-14. Independent Contractor:** The parties hereby acknowledge that they are independent contractors, and neither of the parties nor any of their respective agents, representatives, students or employees shall be construed to be the agent, representative, student or employees of the other party. In no event shall this Agreement be construed as establishing a partnership, joint venture, joint enterprise or similar relationship between the parties. Each party shall be liable for its own debts, obligations, acts and omissions, including the payment of all required withholding, social security and other taxes or benefits of its employees.

**Section 6-15. Compliance with Federal Law:**

(A) Both parties will comply with all applicable Federal, State, and local laws, ordinances, rules, and regulations; comply with all applicable requirements of any accreditation authority; and certify such compliance upon request by the other party.

(B) In compliance with Federal law, including provisions of Title IX of the Education Amendments of 1972, Sections 503 and 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act of 1990, both parties agree to not discriminate on the basis of race, sex, religion, color, national or ethnic origin, age, disability or military service in their administration of policies, programs, or activities, admission policies, other programs and employment.

**Section 6-16. Notices:** Any notice required or permitted under this Agreement must be in writing, and shall be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address set out below. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, email (to the extent a facsimile number or email address is set forth below) or other commercially reasonable means and will be effective when actually received. Each party can change their respective notice address by sending to the other party a notice of the new address. Notices should be addressed as follows:

City of College Station  
City Fire Department  
P.O. Box 9960  
College Station, Tx 77842  
Att: Fire Chief  
Phone: 979-764-3705  
Fax:  
Email:

Blinn College  
Attention: Office of the President  
902 College Avenue  
Brenham, Texas

Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

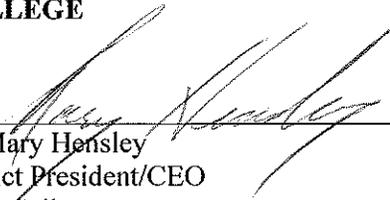
Phone: 979-830-4112  
Fax: 979-830-4116  
Email: bKrebs@blinn.edu

**Section 6-17. Mutual Release:** The City and Blinn College, to the extent allowed by the Constitution and laws of the State of Texas, each release the other from any and all losses, claims, demands, damages, liabilities and costs directly or indirectly arising from or related to such releasing party's acts and omission or that of its officers, employees, affiliates, contractors and agents. Under no circumstances shall either party be liable to the other party for any special, indirect or consequential damages, including without limitation, lost profits or cost of capital.

*(Signature Page Follows)*

IN WITNESS WHEREOF, the undersigned parties have hereunto caused this Agreement to be duly executed on the day and year first above written.

**BLINN COLLEGE**

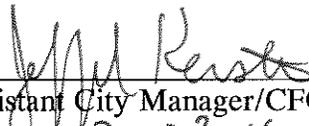
By:   
Dr. Mary Hensley  
District President/CEO  
Blinn College

**CITY OF COLLEGE STATION**

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**APPROVED:**

\_\_\_\_\_  
City Attorney  
Date: \_\_\_\_\_

  
Assistant City Manager/CFO  
Date: 2-23-16





## Legislation Details (With Text)

**File #:** 16-0117      **Version:** 1      **Name:** Motor Operator Controls for Distribution Pole Mounted Airbreak Switches

**Type:** Contract      **Status:** Consent Agenda

**File created:** 2/22/2016      **In control:** City Council Regular

**On agenda:** 3/10/2016      **Final action:**

**Title:** Presentation, possible action, and discussion regarding the award of Bid 16-044 to Techline, Inc. in the amount of \$58,670 for the purchase of Cleaveland Price Motor Operators.

**Sponsors:** Timothy Crabb

**Indexes:**

**Code sections:**

**Attachments:** [Tabulation.pdf](#)

Date	Ver.	Action By	Action	Result
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Presentation, possible action, and discussion regarding the award of Bid 16-044 to Techline, Inc. in the amount of \$58,670 for the purchase of Cleaveland Price Motor Operators.

Relationship to Strategic Goals: (Select all that apply)

- Core Services and Infrastructure

Recommendation(s):

Staff recommends the approval of award for this bid to the lowest qualified bidder, Techline, Inc., in the amount of \$58,670.

Summary:

Retrofitting existing manually operated pole mounted airbreak switches with the SCADA controlled motor operated switches will assist in the lowering of outage times and will increased safety for employees. On February 2<sup>nd</sup>, 2016, three (3) sealed bids were received and opened in response to Invitation to Bid #16-044 for the purchase of Cleaveland Price Motor Operators. These bids were evaluated and ranked. The lowest qualified bidder was Techline, Inc., for \$58,670.

Budget & Financial Summary:

Funds for this project are budgeted and available in the Electric Capital Improvement Projects Fund.

Attachments:

1. Bid Tab 16-044



**City of College Station - Purchasing Division**  
**Bid Tabulation for #16-044**  
**"Purchase of Motor Operated Switches"**  
**Open Date: Tuesday, February 9, 2016 @ 2:00 p.m.**

		<b>Anixter</b>			<b>KBS Electrical Dist.</b>			<b>Techline, Inc.</b>		
<b>Item</b>	<b>Quantity</b>	<b>Unit Price</b>	<b>Total Price</b>	<b>Delivery (Weeks)</b>	<b>Unit Price</b>	<b>Total Price</b>	<b>Delivery (Weeks)</b>	<b>Unit Price</b>	<b>Total Price</b>	<b>Delivery (Weeks)</b>
Cleveland-Price BT-D Switch	10	\$6,126.60	\$61,266.00	12-14 wks	\$5,960.00	\$59,600.00	12-14 wks	\$5,867.00	\$58,670.00	12-14 wks
Manufacturer		Cleveland Price			Cleveland Price			Cleveland Price Inc		
Catalog Number		CB28AA11G01			CB28AA11G01			CB28AA11G01		
Bid Certification		Y			Y			Y		



Legislation Details (With Text)

<b>File #:</b>	16-0118	<b>Version:</b>	1	<b>Name:</b>	ACBV Contract Amendment
<b>Type:</b>	Presentation	<b>Status:</b>		<b>Status:</b>	Consent Agenda
<b>File created:</b>	2/22/2016	<b>In control:</b>		<b>In control:</b>	City Council Regular
<b>On agenda:</b>	3/10/2016	<b>Final action:</b>		<b>Final action:</b>	
<b>Title:</b>	Presentation, possible action, and discussion on the first amendment to the FY16 Arts Council of the Brazos Valley Hotel Occupancy Tax Funding Agreement in the amount of \$386,400 for Affiliate funding and Annual Program and Marketing funding.				
<b>Sponsors:</b>	Jeff Kersten				
<b>Indexes:</b>					
<b>Code sections:</b>					
<b>Attachments:</b>	<a href="#">ACBV Funding Agreement Amend</a>				

Date	Ver.	Action By	Action	Result
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Presentation, possible action, and discussion on the first amendment to the FY16 Arts Council of the Brazos Valley Hotel Occupancy Tax Funding Agreement in the amount of \$386,400 for Affiliate funding and Annual Program and Marketing funding.

**Recommendation(s):** Staff recommends approval of the first amendment of Arts Council Affiliate and Annual Program and Marketing funding agreement for FY16.

**Summary:** Arts Council of the Brazos Valley has proposed the reallocation of annual affiliate grant funds. University Art Galleries has opted to decline Arts Council grant funding in the amount of \$25,000 due to inability to meet contracted requirements. Arts Council staff proposes the reallocation of the \$25,000 to affiliates proportionately based on funds received. Affiliates qualifying for these funds would include affiliates that were not fully funded, affiliates that were not reduced based on failure to comply with grant requirements, and expenses not funded that meet Hotel Tax Fund criteria.

The first amendment replaces the original Exhibit A with the attached Exhibit A. The exhibit shows the original funded amount, the amended funded amount, and the change in funding as a result of the amendment. All other terms, conditions and pricing remain in full force and effect.

As part of the 2015-2016 budget process, the City Council approved funding for the Arts Council of the Brazos Valley from the Hotel Tax Fund in the amount of \$348,400 to be used for Affiliate funding and Arts Tourism marketing and Public Art Support in the amount of \$38,000.

**Budget & Financial Summary:** The funds for this agreement are budgeted and available in the 2015-2016 Hotel Tax Fund Budget in the amount of \$386,400. No new additional funds are proposed for this amendment.

**Attachments:**

1. 1<sup>st</sup> amendment to Exhibit A



# CONTRACT & AGREEMENT ROUTING FORM

CONTRACT#: 16300073 PROJECT#: \_\_\_\_\_ BID#: \_\_\_\_\_ RFP: \_\_\_\_\_

**Contract Description:**

FY16 Funding Agreement with ACBV for affiliate funding and marketing - Hotel Tax Fund - 1st Amendment

**Project Name:**

Outside Agency Funding Agreement

**Name of Contractor:**

Arts Council of the Brazos Valley

**CONTRACT TOTAL VALUE:** \$ 386,400

**Grant Funded**  Yes  No  
If yes, what is the grant number: \_\_\_\_\_

**Debarment Check**  Yes  No  N/A  
**Section 3 Plan Incl.**  Yes  No  N/A

**Davis Bacon Wages Used**  Yes  No  N/A  
**Buy America Required**  Yes  No  N/A  
**Transparency Report**  Yes  No  N/A

NEW CONTRACT  RENEWAL # \_\_\_\_\_  CHANGE ORDER # \_\_\_\_\_  OTHER amendment

**BUDGETARY AND FINANCIAL INFORMATION** (Include number of bids solicited, number of bids received, funding source, budget vs. actual cost, summary tabulation)

Funds for this contract were approved in the FY16 Budget process and are available in the Hotel Tax Fund.

(If required)\*

**CRC Approval Date\*:** \_\_\_\_\_ **Council Approval Date\*:** \_\_\_\_\_ **Agenda Item No\*:** \_\_\_\_\_

--Section to be completed by Risk and Purchasing Only--

**Insurance Certificates:** SM **Performance Bond:** N/A yP **Payment Bond:** N/A yP

**SIGNATURES RECOMMENDING APPROVAL**

\_\_\_\_\_  
DEPARTMENT DIRECTOR/ADMINISTERING CONTRACT

2-24-16  
DATE

\_\_\_\_\_  
LEGAL DEPARTMENT

2-25-16  
DATE

\_\_\_\_\_  
ASST CITY MGR - CFO

2-24-16  
DATE

**APPROVED & EXECUTED**

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

DATE

N/A  
MAYOR (if applicable)

DATE

N/A  
CITY SECRETARY (if applicable)

DATE

3 Original(s) sent to CSO on 2/25/16

Scanned into Laserfiche on \_\_\_\_\_

Original(s) sent to Fiscal on \_\_\_\_\_

# CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.  
 Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

## OFFICE USE ONLY CERTIFICATION OF FILING

Certificate Number:  
 2016-16948

Date Filed:  
 02/23/2016

Date Acknowledged:

**1 Name of business entity filing form, and the city, state and country of the business entity's place of business.**

Arts Council of Brazos Valley  
 College Station, TX United States

**2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.**

City of College Station

**3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the goods or services to be provided under the contract.**

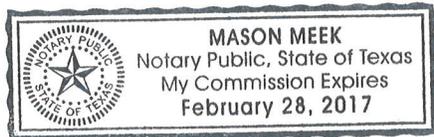
16300073  
 Manage and administer subgrant funds to Bryan/College Station nonprofit arts, culture and heritage organizations

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary
	Arts Council of Brazos Valley	College Station, TX United States	X	

5 Check only if there is NO Interested Party.

**6 AFFIDAVIT**

I swear, or affirm, under penalty of perjury, that the above disclosure is true and correct.



AFFIX NOTARY STAMP / SEAL ABOVE

*[Handwritten Signature]*  
 \_\_\_\_\_  
 Signature of authorized agent of contracting business entity

Sworn to and subscribed before me, by the said Chris Dyar, this the 23<sup>rd</sup> day of Feb, 2016, to certify which, witness my hand and seal of office.

*[Handwritten Signature]*  
 \_\_\_\_\_  
 Signature of officer administering oath

Mason Meek  
 \_\_\_\_\_  
 Printed name of officer administering oath

Notary Public, Texas  
 \_\_\_\_\_  
 Title of officer administering oath

# CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties. Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.	<b>OFFICE USE ONLY</b>
<b>1 Name of business entity filing form, and the city, state and country of the business entity's place of business.</b> Arts Council of Brazos Valley College Station, TX United States	<b>CERTIFICATION OF FILING</b>  Certificate Number: 2016-16948
<b>2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.</b> City of College Station	Date Filed: 02/23/2016
<b>3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the goods or services to be provided under the contract.</b>  16300073 Manage and administer subgrant funds to Bryan/College Station nonprofit arts, culture and heritage organizations	Date Acknowledged: 02/24/2016

**4**

Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
		Controlling	Intermediary
Arts Council of Brazos Valley	College Station, TX United States	X	

**5 Check only if there is NO Interested Party.**

**6 AFFIDAVIT** I swear, or affirm, under penalty of perjury, that the above disclosure is true and correct.

\_\_\_\_\_

Signature of authorized agent of contracting business entity

AFFIX NOTARY STAMP / SEAL ABOVE

Sworn to and subscribed before me, by the said \_\_\_\_\_, this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, to certify which, witness my hand and seal of office.

\_\_\_\_\_  
Signature of officer administering oath      Printed name of officer administering oath      Title of officer administering oath

1<sup>ST</sup> AMENDMENT OF

CITY OF COLLEGE STATION AFFILIATE FUNDING AGREEMENT FOR PAYMENT  
AND USE OF HOTEL TAX

This Amendment ("Agreement") is made by and between The City of College Station, a Texas Home-Rule Municipal Corporation ("City") and Arts Council of the Brazos Valley., ("Agency") and;

WHEREAS, City and Agency entered into an Affiant Funding Agreement with Contract No. 1630073 ("Original Agreement") on October 22, 2015; and

NOW THEREFORE, in consideration of the foregoing and the mutual covenants and promises set forth herein, City and Agency agree to amend:

1. Exhibit A by replacing it with the attached Exhibit A.
2. All other terms, conditions and pricing remain in full force and effect.

ARTS COUNCIL  
OF THE BRAZOS VALLEY

CITY OF COLLEGE STATION

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

Printed Name: Chris Dyer

Title: CEO

Date: 2/16/16

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

City Manager

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

APPROVED:

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

Date: 2-25-16

  
\_\_\_\_\_  
Assistant City Manager / CFO

Date: 2-28-16

### Exhibit A

Affiliate	College Station Original	College Station Amended	Change
Brazos Valley African American Museum	\$ 4,525.00	\$ 4,525.00	\$ -
Brazos Valley Chorale	9,046.00	9,046.00	-
Brazos Valley Museum of Natural History	16,269.00	16,269.00	-
Brazos Valley Stitchers	1,555.00	1,555.00	-
Brazos Valley Symphony Society	39,000.00	44,000.00	5,000.00
Brazos Valley Worldfest	20,000.00	20,000.00	-
Department of Vizualization	14,150.00	14,150.00	-
Downtown Bryan Association	7,000.00	7,000.00	-
Friends of Chamber Music	6,500.00	6,500.00	-
George Bush Library	65,000.00	71,246.00	6,246.00
KAMU-FM	28,500.00	29,000.00	500.00
KEOS Brazos Educational Radio	7,500.00	7,500.00	-
Mic Check	7,320.00	7,570.00	250.00
MSC OPAS	26,500.00	34,205.00	7,705.00
Museum of the American G.I.	27,135.00	31,438.00	4,303.00
StageCenter	11,500.00	11,500.00	-
Texas Independent Film Festival	7,000.00	7,000.00	-
Theatre Company of B/CS	24,900.00	25,896.00	996.00
University Art Galleries	25,000.00	-	(25,000.00)
<b>Totals</b>	<b>\$ 348,400.00</b>	<b>\$ 348,400.00</b>	<b>\$ -</b>



# CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.  
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

## OFFICE USE ONLY CERTIFICATION OF FILING

**1 Name of business entity filing form, and the city, state and country of the business entity's place of business.**

Arts Council of Brazos Valley  
College Station, TX United States

Certificate Number:  
2016-16948

Date Filed:  
02/23/2016

Date Acknowledged:

**2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.**

City of College Station

**3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the goods or services to be provided under the contract.**

16300073

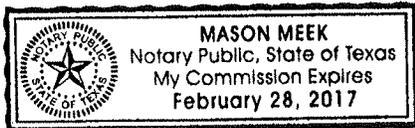
Manage and administer subgrant funds to Bryan/College Station nonprofit arts, culture and heritage organizations

4 Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
		Controlling	Intermediary
Arts Council of Brazos Valley	College Station, TX United States	X	

**5 Check only if there is NO Interested Party.**

**6 AFFIDAVIT**

I swear, or affirm, under penalty of perjury, that the above disclosure is true and correct.



*[Handwritten Signature]*  
\_\_\_\_\_  
Signature of authorized agent of contracting business entity

AFFIX NOTARY STAMP / SEAL ABOVE

Sworn to and subscribed before me, by the said Chris Dyer, this the 23<sup>rd</sup> day of Feb, 2016, to certify which, witness my hand and seal of office.

*[Handwritten Signature]*  
\_\_\_\_\_  
Signature of officer administering oath

mason meek  
Printed name of officer administering oath

Notary Public, Texas  
Title of officer administering oath



## Legislation Details (With Text)

**File #:** 16-0120      **Version:** 1      **Name:** Holleman South Widening Design Contract

**Type:** Contract      **Status:** Consent Agenda

**File created:** 2/23/2016      **In control:** City Council Regular

**On agenda:** 3/10/2016      **Final action:**

**Title:** Presentation, possible action, and discussion regarding a Professional Services Contract (Contract No. 16300289) with Binkley & Barfield, Inc. in the amount of \$1,013,360 for the professional engineering services related to the design of the Holleman South Widening Project.

**Sponsors:** Donald Harmon

**Indexes:**

**Code sections:**

**Attachments:** [HollemanProjectLocation.pdf](#)

Date	Ver.	Action By	Action	Result
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Presentation, possible action, and discussion regarding a Professional Services Contract (Contract No. 16300289) with Binkley & Barfield, Inc. in the amount of \$1,013,360 for the professional engineering services related to the design of the Holleman South Widening Project.

Relationship to Strategic Goals:

- Core Services and Infrastructure
- Improving Mobility

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

Summary: The Holleman South Widening Project will reconstruct Holleman from North Dowling to Rock Prairie Road West, approximately 8,300 linear feet. The improvements will include replacement of the existing pavement with a four lane divided concrete section including either bike lanes or a multi-use path, to be determined after additional public engagement and design considerations.

Budget & Financial Summary: Budget for the design and construction of the Holleman South Widening project is included in the Streets Capital Improvement Projects Fund (\$10,305,000). The project is budgeted to be designed in FY16 and constructed in FY17 and FY18. It is anticipated that the debt for the design of this project will be issued later this fiscal year. A debt reimbursement resolution that included this project was approved by Council on December 10, 2015.

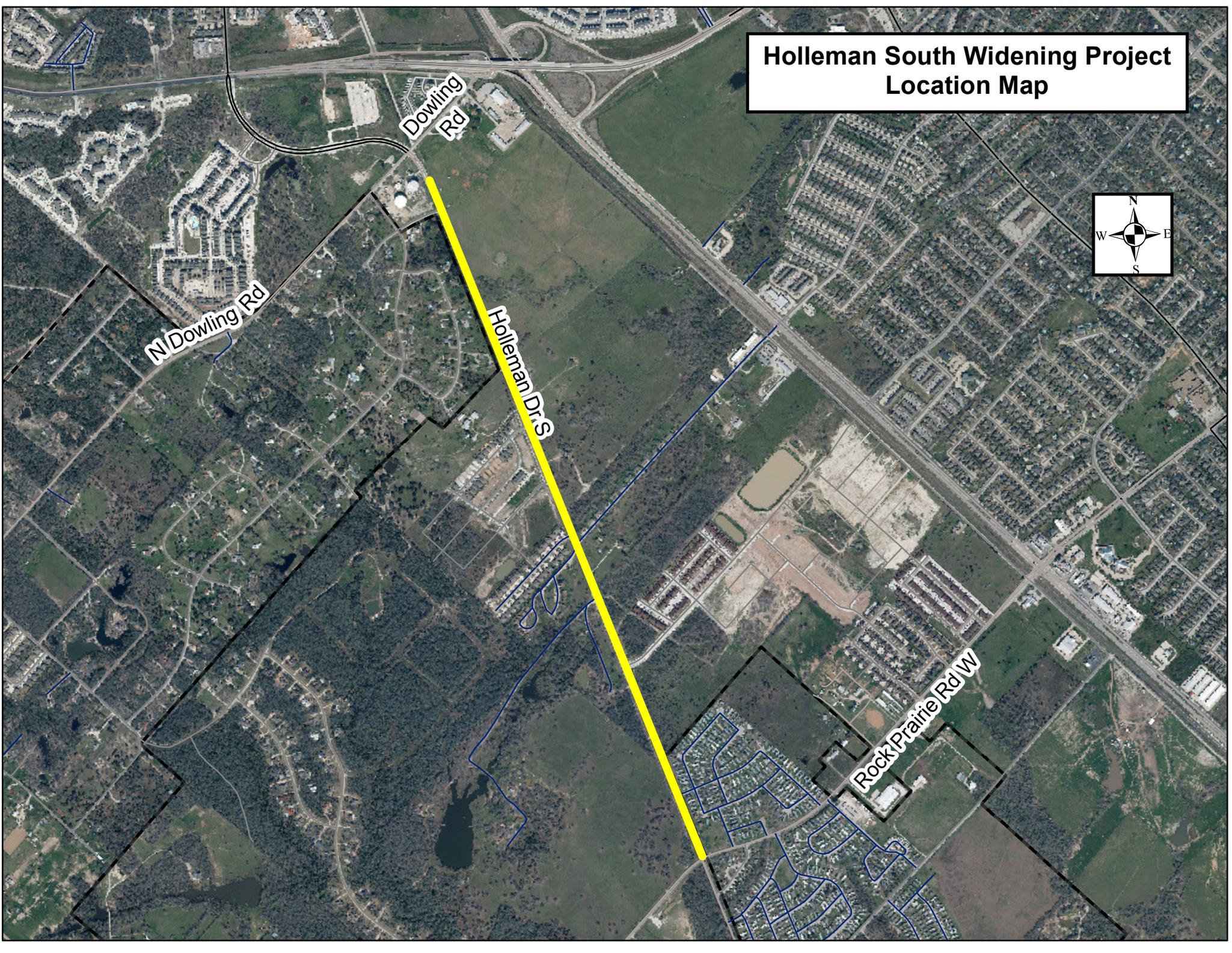
Legal Review: Yes.

Attachments:

1. Contract on file with the City Secretary's Office
2. Project Map



# Holleman South Widening Project Location Map





## Legislation Details (With Text)

**File #:** 16-0121      **Version:** 1      **Name:** Iteris Contract for ITS Master Plan Implementation - Year 2

**Type:** Contract      **Status:** Consent Agenda

**File created:** 2/23/2016      **In control:** City Council Regular

**On agenda:** 3/10/2016      **Final action:**

**Title:** Presentation, possible action, and discussion regarding a contract (Contract No. 15-157-2) with Iteris Inc. to purchase services, equipment, and maintenance of hardware and software associated with the second year (FY16) of the implementation plan. The total cost of this contract is not to exceed \$811,413.

**Sponsors:** Troy Rother

**Indexes:**

**Code sections:**

**Attachments:** [Iteis Agreement 2-26-16](#)

Date	Ver.	Action By	Action	Result
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Presentation, possible action, and discussion regarding a contract (Contract No. 15-157-2) with Iteris Inc. to purchase services, equipment, and maintenance of hardware and software associated with the second year (FY16) of the implementation plan. The total cost of this contract is not to exceed \$811,413.

### Relationship to Strategic Goals:

- Core Services and Infrastructure
- Improving Mobility

Recommendation(s): Staff recommends approving the contract.

Summary: The ITS Master Plan is a multi-phase plan that purchases and installs equipment over a 3-5 year period. The first year installed new controllers in all of the existing signalized intersections, switches, 25 cameras, a server, and the construction of a Traffic Control Center. The second year's implementation includes upgrades to the traffic signal shop, 25 cameras, Bluetooth Readers, and design of a Dynamic Message System so real-time roadway information can be communicated to drivers.

Budget & Financial Summary: A budget of \$5,425,000 is included for this project in the Streets Capital Improvement Projects Fund. This project is being completed in phases and a total of \$1,375,207 has been expended or committed to date for phase I of the project. The funding for the project is structured to reflect the project phasing and includes Certificates of Obligation in the amount of \$4,500,000, an \$850,000 reimbursement from Texas A&M University System and \$75,000 from the General Fund for the items that are not expected to be debt eligible.

### Attachments:

1. Contract 15-157-2



**TRAFFIC SIGNAL SYSTEM  
YEAR TWO  
INTEGRATION SERVICES AGREEMENT  
BETWEEN THE CITY OF COLLEGE STATION AND ITERIS, INC.**

This Agreement (the "Agreement") is made by and between the City of College Station, a Texas Municipal Home-rule Corporation (the "City") and Iteris, Inc., a Delaware corporation, ("Iteris" or "Contractor"). The City and Iteris may also be identified in this Agreement individually as a "Party" or collectively as "Parties".

1. **Scope of Services.** Iteris shall provide all services as described in Exhibit A and B, which are attached hereto and incorporated into this Agreement by this reference (the "Services").

a. **Integration Services.** Iteris shall provide the Design, Integration, operation and maintenance Services as described in Exhibit A, Services Scope of Work.

b. **Third Party Software Licenses, Products and Warranties.** Iteris shall provide all third party software licenses, products and warranties as described in Exhibit B Third Party Licenses, Products & Warranties.

2. **Compensation**

a. City agrees to pay, and Iteris agrees to accept as total payment for its Services as set forth in Section 1, items a, and b above in an amount not to exceed **Eight Hundred Eleven Thousand Four Hundred Thirteen Dollars and No Cents (\$811,413.00)** (the "Agreement Amount") during the term of this Agreement. The amount shall be paid in accordance with Exhibit C, Payment Terms. Iteris shall not take any action causing the amount the City would be obligated to pay to Iteris to exceed the Agreement Amount. Notwithstanding any other provisions of this Agreement, the City shall not be obligated to pay to Iteris any amount in excess of the Agreement Amount, provided however, that this sum may be increased or decreased from time to time by the City in a written amendment to this Agreement.

b. Iteris shall submit invoices to City for Services completed during each invoicing period, which is a fiscal month. Payment by City shall be made within thirty (30) days following receipt of proper invoice evidencing work performed, subject to City accounting procedures and the Texas Prompt Payment Act.

c. In the event of a disputed or contested invoice, only the contested portion will be withheld from payment. City will pay the undisputed portion. No interest will accrue on any reasonably contested portion of the invoice until mutually

resolved.

d. After City has been invoiced and given a written thirty (30) days' notice of failure to pay, if the City continues failing to pay any amount due and undisputed, Iteris then may, in addition to any other rights it may have at law or under this Agreement, suspend further Services until such failure to pay is remedied.

3. **Term.** Time is of the essence of this Agreement.

(a) The Services are to commence upon Iteris' receipt of a Notice to Proceed from the City, following the execution of this Agreement by the City (the "Effective Date"). The schedule for performance of the Integration Services tasks is shown in the Exhibit A Scope of Work.

(b) The initial Agreement term will end two (2) years after the date of the City's Notice to Proceed.

(c) During the initial term Integration Services, the Second Year Signal Shop TMC equipment and field equipment Maintenance and Support will be completed.

(d) This Agreement may be amended in writing if mutually agreed by the City and Iteris.

4. **Modifications and Change Orders.**

(a) This Agreement may not be altered, changed, or modified in any manner except upon the mutual written agreement of both Parties.

(b) City Council Approval. When the original Agreement amount plus all change orders is equal to or greater than \$50,000, the City Manager or his designee may approve the written change order provided the change order does not exceed \$50,000, and provided the sum of all change orders does not exceed 25% of the original contract amount. For such contracts, when a change order exceeds \$50,000 or when the sum of all change orders exceeds 25% of the original contract amount, the City Council of the City must approve such change order prior to commencement of the services or work.

5. **Termination**

a. **Termination for Cause.** The City may by written notice to Iteris, without prejudice to any other rights or remedies provided under this Agreement by law or in equity, terminate this Agreement for cause in whole or in part in any of the following circumstances:

(1) If Iteris has been declared bankrupt, makes an assignment for the benefit of creditors, or is in receivership; or

(2) If Iteris fails to materially perform the Services or make any delivery in accordance with the performance requirements or delivery schedules specified herein or any extension thereof; or

(3) If Iteris (a) fails to observe or comply with any material provisions, terms, or conditions of this Agreement, or (b) fails to make progress so as to endanger performance of this Agreement in accordance with its terms.

(4) In case of termination under (2), (3)(a) or (3)(b) above, Iteris shall have fifteen (15) days from date of delivery of notice to remedy the failure or provide a plan for remedy acceptable to the City. If, after termination for cause, the City determines for any reason that Iteris was not in default or that the failure was excusable, the rights and obligations of the Parties will be the same as if the notice of termination had been issued pursuant to termination for convenience.

**b. Termination for Convenience.**

(1) City may, at any time during the course of this Agreement, terminate for convenience Services under this Agreement whenever the City determines that such termination is in the best interest of the City. Any such termination shall be effected by delivery to Iteris of a notice of termination specifying the extent to which performance of Services under the Agreement is terminated, and the date upon which the termination becomes effective.

(2) After receipt of a notice of termination, and except as otherwise directed by City, Iteris shall comply with all of the following requirements:

- i. Stop Services under the Agreement on the date and to the extent specified in the notice of termination.
- ii. Place no further orders or subcontracts for equipment, materials, services, or facilities except as necessary to complete the portion of the Services under the Agreement that are not terminated.
- iii. Terminate, to the extent possible and practical, all orders and subcontracts that relate to the performance of Services terminated by the notice of termination.
- iv. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts.

- v. Transfer title to the City, and deliver in the manner, at the times, and to the extent, if any, directed by the City, work in process, completed work, equipment, software, documentation, supplies, and other material produced as a part of, or acquired in connection with the performance of Services terminated by the notice of termination.
- vi. Complete performance of such part of the Services not terminated by the notice of termination.
- vii. Take such action as may be necessary, or as the City may direct, for the protection and preservation of the property related to this Agreement, which is in the possession of Iteris and in which the City has or may acquire an interest.

(3) Subject to the previous provisions, Iteris and the City shall agree upon the whole or any part of the amount or amounts to be paid to Iteris because of the total or partial termination of Services under this section. Completed Services shall be paid at the prices set forth in Exhibit B. Partially completed Services may include a reasonable allowance for profit on work completed. However, such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total Agreement Amount as reduced by the amount of payments otherwise made and as further reduced by the portion of the Services not terminated. Iteris shall have no right to recover lost profits on unperformed Work. The Agreement shall be amended accordingly, and Iteris shall be paid the agreed amount.

## 6. Standard of Care/Warranty

a. All Services under this Agreement shall be performed in a manner consistent with the degree of care and skill ordinarily exercised by others performing the same or similar services under similar circumstances. Iteris represents that it has all rights necessary to fulfill the requirements of this Agreement and that Iteris, employees, and subcontractors are fully qualified to perform hereunder.

b. Iteris Products Limited Warranty. Unless otherwise specified in writing by an authorized Iteris representative, products marked as manufactured by or for Iteris or marked with a Iteris brand or trademark are warranted, at the time of shipment to City, to conform to Iteris' published specifications and to be free from defects in material and workmanship. The occurrence of any of the following terminates Iteris' Limited Warranty: (i) a product fails as the result, in whole or in part, of modification or repair of the product not conducted in conformity with Iteris' approved procedures; (ii) a product fails as the result, in

whole or in part, of improper or insufficient maintenance; (iii) a product is damaged due to, in whole or in part, electrical power surge, lightning strike, accident, negligence, improper storage, incorrect installation, incorrect operation, unusual deterioration due to physical environments in excess of limits set forth in product manuals, or any other type of abuse or misuse; or (iv) the removal of serial numbers, or the removal, mutilation or defacement of any part of a product. As a condition to making any claim under this Limited Warranty, City must request a Return Material Authorization (“RMA”) before the Limited Warranty terminates or expires. Provided that the Limited Warranty has not terminated or expired, Iteris shall issue the RMA and City shall have the right to return the non-conforming product, transportation prepaid, to Iteris for repair or, solely at Iteris’ option, replacement with new or reconditioned materials. Except for repair or replacement, Iteris shall be under no other liability to the City. This is a Limited Warranty only and, unless otherwise specified in writing by Iteris, shall expire thirty-six (36) months after the date of shipment of each unit of product to the City. Repaired or replaced Products have a Limited Warranty for the greater of ninety (90) days from the time of shipment or the remainder of the original warranty period.

**c. Non-Iteris Products.** Hardware or software Products marked as manufactured or produced by others or marked with a brand or trademark of a party other than Iteris are warranted by the manufacturer or producer to the City in accordance with the warranty documentation provided by the manufacturer or producer.

**d. NO OTHER WARRANTIES OR GUARANTEES, EXPRESSED OR IMPLIED INCLUDING MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARISING BY LAW, CUSTOM OR CONDUCT, SHALL BE APPLICABLE. THE RIGHTS AND REMEDIES PROVIDED HEREIN ARE EXCLUSIVE AND IN LIEU OF ANY OTHER RIGHTS OR REMEDIES. IN NO EVENT SHALL ITERIS HAVE ANY LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, OR FOR LOSS, DAMAGE OR EXPENSE DIRECTLY OR INDIRECTLY ARISING FROM USE OF THE PRODUCTS, OR AN INABILITY TO USE PRODUCTS EITHER SEPARATELY OR IN COMBINATION WITH OTHER SOFTWARE, EQUIPMENT OR MATERIALS, OR FROM ANY OTHER CAUSE.**

## **7. Ownership and Reuse of Documents**

**a. City Documents.** All drawings, specifications, test reports and other materials or work products prepared or furnished by City to Iteris under this Agreement (“City Documents”) shall remain City’s property. City shall make available to Iteris copies of these City Documents as necessary for Iteris to perform its obligations under this Agreement.

b. Project Documents. Except to the extent that such items are derivatives or adaptations of Commercial Material as defined below, Iteris agrees title to all material originated or prepared by Iteris pursuant to this Agreement, including drawings, designs, specifications, reports, test plans, test procedures, reports, computer programs, websites, and other documents or records (“Project Documents”) shall be deemed to be “works made for hire” and shall be the sole property of the City. To the extent that title to any Project Documents may not, by operation of law, vest in City, or such Project Documents may not be considered “works made for hire,” Iteris hereby assigns all right, title and interest therein, including, without limitation, all copyrights, to Iteris.

c. Commercial Material. Software and other materials developed or acquired independently of this Agreement, pre-existing materials, or software or other materials acquired or procured on a commercial basis from Iteris or its suppliers and any adaptations or derivatives thereof (“Commercial Material”) shall be owned and licensed to the City as set forth in ownership and licensing provisions for such Commercial Material.

## 8. Indemnification

a. Indemnification. Iteris shall indemnify, hold harmless, and defend the City, its officers, agents, volunteers, 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 reasonable attorneys’ fees, for injury to or death of any person or for damage to any property to the extent caused by or arising out of the work done by Iteris under this Agreement. Such indemnity shall apply regardless of whether the claims, losses, damages, causes of action, suits, or liability arise in whole or in part from the negligence of the City except for the items the City is solely responsible for in the Scope of Services, any other party indemnified hereunder, Iteris, or any third party.

b. Legal Limitations. It is agreed with respect to any legal limitations now or hereafter in effect and affecting the validity or enforceability of the indemnification obligation under Section 8 item a, such legal limitations are made a part of the indemnification obligation and shall operate to amend the indemnification obligation to the minimum extent necessary to bring the provision into conformity with the requirements of such limitations, and as so modified, the indemnification obligation shall continue in full force and effect.

9. Release. Iteris assumes full responsibility for the work to be performed hereunder and hereby according to the Scope of Services releases, relinquishes, and discharges the City, its officers, agents, volunteers, and employees from all claims, demands, and causes of action of every kind and

character, including the cost of defense thereof, for any injury to or death of any person and any loss of or damage to any property or that is caused by, alleged to be caused by, arising out of, or in connection with Iteris' work to be performed hereunder. This release shall apply regardless of whether said claims, demands, and causes of action are covered in whole or in part by insurance and regardless of whether such injury, death, loss, or damage was caused in whole or in part by the negligence of the City, any other party released hereunder, Iteris, or any third party.

10. **Infringement.** Iteris shall indemnify and hold harmless City and its customers from loss, damage or liability for infringement of a United States (U.S.) patent or U.S. copyright ("Intellectual Property") arising out of the sale or use of Iteris Products or Services delivered to City hereunder (the "Indemnity"); provided that City notifies Iteris in writing within ten (10) days of City's first notice of an infringement claim, threat or suit ("Infringement Claim") and fully cooperates with Iteris in the defense of such Infringement Claim and the avoidance of infringement by, including but not limited to, providing Iteris any requested authority, information, and assistance necessary. Iteris shall be entitled, at its election, to assume the defense of any Infringement Claim. The foregoing Indemnity shall not apply when normally non-infringing Iteris Products or Services are rendered infringing by (i) City's or its contractor's alteration of Iteris Products or Services or the operation thereof, (ii) use of Iteris Products or Services in combination with other equipment or software, or (iii) Iteris' modification of its products in compliance with the City's specifications or instructions. Iteris shall have the right to resolve any Infringement Claim in the manner it deems appropriate, including, but not limited to, (i) obtaining a license from the owner of the alleged infringed intellectual property or (ii) modifying or replacing the alleged infringing Product with non-infringing Product. The foregoing Indemnity shall not extend to claims based on infringement of intellectual property outside the United States of America. Iteris' sole obligation and liability to City and its customers with respect to indemnification of intellectual property claims shall be as set forth in this paragraph and specifically excludes indemnification for products not manufactured by or for Iteris.

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

12. **Independent Contractor.** In all activities or services performed hereunder, Iteris is an independent contractor and not an agent or employee of the City. Iteris, as an independent contractor, shall be responsible for the final product contemplated under this Agreement. Except for specific labor and materials to be furnished by the City as described herein, Iteris shall supply all materials, equipment and labor required for the

execution of the work on the project. Iteris shall have ultimate control over the execution of its work under this Agreement. Iteris shall have the sole obligation to employ, direct, control, supervise, manage, discharge, and compensate all of its employees and subcontractors, and the City shall have no control of or supervision over the employees of Iteris or any of Iteris' subcontractors except to the limited extent provided for in this Agreement.

13. **Conflict of Interest.** Iteris covenants that it presently has no interests and shall not have interests, direct or indirect, which would conflict in any manner with performance of services specified under this Agreement.

14. **City Employees and Officials.** Iteris shall employ no City official nor any regular City employee in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement in violation of the applicable conflict of interest provisions of the Texas Government Code.

15. **Force Majeure.** If the performance of this Agreement, or any other obligation under this Agreement is prevented, restricted, or interfered with by reason of fire, flood, earthquake, explosion, or other casualty or accident or act of God; strikes or labor disputes; inability to procure or obtain delivery of parts, supplies, power, equipment, or software from suppliers; war or other violence; any law, order, proclamation, regulation, ordinance, demand, or requirement of any governmental authority; or any other act or condition whatsoever beyond the reasonable control of the affected Party, the Party so affected, upon giving prompt notice to the other Party, shall be excused from such performance to the extent of such prevention, restriction, or interference; provided, however, that the Party so affected shall take all reasonable steps to avoid or remove such causes of non-performance and shall resume performance with dispatch whenever such causes are removed.

**General Provisions.**

a. **Notices.** Any official notices shall be in writing and delivered by hand, by facsimile, by nationally recognized private courier or by United States mail. Notices delivered by mail shall be deemed given two (2) business days after being deposited in the United States mail; postage prepaid, registered or certified mail, return receipt requested. Notices delivered by hand, by facsimile or by private carrier shall be deemed given on the first business day following receipt. All notices shall be delivered at the addresses set forth below unless changed by prior written notice.

**City:**  
City of College Station  
Attn: Troy Rother  
P.O. Box 9960  
College Station, TX 77842

**Iteris:**  
Iteris, Inc.  
Attn: Vice President Contracts  
1700 Carnegie Avenue Ste 100  
Santa Ana, CA 92705

b. **Jurisdiction – Venue.** This Agreement and all questions relating to its validity, interpretation, performance, and enforcement shall be government and construed in accordance with the laws of the State of Texas. Both parties further agree that Brazos County, Texas, shall be the venue for any action or proceeding that may be brought or arise out of, in connection with or by reason of this Agreement.

c. **Compliance With Laws.** Iteris shall in the performance of this Agreement comply with all applicable local, state, and federal laws, regulations, standards, codes and ordinances in force during the term of this Agreement. Iteris shall obtain and pay for all permits and licenses and provide such notices required by law that are associated with Iteris' performance under this Agreement.

d. **Discrimination.** Iteris shall not discriminate because of race, color, creed, religion, sex, age, national origin, ancestry, or disability, as defined and prohibited by applicable law, in the recruitment, selection, training, utilization, promotion, termination or other employment related activities. Iteris affirms that it is an equal opportunity employer and shall comply with all applicable federal, state and local laws and regulations.

e. **Immigration.** Iteris shall be responsible for full compliance with the immigration and naturalization laws of the United States and shall, in particular, comply with the provisions of the United States Code regarding employment verification. Iteris will not knowingly obtain the labor or services of an undocumented worker.

f. **Assignment.** Neither the City nor Iteris will assign or transfer its interest in this Agreement without the written consent of the other, which consent shall not be unreasonably withheld.

g. **Rights and Remedies.** All rights and remedies conferred by this Agreement, by any other instrument, or by law are cumulative and may be exercised singly or concurrently. If any provision of this Agreement is held invalid by any law or regulation of any government or by any court, such invalidity shall not affect the enforceability of any other provisions. No waiver of a breach of any provision of this Agreement shall constitute a waiver of any other breach of such provision or any other provision.

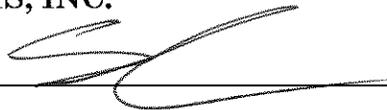
h. **Headings.** The headings of the sections in this Agreement are included for convenience only and are not to be used in construing or interpreting the provisions hereof.

i. **Entire Agreement/Binding.** City and Iteris agree that this Agreement and

the exhibits and attachments cited herein constitute the complete and entire understanding between the Parties on this subject matter and supersede all prior agreements, proposals, representations, statements, or understandings whether written or oral. City and Iteris each binds itself, its officers, employees, successors and assigns to this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by and through their authorized representatives. The "Effective Date" of this Agreement shall be date of signature for last Party signing below.

ITERIS, INC.

By: 

Name: SCOTT CARLSSON

Title: VICE PRESIDENT

Date: 2/24/16

CITY OF COLLEGE STATION

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

City Manager

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

APPROVED:

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

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

\_\_\_\_\_  
Assistant City Manager/CFO

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

## **EXHIBIT A SCOPE OF WORK**

### **City of College Station Traffic Signal System Upgrade Project – Year 2**

#### **1. Project Background**

The City recently completed an Intelligent Transportation Systems (ITS) Master Plan that was adopted by the City Council. The City will be implementing recommendations from in the ITS Master Plan over a five-year period. The recommendations focus primarily on upgrading the central traffic signal software, upgrading all of the signal controllers to take advantage of the advanced capabilities that improve traffic operations, and upgrading the communication network from serial to IP/Ethernet to take advantage of the field and central system capabilities. This Agreement addresses activities to be performed by the Contractor in Year 2 of the Project.

#### **2. Year 2 Summary of Budget**

The Scope of Work in the next section summarizes the activities to be implemented in Year 2 to complete the next phase of the City of College Station traffic signal system upgrade. The Year 2 budget and pricing for this Agreement, shown in Exhibit C, is for Iteris work as defined in the Iteris Year 2 Scope of Work below. Funding for the City's staff time, City provided equipment and services associated with the Project, are in addition to the not to exceed amount shown in Section 2 "Compensation" of this document.

#### **3. Iteris' Year 2 Scope of Work**

This Scope of Work represents Year 2 of the City's multiyear program to implement Transportation Management solutions. Iteris' scope to match the Year 2 budget and pricing in Section 2 is provided in detail below. For the avoidance of doubt, nothing in this Agreement shall be construed as a commitment by the City to continue this contract or enter into any new contract with Iteris in subsequent years of the 5-year plan.

#### **Task 1: Project Management/Project Administration**

This task includes all project management activities related to the Year 2 tasks and activities associated with the City of College Station Traffic Signal System Upgrade Project.

##### **Task 1.1 – Project Management**

This task will consist of the overall management of the project by the assigned project manager and support personnel of Iteris. This task includes the development of monthly progress reports, billing statements, task staffing plans, quality assurance of document deliverables, maintaining project schedule, maintaining project budget, coordinating overall activities of the Project Team,

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and being the main client point of contact for all project related discussions.

### **Task 1.2 – Progress Reporting**

Throughout the duration of this project, Iteris shall develop monthly progress reports to accompany the invoice. The progress reports shall summarize the progress of each task/sub-task, identify the activities to be accomplished during the next progress period, identify any issues/concerns that could prohibit the accomplishment of future activities. Iteris shall also schedule and conduct recurring project progress report meetings with the Project Team to report project progress, provide opportunity to discuss issues, submit deliverables, receive feedback on submitted items reviewed, and discuss upcoming activities. A summary of “To-Do” items; responsibility, and status of those items will be provided at each meeting. These meetings may be scheduled as teleconferences / web conferences or face to face meetings. Meeting minutes will be produced by Iteris. A kick-off meeting will be held in month 1 of the contract in College Station with City staff, other stakeholders and Iteris staff.

### **Task 1.3 – Project ftp Site**

Iteris will maintain the City of College Station Traffic Signal System Upgrade project ftp site for use by all members of the Project Team. This site will enable deliverables to be shared amongst the project team as needed and provide contact information for Project Team members.

#### **Assumptions:**

1. The project ftp site will be hosted by Iteris. It will be password protected.
2. Progress meetings defined in Task 1.2 shall be bi-weekly teleconference/webinar meetings.

#### **Deliverables (some deliverables may be combined):**

1. Monthly Progress Reports
2. Progress Meeting Minutes
3. Updated Project Management Plan (PMP)
4. Project Schedule (including monthly updates)
5. Project ftp site.

### **Task 2: Traffic Signal System Expansion**

Iteris staff shall support the continued development of the traffic signal system by enhancing the existing system with communication redundancy minimizing traffic operation disruptions and expanding the system to include additional intersections and

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devices.

### **Task 2.1 – Develop Field Communication Redundancy Design**

1. The existing field communication network does not provide the level of communication redundancy to maintain connectivity to the intersection if the fiber communication link is broken. Iteris will update the Ultimate Field Communication Design Topology drawing to a) incorporate communication modifications made during the initial communication upgrade and b) identify/verify the additional fibers required for a redundant path for fiber trunk.
2. Iteris will develop the required drawings and supporting documentation necessary for a City provided contractor to implement the field communication redundancy design.
3. Iteris will develop the communication design based upon the requirements and coordinate with IT.
4. Iteris will provide construction support during the communication redundancy implementation.

### **Task 2.2 – Develop Field Communication Network Expansion**

1. The existing fiber network will expand to include some of the intersections currently communicating over a wireless network link. Iteris will develop the engineering drawings and supporting documentation to allow the City to contract with a fiber installation contractor to expand the fiber network (fiber installation to occur in Year 3 or 4). Iteris will also develop the engineering drawings to relocate a wireless radio to a new intersection. Iteris will work with the City IT Department to verify available conduit, identify route for new conduit, prepare plans and supporting documents, and provide support during the construction process. Based on the fiber network upgraded in Year 1 and the recommendations in the ITS Master Plan for new fiber segments, below are the intersections to be added to the fiber network and designed by Iteris.

- 1) Rock Prairie/Wellborn Road
- 2) Arrington/WD Fitch
- 3) H Mitchell/Wellborn (N), H Mitchell/Wellborn (S)
- 4) Longmire/Deacon, Texas/Deacon
- 5) University/Agronomy, University/Vet School, University/ Discovery
- 6) George Bush/Penberthy, George Bush/Olsen
- 7) George Bush/Dominik

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- 8) University/Copperfield
- 9) Southwest Parkway/Dartmouth

**Task 2.3 – Develop ITS Device Design**

**Task 2.3.1 – ITS Device Design Plan Development**

The City has identified locations to install additional PTZ CCTV, Video Detection cameras, DMS and Bluetooth devices. The number of field devices is found in the Assumptions section under this task. As in Year 1, the PTZ CCTV, Video Detection cameras, and Bluetooth devices do not require a design if the installation is to be done by City forces with support from Iteris. However, the DMS, which include pole, cabinet and foundations, does require design drawings that meet applicable City and TxDOT standards. Iteris will develop design level drawings and supporting specifications required to install the DMS with integration to the communication network via wireless link. All drawings will be developed using MicroStation. Aerial photos and GIS data, provided by the City, will be used for the base map topography.

**Task 2.3.2 – DMS Device Geotechnical Design**

The activities below identify the elements required to develop the geotechnical engineering study for the proposed DMS.

1. Drill one boring for Dynamic Message Sign (DMS) at the vicinity as shown in the attached aerial photograph. The maximum depth of the boring shall 50 ft below the existing pavement section. The maximum boring depth is based on previous geotechnical engineering studies in the project area.
2. Texas Cone Penetration Tests – Conduct Texas Cone Penetrometer (TCP) tests at 5 ft intervals beginning at a 5-ft depth.
3. Upper soil layer test. Test soft upper soil layers.
4. Soil and bedrock classification – Fill out a complete soil and bedrock classification and log record for each test hole on the standard log, including all information to complete the form.
5. Ground water – Include ground water elevation measurements as part of the data acquisition and method of monitoring water surface fluctuations.
6. Backfill the open boreholes with soil cuttings, up to the last 3 feet. Use grout for the last 3 feet of the boreholes. The holes through the existing

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pavement section shall be patched using flexible base material and “cold patch” asphaltic concrete.

7. Provide traffic control as per the Texas Manual on Uniform Traffic Control Devices and clear all utilities. Assume that all coring activities can occur in the shoulders and that the mainlane closures may be required. Notify the State in writing 7 days prior to starting any work within highway right of way.
8. Provide a signed and sealed engineering report to include a map showing the location of the borings, subsurface exploration logs using the WinCore format, all laboratory testing results, generalized soil stratigraphy, and interrupted groundwater levels.

### Task 2.3.3 – DMS Device Structural Design

The activities below identify the elements required to develop the detailed structural design (PS&E level) for the proposed DMS.

1. Prepare the following plan sheets shall be developed.
  - i. Title Sheet
  - ii. Vicinity Map
  - iii. Quantity Sheet
  - iv. DMS Layout Sheet
  - v. Structural DMS Details
  - vi. DMS Foundation Details
2. Prepare DMS design specifications, general notes and construction cost estimates.

### Task 2.3.4 – DMS Field Surveying

The activities below identify the elements required to field survey the area for the proposed DMS.

1. Identify/locate underground and overhead utilities in the area
2. Create a survey control line (either a line along the edge of the pavement or the roadway centerline)
3. Develop cross sections (from the edge of pavement to the right-of-way line). Each cross section must include enough points to determine side slopes and ditch line. (maximum of 4 cross sections)
4. Develop survey report suitable to be easily transferred into Microstation.

### **Task 2.4 – Update As-Built” Field Communications Topology**

Based upon the information developed in the previous subtasks, Iteris will update

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the “City of College Station As-Built Traffic Signal System Upgrade Technical Memorandum” to incorporate all network modifications made during the Year 2 design and implementation.

### **Task 2.5 – School Zone Flasher Integration Options**

The City desires to integrate the city’s existing school zone flashers with the current ATMS. Iteris, under this subtask, will identify school zone flasher upgrade and integration options with the City. The discussions will include hardware upgrades, communication enhancements and options to integrate the school zone flashers into the ATMS software. Iteris, with City support, will inventory the City’s existing school zone flashers and document existing equipment. After reviewing the existing conditions, Iteris will provide recommendations to upgrade the existing school zone flashers. Recommendations will include the steps necessary to integrate the school zone flashers into the ATMS.

#### **Assumptions:**

1. City IT will provide details on the communications network, fiber assignments, hub locations, etc.
2. Iteris will estimate developing detailed drawings for the fiber segments listed in Task 2.2. If intersection locations change or intersections added, Iteris will work with the City to determine level of effort to add these intersections to the design package.
3. Fiber shall be located underground, in conduit.
4. The number of additional PTZ CCTV locations is 25.
5. The number of additional video detection camera locations is 21 (based on the “CS Intersection Inventory (Existing and Proposed)v4 – 7-07-15.xlsx” spreadsheet).
6. The number of additional Bluetooth locations is 10.
7. The number of DMS locations is 1.
8. DMS structural details and foundation design details shall be created using Microstation and on 11 x 17 sheets.
9. DMS structural design shall conform to City and TxDOT standards.
10. DMS installation (foundation, structure, installing DMS, power drop) shall be done by others.
11. The number of existing school zone flashers are 59.

#### **Deliverables (some deliverables may be combined):**

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1. Field Communication Network engineering drawings and supporting documentation (Draft and Final)
2. Field Communication Network Redundancy Design (Draft & Final)
3. ITS Field Device Design (Draft & Final)
4. Updated City of College Station As-Built Traffic Signal System Upgrade Technical Memorandum” (Draft & Final)
5. DMS Geotechnical Report (Draft & Final)
6. DMS PS&E plan set (60%, 90%, 100% level)
7. DMS field survey control line and cross sections
8. School Zone Flasher Inventory
9. School Zone Flasher Integration Recommendations

### **Task 3: Equipment and Software Procurement and Delivery**

Under this Task, Iteris shall furnish equipment and software: (i) to upgrade the field communication network to an Internet Protocol (IP) Ethernet based system as new intersections are constructed; and (ii) to implement the changes to the traffic signal shop TMC as described in Task 6. Unless specifically noted in this Task 3, all other field equipment (traffic signal controllers, video detection, etc.) to be purchased for the Year 2 program, whether from Iteris or others shall be acquired by the City through separate procurement actions and are not covered by this Agreement. Below is a summary listing of the equipment and software to be procured under this Agreement. A detailed listing of equipment and software with unit prices is provided in Exhibit C, Section 2.c. If adjustments in quantities are required to complete the Year 2 scope, the unit pricing in Exhibit C will be used to determine price increases or decreases (if any) that may be incorporated into this Agreement by written amendment.

1. Signal Shop TMC Video Wall: Planar MX55HDS with Clarity Matrix G2 processor and mounting hardware, and VCS: 1 unit
2. Signal Shop TMC Audio System: 1 unit
3. Signal Shop TMC consoles: 2 units
4. IP CCTV cameras: 25 CCTV cameras with brackets, CAT6 cable and hardened POE injectors
5. Travel time system: 10 Velocity units (locations to be determined in Task 2)
6. Dynamic Message Sign: Daktonics VF-2420-64x352-20-RGB: 1 unit
7. EdgeConnect: 10 units
8. Ethernet Radios: 1 Pegasus radio

#### **Assumptions:**

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1. Iteris will provide the Ethernet cables for the connection of equipment in the signal shop TMC
2. Delivery of equipment will be to a City-designated destination
3. Equipment acceptance occurs upon delivery to the City-designated destination and will be documented by a delivery notice

**Deliverables:**

1. Equipment and Software Delivery Notices

**Task 4: Field Equipment Installation and Verification**

The traffic signal system field equipment will be installed by a combination of City forces with Iteris oversight, or by Iteris forces, as noted herein. Iteris staff shall also configure the equipment to match the IP network Schema previously developed, and will assist City with oversight of installed equipment as noted herein. Equipment will be configured and validated prior to installation in the field and, upon installation, operation will be verified. This approach will significantly reduce the field implementation time. Iteris will also integrate existing equipment identified to remain in the cabinet on site, based on the final design plans and communication topology documents developed in Task 2.

Below is a summary listing of the field equipment to be configured and installed.

1. IP CCTV cameras: 25 CCTV cameras with brackets, CAT6 cable and hardened POE injectors (locations for Year 2 to be determined in Task 2) configured by Iteris and installed by City staff with Iteris oversight
2. Travel time system: 10 Velocity units (at locations identified to be determined in Task 2) configured and installed by Iteris
3. Dynamic Message Sign: 1 DMS to be furnished, configured and integrated by Iteris, with installation by contractor under contract with City.
4. EdgeConnect: 10 EdgeConnect units configured and installed by Iteris.
5. Ethernet Radios: 1 Pegasus radio configured by Iteris and installed by City staff with Iteris oversight.

**Assumptions:**

1. Installation of noted equipment will be done by City forces under on-site oversight of Iteris as needed
2. City staff will install timing plans and database, and configure new controllers
3. Iteris will provide the Ethernet cables for the connection of equipment in the cabinets.

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4. Fiber optic cable terminations will be done by City forces under on-site oversight of Iteris
5. The City (IT) will provide Hub switches. City-provided hub switches will be compatible with Iteris provided equipment
6. Field equipment installation and verification acceptance occurs upon submittal of the installation verification notices

### **Deliverables:**

1. Field Equipment Installation & Verification Completion Notices

### **Task 5: Municipal Building Traffic Management Center (TMC) Conference Room Enhancements**

The majority of the Municipal Building TMC was implemented as part of the Year 1 project. As part of the Year 2 project, the TMC and TMC Conference Room will receive some enhancements. Iteris shall review the “as-built” Municipal Building TMC civil drawings and determine the required enhancements to complete the build out of the TMC and TMC conference room. The conference room is located adjacent to the TMC Operations room. Two television monitors (relocated from the Traffic Signal Shop) will be installed in the TMC conference room. The conference room monitors and PC workstation (furnished by the City) shall be integrated into the City’s ATMS. Iteris shall also integrate additional intersections into the Tactics ATMS database. Integration shall include developing the intersection maps and updating the Tactics region map.

#### **Task 5.1 –TMC Conference Room Design Modifications**

The TMC conference room in the Municipal Courts Building allows City traffic engineering staff to monitor day-to-day and special event operations without disrupting the TMC operator’s activities. The conference room was initially designed in Year 1. Construction was complete late in the Year 1 schedule. Iteris, working with the City Information Technology (IT) and Traffic Engineering Departments, will review the “as-built” plans to determine if modifications are required to complete the conference room video monitor and PC workstation installation.

Iteris will consult with City Facilities staff and/or the TMC design architect concerning any TMC conference room modifications.

#### **Task 5.2 –TMC Installation/Integration**

Iteris will install the two video monitors (relocated from the Signal Shop) and integrate into the system. Iteris will also install one workstation (to be provided

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by the City) in the conference room. This workstation will be integrated into the traffic system, including Tactics.

### **Task 5.3 – Traffic Signal System Upgrade Installation and Integration**

Iteris upgraded the City of College Station's Actra central software to the current version of Tactics in Year 1. Under this subtask, Iteris will integrate 4 additional intersections into the Tactics database. Iteris integration will include developing the intersection map, updating the Tactics region map and configuring the additional intersection to the City preferred reporting and viewing screens.

Iteris will also integrate the other traffic signal system upgrades implemented as part of the Year 2 scope including the Travel Time System, the video detection system, the video wall, video management software, remote TMC workstation, dynamic message signs and communications network.

### **Task 5.4 – UDOT Performance Measure Software Integration**

The Utah Department of Transportation (UDOT) will provide one staff member familiar with the UDOT Performance Measure Software to install, integrate, and test the UDOT Performance Measure Software onto the College Station system. The installation, integration and testing will be performed remotely. Iteris and City staff will be present during the installation, integration and testing. This UDOT staff member will also provide training to City and Iteris staff on the software.

#### **Assumptions:**

1. The City shall be responsible for all architectural and civil design aspects of the City TMC
2. The City will provide the intersection base map graphics
3. A total of four (4) intersections will be added to the signal system
4. Integration will include equipment installed in Task 4.
5. For UDOT Performance Measure Software installation, integration, testing and training, Iteris is budgeting 2 days to complete Task 5.4.
6. The UDOT Performance Measure Software shall be installed, integrated and tested remotely.

#### **Deliverables (some deliverables may be combined):**

1. Municipal Court TMC Design Modification Drawings
2. Site Readiness Review Completion Notice

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3. Equipment Installation/Integration Completion Notices
4. Tactics Installation/Integration Completion Notices
5. New Municipal Building TMC consoles

### **Task 6: Signal Shop TMC Final Design and Installation**

Iteris shall complete the design of the remote TMC to be located in the signal shop. This task is a continuation of the Signal Shop Preliminary Design task (Year 1). The area allocated for the TMC area is approximately 25 feet by 33 feet and will accommodate an office space (15 feet by 20 feet) a bathroom (9 feet by 9 feet) and the TMC area (16 feet by 18 feet).

#### **Task 6.1 – Signal Shop TMC Final Design**

The City of College Station desires a remote TMC in the traffic signal shop to allow the signal technicians to monitor and make timing plan changes from their office. The Signal Shop TMC shall consist of a two-person traffic management work station area, two workstation PCs each with two computer monitors per workstation, to be furnished and installed by the City with Iteris oversight.

Iteris shall finalize the layout and supporting details to install and integrate the Signal Shop TMC to the field network. These drawings shall be architectural and schematic in nature, but not at a construction letting level. The City will procure the services of an Architectural/Engineering firm to prepare the construction level drawings for the Signal Shop upgrades, including the TMC. Iteris will provide technical input and review of the construction level drawings. Iteris shall participate in two (2) meetings with the Architectural/Engineering firm to finalize the Signal Shop TMC design.

Iteris, working with the City Information Technology (IT) Department, will develop the communication plan meeting all of the City's IT requirements. Iteris and City staff will review the location where the Signal Shop TMC equipment and software will reside.

#### **Task 6.2 – Signal Shop TMC Installation/Integration**

The Signal Shop TMC shall consist of a two-person workstation area, traffic management work stations with two computer monitors per workstation, a 4x2 video wall, and audio system. The video wall shall be a Planar MX55HDS with Clarity Matrix G2 processor. The video wall components shall include all mounting hardware. Iteris shall also install an audio system to complement the video wall. The audio system shall be identical to the audio system installed in the Municipal Building TMC Operations room. Iteris will also relocate the existing Municipal Building TMC console to the Signal Shop TMC, with the

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assistance of the City. The video wall and audio system, including all mounting hardware is to be furnished as part of Task 3.

### **Deliverables:**

1. Signal Shop TMC Design Plans
2. Signal Shop TMC Site Readiness Review Completion Notice
3. Relocated TMC consoles
4. Signal Shop TMC Equipment Installation/Integration Completion Notices
5. Tactics Installation/Integration Completion Notices

### **Task 7: System Verification**

Iteris shall test and verify functionality of all equipment installed and integrated under this scope of work. All equipment installed under this scope of work shall be integrated into the existing traffic signal system.

#### **Task 7.1 – Develop Verification Test Plans**

Iteris staff will review verification test plans developed in Year 1 to determine if the existing plans provide the level of detail necessary to verify the equipment installed during Year 2 comply with the requirements identified in Year 1 services, software and equipment installed.

#### **Task 7.2 – System Test**

Iteris staff will conduct a system test of the Signal System upgrades. The system test procedures will follow the approved test plan approved in Task 7.1.

#### **Task 7.3 – Final Test**

Upon completion of the System Test in Task 7.2, the equipment under the Year 2 scope of work will enter into a 30-day operational test period. During this period, Iteris will monitor the system remotely and identify/address all anomalies. City of College Station staff will also log all system anomalies. Final testing will be conducted jointly between City of College Station traffic staff and Iteris staff. The test procedures will involve the following steps.

1. Iteris and City staff will develop a punch list of any outstanding items
2. The city will review and approve the punch list
3. Iteris will provide any required software fixes and/or configuration changes addressing all of the punch list items

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4. Iteris and City staff will perform testing on the punch list items
5. The City will sign off and accept the equipment installed under the Year 2 scope of work

### **Deliverables (some deliverables may be combined):**

1. Verification Test Plans
2. System Testing Report
3. 30-day Operational Test Completion Notice
4. Final Testing Punch List

### **Task 8: Training**

Iteris shall provide one 2-day on-site, hands-on training class with full set of training materials. This training will be a follow-up training session to training performed during Year 1. The training will focus on operations and administrative functions.

The training effort will allow the system users to become knowledgeable on the Tactics central control software, the IP CCTV camera system, the video detection system, the travel time system, and the video wall. The system operators will also learn the basics required for supporting and expanding the system.

The training will be conducted over a two-day period. An outline of the training will be developed and presented to the City for review, comment and approval prior to conducting the first training session.

During training, questions are encouraged and will be answered as they arise. In addition, time at the end of the training session will be provided for additional questions/discussion, and review of the covered material. The course will have hands on and problem solving activities.

The training session will consist of making the system operators proficient in the Iteris installed systems and equipment. The overall emphasis will be oriented towards a workstation environment on how to command and control field devices. This will also include remote access training (i.e. accessing the system from a laptop or remote computer if one has proper clearance).

### **Assumptions:**

1. Training shall utilize previously developed training materials
2. The City shall provide the use of a suitable training facility with instructor and student workstations and presentation equipment

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### **Deliverables (some deliverables may be combined):**

1. Training course outline and materials
2. Two-day Operator training
3. System Administrator training

### **Task 9: Texas A&M University Coordination**

Texas A&M University (TAMU), through the Texas A&M Transportation Institute (TTI), is developing strategies to address congestion in and around the university campus, especially during sporting events. The City of College Station is responsible for operating all of the traffic signals around TAMU. TTI and the City are coordinating efforts to effectively manage traffic around TAMU. Iteris, through our involvement with the City of College Station Signal Upgrade contract, will participate in meetings and various integration efforts. For this Year 2 scope of work, Iteris will

1. Participate in meetings between the City and TTI as these meetings relate to traffic management and coordination with the City of College Station traffic signal system,
2. Assist in developing schematic type drawings associated with the various sub-systems to be integrated to the College Station traffic signal system,
3. Continue working, on the City's behalf, in coordinating the integration of the Kyle Field TMC to the City's traffic signal system. The integration efforts will focus on video sharing and Bluetooth travel time system data sharing.
4. Review signal coordination plans developed by the City.

### **Assumptions:**

1. Iteris will participate in four (4) meetings between the City and TTI during this Year 2 timeframe.
2. TAMU, through TTI, will provide access to the Kyle Field TMC system to allow Iteris to integrate with the City of College Station traffic signal system.
3. TAMU, through TTI, will provide existing drawings, network diagrams, interface protocols, etc. necessary for Iteris to integrate the Kyle Field TMC to the City traffic signal system.

### **Deliverables:**

1. TTI meeting minutes
2. Kyle Field TMC integration schematics
3. Kyle Field TMC integration completion notice

### **Task 10: Traveler Information System**

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Iteris will develop the arterial travel time/speed map component to the traveler information system in Year 2 Scope of Work. Iteris will also develop the basis for further traveler information services through identifying user needs and requirements. These future traveler information system components would then be developed and deployed in Year 3.

### **Task 10.1 – Arterial Travel Time/Speed Map Component Development/Deployment**

Iteris will work with City IT to deploy the Iteris Velocity Bluetooth arterial travel time/speed map onto the City website. The arterial speed map shown on the City website will be the same map displayed in the TMC for City use. Iteris will facilitate two workshops to obtain information to integrate the Velocity Bluetooth arterial speed map onto the City website.

Iteris will work with City IT in deploying the arterial speed map in a test bed environment prior to placing the speed map on the City website. Iteris will also work with City IT in deploying the arterial speed map on to the City website. The IT hardware (web server) will be furnished by the City.

### **Task 10.2 – Develop Additional Traveler Information System Requirements**

The objective of this task is to identify the requirements for the provision of traveler information to the public, building upon the incorporation of the Iteris Velocity Bluetooth arterial travel time/speed map into the City's website. Anticipated future enhancements may include:

1. Providing access to video images on the City website
2. Developing a smartphone mobile app to access the traveler information system
3. Integrating relevant TAMU Game Day information (e.g. traffic and parking)
4. Providing access to video images on smartphones
5. Providing travel time messages

Together with the arterial travel time/speed map, these enhancements will comprise a traveler information services (TIS) capability. Iteris will work with City staff to develop a list of stakeholders who will be approached to provide input in identifying user needs to be addressed by the TIS. Examples would be City staff, TAMU staff, traffic engineers, police and IT.

To define the user needs, Iteris staff will facilitate a half-day TIS User Needs workshop. The workshop environment will be used to provide a forum for stakeholders to talk about issues for which the TIS could provide solutions. Iteris

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will document the results of the workshop as a Technical Memorandum: Draft User Needs for TIS. Following City review, the report will be circulated to the stakeholders for comments. Iteris will dispose of the comments to produce the Technical Memorandum: Final User Needs for TIS.

Based upon the User Needs, Iteris will derive a list of requirements for the TIS. Iteris will present the requirements to the stakeholders at a second workshop, the College Station Traveler Information Services Requirements review meeting. The results of the workshop will be documented as a Technical Memorandum: TIS Requirements. This document will be the basis for future activities to design, develop and deploy the traveler information services.

### **Assumptions:**

1. The arterial street travel time/speed map displayed on the City website shall be the same map shown in the TMC for City use.
2. The arterial street travel time/speed map shall be accessed via the existing City of College Station website.
3. The City of College Station website webmaster shall create the frame around the travel time/speed map. Level of effort and cost is not included in the Iteris scope of work or budget.

### **Deliverables (some deliverables may be combined):**

1. Arterial Street Travel Time/Speed map meeting minutes
2. Arterial Street Travel Time/Speed map on the City website
3. Arterial Street Travel Time/Speed map integration completion notice
4. College Station Additional Traveler Information System user needs workshop meeting minutes
5. Draft/Final College Station Additional Traveler Information System user needs document
6. College Station Additional Traveler Information System review meeting minutes
7. Draft/Final College Station Additional Traveler Information System requirements document

### **Task 11: Advanced Signal Operations**

Task 11.1: Develop Advanced Signal Operation Concept of Operations and Pilot Project Evaluation

Iteris will facilitate two (2) workshops with City Traffic Engineering staff to

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identify the operational concepts of implementing a traffic adaptive/responsive system within the City. Elements of the Concept of Operations document will include, advanced traffic signal operation goals and objectives, how the system will operate, under what conditions would the system operate, performance metrics, and implementation timeline. Iteris will also develop an evaluation of the Advanced Signal Operation Pilot Project. Elements of the Advanced Signal Operations Pilot Project Evaluation document will include; the methodology for implementing the pilot project, results from the pilot project and next steps toward a city-wide advanced signal operation system. Workshop 1 will focus on the Concept of Operations development. Workshop 2 will focus on the results and next steps in implementing a city-wide advanced signal operation system.

### **Task 11.2: Advanced Signal Operation Pilot Project**

Iteris will install an ACS Lite traffic adaptive system along one corridor (either University Ave or Texas Ave) (maximum of 16 intersections) as a pilot traffic adaptive project.

#### **Assumptions:**

1. A maximum of 16 intersections will be incorporated into the ACS Lite Pilot corridor.
2. Workshop 2 will occur after the pilot project has been implemented.

#### **Deliverables:**

1. Advanced Traffic Signal Operation Concept of Operations Document (Draft/Final)
2. ACS Lite Pilot Project Implementation Completion Notice

### **Task 12: Traffic Video Operations Procedures “Quick-Start” Sheet Development**

Iteris will develop a step-by-step “quick-start” guide identifying the steps necessary to place video (PTZ CCTV or VIVDS) images onto the TMC computer workstation or the video wall. This video operations “quick-start” guide will include setting up video wall templates. Iteris will also develop a step-by-step “quick-start” guide identifying the steps necessary to perform administrative functions, including adding/modifying users, adding/modifying cameras to the system.

#### **Assumptions:**

1. The “quick-start” video operations guide will be based upon the OnSSi Ocularis user guide.

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2. The “quick-start” administrative guide will be based upon the OnSSi Ocularis user guide.
3. The “quick-start” video operations and administrative guides will be no more than one page (front/back).

**Deliverables (some deliverables may be combined):**

1. Video Operations “Quick-Start” Guide (Draft/Final)
2. Administrative “Quick-Start” Guide (Draft/Final)

**Task 13: Operations and Maintenance**

Iteris shall provide 12 months of on-going system support once the system implementation has been completed. Iteris shall also provide 12 months warranty on all Iteris provided equipment procured under this scope of work. Iteris shall monitor and support the system via a Virtual Private Network (VPN) connection with access to all traffic related system components. Iteris shall document each troubleshooting notice with a troubleshooting completion notice. The troubleshooting completion notice will document the issue, document resolution of the issue, Iteris staff addressing the issue and the number of hours and other cost (ODC) associated with resolving the issue.

Iteris will provide support staffing during special or other events, as needed by the City. Staffing will include a maximum of two (2) Iteris staff at the Municipal Court TMC. Iteris staff activities would include monitoring traffic via CCTV, VIVDS or arterial travel time map to determine traffic anomalies. Iteris staff would report these anomalies to the City TMC supervisor and provide recommendations to resolve the traffic anomaly. Iteris staff would also participate in post-incident de-brief meetings, if requested.

**Assumptions:**

1. Iteris shall provide 12-month warranty support only for Iteris provided equipment hardware and software procured under this scope of work.
2. For estimating purposes, 200 hours of labor is budgeted toward Iteris provided equipment hardware and software troubleshooting.
3. For estimating purposes, 80 hours of labor is budgeted toward supporting the TMC during special event or other operations, as needed.
4. Iteris shall access the City network utilizing the City’s current VPN standards and policies.

**Deliverables (some deliverables may be combined):**

1. Troubleshooting logs

**EXHIBIT A**  
**SCOPE OF WORK**

2. Troubleshooting completion notice
3. Iteris staff VPN access list
4. Traffic anomaly/issue reports

# EXHIBIT A SCOPE OF WORK

**Figure 1 – Schedule**

		Feb '16	Mar '16	Apr '16	May '16	Jun '16	Jul '16	Aug '16	Sept '16	Oct '16	Nov '16	Dec '16	Jan '17
Task 1	Project Management												
Task 2	Traffic Signal System Expansion												
Task 3	Field Equipment/Software Procurement & Delivery												
Task 4	Field Equipment Installation												
Task 5	Mun Bldg TMC Enhancements		Design			Construction		Install/Integrate					
Task 6	Signal Shop TMC Design/Installation	Finalize Design				Construction		Install/Integrate					
Task 7	System Verification												
Task 8	Training												
Task 9	TAMU Coordination	Periodically											
Task 10	Traveler Information System												
Task 11	Advanced Signal Operations		ConOps			Pilot Project		Evaluation					
Task 12	Procedures "Quick Start" Development												
Task 13	Operations and Maintenance												Continues through Sept 2017

**EXHIBIT B**  
**THIRD PARTY LICENSES, PRODUCTS AND WARRANTIES**

**1. Daktronics Hardware Warranty and Software License and Warranty**

## Attachment A

### **GOLD® Services** **Scope of Services**

#### **Services Included**

- ❖ Daktronics parts coverage which includes:
  - Daktronics Rapid Parts™ Exchange Program.
  - Repair or replacement of failed electronic parts or assemblies.
  - Shipping of repaired or replaced failed electronic components from Daktronics.
- ❖ Technical support via telephone during business hours as defined below.
- ❖ Access to the Service Coordination Center.

**Gold shall not include** nor be construed to include any service or support that is not expressly stated above in the definition of the Gold service. Examples of services that are not within the scope of Gold service include, but are not limited to, the following:

- ❖ On-site labor to diagnose and/or replace failed electronic components.
- ❖ Remote monitoring services.
- ❖ After hours telephone support.

Above listed exclusions are available as billable services. Quotes may be provided upon request.

#### **Business Hours:**

Monday through Friday, 8 am to 5 pm CST (excludes Daktronics observed holidays).

#### **Purchaser Responsibilities**

The maintenance items listed below are the responsibility of the Purchaser; failure to properly maintain equipment may, at Daktronics' sole discretion, relieve Daktronics of its responsibilities under the Standard Terms and Conditions Service Agreement attached hereto.

- ❖ Throughout the term of this Agreement, Purchaser shall maintain site conditions within the common environmental range of all system devices as specified by Daktronics.
- ❖ Purchaser is responsible for routine operator functions such as content creation or management.
- ❖ Purchaser is responsible for routine maintenance functions.
- ❖ Purchaser is responsible for management of customer-owned spare parts inventory.
- ❖ Purchaser is responsible for costs of any on-site labor to diagnose and/or replace failed electronic components.
- ❖ Purchaser is responsible for providing lift access to the display.

**EXHIBIT B**  
**THIRD PARTY LICENSES, PRODUCTS AND WARRANTIES**

- 1. Planar Systems, Inc. Large Format and Video Wall LCD Products Standard Limited Warranty**
  - a. The Planar Standard Limited Warranty dated June 1, 2014 is set forth in the following five pages.
  - b. Iteris is an authorized distributor for Planar.
  - c. During first 12-months following installation, Iteris shall provide warranty administration and the first contact support for any warranty services. Planar will provide warranty services to City as a supplier to Iteris.

**Planar Systems, Inc. (“Planar”)**  
**Large Format and Video Wall LCD Products**  
**Standard Limited Warranty**

Congratulations on your purchase of a Planar Large Format or Video Wall LCD! With proper installation, setup and care, you should enjoy many years of unparalleled image quality, reliability, and performance.

This Standard Limited Warranty is provided free of charge by Planar with the purchase of a covered Planar product: Clarity™ Matrix, Planar® Mosaic™, Planar® EP-Series™, Planar® LookThru™, Planar® WeatherBright™, Planar® UltraRes™ Series, and Planar® UltraLux™ Series. The following terms and conditions of the Planar Standard Limited Warranty represent a contract between us, Planar, and you, the customer who has purchased a Planar large format or video wall LCD product from Planar or a Planar distributor or dealer. This Standard Limited Warranty applies to purchases of covered Planar products occurring on or after the effective date noted below. Planar reserves the right to change the terms of this warranty. Such changes shall apply to purchases of covered Planar products that occur on or after the effective date of the revised warranty.

**Features:**

- 3-year protection from defects in material and workmanship
- Advanced shipment of replacement part or product
- Access to 24x7 emergency phone support

**Warranty Coverage**

Planar warrants its products to be free from defects in material and workmanship during the warranty period provided below. If, in Planar’s determination, a product proves to be defective in material or workmanship during the warranty period, Planar will replace the defective part with a similar new or like new part. If the issue is deemed a manufacturing defect with the LCD, Planar will replace the product with a similar new or like new product. If replacement of the part or product is determined by Planar to not be commercially feasible, Planar will refund a prorata share of the purchase price (calculated based on the remainder of the warranty period and the then-current MSRP<sup>1</sup> of a similar product).

**Length of Warranty**

All large format and video wall LCDs are warranted for three (3) years from the date of shipment from Planar. All accessories, field replaceable units (FRUs), and Planar® Indisys™ integrated components which include, but are not limited to cables, remotes, power supplies, and controller boards purchased at the time of the initial product purchase are warranted for three (3) years from the date of shipment from Planar.

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<sup>1</sup> MSRP is defined as the most recent product price listed on Planar’s price list.

All accessories, field replaceable units (FRUs), and Indisys integrated components which include, but are not limited to cables, remotes, power supplies, and controller boards, purchased after the initial product purchase are warranted for ninety (90) days from the date of shipment from Planar.

## **Eligibility**

This Standard Limited Warranty covers product purchased from Planar or a Planar dealer or distributor and is valid only for the first customer who purchased the covered product. The Planar dealer or distributor may contact Planar Technical Support on your behalf in the event of a product defect. This warranty is not transferable. You may be required to provide evidence of proof of purchase.

## **Replacement Guidelines**

Planar's LCD products are designed to be easily serviceable by the customer. The majority of parts in each LCD are built as modules that can be replaced quickly; these modules are called Field Replaceable Units (FRUs). It is often easier and more cost effective for customers to replace modules than to send the entire display back to Planar's factory for repair. If the issue is deemed a manufacturing defect with the LCD panel, Planar will issue a replacement for a similar new or like new product. In the event of a product defect, please follow the warranty replacement procedure below:

1. Contact Planar Technical Support via email or phone. Email addresses are: (U.S) [ts@planar.com](mailto:ts@planar.com) OR (France) [emeats@planar.com](mailto:emeats@planar.com) . Technical support phone hotlines are: (U.S) 1-866-752-6271 or (France) +33 5 63 78 38 10
2. Provide the serial number, product model number, purchase date, description of the problem, and troubleshooting steps already attempted.
3. Planar Technical Support staff will attempt to correct any minor issues that might be causing the problem. If Planar is unable to resolve the problem through troubleshooting, a return material authorization (RMA) number will be issued for the defective part or product if it is determined that the claim was made within the coverage period of the Standard Limited Warranty and a replacement will be sent to the customer.
4. Planar will ship the replacement part or product via ground shipping (or the least expensive shipping method). Customer is responsible for excess charges for any other method of shipping that may be requested.
5. Upon receipt of the replacement part or product, customer should inspect the packaging and materials for shipping damage. Report all damage immediately to the carrier and/or Planar Service Representative.
6. Customer will have thirty (30) calendar days from the date of receipt of the Advance Replacement part or product to return the defective part or product to the Planar authorized return facility or Planar will invoice customer and customer shall pay Planar within thirty (30) calendar days from invoice date for the current market price of the Advance Replacement part or product. Planar reserves the right to refuse warranty service for a past due account. Customer shall:
  - a. Return the defective part or product in the box in which the Advance Replacement part or product was shipped. LCDs must be shipped on a pallet in a vertical position.
  - b. Return only the defective part or product. Planar will not be responsible for returning or

<sup>1</sup> MSRP is defined as the most recent product price listed on Planar's price list.

replacing any accessories (as mentioned in the Length of Warranty section) that are returned to Planar with the defective product.

- c. Return the part to the repair location specified by the Planar Service Representative. Clearly mark the RMA number on the shipping box. Verify that the RMA number on the shipping box matches the RMA number for the defective part being returned.
- d. Customer is responsible for all return shipping charges, which include but are not limited to freight charges, taxes, duties, and insurance.

## **Warranty Exclusions**

This Standard Limited Warranty does not include or is limited by the following:

1. Products not purchased from Planar or an authorized Planar distributor or dealer.
2. Shipment delivery time and availability may vary based on origin and destination and Planar is unable to deliver to PO Box and FPO Box addresses.
3. Rental costs incurred by the customer in the event of product defect or failure.
4. Any product on which the serial number has been defaced, modified or removed.
5. Labor and/or travel costs for repairs, adjustments to display settings, installation services, or other labor costs incurred by customer in the event of product defect or failure.
6. Damage, deterioration, or malfunction resulting from:
  - A. Accident, abuse, misuse, neglect, improper ventilation, fire, explosion, water, lightning, or other acts of nature, smoke exposure (cigarette or otherwise), unauthorized product modification (including use of an unauthorized mount), or failure to follow instructions supplied with the product.
  - B. Any labor associated with repair, or attempted repair, by anyone other than Planar.
  - C. Any damage to the product due to shipment.
  - D. Any damage during the removal or installation of the product.
  - E. Causes external to the product, such as electric power fluctuations or failure.
  - F. Use of supplies or parts not meeting Planar's specifications.
  - G. Normal wear and tear.
  - H. Customer caused defects, including but not limited to: cracked LCD, scratched LCD, blemished LCD (dark spot larger than 1/16 inch), or scratched/defaced/altered plastics.
  - I. Any damage or dissatisfaction associated with latent images, "burn-in," or any other damage determined by Planar to be the result of customer use patterns.
  - J. Failure to follow maintenance procedures as outlined in the product's User Guide where a schedule is specified for regular maintenance of the product.
  - K. Any other cause, which does not relate to a product defect in material or workmanship.
  - L. Operating the display outside the suggested normal usage conditions stated in the User Guide.
  - M. Temporary Image Retention as a result of displaying a static image for long periods of time.
  - N. Cosmetic sagging, non-uniformity, image retention, shortened lifespan, and/or degraded optical performance as a result of using the display in an orientation different from the recommendations outlined in the product's User manual.
7. Any costs for on-site removal, installation, set-up, or other labor services.

## **Miscellaneous Return Issues**

1. Planar will not accept returned product unless the RMA number that has been previously issued by Planar is shown on the outside of the box.

<sup>1</sup> MSRP is defined as the most recent product price listed on Planar's price list.

2. If the defective product is returned and determined to be excluded from warranty per any of the exclusions noted above, Planar reserves the right to charge the customer an amount not to exceed the Manufacturer's Standard Retail Price (MSRP<sup>1</sup>).
3. If product is returned and is deemed to be a No Fault Found (NFF) unit, Planar reserves the right to invoice the customer for cost incurred by Planar.
4. It is the responsibility of the customer to properly package the defective product and ship it to the address provided by the Customer Service representative with the RMA number prominently displayed. If the defective Product is not properly packaged by customer and is damaged in transit during its return to Planar, depending on method used, the customer may be charged for either the repair costs, if repairable, or the MSRP of a replacement product.
5. Replacement parts or product will assume the remainder of the original product's warranty or ninety (90) days, whichever is longer.
6. The customer agrees that they will retain the replacement part or product delivered by Planar and that the customer's returned defective part or product shall become the property of Planar.

For additional information or the name of the nearest Planar service center, contact your Planar distributor or call Planar at 1-866-752-6271 or at +33 5 63 78 38 10 or email us at [ts@Planar.com](mailto:ts@Planar.com) or [emeats@planar.com](mailto:emeats@planar.com).

## **Expanded Product Service Plans and Professional Service Options**

Planar offers expanded product service plans and professional service options for purchase by customer. Contact Planar for information at +33 5 63 78 38 10 or 1-866-752-6271 or email us at [emeats@planar.com](mailto:emeats@planar.com) or [ts@Planar.com](mailto:ts@Planar.com).

## **Exclusion of Implied Warranties**

PLANAR PROVIDES NO WARRANTIES, EXPRESS OR IMPLIED, EXCEPT THOSE EXPRESSLY PROVIDED IN THE DOCUMENT. PLANAR EXPRESSLY DISCLAIMS AND EXCLUDES ALL OTHER WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

## **Exclusion of Damages**

PLANAR'S MAXIMUM AGGREGATE LIABILITY IS LIMITED TO THE COST OF ONE OF THE FOLLOWING REMEDIES: (1) REPLACEMENT WITH A SIMILAR NEW OR LIKE NEW PRODUCT; OR (2) REFUND OF THE LESSER OF A PRO RATA SHARE OF THE CURRENT MSRP AS DETERMINED BY THE REMAINDER OF THE WARRANTY PERIOD IF REPLACEMENT OF THE PRODUCT IS NOT COMMERCIALY FEASIBLE. THE REMEDY CHOSEN WILL BE IN GOOD FAITH AND AT THE DISCRETION OF PLANAR.

PLANAR WILL NOT BE LIABLE FOR DAMAGE TO OTHER PROPERTY OR DAMAGES BASED UPON INCONVENIENCE, LOSS OF USE OF THE PRODUCT, LOSS OF TIME, LOSS OF PROFITS, LOSS OF BUSINESS OPPORTUNITY, LOSS OF GOODWILL, INTERFERENCE WITH BUSINESS RELATIONSHIPS, OR OTHER COMMERCIAL OR FINANCIAL LOSS, EVEN IF PLANAR IS AWARE OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF A REMEDY HAS FAILED OF ITS ESSENTIAL PURPOSE.

PLANAR WILL NOT BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, PUNITIVE OR ANY OTHER TYPE OF DAMAGES, WHETHER THE CLAIM IS BASED ON CONTRACT, TORT,

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<sup>1</sup> MSRP is defined as the most recent product price listed on Planar's price list.



PRODUCT LIABILITY, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER LEGAL OR EQUITABLE THEORY.  
PLANAR WILL NOT BE LIABLE FOR ANY CLAIM MADE AGAINST YOU BY ANY OTHER PARTY.

**Effect of Local Law**

This warranty gives you specific legal rights, and you may have other rights, which vary from locality to locality. Some localities do not allow limitations on implied warranties and/or do not allow the exclusion of incidental or consequential damages, so the above limitations and exclusions may not apply to you.

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<sup>1</sup> MSRP is defined as the most recent product price listed on Planar's price list.

**EXHIBIT C  
PRICING AND PAYMENT TERMS**

**1. Agreement Amount**

Iteris shall not take any action whatsoever that could cause the amount for which the City would be obligated to pay to Iteris to exceed the Agreement Amount set forth in Section 2 of the Agreement. Notwithstanding any other provisions of this Agreement, the City shall not be obligated to pay to Iteris any amount in excess of the aforementioned sum, provided however, that this sum may be increased from time to time by the City in writing.

**2. Compensation – Firm Fixed Price (FFP) – Services And Fixed Unit Prices – Hardware/Software**

a. As total compensation for Scope of Work to be performed by Iteris as specified in this Agreement, the City shall pay Iteris the fixed price amount specified in 2b below for each of Tasks 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, and 13 and the fixed unit price specified in 2c below for each unit of equipment delivered under Task 3. Such fixed price amounts and fixed unit prices shall be inclusive of all Iteris' cost (i.e., labor, overhead, material, travel, subsistence, other costs, expenses, etc.) and profit or fee. The City shall not have any liability for any other costs or expenses incurred by Iteris in performance of Work.

b. Task 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, and 13 Prices

<u>Description</u>	<u>Price</u>
Task 1 - Project Management	\$46,185.00
Task 2 - Traffic Signal System Expansion	\$76,322.00
Task 4 - Field Equipment Installation & Verification	\$15,525.00
Task 5 - Court Building TMC Conf Rm Enhancements	\$43,374.00
Task 6 – Signal Shop TMC Final Design/Installation	\$56,098.00
Task 7 – System Testing	\$23,655.00
Task 8 – Training	<u>\$22,201.00</u>
Task 9 – Texas A&M University Coordination	\$24,891.00
Task 10 – Traveler Information System	\$43,305.00
Task 11 – Advanced Signal Operations	\$26,533.00
Task 12 – Traffic Video Ops Procedures Development	\$7,456.00
Task 13 – Operations and Maintenance	\$45,626.00
Subtotal	\$431,171.00

**EXHIBIT C  
PRICING AND PAYMENT TERMS**

c. Task 3 Quantity, Unit Prices, and Extended Amounts

<u>Description</u>	<u>Qty</u>	<u>Fixed Unit Price</u>	<u>Ext. Amount</u>
<b>Field Equipment</b>			
IP CCTV with mounting hardware	25	\$ 4,242.00	\$ 106,050.00
Iteris Vantage Velocity Bluetooth/Wireless	10	\$ 1,818.00	\$ 18,180.00
Dynamic Message Sign	1	\$ 97,750.00	\$ 97,750.00
Iteris Vantage EdgeConnect	10	\$ 2,323.00	\$ 23,230.00
Wireless Radio	1	\$ 1,873.00	\$ 1,873.00
Subtotal Field Equipment			\$ 247,083.00
<b>TMC Equipment and Software</b>			
Planar Video Wall	1	\$ 113,859.00	\$ 113,859.00
Signal Shop TMC Consoles	2	\$ 9,000.00	\$ 18,000.00
Signal Shop Audio System	1	\$ 1,300.00	\$ 1,300.00
Subtotal TMC Equipment & Software			\$ 133,159.00
Total Equipment and Software			\$ 380,242.00

d. Total Amount Items (2b) and (2c) \$811,413.00

3. **Invoices**

a. Services. Iteris may invoice services for Tasks 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, and 13 based upon the percentage of completion claimed for each task as reported in the monthly progress report. Each invoice shall provide a detailed listing of each Task and the percentage of completion claimed, the total billable amount based upon percentage of completion, the amount previously billed, and the net current billable amount.

b. Equipment and Software. Iteris may invoice equipment and software for Task 3 at the fixed unit price for each unit delivered during the month to the City-designated location as documented by delivery notice.

**EXHIBIT D**  
**INSURANCE REQUIREMENTS**

1. The Contractor agrees to maintain, at the Contractor's sole expense throughout the term of the Contract, the following insurance as required in this Contract:

- a. Commercial General Liability
- b. Business Automobile Liability
- c. Workers' Compensation
- d. Professional Liability

2. For each of these policies, the Contractor's insurance coverage shall be primary with respect to the City, its officials, agents, employees and volunteers. Any insurance or self-insurance carried or obtained by the City, its officials, agents, employees or volunteers, shall be considered in excess of the Contractor's insurance and shall not contribute to it. No term or provision of the indemnification provided by the Contractor to the City pursuant to this Contract shall be construed or interpreted as limiting or otherwise affecting the insurance coverage requirements. All Certificates of Insurance, issued by the carrier or the carrier's agent on the most current State of Texas Department of Insurance-approved forms, shall be furnished to the City's Representative at the time of execution of this Agreement, attached hereto as Exhibit F, and approved by the City *before* work commences.

3. **Commercial General Liability Insurance:**

- a. Coverage shall be written by a carrier licensed and authorized to do business in Texas, and rated A: VIII or better in accordance with the current A. M. Best Key Rating Guide.
- b. Minimum Limits of Liability of \$1,000,000 per occurrence with a \$2,000,000 annual aggregate limit.
- c. No coverage shall be excluded from the standard policy without notification of individual exclusions being attached for City's review and acceptance.
- d. The coverage shall include but not be limited to: premises/operations; independent contracts; products/completed operations; contractual liability (insuring the indemnity provided herein); and where exposures exist, Explosion, Collapse and Underground (XCU) coverage.
- e. The policy shall be endorsed to list the City as Additional Insured, to waive rights of subrogation in favor of the City, and to be primary and non-contributory with regard to any self-insurance or insurance policy held by the City.
- f. The policy shall be endorsed to show the policy shall not be canceled, non-renewed, or reduced in limits of liability except after thirty (30) days'

**EXHIBIT D  
INSURANCE REQUIREMENTS**

written notice has been provided to the City.

**4. Business Automobile Liability Insurance:**

- a. Coverage shall be written by a carrier licensed and authorized to do business in Texas, and rated A: VIII or better in accordance with the current A. M. Best Key Rating Guide.
- b. Minimum Combined Single Limit of \$1,000,000 per occurrence for bodily injury and property damage.
- c. The Business Auto Policy must show Symbol 1 in the Covered Autos portion of the liability section in Item 2 of the declarations page.
- d. The coverage shall include any autos, owned autos, leased or rented autos, hired and non-owned autos.

**5. Workers' Compensation Insurance**

The Workers' Compensation Insurance shall include the following terms:

- a. Employer's Liability limits of \$1,000,000 for each accident/disease/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 Other States except those listed in Item 3A and the States of NV, ND, OH, WA, WV, and WY.

**6. Professional Liability Insurance:**

- a. Coverage shall be written by a carrier licensed and authorized to do business in Texas, and rated A:VIII or better in accordance with the current A. M. Best Key Rating Guide.
- b. Minimum of \$1,000,000 per occurrence and \$2,000,000 aggregate, with a maximum deductible of \$100,000.00. Financial statements shall be furnished to the City upon request.
- c. For "claims made" policies, availability of a 24-month extended reporting period shall be required.

**EXHIBIT E**  
**CERTIFICATE OF INSURANCE**



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
2/25/2016

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).

<b>PRODUCER</b> Woodruff-Sawyer & Co. 50 California Street, Floor 12 San Francisco CA 94111		<b>CONTACT NAME:</b> Amber Wisher <b>PHONE (A/C, No., Ext):</b> 415-391-2141 <b>E-MAIL ADDRESS:</b> awisher@wsandco.com <b>FAX (A/C, No.):</b> 415-989-9923	
		<b>INSURER(S) AFFORDING COVERAGE</b>	
		<b>NAIC #</b>	
<b>INSURED</b> ITERINC-01		<b>INSURER A:</b> Berkley National Insurance Company	38911
		<b>INSURER B:</b> Illinois Union Insurance Company	27960
		<b>INSURER C:</b> Zurich American Insurance Company	16535
		<b>INSURER D:</b> American Guarantee and Liability In	26247
		<b>INSURER E:</b>	
		<b>INSURER F:</b>	

**COVERAGES** CERTIFICATE NUMBER: 272043264 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.

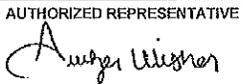
INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
C	<input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> BI Ded. None GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	Y	Y	CP0553288001	4/1/2015	4/1/2016	EACH OCCURRENCE	\$2,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	\$2,000,000
							MED EXP (Any one person)	\$15,000
							PERSONAL & ADV INJURY	\$2,000,000
							GENERAL AGGREGATE	\$4,000,000
							PRODUCTS - COMPOP AGG	\$4,000,000
								\$
C	<input checked="" type="checkbox"/> <b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS	Y	Y	CP0553288001	4/1/2015	4/1/2016	COMBINED SINGLE LIMIT (Ea accident)	\$1,000,000
							BODILY INJURY (Per person)	\$
							BODILY INJURY (Per accident)	\$
							PROPERTY DAMAGE (Per accident)	\$
							Owned/Hired Comp/Coil	\$Ded's \$500
D	<input type="checkbox"/> <b>UMBRELLA LIAB</b> <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$10,000			AUC55328801	4/1/2015	4/1/2016	EACH OCCURRENCE	\$25,000,000
							AGGREGATE	\$
								\$
A	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	TWC700100813	4/1/2015	4/1/2016	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER	
							E.L. EACH ACCIDENT	\$1,000,000
							E.L. DISEASE - EA EMPLOYEE	\$1,000,000
							E.L. DISEASE - POLICY LIMIT	\$1,000,000
B	<b>Professional Liability</b> Claims Made Form Retro-Date 01/01/1991			G21656045012	4/1/2015	4/1/2016	Limit \$5,000,000/ Deductible \$50,000	Agg \$5,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

RE: Traffic Signal System Integration Services  
/ Iteris Job#'s 17J151723, 17J151724 and 17J151725

City of College Station, its officials, agents, employees and volunteers are included as Additional Insured, coverage is considered Primary and Non-Contributory and Notice of Cancellation applies with respect General Liability and Auto Liability per forms attached.

Waiver of Subrogation applies with respects General Liability, Auto Liability and Workers' Compensation per forms attached.

<b>CERTIFICATE HOLDER</b>  City of College Station Ms. Cheryl Turney, Asst. Director of Fiscal Servc 1101 Texas Avenue College Station TX 77842	<b>CANCELLATION</b>  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 
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## WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

### SCHEDULE

**Name Of Person Or Organization:**

City of College Station  
Ms. Cheryl Turney, Asst. Director of Fiscal Service  
1101 Texas Avenue  
College Station TX 77842

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

**The following is added to Paragraph 8. Transfer Of Rights Of Recovery Against Others To Us of Section IV - Conditions:**

We Waive any right of recovery we may have against the person or organization shown in the Schedule above because of payments we make for injury or damage arising out of your ongoing operations or damage arising out of your operations or "your work" done under a contract with that person or organization and included in the "products completed operations hazard". This waiver applies only to the person or organization shown in the Schedule above.

# General Liability Supplemental Coverage Endorsement Technology



Policy No.	Eff. Date of Pol	Exp. Date of Pol	Eff. Date of End.	Producer No.	Add'l. Prem	Return Prem.
CP0553288001	04/01/2015	04/01/2016	04/01/2015	0329598	N/A	N/A

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

This endorsement modifies insurance provided under the:

**Commercial General Liability Coverage Part**

The following changes apply to this Coverage Part. However, endorsements attached to this Coverage Part will supersede any provisions to the contrary in this General Liability Supplemental Coverage Endorsement.

**A. Broadened Named Insured**

1. The following is added to **Section II – Who Is An Insured**:

Any organization of yours, other than a partnership or joint venture, which is not shown in the Declarations, and over which you maintain an ownership interest of more than 50% of such organization as of the effective date of this Coverage Part, will qualify as a Named Insured. However, such organization will not qualify as a Named Insured under this provision if it:

- a. Is newly acquired or formed during the policy period;
- b. Is also an insured under another policy, other than a policy written to apply specifically in excess of this Coverage Part; or
- c. Would be an insured under another policy but for its termination or the exhaustion of its limits of insurance.

Each such organization remains qualified as a Named Insured only while you maintain an ownership interest of more than 50% in the organization during the policy period.

2. The last paragraph of Section II – Who Is An Insured does not apply to this provision to the extent that such paragraph would conflict with this provision.

**B. Newly Acquired or Formed Organizations as Named Insureds**

1. Paragraph 3. of Section II – **Who Is An Insured** is replaced by the following:

3. Any organization you newly acquire or form during the policy period, other than a partnership or joint venture, and over which you maintain an ownership interest of more than 50% of such organization, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

- a. Coverage under this provision is afforded only until the 180<sup>th</sup> day after you acquire or form the organization or the end of the policy period, whichever is earlier;
- b. Coverage **A** does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
- c. Coverage **B** does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

An additional premium will apply in accordance with our rules and rates in effect on the date you acquired or formed the organization.

2. The last paragraph of Section II – Who Is An Insured does not apply to this provision to the extent that such paragraph would conflict with this provision.

**C. Insured Status – Employees**

Paragraph 2.a.(1) of Section II – Who Is An Insured is replaced by the following:

2. Each of the following is also an insured:

- a. Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, none of these "employees" or "volunteer workers" are insureds for:

(1) "Bodily injury" or "personal and advertising injury":

- (a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;
- (b) To the spouse, child, parent, brother or sister of that co-"employee" or "volunteer worker" as a consequence of Paragraph (1)(a) above;
- (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs (1)(a) or (b) above; or
- (d) Arising out of his or her providing or failing to provide professional health care services.

However:

Paragraphs (1)(a) and (1)(d) do not apply to your "employees" or "volunteer workers", who are not employed by you or volunteering for you as health care professionals, for "bodily injury" arising out of "Good Samaritan Acts" while the "employee" or "volunteer worker" is performing duties related to the conduct of your business.

"Good Samaritan Acts" mean any assistance of a medical nature rendered or provided in an emergency situation for which no remuneration is demanded or received.

Paragraphs (1)(a), (b) and (c) do not apply to any "employee" designated as a supervisor or higher in rank, with respect to "bodily injury" to co-"employees". As used in this provision, "employees" designated as a supervisor or higher in rank means only "employees" who are authorized by you to exercise direct or indirect supervision or control over "employees" or "volunteer workers" and the manner in which work is performed.

**D. Additional Insureds – Lessees of Premises**

1. Section II – Who Is An Insured is amended to include as an additional insured any person(s) or organization(s) who leases or rents a part of the premises you own or manage who you are required to add as an additional insured on this policy under a written contract or written agreement, but only with respect to liability arising out of your ownership, maintenance or repair of that part of the premises which is not reserved for the exclusive use or occupancy of such person or organization or any other tenant or lessee.

This provision does not apply after the person or organization ceases to lease or rent premises from you.

However, the insurance afforded to such additional insured:

- a. Only applies to the extent permitted by law; and
- b. Will not be broader than that which you are required by the written contract or written agreement to provide for such additional insured.

2. With respect to the insurance afforded to the additional insureds under this endorsement, the following is added to Section III – **Limits Of Insurance**:

The most we will pay on behalf of the additional insured is the amount of insurance:

- a. Required by the written contract or written agreement referenced in Subparagraph D.1. above (of this endorsement); or
- b. Available under the applicable Limits of Insurance shown in the Declarations, whichever is less.

This Paragraph D. shall not increase the applicable Limits of Insurance shown in the Declarations.

**E. Additional Insured – Vendors**

1. The following change applies if this Coverage Part provides insurance to you for "bodily injury" and "property damage" included in the "products-completed operations hazard":

Section II – **Who Is An Insured** is amended to include as an additional insured any person or organization (referred to throughout this Paragraph E. as vendor) who you have agreed in a written contract or written agreement, prior to loss, to name as an additional insured, but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business:

However, the insurance afforded to such vendor:

- a. Only applies to the extent permitted by law; and
- b. Will not be broader than that which you are required by the written contract or written agreement to provide for such additional insured.

2. With respect to the insurance afforded to these vendors, the following additional exclusions apply:

- a. The insurance afforded the vendor does not apply to:

- (1) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
- (2) Any express warranty unauthorized by you;
- (3) Any physical or chemical change in the product made intentionally by the vendor;
- (4) Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
- (5) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;
- (6) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;
- (7) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or
- (8) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:
  - (a) The exceptions contained in Subparagraphs (4) or (6); or
  - (b) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

- b. This insurance does not apply to any insured person or organization, from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

- c. This insurance does not apply to any of "your products" for which coverage is excluded under this Coverage Part.
3. With respect to the insurance afforded to the vendor under this endorsement, the following is added to Section III – **Limits Of Insurance**:
- The most we will pay on behalf of the vendor is the amount of insurance:
- a. Required by the written contract or written agreement referenced in Subparagraph E.1. above (of this endorsement); or
  - b. Available under the applicable Limits of Insurance shown in the Declarations, whichever is less.

This Paragraph E. shall not increase the applicable Limits of Insurance shown in the Declarations.

**F. Additional Insured – Managers, Lessors or Governmental Entity**

1. **Section II – Who Is An Insured** is amended to include as an additional insured any person or organization who is a manager, lessor or governmental entity who you are required to add as an additional insured on this policy under a written contract, written agreement or permit, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:
- a. Your acts or omissions; or
  - b. The acts or omission of those acting on your behalf; and
- resulting directly from:
- a. Operations performed by you or on your behalf for which the state or political subdivision has issued a permit;
  - b. Ownership, maintenance, occupancy or use of premises by you; or
  - c. Maintenance, operation or use by you of equipment leased to you by such person or organization.
- However, the insurance afforded to such additional insured:
- a. Only applies to the extent permitted by law; and
  - b. Will not be broader than that which you are required by the written contract or written agreement to provide for such additional insured.
2. This provision does not apply:
- a. Unless the written contract or written agreement has been executed, or the permit has been issued, prior to the "bodily injury", "property damage" or offense that caused "personal and advertising injury";
  - b. To any person or organization included as an insured under Paragraph 3. of Section II – Who Is An Insured;
  - c. To any lessor of equipment if the "occurrence" or offense takes place after the equipment lease expires;
  - d. To any:
    - (1) Owners or other interests from whom land has been leased by you; or
    - (2) Managers or lessors of premises, if:
      - (a) The "occurrence" or offense takes place after the expiration of the lease or you cease to be a tenant in that premises;
      - (b) The "bodily injury", "property damage" or "personal and advertising injury" arises out of the structural alterations, new construction or demolition operations performed by or on behalf of the manager or lessor; or
      - (c) The premises are excluded under this Coverage Part.
3. With respect to the insurance afforded to the additional insureds under this endorsement, the following is added to Section III – **Limits Of Insurance**:
- The most we will pay on behalf of the additional insured is the amount of insurance:

- a. Required by the written contract or written agreement referenced in Subparagraph F.1. above (of this endorsement); or
- b. Available under the applicable Limits of Insurance shown in the Declarations, whichever is less.

This Paragraph F. shall not increase the applicable Limits of Insurance shown in the Declarations.

#### G. Damage to Premises Rented or Occupied by You

1. The last paragraph under Paragraph 2. **Exclusions** of Section I – **Coverage A – Bodily Injury And Property Damage Liability** is replaced by the following:

Exclusions c. through n. do not apply to damage by "specific perils" to premises while rented to you or temporarily occupied by you with permission of the owner. A separate Damage To Premises Rented To You Limit of Insurance applies to this coverage as described in Section III – Limits Of Insurance.

2. Paragraph 6. of Section III – **Limits Of Insurance** is replaced by the following:

6. Subject to Paragraph 5. above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage A for damages because of "property damage" to any one premises while rented to you, or in the case of damage by one or more "specific perils" to any one premises, while rented to you or temporarily occupied by you with permission of the owner.

#### H. Broadened Contractual Liability

The "insured contract" definition under the **Definitions** Section is replaced by the following:

"Insured contract" means:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by "specific perils" to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
- b. A sidetrack agreement;
- c. Any easement or license agreement;
- d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. An elevator maintenance agreement;
- f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury", "property damage", or "personal and advertising injury" arising out of the offenses of false arrest, detention or imprisonment, to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph f. does not include that part of any contract or agreement:

- (1) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:

- (a) Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
- (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or

- (2) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in Paragraph (1) above and supervisory, inspection, architectural or engineering activities.

#### I. Definition – Specific Perils

The following definition is added to the **Definitions** Section:

"Specific perils" means:

- a. Fire;
- b. Lightning;

- c. Explosion;
- d. Windstorm or hail;
- e. Smoke;
- f. Aircraft or vehicles;
- g. Vandalism;
- h. Weight of snow, ice or sleet;
- i. Leakage from fire extinguishing equipment, including sprinklers; or
- j. Accidental discharge or leakage of water or steam from any part of a system or appliance containing water or steam.

**J. Limited Contractual Liability Coverage – Personal and Advertising Injury**

1. Exclusion e. of Section I – Coverage B – Personal And Advertising Injury Liability is replaced by the following:

**Exclusions**

This insurance does not apply to:

**e. Contractual Liability**

"Personal and advertising injury" for which the insured has assumed liability in a contract or agreement.

This exclusion does not apply to:

(1) Liability for damages that the insured would have in the absence of the contract or agreement; or

(2) Liability for "personal and advertising injury" if:

(a) The "personal and advertising injury" arises out of the offenses of false arrest, detention or imprisonment;

(b) The liability pertains to your business and is assumed in a written contract or written agreement in which you assume the tort liability of another. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement; and

(c) The "personal and advertising injury" occurs subsequent to the execution of the written contract or written agreement.

Solely for purposes of liability so assumed in such written contract or written agreement, reasonable attorney fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "personal and advertising injury" described in Paragraph (a) above, provided:

(i) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same written contract or written agreement; and

(ii) Such attorney fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

2. Paragraph 2.d. of Section I – Supplementary Payments – Coverages A and B is replaced by the following:

d. The allegations in the "suit" and the information we know about the "occurrence" or offense are such that no conflict appears to exist between the interests of the insured and the interests of the indemnitee;

3. The following is added to the paragraph directly following Paragraph 2.f. of Section I – Supplementary Payments – Coverages A and B:

Notwithstanding the provisions of Paragraph 2.e.(2) of Section I – Coverage B – Personal And Advertising Injury Liability, such payments will not be deemed to be damages for "personal and advertising injury" and will not reduce the limits of insurance.

**K. Internet and Multimedia Services**

Exclusion j. of Section I – Coverage B – Personal And Advertising Injury Liability is replaced by the following:

## Exclusions

This insurance does not apply to:

### j. Insureds In Media And Internet Type Businesses

"Personal and advertising injury" committed by an insured whose business is:

- (1) Advertising, broadcasting, publishing or telecasting;
  - (2) Designing or determining content of websites for others; or
  - (3) An Internet search, access, content or service provider; and
- arising out of goods, products or services provided by any insured to others.

However, this exclusion does not apply to Paragraphs 14.a., b. and c. of "personal and advertising injury" under the Definitions Section.

For the purposes of this exclusion, the placing of frames, borders or links, or advertising, for you or others anywhere on the Internet, is not by itself, considered the business of advertising, broadcasting, publishing or telecasting.

### L. Supplementary Payments

The following changes apply to **Supplementary Payments – Coverages A and B:**

Paragraphs 1.b. and 1.d. are replaced by the following:

- b. Up to \$2,500 for the cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.
- d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$500 a day because of time off from work.

### M. Broadened Property Damage

#### 1. Property Damage to Contents of Premises Rented Short-Term

The paragraph directly following Paragraph (6) in Exclusion j. of Section I – **Coverage A – Bodily Injury And Property Damage Liability** is replaced by the following:

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" to premises (other than damage by "specific perils"), including "property damage" to the contents of such premises, rented to you under a rental agreement for a period of 14 or fewer consecutive days. A separate Limit of Insurance applies to Damage to Premises Rented to You as described in Section III – Limits Of Insurance.

#### 2. Elevator Property Damage

- a. The following is added to Exclusion j. of Section I – **Coverage A – Bodily Injury And Property Damage Liability:**

Paragraphs (3) and (4) of this exclusion do not apply to "property damage" arising out of the use of an elevator at premises you own, rent or occupy.

- b. The following is added to Section III – **Limits Of Insurance:**

Subject to Paragraph 5. above, the most we will pay under Coverage A for damages because of "property damage" to property loaned to you or personal property in the care, custody or control of the insured arising out of the use of an elevator at premises you own, rent or occupy is \$25,000 per "occurrence".

#### 3. Property Damage to Borrowed Equipment

- a. The following is added to Exclusion j. of Section I – **Coverage A – Bodily Injury And Property Damage Liability:**

Paragraph (4) of this exclusion does not apply to "property damage" to equipment you borrow from others at a jobsite.

- b. The following is added to Section III – **Limits Of Insurance:**

Subject to Paragraph 5. above, the most we will pay under Coverage A for damages because of "property damage" to equipment you borrow from others is \$25,000 per "occurrence".

**N. Expected or Intended Injury or Damage**

Exclusion a. of Section I – **Coverage A – Bodily Injury And Property Damage Liability** is replaced by the following:

**a. Expected Or Intended Injury Or Damage**

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect persons or property.

**O. Definitions – Bodily Injury**

The "property damage" definition under the **Definitions** Section is replaced by the following:

"Bodily injury" means bodily injury, sickness or disease sustained by a person, including mental anguish, mental injury, shock, fright or death sustained by that person which results from that bodily injury, sickness or disease.

**P. Electronic Data**

Exclusion p. of Section I – **Coverage A – Bodily Injury And Property Damage Liability** is replaced by the following:

**p. Electronic Data**

Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access or inability to manipulate electronic data.

However, this exclusion does not apply to liability for damages because of "bodily injury" or physical injury to tangible property including all resulting loss of use of that property.

As used in this exclusion, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software (including systems and applications software), hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

**Q. Insured Status – Amateur Athletic Participants**

Section II – **Who Is An Insured** is amended to include as an insured any person you sponsor while participating in amateur athletic activities. However, no such person is an insured for:

**a. "Bodily injury" to:**

(1) Your "employee", "volunteer worker" or any person you sponsor while participating in such amateur athletic activities; or

(2) You, any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company) while participating in such amateur athletic activities; or

**b. "Property damage" to property owned by, occupied or used by, rented to, in the care, custody or control of, or over which the physical control is being exercised for any purpose by:**

(1) Your "employee", "volunteer worker" or any person you sponsor; or

(2) You, any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).

**R. Non-Owned Aircraft, Auto and Watercraft**

Exclusion g. of Section I – **Coverage A – Bodily Injury And Property Damage Liability** is replaced by the following:

**g. Aircraft, Auto Or Watercraft**

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading".

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft that is owned or operated by or rented or loaned to any insured.

This exclusion does not apply to:

- (1) A watercraft while ashore on premises you own or rent;
- (2) A watercraft you do not own that is:
  - (a) Less than 51 feet long; and
  - (b) Not being used to carry persons for a charge;
- (3) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;
- (4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft;
- (5) An aircraft that is hired or chartered by you or loaned to you, with a paid and licensed crew, and is not owned in whole or in part by an insured; or
- (6) "Bodily injury" or "property damage" arising out of:
  - (a) The operation of machinery or equipment that is attached to, or part of, a land vehicle that would qualify under the definition of "mobile equipment" if it were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged; or
  - (b) The operation of any of the machinery or equipment listed in Paragraph f.(2) or f.(3) of the definition of "mobile equipment".

**S. Definitions – Leased Worker, Temporary Worker and Labor Leasing Firm**

- 1. The "leased worker" and "temporary worker" definitions under the **Definitions** Section are replaced by the following:

"Leased worker" means a person leased to you by a "labor leasing firm" under a written agreement between you and the "labor leasing firm", to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".

"Temporary worker" means a person who is furnished to you to support or supplement your work force during "employee" absences, temporary skill shortages, upturns or downturns in business or to meet seasonal or short-term workload conditions. "Temporary worker" does not include a "leased worker".

- 2. The following definition is added to the **Definitions** Section:

"Labor leasing firm" means any person or organization who hires out workers to others, including any:

- a. Employment agency, contractor or services;
- b. Professional employer organization; or
- c. Temporary help service.

**T. Definition – Mobile Equipment**

Paragraph f. of the "mobile equipment" definition under the **Definitions** Section is replaced by the following:

- f. Vehicles not described in Paragraph a., b., c. or d. above maintained primarily for purposes other than the transportation of persons or cargo.

However, self-propelled vehicles with the following types of permanently attached equipment, exceeding a combined gross vehicle weight of 1000 pounds, are not "mobile equipment" but will be considered "autos":

- (1) Equipment designed primarily for:
  - (a) Snow removal;
  - (b) Road maintenance, but not construction or resurfacing; or
  - (c) Street cleaning;
- (2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
- (3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

**U. Definitions – Your Product and Your Work**

The "your product" and "your work" definitions under the **Definitions** Section are replaced by the following:

"Your product":

**a. Means:**

(1) Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:

(a) You;

(b) Others trading under your name; or

(c) A person or organization whose business or assets you have acquired; and

(2) Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

**b. Includes:**

(1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance, use, handling, maintenance, operation or safety of "your product"; and

(2) The providing of or failure to provide warnings or instructions.

**c. Does not include** vending machines or other property rented to or located for the use of others but not sold.

"Your work":

**a. Means:**

(1) Work, services or operations performed by you or on your behalf; and

(2) Materials, parts or equipment furnished in connection with such work, services or operations.

**b. Includes:**

(1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance, use, handling, maintenance, operation or safety of "your work"; and

(2) The providing of or failure to provide warnings or instructions.

**V. Priority Condition**

The following paragraph is added to Section III – **Limits Of Insurance**:

In the event a claim is made or "suit" is brought against more than one insured seeking damages because of "bodily injury" or "property damage" caused by the same "occurrence" or "personal and advertising injury" caused by the same offense, we will apply the Limits of Insurance in the following order:

(a) You;

(b) Your "executive officers", partners, directors, stockholders, members, managers (if you are a limited liability company) or "employees"; and

(c) Any other insured in any order that we choose.

**W. Duties in the Event of Occurrence, Offense, Claim or Suit Condition**

The following paragraphs are added to Paragraph 2. **Duties In The Event Of Occurrence, Offense, Claim Or Suit** of Section IV – **Commercial General Liability Conditions**:

Notice of an "occurrence" or of an offense which may result in a claim under this insurance or notice of a claim or "suit" shall be given to us as soon as practicable after knowledge of the "occurrence", offense, claim or "suit" has been reported to any insured listed under Paragraph 1. of Section II – Who Is An Insured or an "employee" authorized by you to give or receive such notice. Knowledge by other "employees" of an "occurrence", offense, claim or "suit" does not imply that you also have such knowledge.

In the event that an insured reports an "occurrence" to the workers compensation carrier of the Named Insured and this "occurrence" later develops into a General Liability claim, covered by this Coverage Part, the insured's failure to report such "occurrence" to us at the time of the "occurrence" shall not be deemed to be a violation of this Condition.

You must, however, give us notice as soon as practicable after being made aware that the particular claim is a General Liability rather than a Workers Compensation claim.

#### **X. Other Insurance Condition**

Paragraphs 4.a. and 4.b.(1) of the Other Insurance Condition of Section IV – **Commercial General Liability Conditions** are replaced by the following:

##### **4. Other Insurance**

If other valid and collectible insurance is available to the insured for a loss we cover under Coverages A or B of this Coverage Part, our obligations are limited as follows:

###### **a. Primary Insurance**

This insurance is primary except when Paragraph b. below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in Paragraph c. below. However, this insurance is primary to and will not seek contribution from any other insurance available to an additional insured provided that:

- (1) The additional insured is a Named Insured under such other insurance; and
- (2) You are required by written contract or written agreement that this insurance be primary and not seek contribution from any other insurance available to the additional insured.

Other insurance includes any type of self insurance or other mechanism by which an insured arranges for funding of its legal liabilities.

###### **b. Excess Insurance**

(1) This insurance is excess over:

(a) Any of the other insurance, whether primary, excess, contingent or on any other basis:

- (i) That is property insurance, Builder's Risk, Installation Risk or similar coverage for "your work";
- (ii) That is property insurance purchased by you (including any deductible or self insurance portion thereof) to cover premises rented to you or temporarily occupied by you with permission of the owner;
- (iii) That is insurance purchased by you (including any deductible or self insurance portion thereof) to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner;
- (iv) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion g. of Section I – Coverage A – Bodily Injury And Property Damage Liability; or
- (v) That is property insurance (including any deductible or self insurance portion thereof) purchased by you to cover damage to:

Equipment you borrow from others; or

Property loaned to you or personal property in the care, custody or control of the insured arising out of the use of an elevator at premises you own, rent or occupy.

(b) Any other primary insurance (including any deductible or self insurance portion thereof) available to the insured covering liability for damages arising out of the premises, operations, products, work or services for which the insured has been granted additional insured status either by policy provision or attachment of any endorsement. Other primary insurance includes any type of self insurance or other mechanism by which an insured arranges for funding of its legal liabilities.

(c) Any of the other insurance, whether primary, excess, contingent or on any other basis, available to an additional insured, in which the additional insured on our policy is also covered as an additional insured on another policy providing coverage for the same "occurrence", claim or "suit". This provision does not apply to any policy in which the additional insured is a Named Insured on such other policy and where our policy is required by written contract or written agreement to provide coverage to the additional insured on a primary and non-contributory basis.

**Y. Unintentional Failure to Disclose All Hazards**

Paragraph 6. **Representations of Section IV – Commercial General Liability Conditions** is replaced by the following:

**6. Representations**

By accepting this policy, you agree:

- a. The statements in the Declarations are accurate and complete;
- b. Those statements are based upon representations you made to us; and
- c. We have issued this policy in reliance upon your representations.

Coverage will continue to apply if you unintentionally:

- a. Fail to disclose all hazards existing at the inception of this policy; or
- b. Make an error, omission or improper description of premises or other statement of information stated in this policy.

You must notify us as soon as possible after the discovery of any hazards or any other information that was not provided to us prior to inception of this Coverage Part.

**Z. Waiver of Right of Subrogation**

Paragraph 8. **Transfer Of Rights Of Recovery Against Others To Us of Section IV – Commercial General Liability Conditions** is replaced by the following:

**8. Transfer Of Rights Of Recovery Against Others To Us**

- a. If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.
- b. If the insured waives its right to recover payments for injury or damage from another person or organization in a written contract executed prior to a loss, we waive any right of recovery we may have against such person or organization because of any payment we have made under this Coverage Part. The written contract will be considered executed when the insured's performance begins, or when it is signed, whichever happens first. This waiver of rights shall not be construed to be a waiver with respect to any other operations in which the insured has no contractual interest

**AA. Liberalization Condition**

The following condition is added to Section IV – **Commercial General Liability Conditions**:

**Liberalization Clause**

If we revise this Coverage Part to broaden coverage without an additional premium charge, your policy will automatically provide the additional coverage as of the day the revision is effective in the state shown in the mailing address of your policy.

All other terms and conditions of this policy remain unchanged.

## WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

### Schedule

Blanket Waiver - Any person or organization for whom the Named Insured has agreed by written contract to furnish this waiver

Operations -

Premium - 2% of the total premium - subject to a minimum annual premium of \$250.

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective	04/01/2015	Policy No.	TWC700100813	Endorsement No.	
Insured				Premium	
Iteris, Inc					
Insurance Company:		Countersigned by	_____		
Berkley National Insurance Company					



**ZURICH**

## Coverage Extension Endorsement

Policy No	Eff. Date of Pol	Exp. Date of Pol.	Eff Date of End	Producer No	Add'l. Prem	Return Prem
CP0553288001	04/01/2015	04/01/2016	04/01/2016	0329598	N/A	N/A

### **THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

This endorsement modifies insurance provided under the:

**Business Auto Coverage Form  
Motor Carrier Coverage Form**

#### **A. Amended Who Is An Insured**

1. The following is added to the **Who Is An Insured** Provision in **Section II – Covered Autos Liability Coverage**:

The following are also "insureds":

- a. Any "employee" of yours is an "insured" while using a covered "auto" you don't own, hire or borrow for acts performed within the scope of employment by you. Any "employee" of yours is also an "insured" while operating an "auto" hired or rented under a contract or agreement in an "employee's" name, with your permission, while performing duties related to the conduct of your business.
- b. Anyone volunteering services to you is an "insured" while using a covered "auto" you don't own, hire or borrow to transport your clients or other persons in activities necessary to your business.
- c. Anyone else who furnishes an "auto" referenced in Paragraphs **A.1.a.** and **A.1.b.** in this endorsement.
- d. Where and to the extent permitted by law, any person(s) or organization(s) where required by written contract or written agreement with you executed prior to any "accident", including those person(s) or organization(s) directing your work pursuant to such written contract or written agreement with you, provided the "accident" arises out of operations governed by such contract or agreement and only up to the limits required in the written contract or written agreement, or the Limits of Insurance shown in the Declarations, whichever is less.

2. The following is added to the **Other Insurance** Condition in the Business Auto Coverage Form and the **Other Insurance – Primary and Excess Insurance Provisions Condition** in the Motor Carrier Coverage Form:

Coverage for any person(s) or organization(s), where required by written contract or written agreement with you executed prior to any "accident", will apply on a primary and non-contributory basis and any insurance maintained by the additional "insured" will apply on an excess basis. However, in no event will this coverage extend beyond the terms and conditions of the Coverage Form.

#### **B. Amendment – Supplementary Payments**

Paragraphs **a.(2)** and **a.(4)** of the **Coverage Extensions** Provision in **Section II – Covered Autos Liability Coverage** are replaced by the following:

- (2) Up to \$5,000 for the cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" we cover. We do not have to furnish these bonds.
- (4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to \$500 a day because of time off from work.

**C. Fellow Employee Coverage**

The **Fellow Employee** Exclusion contained in **Section II – Covered Autos Liability Coverage** does not apply.

**D. Driver Safety Program Liability and Physical Damage Coverage**

1. The following is added to the **Racing** Exclusion in **Section II – Covered Autos Liability Coverage**:

This exclusion does not apply to covered "autos" participating in a driver safety program event, such as, but not limited to, auto or truck rodeos and other auto or truck agility demonstrations.

2. The following is added to Paragraph 2. in the **Exclusions** of **Section III – Physical Damage Coverage** of the Business Auto Coverage Form and Paragraph 2.b. in the **Exclusions** of **Section IV – Physical Damage Coverage** of the Motor Carrier Coverage Form:

This exclusion does not apply to covered "autos" participating in a driver safety program event, such as, but not limited to, auto or truck rodeos and other auto or truck agility demonstrations.

**E. Lease or Loan Gap Coverage**

The following is added to the **Coverage** Provision of the **Physical Damage Coverage** Section:

**Lease Or Loan Gap Coverage**

In the event of a total "loss" to a covered "auto", we will pay any unpaid amount due on the lease or loan for a covered "auto", less:

- a. Any amount paid under the **Physical Damage Coverage** Section of the Coverage Form; and
- b. Any:
  - (1) Overdue lease or loan payments at the time of the "loss";
  - (2) Financial penalties imposed under a lease for excessive use, abnormal wear and tear or high mileage;
  - (3) Security deposits not returned by the lessor;
  - (4) Costs for extended warranties, credit life insurance, health, accident or disability insurance purchased with the loan or lease; and
  - (5) Carry-over balances from previous leases or loans.

**F. Towing and Labor**

Paragraph **A.2.** of the **Physical Damage Coverage** Section is replaced by the following:

We will pay up to \$75 for towing and labor costs incurred each time a covered "auto" of the private passenger type is disabled. However, the labor must be performed at the place of disablement.

**G. Extended Glass Coverage**

The following is added to Paragraph **A.3.a.** of the **Physical Damage Coverage** Section:

If glass must be replaced, the deductible shown in the Declarations will apply. However, if glass can be repaired and is actually repaired rather than replaced, the deductible will be waived. You have the option of having the glass repaired rather than replaced.

**H. Hired Auto Physical Damage – Increased Loss of Use Expenses**

The **Coverage Extension** for **Loss Of Use Expenses** in the **Physical Damage Coverage** Section is replaced by the following:

**Loss Of Use Expenses**

For Hired Auto Physical Damage, we will pay expenses for which an "insured" becomes legally responsible to pay for loss of use of a vehicle rented or hired without a driver under a written rental contract or written rental agreement. We will pay for loss of use expenses if caused by:

- (1) Other than collision only if the Declarations indicate that Comprehensive Coverage is provided for any covered "auto";
- (2) Specified Causes Of Loss only if the Declarations indicate that Specified Causes Of Loss Coverage is provided for any covered "auto"; or
- (3) Collision only if the Declarations indicate that Collision Coverage is provided for any covered "auto".

However, the most we will pay for any expenses for loss of use is \$100 per day, to a maximum of \$3000.

#### I. Personal Effects Coverage

The following is added to the Coverage Provision of the Physical Damage Coverage Section:

##### Personal Effects Coverage

- a. We will pay up to \$750 for "loss" to personal effects which are:
  - (1) Personal property owned by an "insured"; and
  - (2) In or on a covered "auto".
- b. Subject to Paragraph a. above, the amount to be paid for "loss" to personal effects will be based on the lesser of:
  - (1) The reasonable cost to replace; or
  - (2) The actual cash value.
- c. The coverage provided in Paragraphs a. and b. above, only applies in the event of a total theft of a covered "auto". No deductible applies to this coverage. However, we will not pay for "loss" to personal effects of any of the following:
  - (1) Accounts, bills, currency, deeds, evidence of debt, money, notes, securities, or commercial paper or other documents of value.
  - (2) Bullion, gold, silver, platinum, or other precious alloys or metals; furs or fur garments; jewelry, watches, precious or semi-precious stones.
  - (3) Paintings, statuary and other works of art.
  - (4) Contraband or property in the course of illegal transportation or trade.
  - (5) Tapes, records, discs or other similar devices used with audio, visual or data electronic equipment.

Any coverage provided by this Provision is excess over any other insurance coverage available for the same "loss".

#### J. Tapes, Records and Discs Coverage

1. The Exclusion in Paragraph B.4.a. of Section III – Physical Damage Coverage in the Business Auto Coverage Form and the Exclusion in Paragraph B.2.c. of Section IV – Physical Damage Coverage in the Motor Carrier Coverage Form does not apply.
2. The following is added to Paragraph 1.a. Comprehensive Coverage under the Coverage Provision of the Physical Damage Coverage Section:

We will pay for "loss" to tapes, records, discs or other similar devices used with audio, visual or data electronic equipment. We will pay only if the tapes, records, discs or other similar audio, visual or data electronic devices:

- (a) Are the property of an "insured"; and
- (b) Are in a covered "auto" at the time of "loss".

The most we will pay for such "loss" to tapes, records, discs or other similar devices is \$500. The Physical Damage Coverage Deductible Provision does not apply to such "loss".

**K. Airbag Coverage**

The Exclusion in Paragraph B.3.a. of Section III – Physical Damage Coverage in the Business Auto Coverage Form and the Exclusion in Paragraph B.4.a. of Section IV – Physical Damage Coverage in the Motor Carrier Coverage Form does not apply to the accidental discharge of an airbag.

**L. Two or More Deductibles**

The following is added to the Deductible Provision of the Physical Damage Coverage Section:

If an accident is covered both by this policy or Coverage Form and by another policy or Coverage Form issued to you by us, the following applies for each covered "auto" on a per vehicle basis:

1. If the deductible on this policy or Coverage Form is the smaller (or smallest) deductible, it will be waived; or
2. If the deductible on this policy or Coverage Form is not the smaller (or smallest) deductible, it will be reduced by the amount of the smaller (or smallest) deductible.

**M. Physical Damage – Comprehensive Coverage – Deductible**

The following is added to the Deductible Provision of the Physical Damage Coverage Section:

Regardless of the number of covered "autos" damaged or stolen, the maximum deductible that will be applied to Comprehensive Coverage for all "loss" from any one cause is \$5,000 or the deductible shown in the Declarations, whichever is greater.

**N. Temporary Substitute Autos – Physical Damage**

1. The following is added to Section I – Covered Autos:

**Temporary Substitute Autos – Physical Damage**

If Physical Damage Coverage is provided by this Coverage Form on your owned covered "autos", the following types of vehicles are also covered "autos" for Physical Damage Coverage:

Any "auto" you do not own when used with the permission of its owner as a temporary substitute for a covered "auto" you do own but is out of service because of its:

1. Breakdown;
2. Repair;
3. Servicing;
4. "Loss"; or
5. Destruction.

2. The following is added to the Paragraph A. Coverage Provision of the Physical Damage Coverage Section:

**Temporary Substitute Autos – Physical Damage**

We will pay the owner for "loss" to the temporary substitute "auto" unless the "loss" results from fraudulent acts or omissions on your part. If we make any payment to the owner, we will obtain the owner's rights against any other party.

The deductible for the temporary substitute "auto" will be the same as the deductible for the covered "auto" it replaces.

**O. Amended Duties In The Event Of Accident, Claim, Suit Or Loss**

Paragraph a. of the Duties In The Event Of Accident, Claim, Suit Or Loss Condition is replaced by the following:

- a. In the event of "accident", claim, "suit" or "loss", you must give us or our authorized representative prompt notice of the "accident", claim, "suit" or "loss". However, these duties only apply when the "accident", claim, "suit" or "loss" is known to you (if you are an individual), a partner (if you are a partnership), a member (if you are a limited liability company) or an executive officer or insurance manager (if you are a corporation). The failure of any

agent, servant or employee of the "insured" to notify us of any "accident", claim, "suit" or "loss" shall not invalidate the insurance afforded by this policy.

Include, as soon as practicable:

- (1) How, when and where the "accident" or "loss" occurred and if a claim is made or "suit" is brought, written notice of the claim or "suit" including, but not limited to, the date and details of such claim or "suit";
- (2) The "insured's" name and address; and
- (3) To the extent possible, the names and addresses of any injured persons and witnesses.

If you report an "accident", claim, "suit" or "loss" to another insurer when you should have reported to us, your failure to report to us will not be seen as a violation of these amended duties provided you give us notice as soon as practicable after the fact of the delay becomes known to you.

**P. Waiver of Transfer Of Rights Of Recovery Against Others To Us**

The following is added to the **Transfer Of Rights Of Recovery Against Others To Us** Condition:

This Condition does not apply to the extent required of you by a written contract, executed prior to any "accident" or "loss", provided that the "accident" or "loss" arises out of operations contemplated by such contract. This waiver only applies to the person or organization designated in the contract.

**Q. Employee Hired Autos – Physical Damage**

Paragraph **b.** of the **Other Insurance** Condition in the Business Auto Coverage Form and Paragraph **f.** of the **Other Insurance – Primary and Excess Insurance Provisions** Condition in the Motor Carrier Coverage Form are replaced by the following:

For Hired Auto Physical Damage Coverage, the following are deemed to be covered "autos" you own:

- (1) Any covered "auto" you lease, hire, rent or borrow; and
- (2) Any covered "auto" hired or rented under a written contract or written agreement entered into by an "employee" or elected or appointed official with your permission while being operated within the course and scope of that "employee's" employment by you or that elected or appointed official's duties as respect their obligations to you.

However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".

**R. Unintentional Failure to Disclose Hazards**

The following is added to the **Concealment, Misrepresentation Or Fraud** Condition:

However, we will not deny coverage under this Coverage Form if you unintentionally:

- (1) Fail to disclose any hazards existing at the inception date of this Coverage Form; or
- (2) Make an error, omission, improper description of "autos" or other misstatement of information.

You must notify us as soon as possible after the discovery of any hazards or any other information that was not provided to us prior to the acceptance of this policy.

**S. Hired Auto – World Wide Coverage**

Paragraph **7a.(5)** of the **Policy Period, Coverage Territory** Condition is replaced by the following:

- (5) Anywhere in the world if a covered "auto" is leased, hired, rented or borrowed for a period of 60 days or less,

**T. Bodily Injury Redefined**

The definition of "bodily injury" in the **Definitions** Section is replaced by the following:

"Bodily injury" means bodily injury, sickness or disease, sustained by a person including death or mental anguish, resulting from any of these at any time. Mental anguish means any type of mental or emotional illness or disease.

**U. Expected Or Intended Injury**

The **Expected Or Intended Injury** Exclusion in Paragraph **B. Exclusions** under **Section II – Covered Auto Liability Coverage** is replaced by the following:

**Expected Or Intended Injury**

"Bodily injury" or "property damage" expected or intended from the standpoint of the "insured". This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect persons or property.

**V. Physical Damage – Additional Temporary Transportation Expense Coverage**

Paragraph **A.4.a.** of **Section III – Physical Damage Coverage** is replaced by the following:

**4. Coverage Extensions**

**a. Transportation Expenses**

We will pay up to \$50 per day to a maximum of \$1,000 for temporary transportation expense incurred by you because of the total theft of a covered "auto" of the private passenger type. We will pay only for those covered "autos" for which you carry either Comprehensive or Specified Causes of Loss Coverage. We will pay for temporary transportation expenses incurred during the period beginning 48 hours after the theft and ending, regardless of the policy's expiration, when the covered "auto" is returned to use or we pay for its "loss".

**W. Replacement of a Private Passenger Auto with a Hybrid or Alternative Fuel Source Auto**

The following is added to Paragraph **A. Coverage** of the **Physical Damage Coverage** Section:

In the event of a total "loss" to a covered "auto" of the private passenger type that is replaced with a hybrid "auto" or "auto" powered by an alternative fuel source of the private passenger type, we will pay an additional 10% of the cost of the replacement "auto", excluding tax, title, license, other fees and any aftermarket vehicle upgrades, up to a maximum of \$2500. The covered "auto" must be replaced by a hybrid "auto" or an "auto" powered by an alternative fuel source within 60 calendar days of the payment of the "loss" and evidenced by a bill of sale or new vehicle lease agreement.

To qualify as a hybrid "auto", the "auto" must be powered by a conventional gasoline engine and another source of propulsion power. The other source of propulsion power must be electric, hydrogen, propane, solar or natural gas, either compressed or liquefied. To qualify as an "auto" powered by an alternative fuel source, the "auto" must be powered by a source of propulsion power other than a conventional gasoline engine. An "auto" solely propelled by biofuel, gasoline or diesel fuel or any blend thereof is not an "auto" powered by an alternative fuel source.

**X. Return of Stolen Automobile**

The following is added to the **Coverage Extension** Provision of the **Physical Damage Coverage** Section:

If a covered "auto" is stolen and recovered, we will pay the cost of transport to return the "auto" to you. We will pay only for those covered "autos" for which you carry either Comprehensive or Specified Causes of Loss Coverage.

All other terms, conditions, provisions and exclusions of this policy remain the same.



**ZURICH**

## Coverage Extension Endorsement

Policy No.	Eff. Date of Pol	Exp. Date of Pol	Eff. Date of End.	Producer No.	Add'l Prem	Return Prem
CP0553288001	04/01/2015	04/01/2016	04/01/2016	0329598	N/A	N/A

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

This endorsement modifies insurance provided under the:

**Business Auto Coverage Form  
Motor Carrier Coverage Form**

### **A. Amended Who Is An Insured**

1. The following is added to the **Who Is An Insured** Provision in **Section II – Covered Autos Liability Coverage**:

The following are also "insureds":

- a. Any "employee" of yours is an "insured" while using a covered "auto" you don't own, hire or borrow for acts performed within the scope of employment by you. Any "employee" of yours is also an "insured" while operating an "auto" hired or rented under a contract or agreement in an "employee's" name, with your permission, while performing duties related to the conduct of your business.
- b. Anyone volunteering services to you is an "insured" while using a covered "auto" you don't own, hire or borrow to transport your clients or other persons in activities necessary to your business.
- c. Anyone else who furnishes an "auto" referenced in Paragraphs **A.1.a.** and **A.1.b.** in this endorsement.
- d. Where and to the extent permitted by law, any person(s) or organization(s) where required by written contract or written agreement with you executed prior to any "accident", including those person(s) or organization(s) directing your work pursuant to such written contract or written agreement with you, provided the "accident" arises out of operations governed by such contract or agreement and only up to the limits required in the written contract or written agreement, or the Limits of Insurance shown in the Declarations, whichever is less.

2. The following is added to the **Other Insurance** Condition in the Business Auto Coverage Form and the **Other Insurance – Primary and Excess Insurance Provisions Condition** in the Motor Carrier Coverage Form:

Coverage for any person(s) or organization(s), where required by written contract or written agreement with you executed prior to any "accident", will apply on a primary and non-contributory basis and any insurance maintained by the additional "insured" will apply on an excess basis. However, in no event will this coverage extend beyond the terms and conditions of the Coverage Form.

### **B. Amendment – Supplementary Payments**

Paragraphs **a.(2)** and **a.(4)** of the **Coverage Extensions** Provision in **Section II – Covered Autos Liability Coverage** are replaced by the following:

- (2) Up to \$5,000 for the cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" we cover. We do not have to furnish these bonds.
- (4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to \$500 a day because of time off from work.

agent, servant or employee of the "insured" to notify us of any "accident", claim, "suit" or "loss" shall not invalidate the insurance afforded by this policy.

Include, as soon as practicable:

- (1) How, when and where the "accident" or "loss" occurred and if a claim is made or "suit" is brought, written notice of the claim or "suit" including, but not limited to, the date and details of such claim or "suit";
- (2) The "insured's" name and address; and
- (3) To the extent possible, the names and addresses of any injured persons and witnesses.

If you report an "accident", claim, "suit" or "loss" to another insurer when you should have reported to us, your failure to report to us will not be seen as a violation of these amended duties provided you give us notice as soon as practicable after the fact of the delay becomes known to you.

**P. Waiver of Transfer Of Rights Of Recovery Against Others To Us**

The following is added to the **Transfer Of Rights Of Recovery Against Others To Us** Condition:

This Condition does not apply to the extent required of you by a written contract, executed prior to any "accident" or "loss", provided that the "accident" or "loss" arises out of operations contemplated by such contract. This waiver only applies to the person or organization designated in the contract.

**Q. Employee Hired Autos – Physical Damage**

Paragraph **b.** of the **Other Insurance** Condition in the Business Auto Coverage Form and Paragraph **f.** of the **Other Insurance – Primary and Excess Insurance Provisions** Condition in the Motor Carrier Coverage Form are replaced by the following:

For Hired Auto Physical Damage Coverage, the following are deemed to be covered "autos" you own:

- (1) Any covered "auto" you lease, hire, rent or borrow; and
- (2) Any covered "auto" hired or rented under a written contract or written agreement entered into by an "employee" or elected or appointed official with your permission while being operated within the course and scope of that "employee's" employment by you or that elected or appointed official's duties as respect their obligations to you.

However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".

**R. Unintentional Failure to Disclose Hazards**

The following is added to the **Concealment, Misrepresentation Or Fraud** Condition:

However, we will not deny coverage under this Coverage Form if you unintentionally:

- (1) Fail to disclose any hazards existing at the inception date of this Coverage Form; or
- (2) Make an error, omission, improper description of "autos" or other misstatement of information.

You must notify us as soon as possible after the discovery of any hazards or any other information that was not provided to us prior to the acceptance of this policy.

**S. Hired Auto – World Wide Coverage**

Paragraph **7a.(5)** of the **Policy Period, Coverage Territory** Condition is replaced by the following:

- (5) Anywhere in the world if a covered "auto" is leased, hired, rented or borrowed for a period of 60 days or less,

**T. Bodily Injury Redefined**

The definition of "bodily injury" in the **Definitions** Section is replaced by the following:

"Bodily injury" means bodily injury, sickness or disease, sustained by a person including death or mental anguish, resulting from any of these at any time. Mental anguish means any type of mental or emotional illness or disease.



ZURICH

# Notification to Others of Cancellation or Nonrenewal

Policy No.	Eff. Date of Pol.	Exp. Date of Pol.	Eff. Date of End.	Producer No.	Add'l. Prem	Return Prem.
CPO553288001	04/01/2015	04/01/2016	04/01/2015	0329598	N/A	N/A

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

This endorsement modifies insurance provided under the:

**Commercial General Liability Coverage Part**

**Liquor Liability Coverage Part**

**Products/Completed Operations Liability Coverage Part**

- A.** If we cancel or non-renew this Coverage Part(s) by written notice to the first Named Insured for any reason other than nonpayment of premium, we will mail or deliver a copy of such written notice of cancellation or non-renewal:
  1. To the name and address corresponding to each person or organization shown in the Schedule below; and
  2. At least 10 days prior to the effective date of the cancellation or non-renewal, as advised in our notice to the first Named Insured, or the longer number of days notice if indicated in the Schedule below.
- B.** If we cancel this Coverage Part(s) by written notice to the first Named Insured for nonpayment of premium, we will mail or deliver a copy of such written notice of cancellation to the name and address corresponding to each person or organization shown in the Schedule below at least 10 days prior to the effective date of such cancellation.
- C.** If notice as described in Paragraphs A. or B. of this endorsement is mailed, proof of mailing will be sufficient proof of such notice.

### SCHEDULE

Name and Address of Other Person(s) / Organization(s):	Number of Days Notice:
PER ATTACHED SCHEDULE OF HOLDERS	30

All other terms and conditions of this policy remain unchanged.



ZURICH

# Notification to Others of Cancellation or Nonrenewal

Policy No.	Eff. Date of Pol.	Exp. Date of Pol.	Eff. Date of End.	Producer No.	Add'l. Prem	Return Prem.
CPO553288001	04/01/2015	04/01/2016	04/01/2015	0329598	N/A	N/A

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

This endorsement modifies insurance provided under the:

**Commercial Automobile Coverage Part**

- A. If we cancel or non-renew this Coverage Part by written notice to the first Named Insured for any reason other than nonpayment of premium, we will mail or deliver a copy of such written notice of cancellation or non-renewal:
  1. To the name and address corresponding to each person or organization shown in the Schedule below; and
  2. At least 10 days prior to the effective date of the cancellation or non-renewal, as advised in our notice to the first Named Insured, or the longer number of days notice if indicated in the Schedule below.
- B. If we cancel this Coverage Part by written notice to the first Named Insured for nonpayment of premium, we will mail or deliver a copy of such written notice of cancellation to the name and address corresponding to each person or organization shown in the Schedule below at least 10 days prior to the effective date of such cancellation.
- C. If notice as described in Paragraphs A. or B. of this endorsement is mailed, proof of mailing will be sufficient proof of such notice.

**SCHEDULE**

Name and Address of Other Person(s) / Organization(s):

Number of Days Notice:

PER ATTACHED SCHEDULE OF HOLDERS

30

All other terms and conditions of this policy remain unchanged.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## ENDORSEMENT - NOTICE OF CANCELLATION TO THIRD PARTIES

This endorsement modifies insurance provided under the following:

WORKERS COMPENSATION AND EMPLOYERS LIABILITY POLICY

### SCHEDULE:

Schedule of Person(s) or Organization(s):

PER ATTACHED LIST

(If no entry appears above, information required to complete this Schedule will be shown in the Declarations as applicable to this endorsement.)

**Part Six - Conditions** - Condition D, Cancellation, is amended to include the following:

Notice of cancellation will be also be provided to the person(s) or organization(s) listed in the schedule above.

THIS ENDORSEMENT MUST BE ATTACHED TO A CHANGE ENDORSEMENT WHEN ISSUED AFTER THE POLICY IS WRITTEN.

**ITERIS - Notice of Cancellation List of Holders  
04/01/15 to 04/01/16 Policy Term  
As of 032715**

<u>GL</u>	<u>AUTO</u>	<u>WC</u>	<u>Schedule of Person(s) or Organization(s):</u>
X	X	X	Alameda County Transportation Commission 1111 Broadway, Suite 800 Oakland, CA 94607
X	X	X	Arizona DOT Procurement Group Attn: Ryan Litner 1739 W. Jackson Street, MD 100P Phoenix, AZ 85007-3276
X	X	X	Burbank, City of - Purchasing Division 301 East Olive Avenue Burbank, CA 91502
X	X	X	California State University, Long Beach Attn: Patti Pantoja, Buyer II - Purchasing 1250 Bellflower Blvd., BH-346 Long Beach, CA 90840-0123
X	X	X	Caltrans Division of Planning/Project Management 464 W. 4th Street, MS #645 San Bernadino, CA 92401
X			Cherry Hill Company, LLC 8101 O Street Lincoln, NE 68510
X	X	X	Claremont, City of, 207 Harvard, Claremont, CA 91711
X	X	X	Clark County, Nevada - Purchasing & Contracts Division Government Center - 4th Floor 500 So Grand Central Pkwy, PO Box 551217 Las Vegas, NV 89155-1217
X	X		College Station, City of - PO Box 9960, 1101 Texas Avenue, College Station, TX 77842
X	X	X	Colorado Department of Transportation (CDOT) - 15285 S. Golden Rd., Bldg 45, Golden, CO 80401
X	X	X	Contra Costa Transportation Authority - 2999 Oak Road., Suite 100, Walnut Creek, CA 94597
X	X	X	Corona, City of - Department of Water & Power 755 Public Safety Way Corona, CA 92880
X	X	X	Corona, City of - Public Works Department Attn: JoAnn baeza 400 S. Vincentia Ave. Suite 320 Corona, CA 92882
X	X	X	Eastvale, City of Attn: Mr. George Alvarez 12363 Limonite Avenue, Ste 910 Eastvale, CA 91752
X	X	X	Fehr & Peers 100 Pringle Avenue, Suite 600 Walnut Creek, CA 94596
X	X	X	Fremont, City of - Engineering Division 39550 Liberty Street PO Box 5006 Fremont, CA 94537-5006
X	X	X	Gannett Fleming, Inc. Administrative Support Center 207 Senate Avenue E-280 Camp Hill, PA 17011
X	X	X	Gardena, City of, Attn: John Felix, 1700 West 162nd Street, Gardena, CA 90247
X	X	X	Glendora, City of - Attn: Jerry Burke 116 East Foothill Blvd. Glendora, CA 91741
X	X	X	HDR Engineering, Inc. Attn: Karen Di Padova 2280 Market Street, Suite 100 Riverside, CA 82501
X	X	X	Hesperia, City of Purchasing Section 9700 Seventh Avenue Hesperia, CA 92345
X	X	X	Hogle-Ireland Attn: Laura Stetson, Sr. Vice President 201 S. lake Avenue, Suite 308 Pasadena, CA 91101
X	X	X	Inglewood, City of - Attn: Chad Sweet, P.E., Sr. Transportation Engineer Department of Public Works One Manchester Blvd Inglewood, CA 90301
X	X	X	Irvine, City of, c/o Ebix RCS - PO Box 257, Ref# 113-V73255-B1, Portland, MI 48875-0257
X	X	X	Long Beach, City of - Board of Harbor Commissioners, 925 Harbor Plaza, Long Beach, CA 90802
X	X	X	Los Angeles County MTA (LACMTA) Attn: Victor Zepeda One gateway Plaza MS-99-9-1 Los Angeles CA 90012
X	X	X	Los Angeles County, Department of Public Works, Attn: Loydi Nguyen, 900 S. Fremont Avenue, 8th Floor, Alhambra, CA 91803
X	X	X	Manhattan Beach, City of 1400 Highland Avenue Manhattan Beach, CA 90266
X	X	X	Maricopa County Department of Transportation Contracts Branch - Attn: Bonnie Williams 2901 West Durango Street Phoenix, AZ 85009-6357
X	X	X	MELENDREZ, 617 South Olive Street, Los Angeles, CA 90014
X	X	X	Micom, Inc., Attn: Jeanne Carlson, 6150 Quail Valley Court, Riverside, CA 92507

**ITERIS - Notice of Cancellation List of Holders  
04/01/15 to 04/01/16 Policy Term  
As of 032715**

<b>GL</b>	<b>AUTO</b>	<b>WC</b>	<b>Schedule of Person(s) or Organization(s):</b>
X	X	X	Minnesota Department of Transportation (MNDOT) 395 John Ireland Blvd St. Paul, MN 55155-1800
X	X	X	Moreno Valley, City of Attn: Alan Kashefi 14711 Frederick Street PO Box 88005 Moreno Valley, CA 92552-0805
X	X		NCM Engineering Corporation - 22362 Gilberto, Suite 125, Rancho Santa Margarita, CA 92688
X			New Hampshire, State of - Department of Transportation, PO Box 2950, Concord, NH 03302-2950
X	X	X	Newport Beach, City of, Public Works Department, Iris Lee, Senior Civil Engineer, 100 Civic Center Drive / PO Box 1768, Newport Beach, CA 92658
X		X	Osceola County Board of Commissioners c/o Director of Human Resources 1 Courthouse Sq., Ste 4700, Kissimmee, FL 34741
X	X	X	Parsons Brinckerhoff, Inc., ATTN: Certificate Tracking, 444 West 47th Street, Suite 900, Kansas City, MO 64112-1906
X	X	X	Pasadena, City of, 100 North Garfield Avenue, Room 424, Attn: Kathleen Banuelos, Pasadena, CA 91109-7215
X	X		Pfeiffer & Son, Ltd, 116 N. 16th Street, La Porte, TX 77571
X	X	X	Pomona, City of Attn: Afi Eskandari, P.E. ,Deputy Public Works Engineer 505 South Garey Avenue Pomona, CA 91766
X	X		PSOMAS - 3 Hutton Centre Drive, Suite 200 , Santa Ana, CA 92707
X	X	X	Psomas, Inc. Attn: Corporate Risk Manager 555 South Flower Street, Suite 400 Los Angeles, CA 90071
X	X	X	Round Rock, City of Attn: City Secretary 221 East Main Street Round Rock, TX 78664
X	X	X	Sacramento, City of - c/o Ebix RCS PO Box 257, Ref# 106-Z362468, Portland, MI 48875-0257
X	X	X	San Bernardino Associated Governments 1170 W. 3rd Street, 2nd Floor San Bernardino, CA 92410-1715
X	X	X	San Diego Association of Governments (SANDAG) C/O EBIX PBO PO Box 881639 San Diego, CA 92168-1639
X	X	X	San Diego Association of Governments (SANDAG) c/o myCOI 1075 Broad Ripple Avenue, Suite 313 Indianapolis, IN 46220
X	X	X	San Marcos, City of Public Works 201 Mata Way San Marcos, CA 92069-2918
X	X	X	Santa Barbara County Association of Governments (SBCAG) Attn: Scott Spaulding 260 North San Antonio Road, Suite B Santa Barbara, CA 93110
X	X	X	Santa Clarita, City of 23290 Valencia Boulevard, Suite 300 Santa Clarita, CA 91355-2196
X	X	X	Skyline Network Engineering, LLC Attn: Jason Ross, Vice President 508-C McCormick Drive Glen Burnie, MD 21061
X	X	X	STV INCORPORATED, 9130 Anaheim Place, Suite 210, Rancho Cucamonga, CA 91730-8540
X	X	X	Tennessee Department of Transportation (TDOT) Information Technology Division 505 Deaderick St., Suite 500 Nashville, TN 37243
X	X	X	Tennessee, State of - Department of General Services - Central Procurement Office 312 Rosa L. Parks Ave., 3rd Fl - Snodgrass Tower Nashville, TN 37243-1102
X	X	X	TranSystems Corporation Attn: Michael Lev 222 South Riverside Plaza, Ste 610 Chicago, IL 60606



Legislation Details (With Text)

**File #:** 16-0131      **Version:** 1      **Name:** Comprehensive Plan Amendment – 4098 Raymond Stotzer Parkway

**Type:** Comprehensive Plan      **Status:** Agenda Ready

**File created:** 2/25/2016      **In control:** City Council Regular

**On agenda:** 3/10/2016      **Final action:**

**Title:** Public Hearing, presentation, possible action, and discussion regarding an ordinance amending the Comprehensive Plan - Future Land Use & Character Map from Business Park to Urban and General Commercial for approximately 17 acres located at 4098 Raymond Stotzer Parkway, more generally located at the corner of Turkey Creek Road and Raymond Stotzer Parkway frontage road.

**Sponsors:** Mark Bombek

**Indexes:**

**Code sections:**

**Attachments:** [Amendment Map](#)  
[Background](#)  
[Aerial](#)  
[Ordinance](#)

Date	Ver.	Action By	Action	Result
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Public Hearing, presentation, possible action, and discussion regarding an ordinance amending the Comprehensive Plan - Future Land Use & Character Map from Business Park to Urban and General Commercial for approximately 17 acres located at 4098 Raymond Stotzer Parkway, more generally located at the corner of Turkey Creek Road and Raymond Stotzer Parkway frontage road.

Relationship to Strategic Goals:

- Good Governance
- Financially Sustainable City
- Core Services and Infrastructure
- Diverse Growing Economy

Recommendation(s): The Planning and Zoning Commission considered this item on January 21 and voted 4-0-1 to recommend approval.

Summary: The applicant is requesting the proposed future land use amendment to Urban and General Commercial as a step toward permitting a mixed-use development at the corner of Turkey Creek Road and Raymond Stotzer Parkway Frontage Road. This development is intended to serve the nearby BioCorridor Planned Development District and to provide supplemental uses that add to the efforts made in that area. The subject property and properties to the north and west are primarily designated Business Park and Suburban Commercial on the Comprehensive Plan Future Land Use and Character Map.

## REVIEW CRITERIA

- 1. Changed or changing conditions in the subject area or the City:** The City of College Station's Comprehensive Plan was adopted in 2009. In 2010, through the coordination of the Research Valley Partnership, the Research Valley BioCorridor Concept Master Plan was developed, consisting of a conceptual area of approximately 3,500 acres, spanning the jurisdictions of College Station and Bryan and including property owned by the Texas A&M University System. In 2012, approximately 200 acres west of Turkey Creek Road were zoned BioCorridor Planned Development District (PDD) to encourage research and development, manufacturing, and warehousing for biomedical and other emerging technology industries in the area. The area surrounding this PDD is anticipated to serve as a secondary or supplementary region that would provide supportive land uses enhancing the development occurring within the BioCorridor District. The BioCorridor Concept Master Plan envisioned a mix of uses in the subject area; thus prompting the request to amend the Future Land Use map to Urban and General Commercial.

Development pressure in this area has increased since the conception of the BioCorridor Master Plan, and the City of College Station has made significant agreements and infrastructure investments in the nearby area (e.g., roadway and electric improvements and changes in sewer certificated areas) to support the success of business development in the region. The provision of wastewater service had not been in immediate plans for the area east of Turkey Creek Road, but in 2013, the City's Interlocal Agreement with Texas A&M University was amended to allow for wastewater treatment for this area.

- 2. Scope of the request:** Currently, the Comprehensive Plan Future Land Use and Character Map designates the area east of Turkey Creek Road and west of Harvey Mitchell Parkway to be approximately 22 acres of Suburban Commercial (property already zoned for commercial uses along Harvey Mitchell), 34 acres to be Texas A&M University (property owned by Texas A&M), 58 acres of Public/Institutional (the City's cemetery), and the largest designation to be 70 acres of Business Park. The proposal is to convert approximately 18 acres from Business Park to 6 acres of General Commercial at the intersection of Turkey Creek Road and Raymond Stotzer Parkway, and 12 acres of Urban behind that, further down Turkey Creek Road. The proposed amendment would allow general commercial activities that would cater to both nearby residents and to the larger region at the intersection, and a very intense level of residential development activities being townhouse, duplexes, and high-density apartments.
- 3. Availability of adequate information:** General Commercial and Urban designations allow for future development of non-residential uses that fit within the General Commercial parameters and high-density multi-family. Properties in this area are served water through the City of College Station. College Station has an ability to serve domestic water service to the proposed development, but additional infrastructure improvements will be needed with further site development to meet minimum fire flow requirements.

There are currently no existing sanitary sewer mains available to serve this property necessitating extensions of the nearest lines to provide service to the property with further site development.

The property has frontage on both Raymond Stotzer Parkway (at a grade separated Freeway/Expressway on the Thoroughfare Plan) and Turkey Creek Road (designated a two-lane major collector). The change in land use designation is not expected to generate significantly more trips than the current land use designation.

4. **Consistency with the goals and strategies set forth in the Plan:** The proposal is consistent with the goals and strategies of the Comprehensive Plan. The goal for College Station's Future Land Use and Character is to create a community with strong, unique neighborhoods, protected rural areas, special districts, distinct corridors, and a protected and enhanced natural environment. The subject property and surrounding area are identified in the Comprehensive Plan Concept Map as one of the City's distinct districts-the Presidential Corridor Gateway District-which seeks to preserve and build upon the existing assets in the area enhancing this important gateway into the city. Upon the time when a rezoning is considered for the property, a General Commercial zoning district at the hard corner will dictate minimum non-residential architectural standards for virtually all development on that property proposed adjacent to Raymond Stotzer.
5. **Consideration of the Future Land Use & Character and/or Thoroughfare Plans:** The existing Future Land Use and Character designation on the property is Business Park, which is defined as a land use designation "generally for areas that include office, research, or industrial uses planned and developed as a unified project. Generally, these areas need good access to arterial roadways." While the land use designation is still valid and would support the growth of a research and development and manufacturing district, General Commercial and Urban land uses may also encourage growth, but do so through supporting commercial and residential for the area.

General Commercial is described as:

Generally for concentrations of commercial activities that cater to both nearby residents and to the larger community or region. Generally, these areas tend to be large in size and located near the intersection of two regionally significant roads (arterials and freeways). It is preferred that in such areas development be concentrated in nodes rather than spread out in strips.

Urban is described as:

Generally for areas that should have a very intense level of development activities. These areas will tend to consist of townhomes, duplexes, and high-density apartments. General commercial and office uses, business parks, and vertical mixed-use may also be permitted within growth and redevelopment areas.

The Urban land use designation, when not in a Growth Area, is typically characterized by more dense residential developments in the form of duplexes, townhomes or apartments.

Much of the land located north of Raymond Stotzer Parkway between SH 47 and Harvey Mitchell Parkway is planned for Business Park use, however, with increased development activity occurring in the BioCorridor Planned Development District, some land use designations surrounding the PDD were expected to change to support the anticipated growth. Staff originally was working to carry forward a City-initiated Comprehensive Plan Amendment to the Future Land Use and Character Map to address possible land use scenarios, but it was

determined that the integrity of the Comprehensive Plan in the area was better served by evaluating amendments on a case-by-case basis.

The property has frontage on both Raymond Stotzer Parkway (at a grade separated Freeway/Expressway on the Thoroughfare Plan) and Turkey Creek Road (designated a two-lane major collector). The change in land use designation is not expected to generate significantly more trips than the current land use designation.

6. **Compatibility with the surrounding area:** The adjacent land uses are large lot single-family and unimproved rural tracts varying in size from 1 to 11 acres, the City's cemetery, and rights-of-way. These existing developments are less dense than the Business Park designation prescribes. An Urban and General Commercial development will provide a different character than these existing properties currently provide.

Land located near the subject property and north of Raymond Stotzer Parkway is anticipated for future Business Park, and to a lesser degree, Suburban Commercial land uses. The proposed amendment, while not consistent with the planned future development pattern in the area, is compatible as supporting land uses for the Business Park uses that are anticipated to develop.

7. **Impacts on infrastructure including water, wastewater, drainage, and the transportation network:** Water service will be provided by the City of College Station. The tract is currently not adjacent to an existing water line. Upon development, the tract will need to extend water infrastructure in accordance with the Water Master Plan to and through the property. While extending the water line in order to serve the property, the developer will need to acquire offsite Public Utility Easements. No matter if the property were under Business Park or General Commercial and Urban designations, these improvements would be necessary in conjunction with development.

As mentioned earlier, the City of College Station has an interlocal agreement with Texas A&M University to provide treatment plant capacity to the subject tract. The tract has allocated sanitary sewer treatment plant capacity reserved with the interlocal agreement. The Developer's engineer has provided a sealed sewer demand letter that proposes to not exceed the allowable sanitary sewer treatment plant capacity specified in the interlocal agreement. The tract is currently not adjacent to an existing City of College Station sanitary sewer collection line. The tract will need to extend a sewer line from an existing City of College Station manhole in the Aggie Field of Honor Memorial Cemetery that ultimately sewers to a City of College Station owned/operated Valley Park lift station. The developer will need to acquire offsite easements and do downstream improvements to the City of College Station's collection system, lift station, forced main, and potentially Texas A&M University's collection system in order to serve the property. No matter if the property were under Business Park or General Commercial and Urban designations, these improvements would be necessary in conjunction with development.

The subject property is located in the Whites Creek Drainage basin. Whites Creek Tributary 8 crosses the subject tract. Detention will be required with future development. Drainage and

other public infrastructure will be required as development occurs, no matter if the property were under Business Park or General Commercial and Urban designations.

8. **Impact on the City's ability to provide, fund, and maintain services:** The subject property and surrounding area is within the Fire Department's desired 4.5-minute response time, a performance indicator that can have bearing on the City's ISO rating. There are existing lines stubbing out to the adjacent Aggie Field of Honor Cemetery that could be extended to provide adequate fire flows in this area.

There are currently no existing sanitary sewer mains available to serve this property necessitating extensions of the nearest lines to provide service to the property.

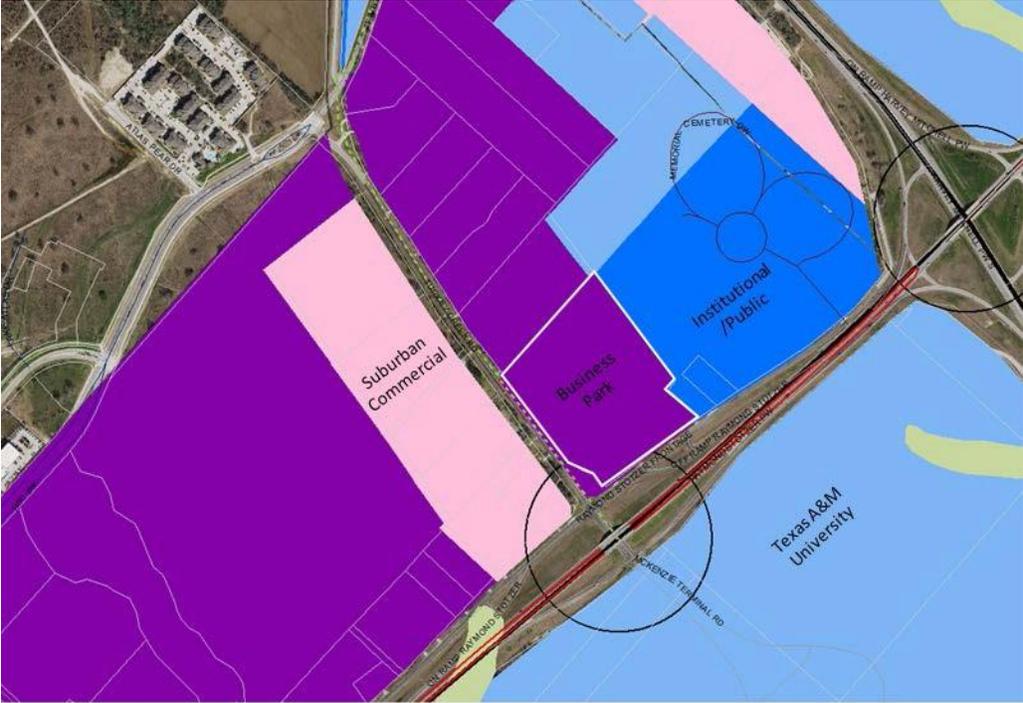
9. **Impact on environmentally sensitive and natural areas:** This area is not recognized as environmentally sensitive, but development at a higher density would impact open space.
10. **Contribution to the overall direction and character of the community as captured in the Plan's vision and goals:** The goal for College Station's Future Land Use and Character is to create a community with strong, unique neighborhoods, protected rural areas, special districts, distinct corridors, and a protected and enhanced natural environment. The proposed amendment from Business Park to Urban and General Commercial on just over 17 acres does not limit the general goals of the Comprehensive Plan. The amendment is proposing a density and level of service compatible with the planned growth of the BioCorridor District.

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

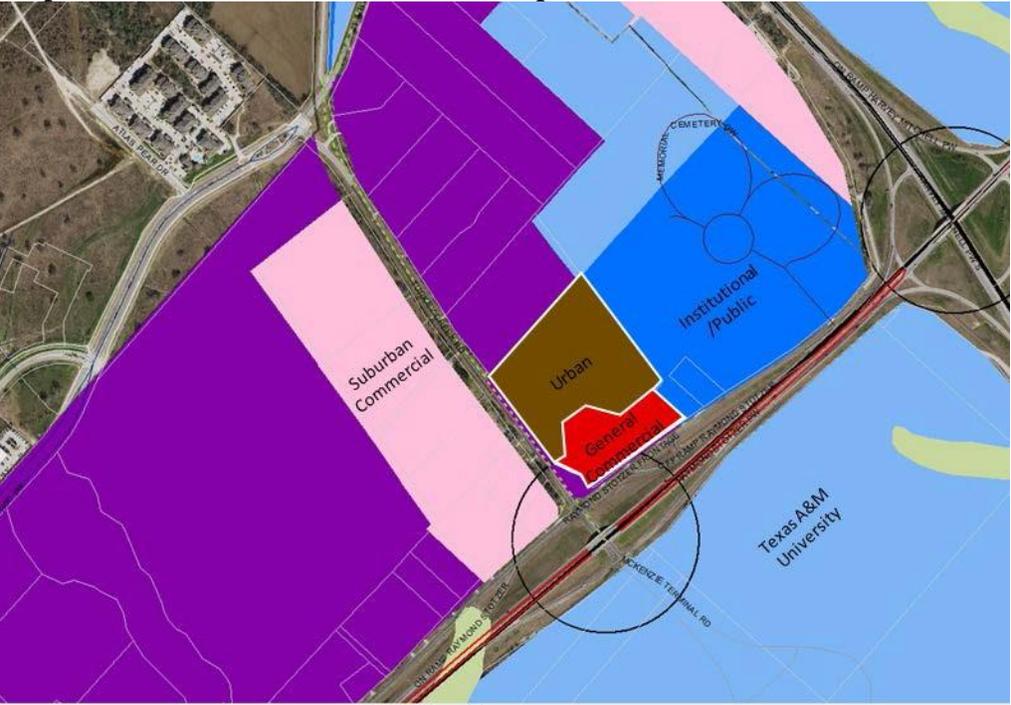
**Attachments:**

1. Amendment Map
2. Background Information
3. Aerial
4. Ordinance

Existing Future Land Use & Character Map



Proposed Future Land Use & Character Map



**NOTIFICATIONS**

Advertised Commission Hearing Date: February 18,  
2016 Advertised Council Hearing Dates: March 10, 2016

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

N/A

Contacts in support: None at the time of the staff  
report  
Contacts in opposition: None at the time of the staff  
report  
Inquiry contacts: None at the time of the staff  
report

**ADJACENT LAND USES**

Direction	Comprehensive Plan	Zoning	Land Use
<b>North</b>	Business Park	R Rural	Large-lot residential
<b>South</b> (Across Raymond Stotzer)	Texas A&M University	C-U College University	Easterwood Airport
<b>East</b>	Institutional/ Public	R Rural	Cemetery
<b>West</b> (Across Turkey Creek)	Suburban Commercial	R Rural	Large-lot residential

**DEVELOPMENT HISTORY**

**Annexation:** 1995  
**Zoning:** A-O Agricultural Open upon annexation renamed R Rural in 2013  
**Final Plat:** Unplatted  
**Site development:** Vacant



Case: COMP PLAN AMENDMENT  
CPA2015-000006

4098 RAYMOND STOTZER PKWY

DEVELOPMENT REVIEW



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

AN ORDINANCE OF THE CITY OF COLLEGE STATION, TEXAS, AMENDING THE COLLEGE STATION COMPREHENSIVE PLAN BY AMENDING THE COMPREHENSIVE PLAN FUTURE LAND USE AND CHARACTER MAP FROM SUBURBAN COMMERCIAL AND NATURAL AREAS RESERVED TO URBAN, FOR APPROXIMATELY 17.788 ACRES GENERALLY LOCATED AT THE SOUTHWEST CORNER OF GRAHAM ROAD AND LONGMIRE DRIVE, PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE; AND CONTAINING OTHER PROVISIONS RELATED THERETO.

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

PART 1: That the “Comprehensive Plan of the City of College Station” is hereby amended by adding a new Subsection C.2.m of Exhibit “A” thereto as set out in Exhibit “A” attached hereto and made a part hereof; and by amending the “Comprehensive Plan Future Land Use and Character Map,” as set out in Exhibit “B” attached hereto for the identified area and made a part hereof for all purposes.

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

PART 3: That any person, firm, or corporation violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not less than Twenty-five Dollars (\$25.00) nor more than Two Thousand Dollars (\$2,000.00). Each day such violation shall continue or be permitted to continue, shall be deemed a separate offense. Said Ordinance, being a penal ordinance, becomes effective ten (10) days after its date of passage by the City Council, as provided by Section 35 of the Charter of the City of College Station.

PASSED, ADOPTED and APPROVED this 10<sup>th</sup> day of March, 2016.

ATTEST:

APPROVED:

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

\_\_\_\_\_  
Mayor

APPROVED:  
  
\_\_\_\_\_

City Attorney

**EXHIBIT “A”**

That Ordinance No. 3186 adopting the “Comprehensive Plan of the City of College Station” as amended, in hereby amended by adding a new Subsection C.2.m to Exhibit “A” of said plan and Exhibit “A” is to read in its entirety as follows:

**“EXHIBIT ‘A’****A. Comprehensive Plan**

The College Station Comprehensive Plan (Ordinance 3186) is hereby adopted and consists of the following:

1. Existing Conditions;
2. Introduction;
3. Community Character;
4. Neighborhood Integrity;
5. Economic Development;
6. Parks, Greenways & the Arts;
7. Transportation;
8. Municipal Services & Community Facilities;
9. Growth Management and Capacity; and
10. Implementation and Administration.

**B. Master Plans**

The following Master Plans are hereby adopted and made a part of the College Station Comprehensive Plan:

1. The Northgate Redevelopment Plan dated November 1996;
2. The Revised Wolf Pen Creek Master Plan dated 1998;
3. Northgate Redevelopment Implementation Plan dated July 2003;
4. East College Station Transportation Study dated May 2005;
5. Parks, Recreation and Open Space Master Plan dated May 2005;
6. Park Land Dedication Neighborhood Park Zones Map dated January 2009;
7. Park Land Dedication Community Park Zones map dated April 2009;
8. Bicycle, Pedestrian, and Greenways Master Plan dated January 2010;
9. Central College Station Neighborhood Plan dated June 2010;
10. Water System Master Plan dated August 2010;
11. Wastewater Master Plan dated June 2011;
12. Eastgate Neighborhood Plan dated June 2011;
13. Recreation, Park and Open Space Master Plan dated July 2011;
14. Southside Area Neighborhood Plan dated August 2012;

- 15.** Medical District Master Plan dated October 2012;
- 16.** Wellborn Community Plan dated April 2013;
- 17.** Economic Development Master Plan dated September 2013; and
- 18.** South Knoll Area Neighborhood Plan dated September 2013.

### **C. Miscellaneous Amendments**

The following miscellaneous amendments to the College Station Comprehensive Plan are as follows:

#### **1. Text Amendments:**

- a.** Chapter 2 “Community Character,” “Growth Areas” by amending the text regarding Growth Area IV and Growth Area V – Ordinance 3376, dated October 2011.
- b.** Chapter 6 “Transportation” by amending the text regarding Complete Streets, Context Sensitive Solutions, Minimum Length and Additional Right-of-Way for Turn Lanes at Intersections, and Right-of-Way for Utilities – Ordinance 3729, dated December 10, 2015.
- c.** Chapter 2 “Community Character,” Chapter 3 “Neighborhood Integrity,” Chapter 4 “Economic Development,” Chapter 5 “Parks, Greenways, and the Arts,” and Chapter 7 “Municipal Services and Community Facilities” by amending the text based on the recommendation of the Comprehensive Plan Five-Year Evaluation & Appraisal Report – Ordinance 3730 dated December 10, 2015.

#### **2. Future Land Use and Character Map Amendment:**

- a.** 301 Southwest Parkway – Ordinance 3255, dated July 2010.
- b.** Richards Subdivision – Ordinance 3376, dated October 2011.
- c.** 1600 University Drive East – Ordinance 3535, dated November 14, 2013.
- d.** 2560 Earl Rudder Freeway S. – Ordinance 3541, dated December 12, 2013.
- e.** 13913 FM 2154. – Ordinance 3546, dated January 9, 2014.
- f.** 2021 Harvey Mitchell Parkway – Ordinance 3549, dated January 23, 2014.
- g.** 1201 Norton Lane – Ordinance 3555, dated February 27, 2014.
- h.** 3715 Rock Prairie Road West – Ordinance 3596, dated August 25, 2014.
- i.** 4201 Rock Prairie Road – Ordinance 3670, dated July 9, 2015.
- j.** The approximately 40 acres of land generally located east of FM 2154 (aka Wellborn Road), south of the Southern Trace Subdivision, west of State Highway 40 (aka William D. Fitch Parkway), and north of Westminster Subdivision – Ordinance 3731, dated December 10, 2015.

- k.** The approximately 120 acres of land generally located south of Barron Cut-Off Road, west of WS Phillips Parkway, north of the Castlegate II Subdivision, and east of the Wellborn Community – Ordinance 3732, dated December 10, 2015.
- l.** The approximately 900 acres of land generally located south of Greens Prairie Road West, east of the Sweetwater Subdivision, and north of Arrington Road – Ordinance 3733, dated December 10, 2015.
- m.** The approximately 17.788 acres of land generally located at the corner of Turkey Creek Road and Raymond Stotzer Parkway frontage road.– By this Ordinance dated March 10, 2016.

**3. Concept Map Amendment:**

- a.** Growth Area IV – Ordinance 3376, dated October 2011.
- b.** Growth Area V – Ordinance 3376, dated October 2011.

**4. Thoroughfare Map Amendment:**

- a.** Raintree Drive – Ordinance 3375, dated October 2011.
- b.** Birkdale Drive – Ordinance 3375, dated October 2011.
- c.** Corsair Circle – Ordinance 3375, dated October 2011.
- d.** Deacon Drive – Ordinance 3375, dated October 2011.
- e.** Dartmouth Drive – Ordinance 3375, dated October 2011.
- f.** Farm to Market 60 – Ordinance 3375, dated October 2011.
- g.** Southwest Parkway – Ordinance 3375, dated October 2011.
- h.** Cain Road extension – Ordinance 3639, dated February 26, 2015.
- i.** Update to Chapter 6 Maps- Ordinance 3729, dated December 10, 2015.

**5. Bicycle, Pedestrian and Greenways Master Plan Amendment:**

- a.** Cain Road extension – Ordinance 3639, dated February 26, 2015
- b.** Update to Maps 5.4 and 5.5- Ordinance 3729, dated December 10, 2015.

**D. General**

- 1. Conflict.** All parts of the College Station Comprehensive Plan and any amendments thereto shall be harmonized where possible to give effect to all. Only in the event of an irreconcilable conflict shall the later adopted ordinance prevail and then only to the extent necessary to avoid such conflict. Ordinances adopted at the same city council

meeting without reference to another such ordinance shall be harmonized, if possible, so that effect may be given to each.

2. Purpose. The Comprehensive Plan is to be used as a guide for growth and development for the entire City and its extra-territorial jurisdiction (“ETJ”). The College Station Comprehensive Plan depicts generalized locations of proposed future land-uses, including thoroughfares, bikeways, pedestrian ways, parks, greenways, and waterlines that are subject to modification by the City to fit local conditions and budget constraints.
3. General nature of Future Land Use and Character. The College Station Comprehensive Plan, in particular the Future Land Use and Character Map found in A.3 above and any adopted amendments thereto, shall not be nor considered a zoning map, shall not constitute zoning regulations or establish zoning boundaries and shall not be site or parcel specific but shall be used to illustrate generalized locations.
4. General nature of College Station Comprehensive Plan. The College Station Comprehensive Plan, including the Thoroughfare Plan, Bicycle, Pedestrian, and Greenways Master Plan, Central College Station Neighborhood Plan, Water System Master Plan and any additions, amendments, master plans and subcategories thereto depict same in generalized terms including future locations; and are subject to modifications by the City to fit local conditions, budget constraints, cost participation, and right-of-way availability that warrant further refinement as development occurs. Linear routes such as bikeways, greenways, thoroughfares, pedestrian ways, waterlines and sewer lines that are a part of the College Station Comprehensive Plan may be relocated by the City 1,000 feet from the locations shown in the Plan without being considered an amendment thereto.
5. Reference. The term College Station Comprehensive Plan includes all of the above in its entirety as if presented in full herein, and as same may from time to time be amended.

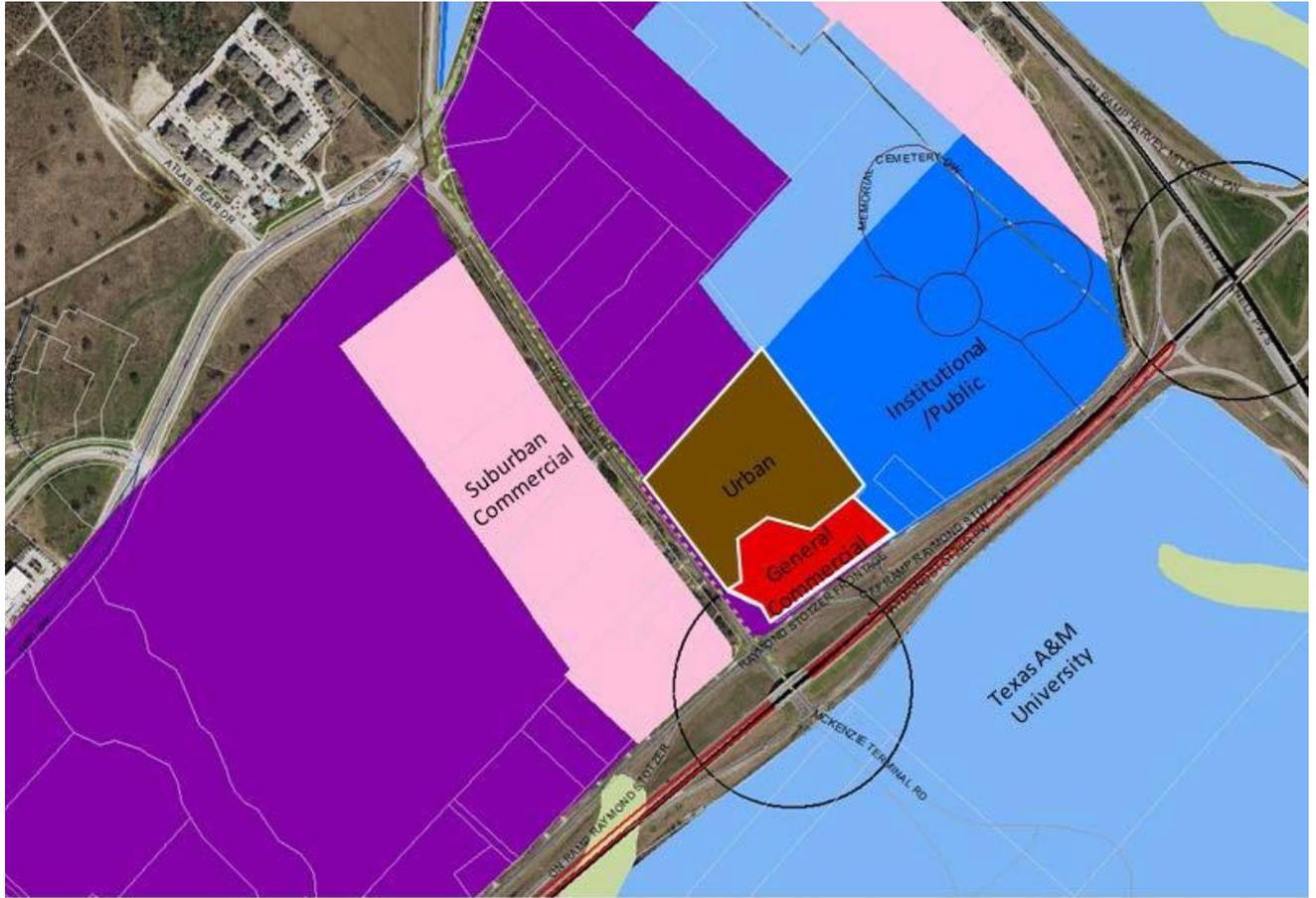
### EXHIBIT “B”

That the “Comprehensive Plan of the City of College Station” is hereby amended by amending a portion of the map titled “Map 2.2-Future Land Use & Character” of Chapter 2 – Community Character” from Suburban Commercial and Natural Areas Reserved to Urban shown as follows:

#### Existing Future Land Use & Character Map



### Proposed Future Land Use & Character Map





## Legislation Details (With Text)

**File #:** 16-0132      **Version:** 1      **Name:** Rezoning – 4098 Raymond Stotzer Parkway  
**Type:** Rezoning      **Status:** Agenda Ready  
**File created:** 2/25/2016      **In control:** City Council Regular  
**On agenda:** 3/10/2016      **Final action:**

**Title:** Public Hearing, presentation, possible action, and discussion regarding an ordinance amending Chapter 12, "Unified Development Ordinance," Section 12-4.2, "Official Zoning Map," of the Code of Ordinances of the City of College Station, Texas by changing the zoning district boundaries from R Rural to MF Multi-Family and GC General Commercial for approximately 17.788 acres lying and being situated in the John H. Jones League Abstract No. 26 in College Station, Brazos County, Texas and being a part of the 17.788 acre tract described in the deed from William Charles Gilmore, Walter Edgar Gilmore, II, Peter Lee Gilmore and Edith Ann Gilmore to BCS Turkey Creek, L.P. recorded in Volume 11640, Page 259 of the Official Records, Brazos County, Texas, and more generally located at the intersection of Turkey Creek Road and Raymond Stotzer Frontage Road.

**Sponsors:** Mark Bombek

**Indexes:**

**Code sections:**

**Attachments:** [Background](#)  
[Aerial & Small Aerial Map](#)  
[Ordinance](#)

Date	Ver.	Action By	Action	Result
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Public Hearing, presentation, possible action, and discussion regarding an ordinance amending Chapter 12, "Unified Development Ordinance," Section 12-4.2, "Official Zoning Map," of the Code of Ordinances of the City of College Station, Texas by changing the zoning district boundaries from R Rural to MF Multi-Family and GC General Commercial for approximately 17.788 acres lying and being situated in the John H. Jones League Abstract No. 26 in College Station, Brazos County, Texas and being a part of the 17.788 acre tract described in the deed from William Charles Gilmore, Walter Edgar Gilmore, II, Peter Lee Gilmore and Edith Ann Gilmore to BCS Turkey Creek, L.P. recorded in Volume 11640, Page 259 of the Official Records, Brazos County, Texas, and more generally located at the intersection of Turkey Creek Road and Raymond Stotzer Frontage Road.

### Relationship to Strategic Goals:

- Good Governance
- Financially Sustainable City
- Core Services and Infrastructure
- Diverse Growing Economy

**Recommendation(s):** The Planning and Zoning Commission considered this item on January 21 and voted 4-0-1 to recommend approval.

**Summary:** : The applicant is requesting a zoning change from R Rural to MF Multi-Family and GC

General Commercial as a step toward developing a property with a mix of multi-family residential and commercial uses.

## REVIEW CRITERIA

- 1. Consistency with the Comprehensive Plan:** The subject lot is designated Business Park on the Comprehensive Plan Future Land Use and Character Map and is also located in Presidential Corridor Gateway District. With easy access to Easterwood Airport and being in close proximity to the recently built Health Science Center as part of the Texas A&M University System, this Gateway District should be accommodating business including research and development, office, and light industrial. These uses should build on the assets existing in the area while protecting and enhancing this primary gateway into the City. The proposed development is consistent with the allowable land uses for Presidential Corridor Gateway District and also with surrounding future land use designations. Should the City Council approve the related amendment to the future land use plan, the rezoning request will be consistent with the Comprehensive Plan.
- 2. Compatibility with the present zoning and conforming uses of nearby property and with the character of the neighborhood:** The existing R Rural zoning allows for large lot residential and/or agricultural uses, which is not compatible or supportive of more intense development that is anticipated for the area. Given the property's close proximity to the BioCorridor Planned Development District, this area is expected to contain uses that support the investment plan that has been set in this District. An R Rural designation does not support the planned growth.
- 3. Suitability of the property affected by the amendment for uses permitted by the district that would be made applicable by the proposed amendment:** The proposed land uses permitted through this request are those allowed in MF Multi-Family and GC General Commercial. The uses are appropriate as they support the uses planned in the BioCorridor PDD and the property's frontage along Raymond Stotzer Parkway. The intent of the area surrounding the BioCorridor District is to help preserve and support the district by providing similar and supplementary uses that focus on research and development, manufacturing, office uses, and other additional uses that would serve those that live and work in the area. The applicant feels the request meets the intentions of the district which is to provide an atmosphere capable of creating the mixed use development desired for the BioCorridor District.
- 4. Suitability of the property affected by the amendment for uses permitted by the district applicable to the property at the time of the proposed amendment:** The property is currently zoned R Rural. The current zoning district is suitable for the property given the similar zonings and uses of nearby property. However, this is one of the first rezoning's requested in the area outside of the BioCorridor PDD. While R Rural is suitable with the current land uses the area is expected to see continued change moving forward.
- 5. Marketability of the property affected by the amendment for uses permitted by the district applicable to the property at the time of the proposed amendment:** The property can currently be marketed under the existing R Rural zoning district. However, the applicant has stated that the use is not appropriate or feasible for this property knowing the current development happening on nearby property and the anticipated change in development pattern for the area.
- 6. Availability of water, wastewater, stormwater, and transportation facilities generally suitable and adequate for the proposed use:** Water service will be provided by City of College

Station. The tract is currently not adjacent to an existing water line. The tract will need to extend the water line from an existing 8-inch main along Frontage of Raymond Stotzer Parkway to and through their property. While extending the water line in order to serve the property, the developer will need to acquire off site Public Utility Easements.

City of College Station has an Interlocal Agreement with Texas A&M University to provide sewer service to the subject tract. The tract has allocated sewer capacity reserved with the Inter-local Agreement. The Developer's engineer has provided a letter verifying that the sewer demand will not exceed the allowable sewer capacity specified in the Interlocal Agreement. The tract is currently not adjacent to an existing sanitary sewer line. The tract will need to extend the sewer line from an existing Manhole in the Aggie Field of honor memorial cemetery that ultimately sewers to a lift station. Developer will need to acquire offsite easements and do downstream improvements in order to serve the property. These improvements include, but are not limited to a private lift station, existing lift station and force main modifications, and upgrades to the TAMU sewer system.

The subject property is located in the Whites Creek Drainage basin. White Creek Tributary 8 crosses the subject tract. Detention will be required with the development.

Drainage and other public infrastructures required with the site shall be designed and constructed in accordance with the B/CS Unified Design Guidelines.

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

#### **Attachments:**

1. Background Information
2. Aerial & Small Area Map
3. Ordinance

**NOTIFICATIONS**

Advertised Commission Hearing Date: February 18, 2016

Advertised Council Hearing Date: March 10, 2016

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

None

Property owner notices mailed: Nine  
 Contacts in support: None at the time of this report  
 Contacts in opposition: None at the time of this report  
 Inquiry contacts: None at the time of this report

**ADJACENT LAND USES**

<b>Direction</b>	<b>Comprehensive Plan</b>	<b>Zoning</b>	<b>Land Use</b>
<b>North</b>	Business Park	R Rural	Vacant
<b>South</b> (Across Raymond Stotzer)	Texas A&M University	C-U College University	Easterwood Airport
<b>East</b>	Institutional/Public	R Rural	Cemetery
<b>West</b> (Across Turkey Creek)	Suburban Commercial	R Rural	Vacant

**DEVELOPMENT HISTORY**

**Annexation:** June 1995  
**Zoning:** A-O Agricultural Open upon annexation renamed R Rural in 2013  
**Final Plat:** N/A  
**Site development:** Vacant



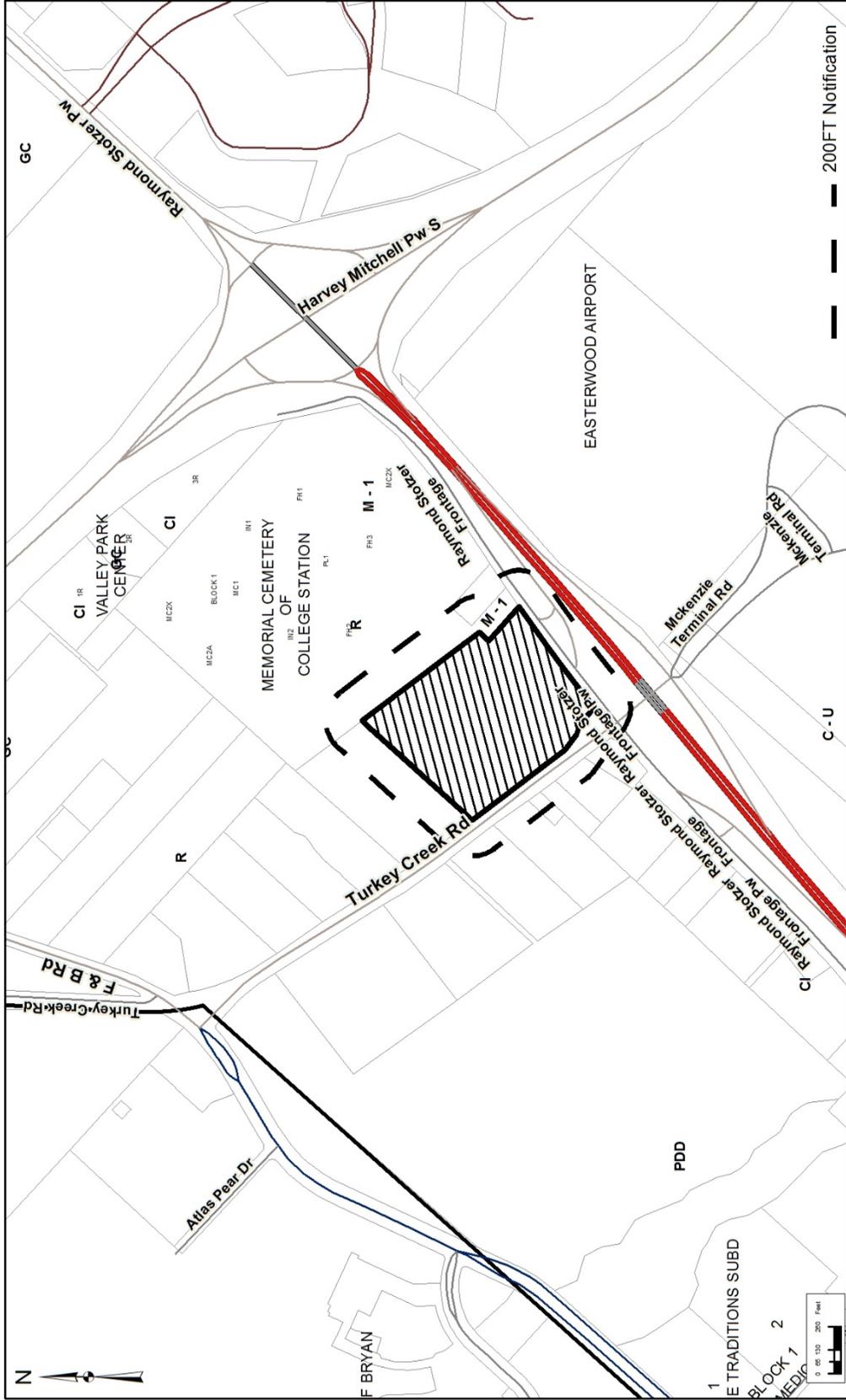
REZONING

Case:  
REZ2015-000001

4098 RAYMOND STOTZER PKWY

DEVELOPMENT REVIEW





**Zoning Districts**

R	Rural	PDD	Planned Development District
E	Estate	WPC	Wolf Pen Creek Dev. Corridor
RS	Restricted Suburban	NG - 1	Core Northgate
GS	General Suburban	NG - 2	Transitional Northgate
R - 1B	Single Family Residential	NG - 3	Residential Northgate
D	Duplex	OV	Corridor Overlay
T	Townhouse	RDD	Redevelopment District
		KO	Krenek Tap Overlay

BPI	Business Park Industrial	BPI	Business Park Industrial
NAP	Natural Areas Protected	NAP	Natural Areas Protected
C - 3	Light Commercial	C - 3	Light Commercial
M - 1	Light Industrial	M - 1	Light Industrial
M - 2	Heavy Industrial	M - 2	Heavy Industrial
C - U	College and University	C - U	College and University
R & D	Research and Development	R & D	Research and Development
P-MUD	Planned Mixed-Use Development	P-MUD	Planned Mixed-Use Development



**DEVELOPMENT REVIEW**

**4098 RAYMOND STOTZER PKWY**

**REZONING**

Case: REZ2015-000001

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

AN ORDINANCE AMENDING CHAPTER 12, "UNIFIED DEVELOPMENT ORDINANCE," SECTION 12-4.2, "OFFICIAL ZONING MAP," OF THE CODE OF ORDINANCES OF THE CITY OF COLLEGE STATION, TEXAS, BY CHANGING THE ZONING DISTRICT BOUNDARIES FROM R RURAL TO MF MULTI-FAMILY AND GC GENERAL COMMERCIAL FOR APPROXIMATELY 17.788 ACRES FOR THE PROPERTY BEING SITUATED IN THE JOHN H. JONES LEAGUE ABSTRACT NO. 26 IN COLLEGE STATION, BRAZOS COUNTY, TEXAS AND BEING A PART OF THE 17.788 ACRE TRACT DESCRIBED IN THE DEED FROM WILLIAM CHARLES GILMORE, WALTER EDGAR GILMORE, II, PETER LEE GILMORE AND EDITH ANN GILMORE TO BCS TURKEY CREEK, L.P. RECORDED IN VOLUME 11640, PAGE 259 OF THE OFFICIAL RECORDS, BRAZOS COUNTY, TEXAS, AND MORE GENERALLY LOCATED AT THE INTERSECTION OF TURKEY CREEK ROAD AND RAYMOND STOTZER FRONTAGE ROAD; PROVIDING A SEVERABILITY CLAUSE; DECLARING A PENALTY; AND PROVIDING AN EFFECTIVE DATE.

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

- PART 1: That Chapter 12, "Unified Development Ordinance," Section 12-4.2, "Official Zoning Map," of the Code of Ordinances of the City of College Station, Texas, be amended as set out in Exhibit "A" and as shown graphically in Exhibit "B" and Exhibit "C", attached hereto and made a part of this ordinance for all purposes.
- PART 2: That if any provisions of any section of this ordinance shall be held to be void or unconstitutional, such holding shall in no way effect the validity of the remaining provisions or sections of this ordinance, which shall remain in full force and effect.
- PART 3: That any person, firm, or corporation violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not less than Twenty-five Dollars (\$25.00) nor more than Two Thousand Dollars (\$2,000.00). Each day such violation shall continue or be permitted to continue, shall be deemed a separate offense. Said Ordinance, being a penal ordinance, becomes effective ten (10) days after its date of passage by the City Council, as provided by Section 35 of the Charter of the City of College Station.
- PART 4: Said Ordinance will not become effective unless a deed executed for purchase of the property is recorded in the Official Records of Brazos County, Texas.

PASSED, ADOPTED and APPROVED this 10<sup>th</sup> day of March, 2016

APPROVED:

\_\_\_\_\_  
MAYOR

ATTEST:

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

APPROVED:

\_\_\_\_\_

Ordinance No . \_\_\_\_\_

City Attorney

**EXHIBIT “A”**

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

The following property is rezoned from R Rural to MF Multi-Family and GC General Commercial, as graphically depicted in Exhibit “B” and Exhibit “C”.

FIELD NOTES  
PROPOSED MULTI-FAMILY ZONE  
12.00 ACRES

Being all that certain tract or parcel of land lying and being situated in the JOHN H. JONES LEAGUE, Abstract No. 26 in College Station, Brazos County, Texas and being a part of the 17.788 acre tract described in the deed from William Charles Gilmore, Walter Edgar Gilmore, II, Peter Lee Gilmore and Edith Ann Gilmore to BCS Turkey Creek, L.P. recorded in Volume 11640, Page 259 of the Official Records, Brazos County, Texas (O.R.B.C.) and being more particularly described by metes and bounds as follows:

BEGINNING: at a found 4-inch square concrete monument marking the north corner of the said 17.788 acre BCS Turkey Creek, L.P. tract, the east corner of the called 1.348 acre Junia Kinman tract recorded in Volume 2461, Page 202 (O.R.B.C.) and being in the southwest line of the 56.56 acre Block One, MEMORIAL CEMETERY OF COLLEGE STATION according to the Final Plat recorded in Volume 8563, Page 210 (O.R.B.C.);

THENCE: S 37° 03' 19" E along the common line of the said 17.788 acre BCS Turkey Creek, L.P. tract and said MEMORIAL CEMETERY OF COLLEGE STATION for a distance of 813.96 feet to a found 4-inch square concrete monument marking an angle point in the northeast line of the said 17.788 acre tract and an interior ell-corner in the before-mentioned southwest line of the MEMORIAL CEMETERY OF COLLEGE STATION, said concrete monument also being in or near the common line of the said JOHN H. JONES LEAGUE, A-26 and the JOHN H. JONES SURVEY, Abstract No. 148;

THENCE: S 41° 58' 41" W continuing along the said common line of the said 17.788 acre BCS Turkey Creek, L.P. tract and said MEMORIAL CEMETERY OF COLLEGE STATION, said line being in or near the common line of the said JOHN H. JONES LEAGUE, A-26 and the said JOHN H. JONES SURVEY, A-148 for a distance of 68.84 feet to a found 1/2-inch iron rod marking an interior ell-corner in the northeast line of the before-said 17.788 acre tract and an angle point in the southwest line of the said MEMORIAL CEMETERY OF COLLEGE STATION;

THENCE: through the interior of the said 17.788 acre BCS Turkey Creek, L.P. tract for the following six (6) calls:

- 1) S 58° 04' 35" W for a distance of 262.76 feet for corner,
- 2) N 59° 26' 17" W for a distance of 106.42 feet for corner,
- 3) N 61° 24' 08" W for a distance of 100.93 feet for corner,
- 4) S 54° 53' 47" W for a distance of 200.73 feet for corner,
- 5) S 02° 51' 33" W for a distance of 184.25 feet for corner, and
- 6) S 46° 21' 31" W for a distance of 74.98 feet for corner in the northeast right-of-way line of FM 2513, commonly known as Turkey Creek Road (base on a 100-foot width);

THENCE: N 37° 10' 37" W along the southwest line of the said 17.788 acre BCS Turkey Creek, L.P. tract, said line being common with northeast line of said FM 2513 right-of-way for a distance of 599.46 feet to a found 4-inch square concrete monument marking the west corner of the said 17.788 acre tract and the south corner of the called 15.37 acre Junia Kinman remainder tract recorded in Volume 263, Page 28 (B.C.D.R.);

THENCE: N 41° 56' 05" E along the northwest line of the said 17.788 acre BCS Turkey Creek, L.P. tract, the called 15.37 acre Kinman remainder tract and the before-mentioned 1.348 acre Kinman tract for a distance of 821.13 feet to the POINT OF BEGINNING and containing 12.00 acres of land, more or less.

FIELD NOTES  
PROPOSED COMMERCIAL ZONE  
5.79 ACRES

Being all that certain tract or parcel of land lying and being situated in the JOHN H. JONES LEAGUE, Abstract No. 26 and the JOHN H. JONES SURVEY, Abstract No. 148 in College Station, Brazos County, Texas and being a part of the 17.788 acre tract described in the deed from William Charles Gilmore, Walter Edgar Gilmore, II, Peter Lee Gilmore and Edith Ann Gilmore to BCS Turkey Creek, L.P. recorded in Volume 11640, Page 259 of the Official Records, Brazos County, Texas (O.R.B.C.) and being more particularly described by metes and bounds as follows:

BEGINNING: at a found 1/2-inch iron rod marking the east corner of the said 17.788 acre BCS Turkey Creek, L.P. tract, the south corner of the 56.56 acre Block One, MEMORIAL CEMETERY OF COLLEGE STATION according to the Final Plat recorded in Volume 8563, Page 210 (O.R.B.C.) and being in the monumented northwest line of F.M. 60, commonly known as Raymond Stotzer Parkway (right-of-way width varies);

THENCE: 699.11 feet in a counter-clockwise direction along the arc of a curve in the said monumented line of F.M. 60, said curve having a central angle of  $03^{\circ} 28' 49''$ , a radius of 11509.16 feet, a tangent of 349.66 feet and a long chord bearing  $S 53^{\circ} 21' 51'' W$  at a distance of 699.00 feet to a found 1/2-inch iron rod marking the south corner of the said 17.788 acre BCS Turkey Creek, L.P. tract and the intersection of the northeast right-of-way line of FM 2513, commonly known as Turkey Creek Road (right-of-way width varies at this location);

THENCE: along the southwest line of the said 17.788 acre BCS Turkey Creek, L.P. tract, said line being common with northeast line of said FM 2513 right-of-way for the following five (5) calls:

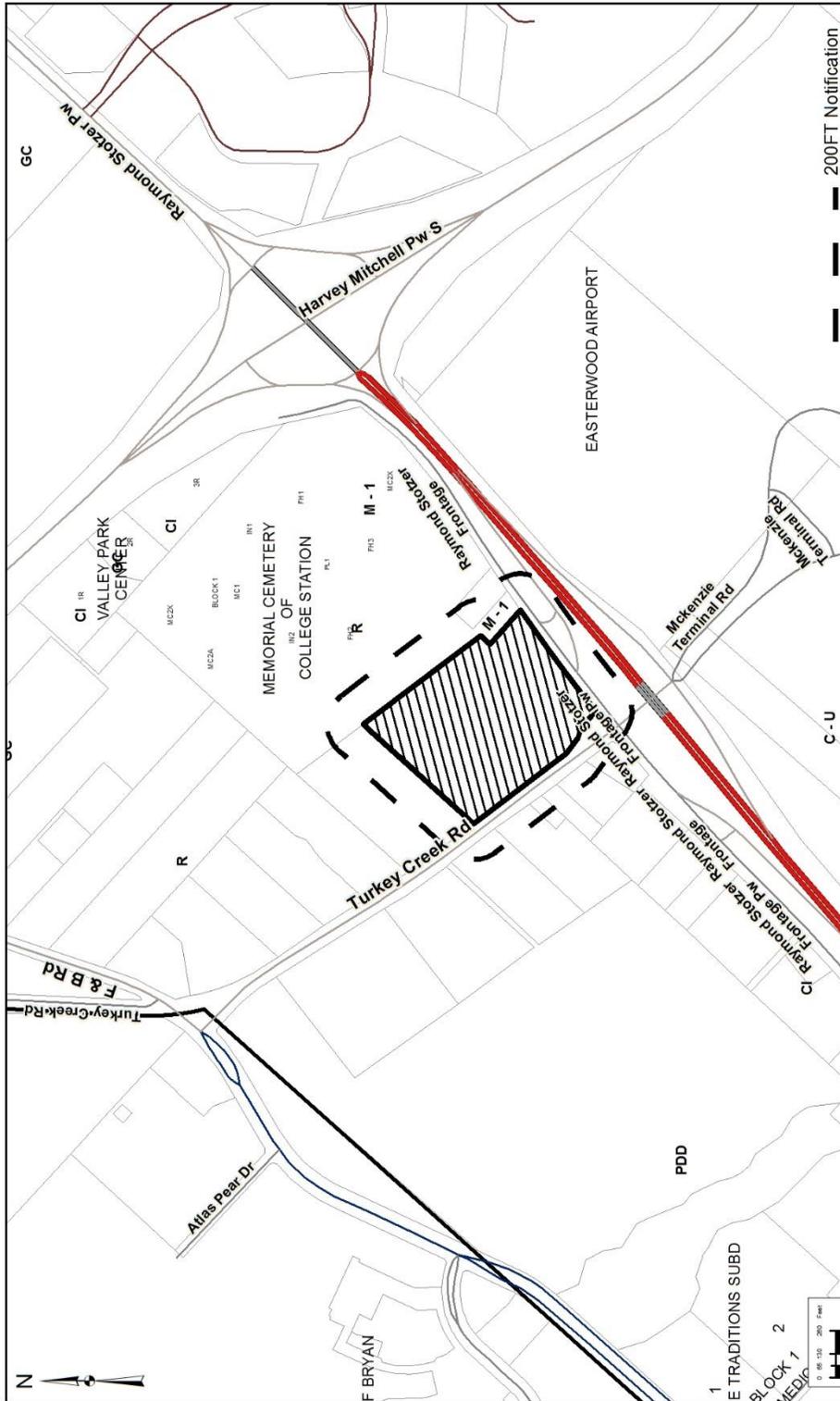
- 1)  $N 48^{\circ} 16' 06'' W$  for a distance of 116.00 feet to a found 4-inch square concrete monument in or near the common line of the said JOHN H. JONES LEAGUE, A-26 and the said JOHN H. JONES SURVEY, A-148,
- 2)  $N 70^{\circ} 34' 37'' W$  for a distance of 63.79 feet to a found 1/2-inch iron rod,
- 3)  $N 52^{\circ} 54' 37'' W$  for a distance of 72.78 feet to a found 1/2-inch iron rod,
- 4)  $N 52^{\circ} 49' 37'' W$  for a distance of 32.78 feet to a found 1/2-inch iron rod, and
- 5)  $N 37^{\circ} 10' 37'' W$  for a distance of 46.10 feet for corner;

THENCE: through the interior of the said 17.788 acre BCS Turkey Creek, L.P. tract for the following six (6) calls:

- 1)  $N 46^{\circ} 21' 31'' E$  for a distance of 74.98 feet for corner,
- 2)  $N 02^{\circ} 51' 33'' E$  for a distance of 184.25 feet for corner,
- 3)  $N 54^{\circ} 53' 47'' E$  for a distance of 200.73 feet for corner,
- 4)  $S 61^{\circ} 24' 08'' E$  for a distance of 100.93 feet for corner,
- 5)  $S 59^{\circ} 26' 17'' E$  for a distance of 106.42 feet for corner, and
- 6)  $N 58^{\circ} 04' 35'' E$  for a distance of 262.76 feet to a found 1/2-inch marking an interior ell-corner in the northeast line of the before-said 17.788 acre tract and an angle point in the southwest line of the said MEMORIAL CEMETERY OF COLLEGE STATION, said iron rod also being in or near the common line of the said JOHN H. JONES LEAGUE, A-26 and the said JOHN H. JONES SURVEY, A-148;

THENCE:  $S 48^{\circ} 04' 45'' E$  along the northeast line of the said 17.788 acre BCS Turkey Creek, L.P. tract and the southwest line of the said MEMORIAL CEMETERY OF COLLEGE STATION for a distance of 253.64 feet to the POINT OF BEGINNING and containing 5.79 acres of land, more or less.

**EXHIBIT "B"**



Zoning Districts	Planned Development District	PDD	Case:
R - 4	Multi-Family	Business Park Industrial	4098 RAYMOND STOTZER PKWY
R - 6	High Density Multi-Family	Natural Areas Protected	
MHP	Manufactured Home Park	Light Commercial	
O	Office	Light Industrial	
SC	Suburban Commercial	Heavy Industrial	
GC	General Commercial	College and University	
CI	Commercial-Industrial	Research and Development	
BP	Business Park	Planned Mixed-Use Development	
PDD			
CI			
R			REZ2015-000001
R - 1B	Single Family Residential	WPC	
D	Duplex	NG - 1	
T	Townhouse	NG - 2	
		NG - 3	
		Transitional Northgate	
		Residential Northgate	
		Corridor Overlay	
		Redevelopment District	
		Krenek Tap Overlay	
			200FT Notification



**DEVELOPMENT REVIEW**

**4098 RAYMOND STOTZER PKWY**

**REZONING**





## Legislation Details (With Text)

**File #:** 16-0130      **Version:** 1      **Name:** Arrington Road Rezoning  
**Type:** Rezoning      **Status:** Agenda Ready  
**File created:** 2/24/2016      **In control:** City Council Regular  
**On agenda:** 3/10/2016      **Final action:**

**Title:** Public Hearing, presentation, possible action, and discussion regarding an ordinance amending Chapter 12, "Unified Development Ordinance," Section 12-4.2, "Official Zoning Map," of the Code of Ordinances of the City of College Station, Texas by changing the zoning district boundaries from O Office and GC General Commercial to MF Multi-Family and NAP Natural Areas Protected with the condition that no residential structures be constructed within the 135-foot buffer from the heater-treater equipment on the abutting site containing oil and gas uses for approximately 17.66 acres being Lot 1, Block 5 of the Tower Point Phase 5 subdivision, generally located at 1110 Arrington Road, more generally located south of the intersection of Arrington Road and Decatur Drive.

**Sponsors:** Laura Walker

**Indexes:**

**Code sections:**

**Attachments:** [Aerial and Small Area Map](#)  
[Background](#)  
[Ordinance](#)

Date	Ver.	Action By	Action	Result
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Public Hearing, presentation, possible action, and discussion regarding an ordinance amending Chapter 12, "Unified Development Ordinance," Section 12-4.2, "Official Zoning Map," of the Code of Ordinances of the City of College Station, Texas by changing the zoning district boundaries from O Office and GC General Commercial to MF Multi-Family and NAP Natural Areas Protected with the condition that no residential structures be constructed within the 135-foot buffer from the heater-treater equipment on the abutting site containing oil and gas uses for approximately 17.66 acres being Lot 1, Block 5 of the Tower Point Phase 5 subdivision, generally located at 1110 Arrington Road, more generally located south of the intersection of Arrington Road and Decatur Drive.

### Relationship to Strategic Goals:

- Good Governance
- Financially Sustainable City
- Core Services and Infrastructure
- Diverse Growing Economy

**Recommendation(s):** The Planning and Zoning Commission considered this item on February 4th and voted to recommend approval with the condition that no residential structures be located within a 135-ft buffer of the existing heater-treater on the abutting property containing oil and gas uses. Staff recommends approval with the condition as well.

Summary:

The applicant is requesting a MF Multi-Family and NAP Natural Areas Protected rezoning to develop this lot into a multi-family complex and greenway trails within the Natural Areas Protected district.

**REVIEW CRITERIA**

**1. Consistency with the Comprehensive Plan:** The subject area is designated on the Comprehensive Plan Future Land Use and Character Map as Urban, Natural Areas Reserved, General Suburban, and Natural Areas Protected; and a portion of the property is located within Growth Area II. The Comprehensive Plan states the Urban designation is for areas that should have the most intense level of development consisting of vertical mixed use and other aspects of urban character; the Natural Areas Reserved designation is for areas that represent a constraint to development and should be preserved for their natural functions (floodplains, riparian buffers, etc.); the General Suburban designation is for areas with an intense level of high-density single-family residential uses; and the Natural Areas Protected designation is for parks, recreation, or greenways permanently protected from development. Growth Area II states that the urban portion of this area should be used for intense land uses with no more than 25% of the area being used for residential activities. However, there are currently little to no residential uses within the urban portion of Growth Area II.

The areas designated as Natural Areas Protected on the Comprehensive Plan Future Land Use map were originally designated as such with the intent of planning for the adjacent conservation easement but, since the easement has been defined and dedicated, this land use no longer applies to the entire area. Some portions dedicated for greenway purposes are still upholding their Natural Areas Protected designation through the use of the Natural Areas Protected zoning district at these locations. In addition, the General Suburban designation is a result of designations being assigned on a non-parcel basis, so it no longer applies either. In conclusion, the rezoning request is consistent with the Comprehensive Plan.

**2. Compatibility with the present zoning and conforming uses of nearby property and with the character of the neighborhood:** The properties to the north are zoned PDD and contain townhouse residential uses; properties to the east are zoned R Rural and are vacant; Spring Creek is to the south with an R Rural zoning designation; and properties to the west are zoned O Office with an oil and gas use, PDD with a self-storage use, and GS General Suburban with single-family homes. The present zoning of O Office and GC General Commercial are compatible with most of these zoning districts and uses with the exception of the oil and gas use.

Staff expressed concern regarding the proposed use being located within close vicinity of an active oil site. The applicant's engineer acknowledged the concern and has applied guidelines from the Department of Housing & Development (HUD) Exchanges' Acceptable Separation Distances in response to Staff's concern. A minimum separation distance of 135-ft from the oil field's heater-treater to any residential building is being proposed. The area will be used for parking and perhaps a maintenance building to help buffer the potential hazard. Additional mitigation discussions from the oil well site will be made with the applicant when the site plan has been submitted for review.

**3. Suitability of the property affected by the amendment for uses permitted by the district that would be made applicable by the proposed amendment:** The property is designated for urban and high-density uses on the Comprehensive Plan Land Use Map, but there are also pre-existing uses surrounding this site that the Future Land Use Map did not anticipate.

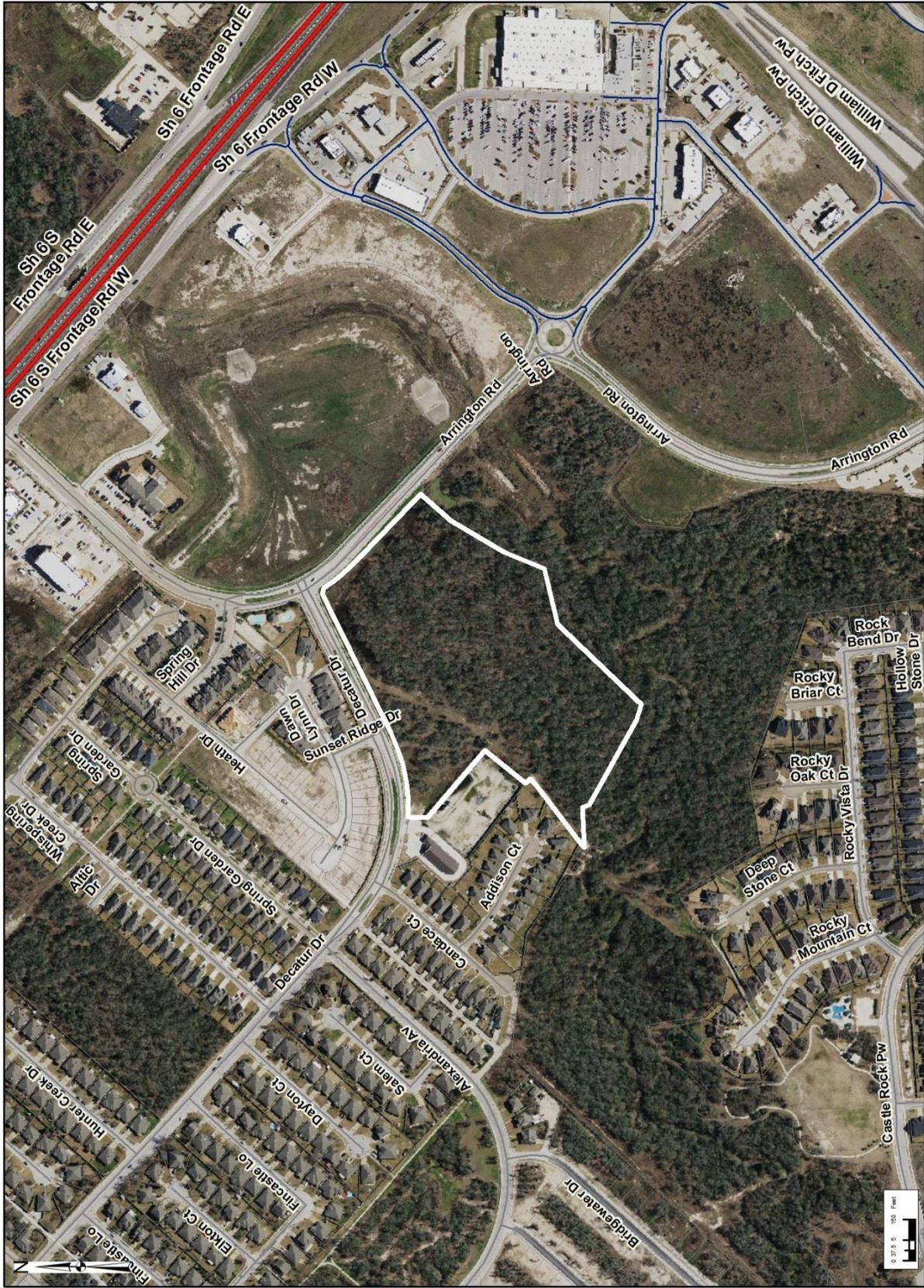
Directly west of the subject property is an operating oil well use that the applicant is proposing the condition with the rezoning that no residential buildings be within a 135-ft arc from a heater-treater on site that poses a significant threat (as illustrated in the HUD Allowable Separation Distance Map). Only parking and a maintenance building can be used in this area. There are also single-family homes to the west surrounding the oil and gas use, so the property will be required to provide single-family height protection and a minimum of 10ft buffer with a fence from this use. In addition, the greenway areas will be preserved with NAP Natural Areas Protected zoning.

4. **Suitability of the property affected by the amendment for uses permitted by the district applicable to the property at the time of the proposed amendment:** The property is also suitable for uses permitted in the O Office and GC General Commercial districts. The O Office zoning is located in between the single-family uses and the GC General Commercial zoning, acting like a buffer between use intensities. However, the existing oil well use poses an issue to developing the site as an office use because similar buffering conditions to the oil well would be required at the site plan stage.
5. **Marketability of the property affected by the amendment for uses permitted by the district applicable to the property at the time of the proposed amendment:** The property is marketable for both commercial/office uses under the current zoning districts as well as multi-family uses allowed by the proposed rezoning.
6. **Availability of water, wastewater, stormwater, and transportation facilities generally suitable and adequate for the proposed use:** Water Service will be provided by City of College Station via existing 12-inch main along Decatur Drive. The site will have sewer access via an existing 21-inch main running through the tract. The subject property is located in the Spring Creek drainage basin. The site is draining to an existing regional detention pond. The property has frontage on Decatur Dr. & Arrington, both classified as Two-Lane Major Collectors on the Thoroughfare Plan. Since the proposed zoning resulted in fewer trips than the current zoning, a Traffic Impact Analysis (TIA) was not required at this time. A revised TIA will be required with the site plan application. Drainage and other public infrastructure required with the site shall be designed and constructed in accordance with the B/CS Unified Design Guidelines. The existing infrastructure appears to currently possess capacity to adequately serve the proposed use.

Budget & Financial Summary: N/A

Attachments:

1. Area Map
2. Background Information
3. Ordinance



REZONING

Case: REZ2015-000025

1110 ARRINGTON RD

DEVELOPMENT REVIEW



© 2015 100 Feet



**NOTIFICATIONS**

Advertised Commission Hearing Date: February 4, 2016

Advertised Council Hearing Date: March 10, 2016

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

Spring Creek Townhomes HOA

Property owner notices mailed: 27

Contacts in support: None at the time of staff report.

Contacts in opposition: Five at the time of staff report, citing concerns of developing in the greenbelt and flooding hazards.

Inquiry contacts: Two at the time of staff report.

**ADJACENT LAND USES**

<b>Direction</b>	<b>Comprehensive Plan</b>	<b>Zoning</b>	<b>Land Use</b>
<b>North</b> (Across Decatur Drive)	Urban	PDD Planned Development District	Townhomes
<b>South</b>	Natural Areas Protected and Natural Areas Reserved	R Rural	Spring Creek Greenway
<b>East</b> (Across Arrington Road)	Urban and Natural Areas Reserved	R Rural and GC General Commercial	Vacant
<b>West</b>	Estate and Natural Areas Protected	GS General Suburban and PDD Planned Development District	Single-Family homes, storage buildings, and an oil well

**DEVELOPMENT HISTORY**

**Annexation:** 1983

**Zoning:** Properties zoned A-O Agricultural Open after Annexation  
 2001- A-O rezoned to R-4 Residential Attached  
 2006- R-4 rezoned to A-P Administrative Professional & C-1 General Commercial  
 2012- A-P Administrative Professional and C-1 General Commercial renamed to O Office and GC General Commercial

**Final Plat:** The property is platted as Lot 1, Block 5 of the Tower Point Phase 5 Subdivision (2009).

**Site Development:** Property is currently vacant.

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

AN ORDINANCE AMENDING CHAPTER 12, "UNIFIED DEVELOPMENT ORDINANCE," SECTION 12-4.2, "OFFICIAL ZONING MAP," OF THE CODE OF ORDINANCES OF THE CITY OF COLLEGE STATION, TEXAS, BY CHANGING THE ZONING DISTRICT BOUNDARIES FOR APPROXIMATELY 17.66 ACRES FROM O OFFICE AND GC GENERAL COMMERCIAL TO MF MULTI-FAMILY AND NAP NATURAL AREAS PROTECTED WITH THE CONDITION THAT NO RESIDENTIAL STRUCTURES BE CONSTRUCTED WITHIN THE 135-FOOT BUFFER FROM SIGNIFICANT HAZARDS ON THE ABUTTING PARCEL CONTAINING OIL AND GAS USES, BEING LOT 1, BLOCK 5 OF THE TOWER POINT PHASE 5 SUBDIVISION, ACCORDING TO THE PLAT RECORDED IN VOLUME 9448, PAGE 274 OF THE OFFICIAL PUBLIC RECORDS OF BRAZOS COUNTY, TEXAS, MORE GENERALLY LOCATED SOUTH OF THE INTERSECTION OF ARRINGTON ROAD AND DECATUR DRIVE, PROVIDING A SEVERABILITY CLAUSE; DECLARING A PENALTY; AND PROVIDING AN EFFECTIVE DATE.

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

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

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

PART 3: That any person, firm, or corporation violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not less than Twenty-five Dollars (\$25.00) nor more than Two Thousand Dollars (\$2,000.00). Each day such violation shall continue or be permitted to continue, shall be deemed a separate offense. Said Ordinance, being a penal ordinance, becomes effective ten (10) days after its date of passage by the City Council, as provided by Section 35 of the Charter of the City of College Station.

PASSED, ADOPTED and APPROVED this 10<sup>th</sup> day of March, 2016.

APPROVED:

\_\_\_\_\_  
MAYOR

ATTEST:

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

APPROVED:

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

**EXHIBIT “A”**

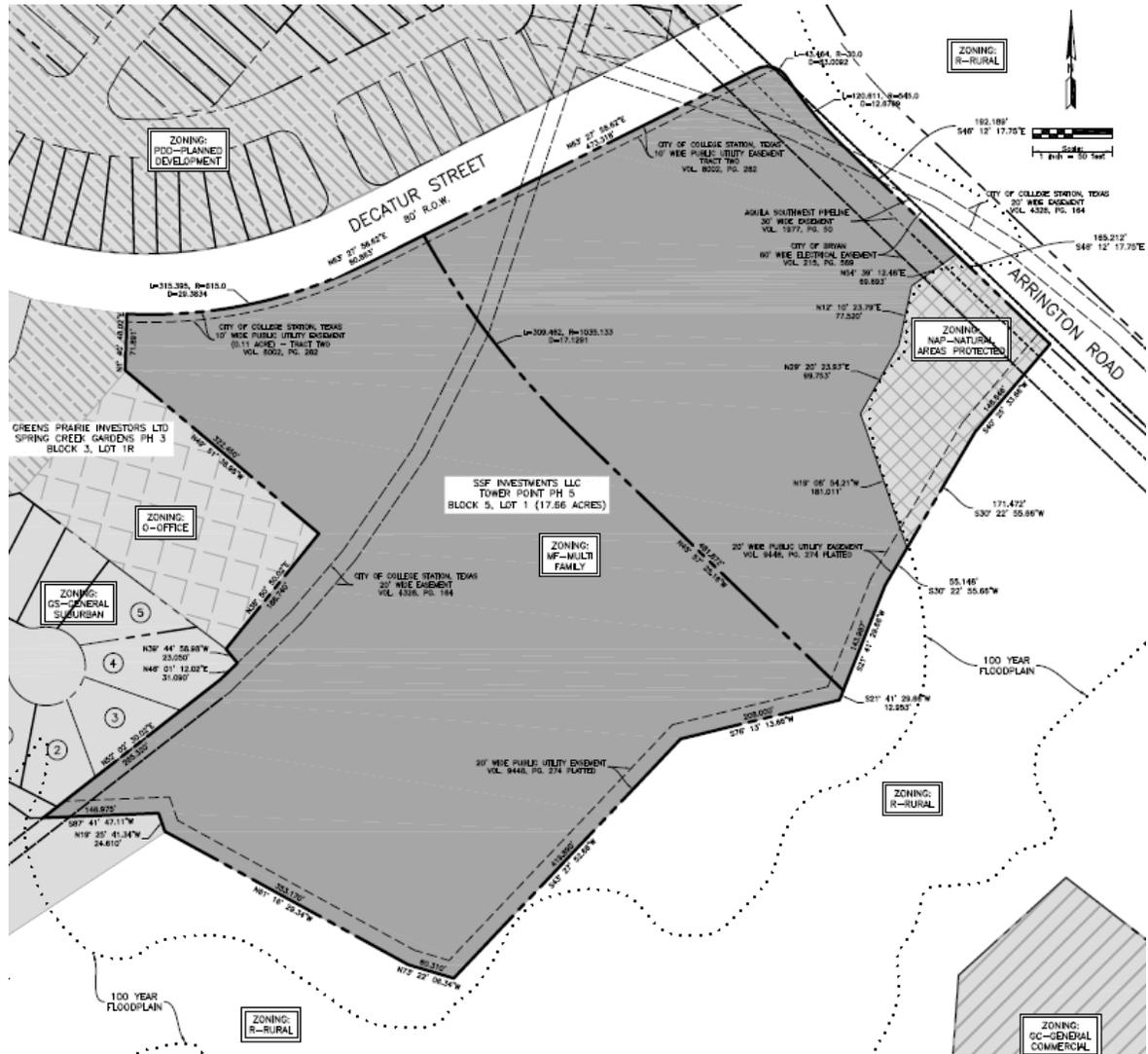
That Chapter 12, “Unified Development Ordinance,” Section 12-4.2, “Official Zoning Map,” of the Code of Ordinances of the City of College Station, Texas, is hereby amended as follows:

The following property is rezoned from O Office and GC General Commercial to MF Multi-Family and NAP Natural Areas Protected with the condition that no residential structures be constructed within the 135-ft buffer from significant hazards located on the abutting site containing oil and gas uses, as shown graphically in Exhibits “B”, “C”, & “D”:

Approximately 17.66 acres, being Lot 1, Block 5 of the Tower Point Phase 5 Subdivision, according to the plat recorded in Volume 9448, Page 274 of the official public records of Brazos County, Texas.



### EXHIBIT "C"



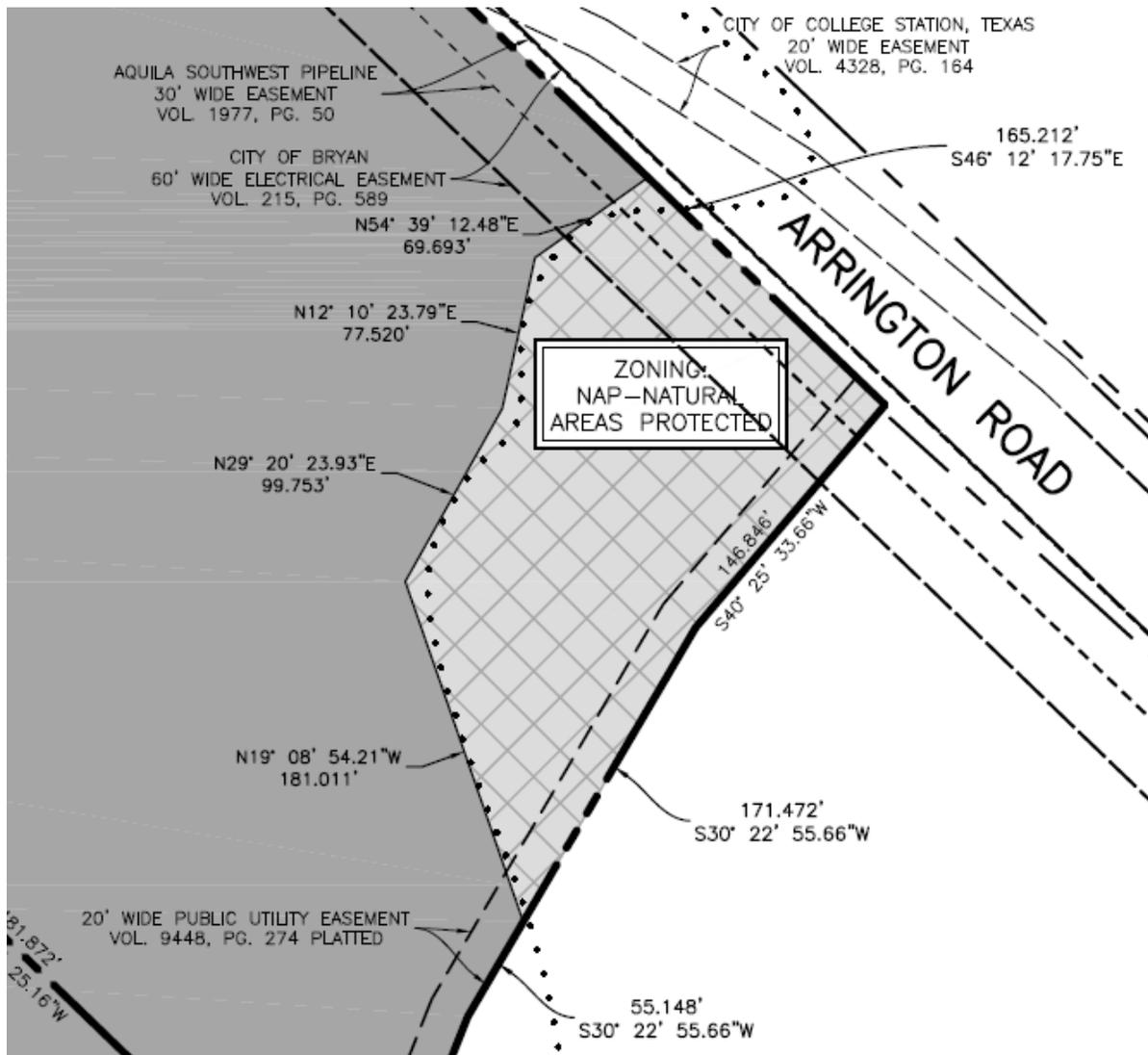


EXHIBIT "D"