



# College Station, TX

City Hall  
1101 Texas Ave  
College Station, TX 77840

## Meeting Agenda - Final

### City Council Regular

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**Thursday, April 14, 2016**

**7:00 PM**

**City Hall Council Chambers**

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

Hear Visitors: A citizen may address the City Council on any item which does not appear on the posted Agenda. Registration forms are available in the lobby and at the desk of the City Secretary. This form should be completed and delivered to the City Secretary by 5:30 pm. Please limit remarks to three minutes. A timer alarm will sound after 2 1/2 minutes to signal thirty seconds remaining to conclude your remarks. The City Council will receive the information, ask staff to look into the matter, or place the issue on a future agenda. Topics of operational concerns shall be directed to the City Manager. Comments should not personally attack other speakers, Council or staff.

#### Consent Agenda

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. [16-0205](#) Presentation, possible action, and discussion of minutes for:
- March 31, 2016 Workshop
  - March 31, 2016 Regular

**Sponsors:** Mashburn

**Attachments:** [WKSHPO33116 DRAFT Minutes.docx](#)  
[RM033116 DRAFT Minutes.docx](#)

- 2b. [16-0159](#) Presentation, possible action, and discussion on purchase quote with Med-Eng, LLC for the purchase of two (2) new Explosive Ordinance Device suits for a total amount of \$64,247.98.

**Sponsors:** Norris

**Attachments:** [MedEng Bomb Suit Quote.pdf](#)  
[EOD 10 Sole Source Letter - January 2016.pdf](#)

- 2c. [16-0178](#) Presentation, possible action, and discussion regarding approval of

a professional services contract #15300410 with Dunham Engineering for \$50,000 to provide design services to recoat four clarifiers at the Carters Creek Wastewater Treatment Plant.

**Sponsors:**

Coleman

- 2d. [16-0183](#) Presentation, possible action, and discussion on a construction contract with Progressive Commercial Aquatics, Inc. for \$79,722 for painting and repairs to the Adamson Lagoon flume slides and slide structures.

**Attachments:**

[College Station Adamson repaint](#)  
[16300350 Progressive Commercial Swim - reduced](#)

- 2e. [16-0188](#) Presentation, possible action, and discussion on a resolution amending the authorized representatives on the local government pool account, TexPool.

**Sponsors:**

Kersten

**Attachments:**

[TEXPOOL Resolution](#)

- 2f. [16-0189](#) Presentation, possible action, and discussion on a resolution amending the authorized representatives on the local government pool account, Texas Short Term Asset Reserve ("TexSTAR").

**Sponsors:**

Kersten

**Attachments:**

[TEXSTAR Resolution](#)

- 2g. [16-0196](#) Presentation, possible action, and discussion regarding a Real Estate Contract with Red Rock Alchemy, LLC conveying 5.621 acres of City property described as Lots 6-14, Block 1 of the Pooch's Park Subdivision Section One located at Holleman Drive at Lassie Lane in the amount of \$2,495,000.

**Sponsors:**

Ruiz and Eller

**Attachments:**

[Holleman Property - Location Map](#)  
[Real Estate Contract - Holleman](#)

- 2h. [16-0197](#) Presentation, possible action, and discussion to ratify an agreement between McAlister Opportunity Fund 2012, LP, and the City of College Station designating a two-acre site within the Brazos County Municipal Utility District #1 as a possible option site for a future fire station

**Sponsors:**

Hurt

**Attachments:**

[Option Site Agreement Executed.pdf](#)

- 2i. [16-0198](#) Presentation, possible action, and discussion on an ordinance amending Chapter 10, Traffic Code, Section 3, F., Temporary Speed Limits Established for Certain Described Streets, Traffic

Schedule XIII - Temporary Speed Limits Speed Limits, of the College Station Code of Ordinances by amending the posted speed limit on FM 2154 between Mile Post 15.513 to Mile Post 15.994 to 50 mph and Greens Prairie Trail from the intersection with FM 2154 to Flagstone Court to 35 mph for the duration of the Texas Department of Transportation managed FM 2154 & Greens Prairie Trail Intersection Improvements project when reduced speed limit signs are posted.

**Sponsors:**

Harmon

**Attachments:**

[FM 2154 Temporary Speed Limit Reduction Ordinance.docx](#)  
[Project Map.pdf](#)

- 2j. [16-0199](#) Presentation, possible action, and discussion regarding approval of the construction contract (Contract No. 16300229) with Brazos Paving in the amount of \$1,099,608.81 for the Luther Street Rehabilitation Project.

**Sponsors:**

Harmon

**Attachments:**

[Project Map.pdf](#)

- 2k. [16-0200](#) Presentation, possible action, and discussion on a construction contract (Contract No. 16300230) with Larry Young Paving in the amount of \$3,935,724.15 for the construction of the Rock Prairie Road Widening Project.

**Sponsors:**

Harmon

**Attachments:**

[Rock Prairie West location map GIS.pdf](#)

- 2l. [16-0201](#) Presentation, possible action, and discussion regarding approval of a Professional Services Contract (No. 16300135) with Half Associates Inc. in the amount of \$389,509 for the professional engineering services related to design and associated construction phase services of the Veterans Park and Athletic Complex Build-Out, Phase 1.

**Sponsors:**

Harmon

- 2m. [16-0202](#) Presentation, possible action, and discussion regarding approval of a resolution allowing the mayor to sign an Advance Funding Agreement with the Texas Department of Transportation (TXDOT) for the City of College Station's cost participation in the TXDOT FM 2154 and Green's Prairie Trail Intersection Improvements project.

**Sponsors:**

Harmon

**Attachments:**

[2 RES TXDOT-revised 452015.docx](#)  
[Partially\\_Execute AFA\\_FM2154\\_0540-04-072\\_CoCS.pdf](#)  
[Project Map.pdf](#)

## 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.

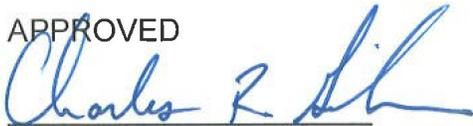
Individuals who wish to address the City Council on an item posted as a public hearing shall register with the City Secretary prior to the Mayor's announcement to open the public hearing. The Mayor will recognize individuals who wish to come forward to speak for or against the item. The speaker will 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.

## Adjourn.

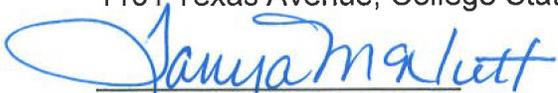
The City Council may adjourn into Executive Session to consider any item listed on this agenda if a matter is raised that is appropriate for Executive Session discussion. An announcement will be made of the basis for the Executive Session discussion.

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 April 8, 2016 at 5:00 p.m.



City Secretary

This building is wheelchair accessible. Persons with disabilities who plan to attend this meeting and who may need accommodations, auxiliary aids, or services such as interpreters, readers, or large print are asked to contact the City Secretary's Office at (979) 764-3541, TDD at 1-800-735-2989, or email [adaassistance@cstx.gov](mailto:adaassistance@cstx.gov) at least two business days prior to the meeting so that appropriate arrangements can be made.

If the City does not receive notification at least two business days prior to the meeting, the City will make a reasonable attempt to provide the necessary accommodations.

**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 #:** 16-0205      **Version:** 1      **Name:** Minutes  
**Type:** Minutes      **Status:** Consent Agenda  
**File created:** 4/4/2016      **In control:** City Council Regular  
**On agenda:** 4/14/2016      **Final action:**  
**Title:** Presentation, possible action, and discussion of minutes for:  
• March 31, 2016 Workshop  
• March 31, 2016 Regular  
**Sponsors:** Sherry Mashburn  
**Indexes:**  
**Code sections:**  
**Attachments:** [WKSHP033116 DRAFT Minutes.pdf](#)  
[RM033116 DRAFT Minutes.pdf](#)

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

- March 31, 2016 Workshop
- March 31, 2016 Regular

Relationship to Strategic Goals:

- Good Governance

Recommendation(s): Approval

Summary: None

Budget & Financial Summary: None

Attachments:

- March 31, 2016 Workshop
- March 31, 2016 Regular

MINUTES OF THE CITY COUNCIL WORKSHOP  
CITY OF COLLEGE STATION  
MARCH 31, 2016

STATE OF TEXAS           §  
  §  
COUNTY OF BRAZOS       §

**Present:**

Nancy Berry, Mayor

**Council:**

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

**TAMU Student Liaison**

Wayne Beckermann, VP/Municipal Affairs

**City Staff:**

Kelly Templin, City Manager  
Chuck Gilman, Deputy City Manager  
Carla Robinson, City Attorney  
Ian Whittenton, Records Management Administrator  
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 4:30 p.m. on Thursday, March 31, 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, §551.072-Real Estate, and §551.074-Personnel, the College Station City Council convened into Executive Session at 4:30 p.m. on Thursday, March 31, 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 related to the proposed economic development non-profit corporation
- Legal issues related to the contracts associated with the Enterprise Resource Planning (ERP) System
- Legal advice related to a pole attachment collection matter
- Legal issues related to the City's funding of and possible guarantee for a lease for certain funding partners

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

- Property located generally in the west side ETJ area adjacent to the College Station, Brazos County, Texas, city limits on North Dowling Rd.

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

- Council Self Evaluation

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

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

**MOTION:** Upon a motion made by Councilmember Mooney and seconded by Councilmember Aldrich, the City Council voted six (6) for and none (0) opposed, to authorize the City Manager to negotiate a reasonable and favorable settlement in the pole attachment collection matter and authorize the City Manager to execute all documents to complete the settlement.

**MOTION:** Upon a motion made by Councilmember Nichols and seconded by Councilmember Berry, the City Council voted six (6) for and none (0) opposed, to approve and ratify the terms of a settlement agreement between the City and Embrace Brazos Valley to settle: City of College Station Texas v. Embrace Brazos Valley, Inc.; Cause No. 15-000804-CV-85, in the 85<sup>th</sup> Judicial District Court of Brazos Count, Texas, for the proceeds from the sale of 4205 Cedar Creek Ct, Lot 3 Block 2 of Creek Meadows, Sec 4, Phase 1 in College Station, Texas and give the City Manager authority to execute and approve any documents relate to the settlement.

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

**(2f):** Jeff Kersten, Assistant City Manager, gave clarification on the certificate of obligation process.

**(2h):** Donald Harmon, Director of Public Works and David Schmitz, Director of Parks and Recreation, gave clarification on public engagement with regards to the design of the Larry J. Ringer library expansion project.

**5. Presentation, possible action, and discussion relating to receiving the annual audit reports and Comprehensive Annual Financial Report (CAFR) for the fiscal year ended September 30, 2015.**

Jeff Kersten, Assistant City Manager, introduced Jimmy Ingram of Ingram, Wallis & Associates, who presented the results of the fiscal year 2015 audit and the 2015 CAFR. This item was presented to the Audit Committee on March 29th. The reports provide a summary of the City's financial position as of September 30, 2015.

**6. Presentation, possible action, and discussion regarding the status of the Fun For All Park Project.**

David Schmitz, Director of Parks and Recreation, reported that the Fun for All Park Project will be designed as a new all-abilities fully accessible park to provide inclusive play for everyone. The improvements will be added to the existing Stephen C. Beachy Central Park and will be constructed primarily by funds donated by charitable civic groups, as well as private citizens. The design contract is included on the consent agenda. Budget for the design of the Fun for All Park Project is included in the Community Park Land Zone C Fund and the Neighborhood Park Land Zone 3 Fund.

Mr. Schmitz also introduced Werner Rose, College Station Rotary, and David Gerling and Craig Griffith, College Station Noon Lions, who gave an update on organizing, planning, and community engagement activities related to the fundraising for this project. They reported over \$1,000,000 in cash and pledges with over \$465,000 of that having already been received.

**7. Council Calendar**

Council reviewed the calendar.

**8. 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.**

There were no future agenda items.

**9. Discussion, review and possible action regarding the following meetings: Animal Shelter Board, Annexation Task Force, Arts Council of Brazos Valley, Arts Council Sub-committee, 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,**

Mayor Berry reported on the Research Valley Partnership.

Councilmember Nichols reported on the Convention and Visitors Bureau.

Councilmember Brick reported on the Transportation and Mobility Committee.

Councilmember Nichols noted that National Public Health Week is April 4<sup>th</sup>-10<sup>th</sup>.

Councilmember Mooney reported that on April 5, the YMCA Natatorium Advisory Council will visit a current YMCA in the Woodlands for planning purposes.

Councilmember Aldrich noted that the Arts Council of the Brazos Valley will host Boots and BBQ on April 2<sup>nd</sup>.

## **10. Adjournment**

There being no further business, Mayor Berry adjourned the workshop of the College Station City Council at 7:04 p.m. on Thursday, March 31, 2016.

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

ATTEST:

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

MINUTES OF THE REGULAR CITY COUNCIL MEETING  
CITY OF COLLEGE STATION  
MARCH 31, 2016

STATE OF TEXAS           §  
  §  
COUNTY OF BRAZOS       §

**Present:**

Nancy Berry, Mayor

**Council:**

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

**City Staff:**

Kelly Templin, City Manager  
Carla Robinson, City Attorney  
Chuck Gilman, Deputy City Manager  
Ian Whittenton, Records Management Administrator  
Tanya McNutt, Deputy City Secretary

**TAMU Student Liaison**

Wayne Beckermann, VP/Municipal Affairs

**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 7:15 p.m. on Thursday, March 31, 2016 in the Council Chambers of the City of College Station City Hall, 1101 Texas Avenue, College Station, Texas 77840.

**MOTION:** Upon a motion made by Councilmember Nichols and a second by Councilmember Moony, the City Council voted six (6) for and none (0) opposed, to approve the Absence Request by Councilmember Benham. The motion carried unanimously.

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

**Presentation**

**Proclamation recognizing National Community Development Week.**

Mayor Berry presented the proclamation to Community Development staff, proclaiming March 28 – April 2 as National Community Development Week.

Mayor Berry accepted a gift from the City of Koriyam, Japan, presented by Layne and Keiko Westover, in gratitude for College Station families who hosted ten Japanese middle school and high school students during the past week.

### **Hear Visitors Comments**

Ben Roper, 5449 Prairie Dawn Ct., came before Council to honor the service and sacrifice of Staff Sgt. Roland L. Castro.

Robert Rose, 3201 Walnut Creek Ct., Bryan, came before council to raise the awareness of air quality monitoring in College Station and request that council consider monitoring stations.

Buck Prewitt, 2302 Scotney Court, came before council to request that council consider postponing a decision and conduct additional stakeholder meetings on the issue of concrete paving standards. He also requested that the Impact Fee Advisory Committee include a member of the Bryan-College Station Home Builders Association.

Stephan Turner, 2901 Camille Dr., stated that she does not believe traffic patterns have been improved nor safety enhanced at Brothers Boulevard into the Southwood Valley Elementary School by Ordinance 2015-3714 and requested that Council take appropriate action to determine whether its goals were met after the implementation of the new traffic pattern.

### **CONSENT AGENDA**

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

- **March 10, 2016 Workshop**
- **March 10, 2016 Regular Meeting**

**2b. Presentation, possible action, and discussion on approval of a construction contract with Jamail and Smith Construction, LP; in the amount of \$137,644.43, for installation of new chain link fence and wood decking at Bee Creek, Jack and Dorothy Miller, Luther Jones, Central, and Wolf Pen Creek Parks.**

**2c. Presentation, possible action, and discussion regarding approval of a contract between the City of College Station and H&B Construction, LTD. in the not to exceed amount of \$1,500,000 for Annual Electric System Construction & Maintenance Labor.**

**2d. Presentation, possible action, and discussion on a bid award for the purchase of various electric capacitor banks which will be maintained in electrical inventory and expended as needed. The total recommended award is \$52,425 and will be awarded to the lowest responsible bidder.**

**2e. Presentation, possible action, and discussion on the first renewal of a price agreement with Techline, Inc., for the annual purchase of wire and cable not to exceed \$659,700.**

**2f. Presentation, possible action, and discussion to approve Resolution 03-31-16-2f, by the City Council of the City of College Station, Texas, directing publication of notice of intention to issue certificates of obligation, series 2016; and providing an effective date.**

**2g. Presentation, possible action, and discussion regarding a Professional Services Contract (Contract No. 16300291) with Luna Architecture & Design, Inc. in the amount of \$207,390 for the professional engineering services related to the design of the Fun for All Park Project.**

**2h. Presentation, possible action, and discussion regarding the approval of a Professional Services Contract (Contract No. 16300336) with Komatsu Architecture in the amount of \$727,453 for the design, bidding, and construction administration for the Larry J. Ringer Library Expansion project.**

**2i. Presentation, possible action, and discussion regarding approval of a construction contract (Contract No. 16300237) with SJ&J Construction, LLC in the amount of \$167,088 for the Southland Drainage Improvements project.**

**2j. Presentation, possible action, and discussion regarding a Professional Services Contract (No. 16300323) with Mitchell & Morgan, LLP. in the amount of \$944,474 for the professional engineering services related to the preliminary and final design and associated construction phase services of the Lakeway Drive-Pebble Creek Parkway Extension Project, and approval of Resolution 03-31-16-2j, declaring intention to reimburse certain expenditures with proceeds from debt.**

**2k. Presentation, possible action, and discussion on a Professional Services Contract (No. 16300034) with Don Durden, Inc. dba Civil Engineering Consultants in the amount of \$58,000 for the Preliminary Engineering Report related to Southside Improvements: Park Place, Holik, Glade, and Anna Streets Project.**

**2l. Presentation, possible action, and discussion to approve an Interlocal Agreement between City of College Station and Wellborn Special Utility District for the cost participation in relocation of Wellborn Special Utility District infrastructure due to the roadway improvements at Greens Prairie Trail and FM 2154.**

**2m. Presentation, possible action, and discussion on Ordinance 2016-\_\_\_, amending Chapter 1, "General Provisions" Section 17 "Certain Acts Prohibited on Public and Private Property" of the Code of Ordinances of the City of College Station, Texas prohibiting the distribution of handbills on public facilities, providing a severability clause, declaring a penalty, and providing an effective date.**

Mayor Berry noted that item 2m was pulled from the agenda and will be considered at a later date.

**MOTION:** Upon a motion made by Councilmember Mooney and a second by Councilmember Shultz, the City Council voted six (6) for and none (0) opposed, to approve the Consent Agenda, less item 2m. The motion carried unanimously.

## **REGULAR AGENDA**

**1. Public Hearing, presentation, possible action, and discussion regarding Ordinance 2016-3755, amending Chapter 10, "Traffic Code," of the Code of Ordinances of the City of College Station, Texas, to remove parking along the 500 Block of First Street and the 200 Block of Spruce Street.**

Danielle Singh, Planning and Development, reported that this item amends Chapter 10 "Traffic Code," by removing parking from the 500 Block of First Street and the 200 Block of Spruce Street. The parking removal is needed to allow aerial fire access to the Sterling Northgate Apartments (currently under development). Letters were mailed to the property owners adjacent to the parking removal. Additionally, on March 1. The applicant held a meeting with the property owners to discuss the parking removal.

At approximately 7:42 p.m., Mayor Berry opened the Public Hearing.

There being no comments, the Public Hearing was closed at 7:42 p.m.

**MOTION:** Upon a motion made by Councilmember Mooney and a second by Councilmember Schultz, the City Council voted six (6) for and none (0) opposed, to adopt Ordinance 2016-3755, amending Chapter 10, "Traffic Code," of the Code of Ordinances of the City of College Station, Texas, to remove parking along the 500 Block of First Street and the 200 Block of Spruce Street. The motion carried unanimously.

**2. Public Hearing, presentation, possible action, and discussion regarding Ordinance 2016-3756, 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 PDD Planned Development District for approximately 2 acres being A&M Super Storage at Wellborn, Block 1, Lot 1, College Station, Brazos County, Texas, located at 4000 Greens Prairie Road West, generally located near the intersection of Wellborn Road and Greens Prairie Road West.**

Jessica Bullock, Planning and Development, reported that the applicant is requesting a Planned Development District zoning on approximately two acres to expand an existing commercial use in the Wellborn Community. The site is currently developed as A&M Super Storage, which started when the property was located in the Extraterritorial Jurisdiction (ETJ). The PDD uses a base zoning district of Suburban Commercial and aims to make the current use and some development characteristics conforming such as setbacks, single-family height protection, signage, covered/uncovered storage, and paving standards.

The Planning and Zoning Commission considered this item on March 3 and voted 4-0-1 to recommend approval.

At approximately 7:50 p.m., Mayor Berry opened the Public Hearing.

There being no comments, the Public Hearing was closed at 7:50 p.m.

**MOTION:** Upon a motion made by Councilmember Nichols and a second by Councilmember Schultz, the City Council voted six (6) for and none (0) opposed, to adopt Ordinance 2016-3756, 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 PDD Planned Development District for approximately 2 acres being A&M Super Storage at Wellborn, Block 1, Lot 1, College Station, Brazos County, Texas, located at 4000 Greens Prairie Road West, generally located near the intersection of Wellborn Road and Greens Prairie Road West. The motion carried unanimously.

**3. Presentation, possible action, and discussion on appointing a Capital Improvements Advisory Committee (aka Impact Fee Advisory Committee or "IFAC") to consider the imposition of a roadway impact fee.**

**4. Presentation, possible action, and discussion on appointing a Capital Improvements Advisory Committee (aka Impact Fee Advisory Committee or "IFAC") to consider the imposition of Water and/or Wastewater impact fee(s).**

Items 3 & 4 were presented and discussed together.

**MOTION:** Upon a motion made by Councilmember Aldrich and a second by Councilmember Nichols, the City Council voted six (6) for and none (0) against, to appoint the following to the Roadway Capital Improvements Advisory Committee (aka Roadway Impact Fee Advisory Committee): Planning and Zoning Commission, Randy French, and Don Hellriegel, as well as to appoint the following to the Water and/or Wastewater Capital Improvements Advisory Committee (aka Water and/or Wastewater Impact Fee Advisory Committee): Planning and Zoning Commission and Randy French, Don Hellriegel, and Roger Kirk Joseph. The motion carried unanimously.

**5. Adjournment.**

There being no further business, Mayor Berry adjourned the Regular Meeting of the City Council at 8:15 p.m. on Thursday, March 31, 2016.

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

ATTEST:

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



## Legislation Details (With Text)

<b>File #:</b>	16-0159	<b>Version:</b>	1	<b>Name:</b>	Bid Award to Med-Eng
<b>Type:</b>	Bid Award	<b>Status:</b>		<b>Status:</b>	Consent Agenda
<b>File created:</b>	3/14/2016	<b>In control:</b>		<b>In control:</b>	City Council Regular
<b>On agenda:</b>	4/14/2016	<b>Final action:</b>		<b>Final action:</b>	
<b>Title:</b>	Presentation, possible action, and discussion on purchase quote with Med-Eng, LLC for the purchase of two (2) new Explosive Ordinance Device suits for a total amount of \$64,247.98.				
<b>Sponsors:</b>	Brandy Norris				
<b>Indexes:</b>					
<b>Code sections:</b>					
<b>Attachments:</b>	<a href="#">MedEng Bomb Suit Quote.pdf</a> <a href="#">EOD 10 Sole Source Letter - January 2016.pdf</a>				

Date	Ver.	Action By	Action	Result
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Presentation, possible action, and discussion on purchase quote with Med-Eng, LLC for the purchase of two (2) new Explosive Ordinance Device suits for a total amount of \$64,247.98.

Relationship to Strategic Goals: (Select all that apply)

- Core Services and Infrastructure

Recommendation(s): Staff Recommends Council Approval

Summary: The Police Department's Bomb Unit is a regional asset that serves the City of College Station as well as all counties within the seven county Council of Governments region. The explosive ordinance device suits, or bomb suits, that the technicians are currently utilizing have expired and the suits must be replaced. The new suits that need to be purchased are the latest in the market and have a life of seven years, at which time new suits will need to be purchased again. Only one quote was received for this purchase because Med-Eng is a sole source provider of the bomb suits.

Budget & Financial Summary: The total cost of \$64,247.98 will provide two suits the bomb technicians. At this time, it is not believed that the Police Department's budget has the capacity to purchase the suits. However, it is of utmost importance that the bomb technicians be outfitted in unexpired safety equipment. The purchase of these suits can be made with the Police Department's seizure funds. If, upon a complete budget analysis, it is determined that one of the suits can be supported by the general Police Department budget, a transfer will be done at that time to replenish the seizure funds utilized.

Attachments:

1. Copy of quote from Med-Eng
2. Sole Source Letter from Med-Eng





MED-ENG, LLC.  
 103 Tulloch Drive  
 Ogdensburg, NY 13669, USA  
 Toll Free: 1-855-633-3649  
 Tel: 1-613-482-8835  
 Fax: 1-613-482-4991  
 med-engsales@safariland.com  
 www.med-eng.com www.med-eng.com

## QUOTATION

**Quote ID**  
 QUO-06209-L6M0P8

**Customer ID**  
 4001055

<b>Customer:</b>	College Station Police Dept 2611 Texas Ave. South College Station TX UNITED STATES 77840	<b>Ship To:</b>	College Station Police Dept 2611 Texas Ave. South College Station TX UNITED STATES 77840
<b>Contact:</b>	JAMES WOODWARD		

Date	Payment Terms	Lead Time *	Expiry Date	Inco term	End user	Currency
2/16/16	01 - Net 30	24 Wks A.R.O.	8/10/16	DDP - TX	COLLEGE STATION	US Dollar

Item No.	Part Number	Quantity	Unit	Unit Price	Discount	Total Price
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\*\*\*\*\*  
 \*BOTH BATTERY AND FOOT PROTECTION HAVE BEEN INCLUDED\*  
 \*\*\*\*\*

1.	8000502	1.00	EA	\$16,743.00	\$0.00	\$16,743.00
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SUIT KIT EOD 10 OLIVE DRAB MEDIUM  
 The EOD 10 Bomb Suit Ensemble has been engineered to provide superior protection against the threats of an explosive blast: overpressure, fragmentation, impact and heat. The most ergonomic full coverage ensemble in the industry today, the EOD 10 has achieved an unprecedented optimal balance between protection and flexibility through the meticulous distribution of protective materials over the body. A sliding groin plate easily retracts to allow for crouching, bending and climbing movements. The EOD 10 has been designed to provide maximum protection, while still permitting a high degree of flexibility and comfort to facilitate the conduct of operational duties.  
 The EOD 10 Bomb Suit (standard configuration) includes: Jacket Rear with Back Protector and Multi-Connector Cable

**\* Lead time subject to change due to product availability at time of order**

MED-ENG, LLC will not be bound by any additional terms and conditions, whether contained in a purchase order or other document, unless expressly agreed to by MED-ENG, LLC in writing or within our order acknowledgement. Delivery of product is subject to raw material availability. MED-ENG, LLC Terms and Conditions of Sale apply. These terms can be viewed at [www.med-eng.com](http://www.med-eng.com)



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## QUOTATION

(MCC), Trousers, Grounding Strap, Carry Bag, Steel Hanger (for drying only), and User Manual & Thumb Drive. Medium (MD) - Fits: Height: 165 - 177 cm (5'5" - 5'10")

NSN:

2.	8000619	1.00	EA	\$16,743.00	\$0.00	<b>\$16,743.00</b>
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**SUIT KIT EOD 10 OLIVE DRAB LARGE**  
 The EOD 10 Bomb Suit Ensemble has been engineered to provide superior protection against the threats of an explosive blast: overpressure, fragmentation, impact and heat. The most ergonomic full coverage ensemble in the industry today, the EOD 10 has achieved an unprecedented optimal balance between protection and flexibility through the meticulous distribution of protective materials over the body. A sliding groin plate easily retracts to allow for crouching, bending and climbing movements. The EOD 10 has been designed to provide maximum protection, while still permitting a high degree of flexibility and comfort to facilitate the conduct of operational duties.  
 The EOD 10 Bomb Suit (standard configuration) includes: Jacket Rear with Back Protector and Multi-Connector Cable (MCC), Trousers, Grounding Strap, Carry Bag, Steel Hanger (for drying only), and User Manual & Thumb Drive.  
 Large (LG) - Fits: Height: 177 - 189 cm (5'10" - 6'2")

NSN:

3.	8000737	2.00	EA	\$13,873.00	\$0.00	<b>\$27,746.00</b>
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**EOD 10 HELMET KIT, OLIVE**  
 The EOD 10 Helmet Platform includes the following features: Inflatable Sizing and Comfort Liner System, 4 Point Retention System, Primary Electronics Module (PEM), Advanced Remote Control Unit (RCU), Inflation Bulb, Communications System Compatibility, Rechargeable Battery Pouch, EOD and Optional Breathing Apparatus (BA) Visor Compatibility (both visors feature

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## QUOTATION

built-in White, Red, and Blue searchlights).

NSN:

4.	8000568	2.00	EA	\$150.00	\$0.00	<b>\$300.00</b>
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FRONT FOOT PROTECTION - PAIR  
Toe protector a standard component with the purchase of an EOD10 ensemble. This protector only covers the front of the foot. Thge full foot protector component is an upgrade to the toe protector.

NSN:

5.	8000807	1.00	EA	\$285.00	\$0.00	<b>\$285.00</b>
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FULL FOOT PROTECTION - PAIR

NSN:

6.	8001062	2.00	EA	\$734.99	\$0.00	<b>\$1,469.98</b>
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AA Battery Housing w/24 AA Cells KIT  
The EOD 10 AA Battery Pack includes the shielded battery container, a pouch to attach to the suit, and 24 Alkaline Batteries. This battery has been rated for Electromagnetic Compliance (EMI/EMC).

NSN:

7.	8001061	1.00	EA	\$961.00	\$0.00	<b>\$961.00</b>
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BB-2590 Battery w/Charger KIT  
The BB-2590 Li-Ion Rechargeable Battery will provide up to 8 hours of operational time for the EOD 10 Bomb Suit Ensemble. This battery has been rated for Electromagnetic Compliance (EMI/EMC). This battery is classified as a Dangerous Good by IATA and the TDGA.

NSN:

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## QUOTATION

<b>Sub-Total:</b>	<b>\$64,247.98</b>
<b>Total Discount:</b>	<b>\$0.00</b>
<b>Total Freight Amount:</b>	
<b>Total Misc Amount</b>	<b>\$0.00</b>
<b>Total Sales Tax:</b>	<b>\$0.00</b>
<b>Total Amount:</b>	<b>\$64,247.98</b>

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February 9, 2016

### **SOLE SOURCE VENDOR STATEMENT**

This letter is to certify that Med-Eng, LLC is the sole manufacturer for our EOD/IEDD Protective Equipment in North America. This equipment includes the newly redesigned EOD 10 Bomb Suit and Helmet, EOD 9 Bomb Suit and Helmet and the TAC 6 Protective ensemble.

In January 2016 the EOD 10 Bomb Suit and Helmet ensemble was introduced. The Suit and Helmet work as an integrated system of materials and electronics that defines the next generation of Explosive Ordnance Disposal Personal Protective Equipment (EOD PPE).

In September 2004 the EOD 9 ensemble was introduced. The EOD 9 ensemble provides modular protection and operational flexibility for EOD and CBRNE missions. The EOD 9 helmet features interchangeable visors, standard and BA (Breathing Apparatus). The optional BA visor accommodates various respirators and has a remote control module that mounts on the right or left arm.

The TAC 6 uses modular and scalable components to enable users to very easily and quickly reconfigure their protection for use in a wide range of missions. Each protective item is ergonomically designed to allow for a full range of motion and greatly reduce the strain experienced by EOD and Tactical First Responders. Including the TAC Visor Systems (includes the TAC-250, TAC-250-BA, TAC-450, & TAC-550).

#### **OTHER ACCESSORIES:**

All Med-Eng suits are compatible with Med-Eng Body Cooling Systems, such as the BCS4. In the event of a CBRNE mission requiring the EOD 9, it is recommended that the CPU (chemical protective undergarment) be worn, as stipulated by a response unit's own operating procedures, with the EOD 9 and SRS 5 protective ensembles. Additionally, Med-Eng offers a Hard Wire communication system for EOD/IEDD Explosive Protection Systems. The HW-300 communication system should reduce the risks of inducing radio frequency (FR) signals into an improvised explosive device (IED).

#### **REMOTE HANDLING TOOLS:**

Remote handling equipment and tools that complement robotic vehicles or that may be used independently in a stand-alone configuration are available from Med-Eng, allowing the user to maintain minimum safety distances from a suspected device.

Remote handling tools, including all Hook and Line kits such as the HAL General Service Kits (GS& GS Lite), the HAL Vehicle and Building Kits (VK & BK), the HAL Access Kit (AK), the HAL Tactical Kit and the TM-600 Robotic Manipulator, have aided in minimizing human exposure to an explosive device. The HAL GS Kits feature new or redesigned components designed to increase functionality and operational efficiency.

Included along with remote handling tools are Med-Eng's lines of telescopic mirrors, demolition tools, including the Remote Firing Initiator (RFI A, RFI B, and RFI C), the DXIO-U and Med-Eng's line of crimpers and cutters.

103 Tulloch Drive  
Ogdensburg, NY 13669  
USA  
1-315-713-0130



Med-Eng offers a limited lifetime warranty on its Hook and Line (HAL) products; a one (1) year limited warranty on all other remote handling and demolition tools, and a limited two (2) year manufacturer's warranty on bomb suits and other accessories. All service repairs are performed at either our facility in Pembroke, Ontario, Canada or Ogdensburg, NY, USA, by authorized Med-Eng technicians.

Sincerely,

A handwritten signature in black ink that reads 'Danny Young'.

Danny Young  
Product Line Director  
Med-Eng, LLC



## Legislation Details (With Text)

**File #:** 16-0178      **Version:** 1      **Name:** Clarifier Recoat Design  
**Type:** Contract      **Status:** Consent Agenda  
**File created:** 3/18/2016      **In control:** City Council Regular  
**On agenda:** 4/14/2016      **Final action:**

**Title:** Presentation, possible action, and discussion regarding approval of a professional services contract #15300410 with Dunham Engineering for \$50,000 to provide design services to recoat four clarifiers at the Carters Creek Wastewater Treatment Plant.

**Sponsors:** David Coleman

**Indexes:**

**Code sections:**

**Attachments:**

Date	Ver.	Action By	Action	Result
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Presentation, possible action, and discussion regarding approval of a professional services contract #15300410 with Dunham Engineering for \$50,000 to provide design services to recoat four clarifiers at the Carters Creek Wastewater Treatment Plant.

Relationship to Strategic Goals: Core services and infrastructure

Recommendation: Staff recommends approval of this contract.

Summary: The Carters Creek Wastewater Treatment Plant has 8 clarifiers that allow solids to settle out of the water. They are large circular concrete basins that have conical bottoms and a rotating steel structure that sweeps the bottom and collects the solids, as well as weirs to allow clear water to flow out of the basin. In 4 of the clarifiers, these steel components were last painted 10 years ago, and they are due to be recoated, to extend their service life. This design contract will provide a bid package to recoat the steel components of clarifiers 2A, 2B, 3A, and 3B.

The scope of the contract includes:

- Engineering design specifications & drawings for construction/repairs.
- Provide recommendation for lowest responsive bidder.
- Inspect the construction to ensure work quality & contract compliance.
- Review and recommend/approve Contractor pay applications.
- Review and recommend/approve contract change orders, if needed.
- Provide substantial completion inspection and create punch-list.
- Provide warranty inspection prior to expiration, and coordinate completion of any required warranty repairs.

Dunham Engineering has previous experience with this equipment and does an excellent job with projects like this. The Dunham President signed this contract in August 2015, but staff delayed the

execution for operational reasons, and Dunham has confirmed they are still good with the price and scope. Staff recommends approval of the contract.

Budget & Financial Summary: Funds are available in the Wastewater Operations Budget.

Reviewed and Approved by Legal: Yes

Attachment: Contract available in City Secretary's office



## Legislation Details (With Text)

**File #:** 16-0183      **Version:** 1      **Name:** Construction Contract # 16300350  
Painting and Repair of Adamson Lagoon Slide

**Type:** Presentation      **Status:** Consent Agenda

**File created:** 3/24/2016      **In control:** City Council Regular

**On agenda:** 4/14/2016      **Final action:**

**Title:** Presentation, possible action, and discussion on a construction contract with Progressive Commercial Aquatics, Inc. for \$79,722 for painting and repairs to the Adamson Lagoon flume slides and slide structures.

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** [College Station Adamson repaint](#)  
[16300350 Progressive Commercial Swim - reduced](#)

Date	Ver.	Action By	Action	Result
------	------	-----------	--------	--------

Presentation, possible action, and discussion on a construction contract with Progressive Commercial Aquatics, Inc. for \$79,722 for painting and repairs to the Adamson Lagoon flume slides and slide structures.

**Relationship to Strategic Goal:** Neighborhood Integrity; Diverse Growing Economy

**Recommendation(s):** Staff recommends approval and award of the construction contract with Progressive Commercial Aquatics, Inc.; for the painting of Adamson Lagoon slide structure and flumes, in the amount of \$79,722 and twenty five (25) construction days.

**Summary:** The proposed contract includes repainting both slides; inside and out. Repair of any fiberglass, re-caulking the seams of each slide, and checking bolts and replacing where needed. In addition, the entire metal slide structure itself will be sanded, primed, and repainted.

**Budget & Financial Summary:** Progressive Commercial Aquatics, Inc.; a Buy Board Contractor, was asked to submit a quote for the repair and painting of both flumes, as well as the metal slide structure at Adamson Lagoon. Buy Board Contractors vendors have been competitively procured, so members automatically have compliance with Texas local and state procurement requirements. Funds are available from the general fund allocated through the SLA process of the FY '16 budget.

**Attachments:**

1. Painting and refurbishing Proposal
2. Construction Contract with Progressive Commercial Aquatics, Inc., (on file in the City Secretary's

Office)



Project Name: Adamson Lagoon Slides  
Attn: Amy Atkins  
Date: 3/16/16  
Buyboard#451-14

**Quote:**

- \$45,000.00 ---BOTH Slides Refinished inside and out with the color of their choosing. Seams removed and re-caulked, any fiberglass repair work, bolts checked, and replaced where needed.
- \$32,400.00— Slide Structure sand/prime/repaint.
- Since Payment Performance Bond is needed please add 3% to the total which is \$2,322.
- Estimated time to complete the slide resurfacing and structure would be between 20-25 days.
- Buyboard Hourly Rate is \$95/hr plus all materials and travel. Refinishing Projects are all custom to each facility so each facility is quoted based on amount of labor, materials and travel.

**Grand Total with Bond: \$79,722**

Myles Phelps  
Progressive Commercial Aquatics, Inc.

15616 Schmidt Loop Manor, Texas 78653 (512) 278-0801 Fax (512) 350-2154  
Website [www.proaquatic.com](http://www.proaquatic.com) E-Mail [TPHELPS4@austin.rr.com](mailto:TPHELPS4@austin.rr.com)

**CITY OF COLLEGE STATION  
STANDARD FORM OF CONSTRUCTION AGREEMENT**

**CONTRACT NO. 16300350**

This Agreement is entered into by and between the **City of College Station**, a Texas home-rule municipal corporation (the "City") and **Progressive Commercial Aquatics, Inc.**, a corporation (the "Contractor"), for the construction and/or installation of Painting and Repair of Adamson Lagoon Slides.

**1. DEFINITIONS**

- 1.01. Calendar Day. A "calendar day" is any day of the week or month, no days being excepted.
- 1.02. City. Whenever the word "City" is used, it shall mean and be understood as referring to the City of College Station, Texas.
- 1.03. City's Representative. Whenever the words "City's Representative" or "Representative" are used, it shall mean and be understood as referring to the City Manager or his delegate, who shall act as City's agent. The City's Representative may inspect and issue instructions but shall not directly supervise the Contractor.
- 1.04. Contract Amount. The term "Contract Amount" shall mean the amount of Contractor's lump sum base bid proposal, together with all alternates, as accepted by the City in accordance with the Contractor's Proposal. In the case of a unit price contract, Contract Amount shall mean the sum of the product of all unit prices times the respective estimated final quantities of work, for all base bid and alternates, as accepted by the City.
- 1.05. Contract Documents. The term "Contract Documents" shall mean those documents listed in Paragraph 2.01.
- 1.06. Contractor. Whenever the word "Contractor" is used, it shall mean the person(s), partnership, or corporation who has agreed to perform the work embraced in this Agreement and the other Contract Documents.
- 1.07. Extra Work. The term "Extra Work" shall mean and include work that is **not** covered or contemplated by the Contract Documents but that may be required by City's Representative and approved by the City in writing *prior* to the work being done by the Contractor.
- 1.08. Final Completion. The term "Final Completion" shall mean that all the work has been completed, all final punch list items have been inspected and satisfactorily completed, all payments to materialmen and subcontractors have been made, all documentation and warranties have been submitted, and all closeout documents have been executed and approved by the City.
- 1.09. Interpretation of Phrases. Whenever the words "directed", "permitted", "designated", "required", "considered necessary", "prescribed", or words of like import are used, it is understood that the direction, requirement, permission, order, designation, or prescription of City's Representative is intended. Similarly, the words "approved", "acceptable", "satisfactory", or words of like import shall mean approved by, accepted by, or satisfactory to City's Representative.
- 1.10. Nonconforming work. The term "nonconforming work" shall mean work or any part thereof that is rejected by City's Representative as not conforming with the Contract Documents.
- 1.11. Parties. The "parties" are the City and the Contractor.

1.12. Project. The term "Project" shall mean and include all that is required to obtain a final product that is acceptable to the City. The term "work" shall have like meaning.

1.13. Subcontractor. The term "subcontractor" shall mean and include only those hired by and having a direct contact with Contractor for performance of work on the Project. The City shall have no responsibility to any subcontractor employed by a Contractor for performance of work on the Project, and all subcontractors shall look exclusively to the Contractor for any payments due.

1.14. Substantially Completed. The term "Substantially Completed" means that in the opinion of the City's Representative the Project, including all systems and improvements, is in a condition to serve its intended purpose but still may require minor miscellaneous work and adjustment. Final payment of the Agreement Price, including retainage, however, shall be withheld until Final Completion and acceptance of the work by the City. Acceptance by the City shall not impair or waive any warranty obligation of Contractor.

1.15. Work. The term "work" as used in this Agreement shall mean and include all that is required herein to obtain a final product that is acceptable to the City. The term "Project" shall have like meaning. This Project includes the following:

Painting and repair of the Adamson Lagoon flume slides.

1.16. Working Day. A "working day" means any day not including Saturdays, Sundays, or legal holidays.

## 2. CONTRACT DOCUMENTS

2.01. The Contract Documents and their priority shall be as follows:

- 2.01.01. This signed Agreement
- 2.01.02. Addendum to this Agreement
- 2.01.03. General Conditions
- 2.01.04. Special Conditions
- 2.01.05. Technical specifications
- 2.01.06. Drawings
- 2.01.07. Instructions to Bidders and any other notices to Bidders or Contractor
- 2.01.08. Performance bond, Payment bonds, Bid bonds and Special bonds
- 2.01.09. Contractor's Proposal

2.02. Where applicable, the Contractor will be furnished three (3) sets of plans, drawings, specifications, and related Contract Documents for its use during construction. Plans and specifications provided for use during construction shall be furnished directly to the Contractor only.

2.03. The Contractor shall distribute copies of the plans and specifications to suppliers and subcontractors as necessary. The Contractor shall keep one (1) copy of the plans and specifications accessible at the work site with the latest revisions noted thereon. For proper execution of the work contemplated by this Agreement, additional sets of drawings, plans and specifications may be purchased by the Contractor.

2.04. All drawings, specifications, and copies thereof furnished by the City shall not be re-used on other work, and with the exception of one (1) copy of the signed Contract Documents, all documents, including sets of the plans and specifications and "as built" drawings, are to be returned to the City on request at the completion of the work. All Contract Documents, models, mockups, or other representations are the property of the City. In the event of inconsistencies within or between parts of the Contract Documents, the Contractor shall (1) provide the better quality or greater quantity of Work, or (2) comply with the more stringent requirement, either or both in accordance with the City's interpretation. The terms and conditions

of this Clause 2.04, however, shall not relieve the Contractor of any of the obligations set forth in Paragraphs 8.01. and 8.02.

### 3. AWARD OF CONTRACT

3.01. Upon the award of the contract by the City Council, the parties shall execute this Agreement, and the Contractor shall deliver to City's Representative all documents, bonds, and certificates of insurance required herein.

3.02. **Time is of the essence of this Agreement.** Accordingly, the Contractor shall be prepared to perform the work in the most expedient and efficient possible manner in order to complete the work by the times specified in this Agreement for Substantial Completion and Final Completion. In addition, the Contractor's work on the Project shall be commenced on the date to be specified in the notice to proceed. The notice to proceed may be given by oral notification or set by City's Representative at the post-contract award conference. **The notice to proceed may not be given, nor may any work be commenced, until this Agreement is fully executed and complete, including all required exhibits and other attachments, particularly those required under Paragraphs 27 and 28 (Insurance & Bonds).**

3.03. **Contract Amount.** Except in the event of a duly authorized change order approved by the City as provided in this Contract, and in consideration of the Contractor's final completion of all work in conformity with this Contract, the City shall pay the Contractor an amount not to exceed **Seventy Nine Thousand Seven Hundred Twenty Two and 00/100 Dollars (\$79,722.00).**

### 4. CITY'S REPRESENTATIVE

4.01. The Contractor shall forward all communications, written or oral, to the City through the City's Representative.

4.02. The City's Representative may periodically review and inspect the work of the Contractor.

4.03. The City's Representative shall appoint, from time to time, such subordinate supervisors or inspectors as City's Representative may deem proper to inspect the work performed under this Agreement and ensure that said work is performed in accordance with the plans and specifications.

4.04. The Contractor shall regard and obey the directions and instructions of City's Representative, any subordinate supervisors or inspectors appointed by the City provided such directions and instructions are consistent with the obligations of this Agreement.

4.05. Should the Contractor object to any orders by any subordinate supervisor or inspector, the Contractor may, within two (2) days from receipt of such order, make written appeal to City's Representative for his decision.

## 5. INDEPENDENT CONTRACTOR

5.01. In all activities or services performed hereunder, the Contractor is an independent contractor and not an agent or employee of the City. The Contractor, as an independent contractor, shall be responsible for the final product contemplated under this Agreement. Except for materials furnished by the City, the Contractor shall supply all materials, equipment and labor required for the execution of the work on the Project. The Contractor shall have ultimate control over the execution of the work under this Agreement. The Contractor 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 the Contractor or any of the Contractor's subcontractors except to the limited extent provided for in this Agreement.

5.02. The Contractor shall retain personal control and shall give its personal attention to the faithful prosecution and completion of the work and fulfillment of this Agreement. The subletting of any portion or feature of the work or materials required in the performance of this Agreement shall not relieve the Contractor from its obligations to the City under this Agreement. The Contractor shall appoint and keep on the Project during the progress of the work a competent Project Manager and any necessary assistants, all satisfactory to City's Representative, to act as the Contractor's representative and to supervise its employees and subcontractors. All directions given to the Project Manager shall be binding as if given to the Contractor. Adequate supervision by competent and reasonable representatives of the Contractor is essential to the proper performance of the work, and lack of such supervision shall be grounds for suspending the operations of the Contractor and is a breach of this Agreement.

5.03. Unless otherwise stipulated, the Contractor shall provide and pay for all labor, materials, tools, equipment, transportation, facilities, and drawings, including engineering, and any other services necessary or reasonably incidental to the performance of the work by the Contractor. It shall be the responsibility of the Contractor to furnish a completed work product that meets the requirements of the City. Any additional work, material, or equipment needed to meet the intent of this specification shall be supplied by the Contractor *without* claim for additional payment, even though not specifically mentioned herein.

5.04. Any injury or damage to the Contractor or the Project caused by an act of God, natural cause, a party or entity not privy to this Agreement, or other force majeure shall be assumed and borne by the Contractor.

## 6. DISORDERLY EMPLOYEES

The Contractor agrees to employ only orderly and competent employees skillful in the performance of the type of work required, and agrees that whenever City's Representative shall inform the Contractor in writing that any person or persons on the work are, in his opinion, incompetent, unfaithful, or disorderly, such person or person shall be discharged from the work and shall not again be re-employed on the site or the Project without City's Representative's written permission.

## 7. HOURS OF WORK

The Contractor may work Monday through Friday from 7 a.m. to 6 p.m., exclusive of Saturdays, Sundays, or legal holidays. The Contractor may work overtime, weekends, and holidays only when approved in advance by the City's Representative. The time for Substantial Completion shall not be affected in any way by inclusion of this section or by the City's consent or lack of consent to work outside of the times specified in this Agreement.

## 8. NATURE OF THE WORK

8.01. It is understood and agreed that the Contractor has, by careful examination, studied and compared the various Drawings and other Contract Documents, satisfied itself as to the nature and location of the

work, the conditions of the ground and soil, the nature of any structures, the character, quality, and quantity of the material to be utilized, the character of equipment and facilities needed for and during the prosecution of the work, the time needed to complete the work, Contractor's ability to meet all deadlines and schedules required by this Agreement, the general and local conditions, including but not limited to weather, and all other matters that in any way affect the work under this Agreement. These obligations are for the purpose of facilitating construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, any errors, inconsistencies or omissions discovered, or which reasonably should have been discovered by the Contractor shall be reported promptly to the City as a request for information in such form as the City may require. However, the Contractor shall not perform any act or do any work on the Project that places the safety of persons at risk or potentially damages materials or equipment used in the Project, and the Contractor shall do nothing that would render any test or tests erroneous.

8.02. Any design errors or omissions noted by the Contractor during this review shall be reported promptly to the City, but it is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional unless otherwise specifically provided in the Contract Documents. The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations, but any nonconformity discovered by or which reasonably should have been discovered or made known to the Contractor shall be reported promptly to the City.

8.03. If the Contractor fails to perform the obligations of Paragraphs 8.01. and 8.02., the Contractor shall pay such costs and damages to the City as would have been avoided if the Contractor had performed such obligations. The Contractor shall not be liable to the City for damages resulting from errors, inconsistencies or omissions in the Contract Documents or for differences between field measurements or conditions and the Contract Documents unless the Contractor recognized or reasonably should have recognized such error, inconsistency, omission or difference and knowingly failed to report it to the City.

## **9. POST-AGREEMENT AWARD MEETINGS**

9.01. Prior to the commencement of the work, the parties shall meet and attend a post-agreement award meeting at the time and place determined by City's Representative. At the post-agreement award meeting, the parties shall meet, discuss, and finalize all schedules, including commencement date, and/or specifications submitted for review. No later than ten (10) days prior to the post-agreement award meeting, the Contractor shall submit to City's Representative the following documents:

- (a) Schedules of work contemplated, including the starting and ending date, as well as an indication of the completion of stages of work hereunder.
- (b) The names and addresses of all proposed subcontractors in writing.
- (c) Schedules of the starting and ending dates of subcontractors and the scope of work contemplated for subcontractors.
- (d) Name, local office, phone number and addresses and, home phone numbers for the Contractor and its Project Superintendent/Manager.
- (e) For construction projects, four (4) copies of all shop and/or setting drawings or schedules for the submission thereof.
- (f) Where applicable, materials procurement schedules and material supplier names, addresses and phone numbers.

9.02. The City's Representative, within five (5) working days after the initial post-agreement award conference or any other meetings, may submit minutes of the meeting to the Contractor. The Contractor shall thereafter have five (5) working days to review the minutes and make its objections, changes, or reductions thereto in writing. The Contractor shall thereafter sign the minutes and promptly return them to City's Representative. Where there is disagreement, City's Representative will make the final determination.

## **10. PROGRESS OF WORK**

10.01. Unless otherwise specifically provided, the Contractor shall prosecute its work at such time and sessions, in such order of precedence, and in such manner as shall be most conducive to the economy of the Project; provided, however, that the order and time of prosecution shall be such that the Project shall be Substantially Completed in accordance with this Agreement, the plans and specifications, and within the time of completion designated in the schedules agreed upon by the parties.

10.02. Further, the parties shall be subject to the following:

- (a) The Contractor shall submit a progress schedule and payment schedule of the work contemplated by this Agreement at the initial post-agreement award meeting and subsequent meetings.
- (b) City's Representative shall be entitled to make objections to the Contractor's schedule submitted herein. The Contractor shall promptly resubmit a revised schedule to City's Representative.
- (c) The Project Superintendent/Manager shall coordinate its activities with City's Representative. If required by the City, the Contractor shall provide a weekly schedule of planned activities, which may be reviewed on a daily basis.
- (d) The Contractor shall submit, at such time as may reasonably be requested by City's Representative, additional schedules that shall list the order in which the Contractor proposes to carry on the work with dates at which the Contractor will start the several parts of the work and the estimated dates of completion of the several parts.
- (e) The Contractor shall attend additional meetings called by City's Representative upon twenty-four (24) hours written notice unless otherwise agreed in writing by the parties.
- (f) When the City is having other work done, either by agreement or by its own force, City's Representative may direct the time and manner of work done under this Agreement so that conflicts will be avoided and the various work being done by and for the City shall be coordinated.
- (g) In the event that it is determined by the City that the progress of the work is not in accordance with the approved progress and payment schedule, the City may so inform the Contractor and require the Contractor to take such action as is necessary to insure completion of the Project within the time specified.

10.03. The process of approving Contractor's schedules and updates to Contractor's schedules shall not constitute a warranty by the City that any non-Contractor milestones or activities will occur as set out in the Contractor's schedules. Approval of a contractor's schedules does not constitute a commitment by the City to furnish any City-furnished information or material any earlier than the City would otherwise be obligated to furnish that information or material under the Contract Documents. Failure of the Work to proceed in the sequence scheduled by Contractor shall not alone serve as the basis for a Claim for additional compensation or time. In the event there is interference with the Work which is beyond its control, Contractor shall attempt to reschedule the Work in a manner that will hold the additional time and costs beyond its control to a minimum. The Contractor shall monitor the progress of the Work for conformance

with the requirements of the construction schedules and shall promptly advise the City of any delays or potential delays. In the event any schedule indicates any delays, the Contractor shall propose an affirmative plan to correct the delay. In no event shall any schedule constitute an adjustment in the Contract Time, any Milestone Date or the Contract Sum unless any such adjustment is agreed to by the City and authorized pursuant to Change Order.

10.04. **Work Stoppage.** If in the judgment of either the City or City's Representative any of the work or materials furnished is not in strict accordance with this Agreement or any portion of the work is being performed so as to create a hazardous condition, they may, in their sole discretion, order the work of the Contractor or any sub contractor wholly or partially stopped until any objectionable person, work, or material is removed from the premises. Such stoppage or suspension shall neither invalidate any of the Contractor's performance obligations under this Agreement, including the time of performance and deadlines therefore, nor will any extra charge be allowed the Contractor by reason of such stoppage or suspension.

## 11. SITE CONDITIONS AND MANAGEMENT

11.01. Where the Contractor is working around or in existing structures, it shall verify conditions at the site, including but not limited to, door openings and passages. Any items constructed or manufactured off-site or outside of buildings shall be done so that they are not too bulky for existing facilities. The Contractor shall provide special apparatus as required to handle any such items. All special handling equipment charges shall be at the Contractor's expense. Further, Contractor shall include in its price for the Work, all labor, materials, equipment and/or engineering services required to protect the adjacent properties and/or structures from damage due to performance of the Work.

11.02. The Contractor shall be responsible for all power, light, and water required to perform the work.

11.03. Throughout the progress of the work, the Contractor shall keep the working area free from debris of all types, and remove from premises all rubbish, resulting from any work being done by him. At the completion of the work, the Contractor shall leave the premises in a clean and finished condition. Any failure to do so may be remedied and charged back to the Contractor.

11.04. **Layout of Work.** Except as specifically provided herein, the Contractor shall lay out all work in a manner acceptable to City's Representative in accordance with applicable City of College Station codes and ordinances. City's Representative will review the Contractor's layout of all structures and any other layout work done by the Contractor at the construction meeting, or at the Contractor's request, but this review does not relieve the Contractor of the responsibility of accurately locating all work in accordance with the plans and specifications.

11.05. **Lines and Grades.** All lines and grades shall be furnished by the Contractor. Benchmarks and control stakes have been provided by the City's Representative. All benchmarks and control stakes shall be carefully preserved by the Contractor. In case of destruction or removal of the same by the Contractor, its subcontractors, or employees, such stakes, marks, etc. shall be replaced by the Contractor at the Contractor's expense. If the Contractor fails to do so, the City may do so and charge back the Contractor. Additional construction staking as needed for the work, including lines and grades, shall be the sole responsibility of the Contractor, and the Contractor shall receive no extra time or compensation therefor.

11.06. **Contractor's Structures.** The building or locating of structures for housing men or the erection of tents or other forms of protection will be permitted only at such places as City's Representative shall permit. The Contractor shall not damage the property where such structures are allowed and shall at all times maintain sanitary conditions in and about such structures in a manner satisfactory to the City. The City may charge the Contractor for any damage or injury to the City, its property, or third persons as a result of the location or use of such structures.

11.07. The Contractor and any entity over whom the Contractor has control shall not erect any sign on the Project site without the prior written consent of the City.

11.08. City may have other work related to the Project performed at the Project site during the time the Work is performed. Contractor should schedule its Work to coordinate with the work of other contractors and utilities with the understanding that some of that work may be performed at times other than as set out in the Contract Documents or as otherwise anticipated. City will endeavor to have such other work performed so as not to unduly interfere with Contractor's performance when Contractor notifies City of specific reasonable needs well in advance of those needs and where it is possible to do so. Although Contractor should anticipate some delays and interference to its sequence of Work because of work by other contractors and utilities, and will not be entitled to either an extension of time or additional compensation because of them, in the event of substantial delay caused by another contractor or a utility, after advance notice of its needs by Contractor, Contractor will be entitled to make a claim for an extension of time as provided herein.

11.09. When two or more contractors, including Contractor, are employed on related or adjacent work or obtain materials from the same material source, or when work must be completed by one contractor before another can begin, each shall conduct his operations in such a manner as not to cause any unnecessary delay or hindrance to the other. Each contractor, including Contractor if applicable, shall be responsible to the other for all damage to work, to persons, or to property caused to the other by his operations, and for loss caused the other due to unreasonable or unjustified delays or failure to finish the work or portions thereof, or furnish materials within the time requested. Should Contractor cause damage to the work or property of any separate contractor at the Project site, or should any claim arising out of Contractor's separate contractor at the Project site, or should any claim arising out of Contractor's performance of the Work at the Project site be made by any separate contractor against Contractor, City or other consultants, or any other person, Contractor shall promptly attempt to settle with such other contractor by agreement, or to otherwise resolve the dispute. **Contractor shall, to the fullest extent permitted by applicable laws, indemnify and hold City harmless from and against all claims, damages, losses and expenses (including, but not limited to, fees of architects, attorneys and other professionals and court costs) arising directly, indirectly or consequentially out of any action, legal or equitable, brought by any separate contractor against City to the extent based on a claim arising out of Contractor's negligence.**

## 12. MATERIALS

12.01. Materials or work described in words that when so applied have well-known technical or trade meaning shall be held to refer to such recognized standards. All work shall be done and all materials furnished in strict conformity with this Agreement, the other Contract Documents, and recognized industry standards. When specific products, systems or items of equipment are referred to in the Contract Documents, any ancillary devices necessary for connecting the products, systems or items of equipment shall also be provided. When standards, codes, manufacturer's instructions and guarantees are required by the Contract Documents, the current edition at the time of Contract execution shall apply, unless another edition is specified in the Contract Documents. References to standards, codes, manufacturer's instructions and guarantees shall apply in full, except (1) they do not supersede more stringent standards set out in the Contract Documents, and (2) any exclusions or waivers that are inconsistent with the Contract Documents do not apply.

12.02. All materials shall be approved by the City prior to purchase by the Contractor. Unless otherwise specified herein, the Contractor shall purchase all materials and equipment outright and shall not subject the materials and equipment utilized in the Project to any conditional sales agreement, bailment, lease, or other

agreement reserving unto seller any right, title, or interest therein. Title to all materials, but not risk of loss, shall pass to the City upon delivery to the Project.

12.03. Where the City deems it necessary to supply materials, it may furnish to the Contractor the list of materials set forth in the attached "List of City Furnished Materials". Upon receipt of said materials, the Contractor shall immediately furnish to the City a written receipt. Moreover, the Contractor shall, on behalf of the City, accept delivery of the materials set forth in the attached "List of Materials Ordered by the City". Under such circumstances, the Contractor shall promptly forward to the City for payment the supplier's invoice together with the Contractor's receipt in writing for such materials.

- (a) Upon acceptance of the materials furnished or ordered by the City, the Contractor warrants that it shall properly handle, transport, store and safeguard the materials.
- (b) Further, the Contractor shall repair, repaint or replace any and all materials or any part thereof damaged or stolen while in its possession. Such materials are considered to be in the Contractor's possession from the moment the Contractor either accepts delivery of the materials or signs a receipt accepting delivery of said materials until the Project is accepted by the City's Representative.
- (c) Before transporting any of the materials furnished or ordered by the City, the Contractor shall establish to the City's satisfaction that it has obtained insurance against losses, theft, damage, equal to or greater than the amounts spent by the City in securing said materials. It shall be incumbent upon the Contractor to verify the cost of materials.
- (d) The City shall not be obligated to furnish materials in excess of the quantities, size, kind, and type set forth in the attached List of City Furnished Materials and List of Materials Ordered by the City. If the City furnishes, and the Contractor accepts, materials in excess thereof, the values of such excess materials shall be their actual cost as stated by the City.
- (e) Upon delivery, the Contractor shall promptly receive, unload, transport, and handle all materials and equipment on the List of Materials Ordered by the City at its expense and shall be responsible for all shipping costs.

12.04. **Materials and supplies shall be new and of good quality.** Upon request, the Contractor shall supply proof of quality and manufacturer. No refurbished, reconditioned, or other previously utilized materials or supplies will be used without the prior signed authorization of City's Representative. The Contractor may utilize substitutes of equal quality and function only upon the prior written authorization of the City's Representative. The City's Representative may require documentation as to quality and function, including manufacturer's specifications, to insure that the proposed substitute is equal to the required material or supply. The City's Representative shall have sole discretion over the use of substitute materials and supplies. Contractor shall bear the risk of any delay in performance caused by submitting substitutions.

12.05. Only materials and equipment which are to be used directly in the Work shall be brought to and stored on the Project site by the Contractor. After equipment is no longer required for the Work, it shall be promptly removed from the Project site. Protection of construction material and equipment stored at the Project site from weather, theft, damage and all other perils is solely the responsibility of the Contractor.

### **13. ENTRY, OBSERVATION, TESTING & POSSESSION**

13.01. The City reserves the right to enter the Project site or sites by such employee(s) or agent(s) as it may elect for the purpose of inspecting the work. The City further reserves the right to enter the Project site or sites for the purpose of performing such collateral work as the City may desire.

13.02. The City's Representative shall have the right, at all reasonable times, to observe and test the work. The Contractor shall make necessary arrangements and provide proper facilities and access for such observation and testing at any location where the work or any part thereof is in preparation or progress. The Contractor shall ascertain the scope of any observation that may be contemplated by City's Representative and shall give ample notice as to the time each part of the work will be ready for observation.

13.03. The City's Representative may require Contractor to remove, dismantle, or uncover completed work. If the work is not in accordance with the plans, specifications, or other Contract Documents, the Contractor shall pay the costs of repair and restoration of the work required to be removed, dismantled, or uncovered. Unless Contractor is obligated to provide advance notice of inspection, prior to covering up the work, and fails to do so, if the work is in accordance with the plans, specifications, and other Contract Documents, the City shall pay the costs of repair and restoration of the work.

13.04. City shall have the right to take possession of and use any completed or partially completed portions of the Project prior to the time for completing the entire Project or such portions which may not have expired. The parties agree and understand that possession and use shall not constitute an acceptance of any work not completed in accordance with this Agreement. Further, insurance changes required to keep Contractor's insurance in effect shall be the responsibility of Contractor.

#### **14. REJECTED WORK**

14.01. All work deemed not in conformity with this Agreement as determined by the City in its sole discretion, may be rejected by the City. City's Representative may reject any work found to be defective or not in accordance with the Contract Documents, regardless of the stage of the work's completion or the time or place of discovery of such defects or inconsistencies and regardless of whether City's Representative has previously accepted the work through oversight or otherwise. Neither observations nor inspections, tests, or approvals made by City's Representative, or other persons authorized under this Agreement to make such observations, inspections, tests, or approvals, shall relieve the Contractor from the obligation to perform the work in accordance with the requirements of this Agreement and the other Contract Documents.

14.02. If the work or any part thereof is rejected by the City, it shall be deemed by City's Representative as not in conformity with this Agreement. Any remedial action required, as set forth herein, shall be at the Contractor's expense, as follows:

(a) The Contractor may be required, at the City's option, after notice from City's Representative, to remedy such work so that it shall be in full compliance with this Agreement. All rejected work or materials shall be immediately replaced in order to conform with this Agreement.

(b) If the City deems it inexpedient to correct work damaged or not done in accordance with this Agreement, an equitable deduction from the agreed sum may be made by the City at the City's sole discretion.

#### **15. SUBCONTRACTING & SUBCONTRACTORS**

15.01. The Contractor agrees that it will retain personal control and will give its personal attention to the fulfillment of this Agreement. The Contractor further agrees that subletting of any portion or feature of the work or materials required in the performance of this Agreement shall not relieve the Contractor from its full obligation to the City as provided by this Agreement.

15.02. Subcontractors must be approved by City's Representative prior to hiring or beginning any work on the Project. If City's Representative judges any subcontractor to be failing to perform the work in strict accordance with the drawings and specifications, the Contractor, after due notice, shall discharge the same, but this shall in no way release the Contractor from its obligations and responsibility under this Agreement.

Every subcontractor shall be bound by the terms and provisions of this Agreement and the Contract Documents as far as applicable to their work. The Contractor shall be fully responsible to the City for the acts and omissions of its subcontractors. Nothing contained herein shall create any contractual or employment relations between any subcontractor and the City.

## 16. PAYMENT

16.01. The City stipulates that it is an exempt organization as defined by the Limited Sales, Excise and Use Tax Act and, as such, is exempt from the payment of the sales tax on materials and supplies used in the performance of this Contract. The Contractor shall issue exemption certificates to its suppliers and Subcontractors in lieu of said sales tax for all such materials and supplies, and said exemption certificates must comply with the State Comptroller's Ruling No. 95-0.07 and shall be subject to the provision of the State Comptroller's Ruling No. 95-0.09, effective October 1, 1969.

16.02. **Progress Payment Applications.** The Contractor shall submit applications for payment as provided for herein. Applications for payment will be processed by City's Representative. Before the first Application for Payment, the Contractor shall submit to the City a schedule of values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the City may require. This schedule, unless objected to by the City, shall be used as a basis for reviewing the Contractor's Applications for Payment. On or before the 15<sup>th</sup> day of each month, the Contractor shall submit to City's Representative, for approval or modification, a statement showing as completely as practicable the total value of the actual work performed by the Contractor and accepted by the City up to and including the last day of the *preceding* month. The statement shall also include the value of all materials not previously submitted for payment which have been delivered to the site but have not yet been incorporated into the work.

16.03. **Progress Payments.** On or before the 30<sup>th</sup> calendar day following the City's receipt of a progress payment application made in conformity with Paragraph 16.02, the City shall pay to the Contractor the approved amount of the progress payment based on the Contractor's applications for payment, and the recommendation and approval of City's Representative. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage of work completed by the Contractor and approved by the City, but in each case less the aggregate of payments previously made, less retainage, and less amounts as City's Representative shall determine and the City may withhold in accordance with this Agreement. Upon Final Completion, including the delivery of all close out documents, such as "as built" drawings, warranties, guarantees, required additional materials, releases, operation and maintenance manuals, and acceptance of the work in accordance with this Agreement, the City shall pay the remainder of the balance due under this Agreement, less any sums withheld under other terms of this Agreement and less the retainage, which shall be retained for a period of thirty (30) calendar days from the date of Final Completion. Acceptance of retainage by Contractor shall constitute a Waiver and Release of all claims by Contractor.

16.04. **Retainage.** From each approved statement, the City shall retain until final payment, ten percent (10%), where the full contract amount is less than \$400,000.00, and five percent (5%), where the full contract amount is \$400,000.00 or more. The City may also retain from each approved statement any other sums authorized under the terms of this Agreement.

16.05. If the actual amount of work to be done and the materials to be furnished differ from estimates and where the basis for payment is the unit price method, then payment shall be for the actual amount of accepted work done and materials furnished on the Project.

16.06. Reduction in the scope or quantity of work on unit price items shall merely reduce the number of units. In the event that materials have been delivered prior to notice of such reduction, the City will have the option either to pay freight & transportation costs and any re-stocking charges actually incurred by the

Contractor or to purchase the materials. The Contractor shall never be entitled to anticipated or lost profits on the deleted or reduced portion of a job, whether bid on a unit price or lump sum basis.

16.07. The Contractor shall have the sole obligation to pay any and all charges or fees and give all notices necessary to and incidental to the lawful prosecution of the work hereunder. The Contractor shall not and shall have no authority whatsoever to obligate the City to make any payments to another party nor make any promises or representation of any nature on behalf of the City, without the specific written approval of the City.

16.08. The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the City may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

16.09. Unless otherwise provided in the Contract Documents:

- (a) allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- (b) Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Amount but not in the allowances;
- (c) whenever costs are more than or less than allowances, the Contract Amount shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Paragraph 16.9(a) and (2) changes in the Contractor's costs under Paragraph 16.9(b).

16.10. **Suspension of Payments.** The City, at any time, may suspend monthly progress payments on the work if it determines that the projected liquidated damages may exceed retainage. The City, at any time, may suspend monthly progress payments if it believes that the Contractor will not complete the work due to actual default or that the Contractor has represented or done some act that indicates that it will not complete the work in accordance with this Agreement or within the time period submitted in its bid. Provided, however, City is in no way obligated to Contractor's surety to withhold payment pursuant to the provisions of this Paragraph.

16.11. **Withhold Funds.** Regardless of any bond, the City may, on account of subsequently discovered evidence and in addition to the retainage withheld under Paragraph 16.04, withhold funds or nullify all or part of any acceptance or certificate to such extent as may be necessary to protect itself from loss on account of any of the following, or as otherwise provided in this Agreement:

- (a) Defective work.
- (b) Claims made or reasonable evidence indicating probable filing of claims by unpaid vendors or other third parties.
- (c) Failure of the Contractor to make prompt payments to subcontractors for labor or material or materialmen.
- (d) Claims made or reasonable evidence indicating claims will be made for damage to another by the Contractor.
- (e) Claims made or reasonable evidence indicating claims will be made for damage to third parties, including adjacent property owners.
- (f) Claims made or reasonable evidence indicating claims will be made for unremedied damage to property owned by the City.
- (g) City's determination of an amount of liquidated damages.
- (h) Charges made for repairs to the Contractor's defective work or repairs made by the City to correct damage to other property.

- (i) Other amounts authorized under this Agreement or under any other agreement made between City and Contractor.

Provided, however, City is in no way obligated to Contractor's surety to withhold payment pursuant to the provisions of this Paragraph.

## 17. EXTRA WORK CHARGES

17.01. No changes shall be made, nor will bills for changes, alterations, modifications, deviations, and extra orders be recognized or paid for except upon the written order from authorized personnel of the City.

17.02. For "Extra Work", as defined in Paragraph 1.07 and authorized through written change orders, and pursuant to Section 252.048(d) of the Texas Local Government Code, the original contract price may not be increased by more than **twenty-five percent (25%)**. Written change orders that do not exceed **twenty-five percent (25%)** of the original contract amount may be made or approved by the City Manager or his delegate if the change order is less than **Fifty Thousand Dollars (\$50,000.00)**. Changes in excess of **Fifty Thousand Dollars (\$50,000.00)** must be approved by the City Council prior to commencement of the services or work. **Any requests by the Contractor for a change to the Contract Amount shall be made prior to the beginning of the work covered by the proposed change or the right to payment for Extra Work shall be waived.** No course of conduct or dealings between the parties, nor implied acceptance of alterations or additions to the Work or changes to the Contract schedule shall be the basis for any claim for an increase in compensation or change in time. Any cost incurred by Contractor in connection with any Extra Work shall be included in Contractor's requested change order and Contractor's failure to include any such cost shall act to Waive and Release any claim for such non included cost.

17.03. The Contractor shall complete all work as specified or indicated in the Contract Documents. The Contractor shall complete all Extra Work in connection therewith. All work and materials shall be in strict conformity with the specifications. The Substantial Completion of the work shall not excuse the Contractor from performing all the work undertaken, whether of a minor or major nature, and thereby completing the Project in accordance with the Contract Documents. In the event that the Contractor fails to perform the work as required for Substantial Completion or Final Completion, the City may contract with a third party to complete the work and the Contractor shall assume and pay the costs of the performance of the work as contracted.

- (a) It is agreed that the Contractor shall perform all Extra Work under the direction of City's Representative when presented with a written work order signed by City.
- (b) **No claim for Extra Work of any kind will be allowed unless ordered in writing by the City.** In case any orders or instructions appear to the Contractor to involve Extra Work for which it should receive compensation or an adjustment in the construction time, it shall make written request to City's Representative for a written order from City authorizing such Extra Work.
- (c) Should a difference of opinion arise as to what does or does not constitute Extra Work, or as to the payment therefor, and the City insists upon its performance, then the Contractor shall proceed with the work after making written requests for written orders in a change order and shall keep adequate and accurate account of the actual field costs therefor, as provided under Method C.
- (d) It is also agreed that the compensation to be paid to the Contractor for performing Extra Work shall be determined by one or more of the following methods:

Method A - By agreed unit prices, or  
Method B - By agreed lump sum, or

Method C - If neither Method A nor Method B is agreed upon before the Extra Work is commenced, then the Contractor shall be paid the actual field cost of the work.

(e) **Method A - Unit Prices.** The Contractor agrees to perform Extra Work for the unit prices in the Contractor's Proposal. The Contractor also agrees and warrants that when it is necessary to construct units not shown in the Contract Documents, it shall construct such units for a price arrived at as follows:

- (1) The cost of materials shall be determined by the invoices;
- (2) The cost of labor shall be the reasonable cost thereof, as determined by the City, but in no event shall it exceed an amount determined by calculating the ratio of the total labor costs to the total costs to the total material costs in the section of the Proposal involved, and multiplying the cost of materials for the unit in question by this ratio. Provided, however, that the ratio shall be calculated for only those units that are similar to the new unit for which a price is to be determined.

(f) **Method B - Lump Sum.** The lump sum shall be reasonably close to the amount for similar work previously done or combinations of similar units. Invoices for materials used shall be provided in support of the agreed lump sum.

(g) **Method C - Actual Field Costs.** The actual field cost is hereby defined to include the cost of all applicable workmen and laborers, as well as materials, supplies, teams, trucks, rentals on machinery and equipment, for the time actually employed or used for such Extra Work, plus actual transportation charges necessarily incurred, together with other costs reasonably incurred directly on account of such Extra Work, including social security, old age benefits, maintenance bonds, public liability, property damage, worker's compensation, and all other insurance as may be required by law or ordinances or required and agreed to by the City or City's Representative. City's Representative may direct the form in which accounts of the actual field costs shall be kept and records of these accounts shall be made available to City's Representative. Unless otherwise agreed upon, the prices for the use of machinery and equipment shall be determined by using one hundred percent (100%), unless otherwise specified, of the latest schedule of equipment and ownership expenses adopted by the Associated General Contractors of America. Where practical, the terms and prices for the use of machinery and equipment shall be incorporated in the written Extra Work order. Actual field costs shall not exceed the prevailing market price therefor within reasonable tolerances as determined by City's Representative. The amount due to Contractor for costs other than actual field costs shall be calculated in accordance with the following standards:

- (1) No indirect or consequential damages will be allowed.
- (2) All damages must be directly and specifically shown to be caused by a proven wrong. No recovery shall be based on a comparison by planned expenditures to total actual expenditures or on estimated losses of labor efficiency, or on a comparison of planned manloading to actual manloading, or any other analysis that is used to show damages indirectly.
- (3) Damages are limited to extra costs specifically shown to have been directly caused by a proven wrong.
- (4) The maximum daily limit on any recovery for delay shall be the amount established by the Contractor for job overhead costs, defined in the pay applications, divided by the total number of days specified for completion called for in the original Contract. Absent

an overhead amount in the Schedule of Values, the amount estimated by Contractor for job overhead cost shall be used.

## 18. TIME OF COMPLETION

18.01. The date of beginning, the time for Substantial Completion and Final Completion of work as specified in this Agreement are of the essence of this Agreement.

18.02. The work embraced by this Agreement shall be commenced on the date specified in the notice to proceed. Said notice to proceed may be given orally or set by the City's Representative at the post-award conference.

18.03. The work shall be Substantially Completed within the time bid, which shall run from the date when the notice to proceed is given by City's Representative. The Contractor bid **25 calendar days** for the time within which it shall reach Substantial Completion of the Project.

18.04. The work shall reach Final Completion and be ready for final payment within **thirty (30) calendar days** from the date of Substantial Completion.

## 19. SUBSTANTIAL COMPLETION

19.01. The Contractor shall notify City's Representative when, in the Contractor's opinion, the contract is Substantially Completed. Within ten (10) calendar days after the Contractor has given City's Representative written notice that the work has been Substantially Completed, City's Representative shall inspect the work for the preparation of a final punch list.

(a) If City's Representative and the City find that the work is not Substantially Completed, then they shall so notify the Contractor who shall then complete the work. City's Representative shall not be required to provide a list of unfinished work.

(b) If the City Representative and City find that the work is Substantially Completed, the City shall issue to the Contractor its certificate of Substantial Completion.

19.02. The Substantial Completion of the work shall not excuse the Contractor from performing all of the work undertaken, whether of a minor or major nature, and thereby completing the Project in accordance with the Contract Documents.

## 20. FINAL COMPLETION

20.01. Contractor shall notify the City's Representative when it believes that the work has reached Final Completion as defined in Paragraph 1.08. If the City's Representative and the City accept and deems such work Finally Complete, then Contractor shall be so notified and certificates of completion and acceptance, as provided herein, shall be issued. A complete itemized statement of this Agreement account, certified by the City's Representative as correct, shall then be prepared and delivered to Contractor. Contractor or City, as the case may be, shall pay the balance due as reflected by said statement within thirty (30) calendar days.

20.02. The Contractor shall procure all required certificates of acceptance or completions issued by state, municipal, or other authorities and submit the same to the City. The City may withhold any payments due under this Agreement until the necessary certificates are procured and delivered.

20.03. Neither the final payment nor any acceptance nor certificate nor any provision of this Agreement shall relieve the Contractor of any responsibility for faulty workmanship or materials. At the option of the City, the Contractor shall remedy any defects and pay for any damage to other work which may appear after final acceptance of the work.

## 21. DELAYS

21.01. The Contractor, in undertaking to complete the work within the times herein fixed, has taken into consideration and made allowance for all hindrances and delays incident to such work, whether growing out of delays in securing material or workmen or delays arising from inclement weather or otherwise.

21.02. The City may, in its sole discretion, delay the work during inclement weather in order to preserve the Project, insure safety of work forces, and the preservation of materials and equipment. In such event and upon a written request from the Contractor, the City may grant an extension of time pursuant to Paragraph 22 to offset for such stoppage of the work.

21.03. In the event of delays resulting from changes ordered in the work by the City or other delays caused by the City or for the City's convenience, the Contractor may apply to the City for recovery of incidental damages resulting from increased storage costs or other costs necessary to protect the value of the work. In no event shall any consequential or other damages be allowed or any other charges or claims be made by the Contractor for hindrances or delays resulting from any other cause.

## 22. EXTENSIONS OF TIME

The Contractor has submitted its proposal in full recognition of the time required for the completion of this Project, taking into consideration all factors including, but not limited to the average climatic range and industrial conditions. The Contractor has considered the liquidated damage provision of this Agreement and understands and agrees that it shall not be entitled to, nor will it request, an extension of time for either Substantial Completion or Final Completion, except when the work has been delayed by one or more of the following:

- (1) an act or neglect of the City, the City's Representative, employees of the City, or other contractors employed by the City;
- (2) by changes ordered in the work, or reductions thereto approved in writing;
- (3) by "rain days" (days with rainfall in excess of one-tenth of an inch) during the term of this Agreement that exceed the average number of rain days for such term for this locality, both as determined by the Texas A&M University weather service; or
- (4) by other causes that the City and the Contractor agree may reasonably justify delay and that were beyond the Contractor's reasonable control and ability to estimate, predict, or avoid, such as delays caused by unforeseen labor disputes, fire, natural disasters, acts of war, and other rare and unpredictable events. This term does **not** include normal delays incident to the delivery of materials, tools, or labor that reasonably could have been predicted and/or accounted for in the Contractor's proposal or decision to bid.

If one or more of the foregoing conditions is present, the Contractor may apply in writing for an extension of time, within thirty (30) days of the occurrence of the event causing the delay, submitting therewith all written justification as may be required by the City's Representative. Within ten (10) calendar days after receipt of a written request for an extension of time, which is supported by all requested documentation, the City shall, in writing and in its sole discretion, grant or deny the request. Under no circumstances shall any extension of time by the City be valid and binding unless it is in writing and in conformity with the other terms of this Agreement.

## 23. LIQUIDATED DAMAGES

23.01. The time for the Substantial and Final Completion of the work described herein are reasonable times for the completion of each, taking into consideration all conditions, including but not limited to the average climatic conditions and usual industrial conditions prevailing in this locality. The amount of liquidated damages for the Contractor's failure to meet the deadlines for Substantial and/or Final

Completion are fixed and agreed on by the Contractor because of the impracticability and extreme difficulty in fixing and ascertaining the actual damages that the City would in such an event sustain. The amounts to be charged are agreed to be damages the City would sustain and shall be retained by the City from current periodic estimates for payment or from final payment.

23.02. As a result of the difficulty in estimation, calculation and ascertainment of City's damages due to a failure of Contractor to achieve timely completion of the Work, if the Contractor should neglect, fail, or refuse to either Substantially Complete or Finally Complete the work within the time herein specified, or any proper extension thereof granted by the City's Representative pursuant to the terms of Paragraph 22 of this Agreement, then the Contractor does hereby agree as part of the consideration for the awarding of this Agreement that the City may permanently withhold from the Contractor's total compensation the sum of **One Hundred and 00/100 DOLLARS (\$100.00)** for each and every calendar day that the Contractor shall be in default after the time stipulated for Substantial Completion and/or Final Completion, not as a penalty, but as liquidated damages for the breach of this Agreement. It being specifically understood that the assessment of liquidated damages may be made for any failure to meet either or both of the deadlines specified for Substantial Completion and/or Final Completion.

## 24. CHARGES FOR INJURY OR REPAIR

24.01. The Contractor shall be liable for any damages incurred or repairs made necessary by reason of its work and/or caused by it. Repairs of any kind required by the City will be made and charged to the Contractor by the City.

24.02. The Contractor shall take the necessary precautions to protect any areas adjacent to its work.

24.03. The work specified consists of all work, materials, and labor required by the City to repair any damage to the property of the City, including but not limited to structures, roadways, curbs, parking areas, and sidewalks.

## 25. WARRANTY

25.01. Upon issuance of a certificate of Final Completion, the Contractor warrants for a period of one (1) year as follows:

**The Contractor warrants that all materials provided to the City under this Agreement shall be new unless otherwise approved in advance by City's Representative and that all work will be of good quality, free from faults and defects, and in conformance with this Agreement, the other Contract Documents, and recognized industry standards.**

25.02. All work not conforming to these requirements, including but not limited to unapproved substitutions, may be considered defective.

25.03. This warranty is in addition to any rights or warranties expressed or implied by law and in addition to any consumer protection claims arising from misrepresentations by the Contractor.

25.04. Where more than a one (1) year warranty is specified for individual products, work, or materials, the longer warranty shall govern.

25.05. This warranty obligation shall be covered by any performance or payment bonds tendered in compliance with this Agreement.

25.06. **Defective Work Discovered During Warranty Period.** If any of the work is found or determined to be either defective, including obvious defects, or otherwise not in accordance with this Agreement within one (1) year after the date of the issuance of a certificate of Final Completion of the work or a designated portion thereof, whichever is longer, or within one (1) year after acceptance by the City of designated equipment, or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required by this Agreement, the Contractor shall promptly correct the defective work at no cost to the City.

25.07. After receipt of written notice from the City to begin corrective work, the Contractor shall promptly begin the corrective work. The obligation to correct any defective work shall survive the termination of this Agreement. The guarantee to correct the defective work shall not constitute the exclusive remedy of City, nor shall other remedies be limited to the terms of either the warranty or the guarantee.

25.08. If within ten (10) calendar days after the City has notified the Contractor of a defect, failure, or abnormality in the work, the Contractor has not started to make the necessary corrections or adjustments, the City is hereby authorized to make the corrections or adjustments, or to order the work to be done by a third party. The cost of the work shall be paid by the Contractor or its surety.

25.09. The cost of all materials, parts, labor, transportation, supervision, special instruments, and supplies required for the replacement or repair of parts and for correction of defects shall be paid by the Contractor or by the surety.

25.10. The guarantee shall be extended to cover all repairs and replacements furnished, and the term of the guarantee for each repair or replacement shall be one (1) year after the installation or completion. The one (1) year warranty shall cover all work, equipment, and materials that are part of this Project, whether or not a warranty is specified in the individual section of the Contract Documents that prescribe that particular aspect of the work.

## 26. PAYMENT OF EMPLOYEES, SUBCONTRACTORS & SUPPLIERS

26.01. **Wage Rates.** Pursuant to Section 2258.023(a) of the Texas Government Code, wage rates paid by the Contractor and any subcontractor on this Project shall be not less than the general prevailing rate of per diem wages for work of a similar character in this locality as specified in the schedule of general prevailing rates of per diem wages attached hereto as Exhibit A.

26.02. **Statutory Penalty.** Pursuant to Section 2258.023(b) of the Texas Government Code, if the Contractor or any subcontractor violates the requirements of Paragraph 26.01, the Contractor or subcontractor as the case may be shall pay the City **Sixty Dollars (\$60.00)** for each worker employed for each calendar day or part of the day that the worker is paid less than the stipulated wage rates.

26.03. The Contractor and each subcontractors shall pay all of their employees engaged in work on the Project in full (less mandatory legal deductions) in cash or by check readily cashable, without discount, no less than once each week.

26.04. No later than the seventh (7th) calendar day following the payment of wages, the Contractor must file with City's Representative a certified, sworn, legible copy of such payroll. This shall contain the name of each employee, their classification, the number of hours worked on each day, rate of pay, and net pay. The affidavit shall state that the copy is a true and correct copy of such payroll and that no rebates or deductions (except as shown) have been made or will be made in the future from the wages therein shown.

26.05. **Payment of Subcontractors.** The Contractor shall be solely and exclusively responsible for compensating any of the Contractor's employees, subcontractors, materialmen and/or suppliers of any type or nature whatsoever and for insuring that no claims or liens of any type arising out of or incidental to the performance of any services performed pursuant to this Agreement are filed against any property owned by

the City. In the event a statutory lien notice is sent to the City, the Contractor shall, where no payment bond covers the work, upon written notice from the City, immediately obtain a bond at its expense and hold the City harmless from any losses that may result from the filing or enforcement of any said lien notice. In the event that the Contractor defaults in the provision of the bond, the City may withhold such funds as are necessary to assure the payment of such claim until litigation determines to whom payment shall be made.

26.06. **Affidavit of Bills Paid.** Prior to Final Acceptance of the Project, the Contractor shall provide a notarized affidavit stating that all bills for labor, materials, and incidentals incurred have been paid in full, that any claims from manufacturers, materialmen, and subcontractors have been released, and that there are no claims pending of which the Contractor has been notified.

## 27. INSURANCE

27.01. The Contractor 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 the Contractor, its agents, representatives, volunteers, employees or subcontractors. The policies, coverages, limits and endorsements required are as set forth in Exhibit B.

## 28. BOND PROVISIONS

28.01. Pursuant to Section 2253.021 of the Texas Government Code, for all public works contracts with governmental entities, a payment bond is required if the Contract Amount exceeds \$50,000, and a performance bond is required if the Contract Amount exceeds \$100,000. Below those amounts, the City *may* require payment and/or performance bonds. In the event a performance or payment bond or both is required either by law or in the City's discretion, such bonds shall be executed in accordance with all requirements of Article 7.19-1 of the Texas Insurance Code, all other applicable law, and the following:

- (a) The Contractor shall execute performance and payment bonds for the full Contract Amount.
- (b) The bond surety shall be authorized under the laws of the State of Texas to provide a performance and payment bond and shall have attached proof of authorization of the surety to act in the performance and payment of bonds.
- (c) The Contractor shall provide original, sealed, and complete counterparts of the executed bonds in the forms required by the Contract Documents, which are attached as Exhibit C, together with valid original powers of attorney, **at the time of execution of this Agreement and prior** to the commencement of work. Copies of the executed bonds shall be attached hereto as **Exhibit C**.
- (d) The performance and payment bonds shall remain in effect for a period of one (1) year after Final Completion of the work and shall be extended for any warranty work to cover the warranty period.
- (e) If at any time during the execution of this Agreement in the required period thereafter, the bond or bonds become invalid or ineffective for any reason, the Contractor shall promptly supply within ten (10) days such other bond or bonds, which bond or bonds shall assure performance or payment as required.

28.02. The Contractor may make such changes and alterations as the City may require in the work or any part thereof without affecting the validity of this Agreement and any accompanying bond. If such changes or alterations diminish the quantity of the work to be done, they shall not constitute the basis for any claim for damages or anticipated profits. If the City makes changes or alterations that render useless any work already done or material already used in said work, then the City shall compensate the Contractor for any material or labor so used, and for any actual loss occasioned by such change due to actual expenses incurred in preparation for the work as originally planned, in accordance with the provisions of Article 17.

## 29. SURETY

29.01. If the Contractor has abandoned the Project or the City has terminated the contract for cause and the Contractor's Surety, after notice demanding completion is sent, fails to commence the completion of the work in compliance with this Agreement, then the City at its option may provide for completion of the work in either of the following manners:

29.01.01. The City may employ such force of men and use of instruments, machinery, equipment, tools, materials, and supplies as said the City may deem necessary to complete the work and charge the expense of such labor, machinery, equipment, tools, materials, and supplies to said the Contractor, and the expense so charged shall be deducted and paid by the City out of such monies as may be due or that may thereafter at any time become due to the Contractor and Surety.

29.01.02. The City may, after notice published as required by law, accept sealed bids and let this Agreement for the completion of the work under substantially the same terms and conditions that are provided in this Agreement. In case of any increase in cost to the City under the new agreement as compared to what would have been the cost under this Agreement, such increase together with all of the City's damages due to Contractor's abandonment and/or default, including liquidated damages, as provided pursuant to Paragraph 38, entitled "TERMINATION FOR CAUSE" shall be charged to the Contractor and the surety shall be and remain bound therefor. However, should the cost to complete such new agreement prove to be less than that which would have been the cost to complete the work under this Agreement, the Contractor shall be credited therewith after all deductions are made in accordance with this Agreement.

29.02. Should the cost to complete the work exceed the Contract Amount and the Contractor fails to pay the amount due to the City within the time designated and there remains any machinery, equipment, tools, materials, or supplies on the site of the work, notice thereof, together with an itemized list of such equipment and materials, shall be mailed to the Contractor at its respective address designated in this Agreement; provided, however, that actual written notice given in any manner shall satisfy this condition. After mailing, or otherwise giving such notice, such property shall be held at the risk of the Contractor subject only to the duty of City's Representative to exercise ordinary care to protect such property. After fifteen (15) calendar days from the date of said notice, City's Representative may sell such machinery, equipment, tools, materials, or supplies and apply the net sum derived from such sale to the credit of the Contractor. Such sale may be made at either public or private sale, with or without notice, as City's Representative may elect. City's Representative shall release any machinery, equipment, tools, materials, or supplies which remain on the job site and belong to persons other than the Contractor to their proper owners.

29.03. In the event the account shows that the cost to complete the work is less than that which would have been the cost to City had the work been completed by the Contractor under the terms of this Agreement, or when the Contractor shall pay the balance shown to be due by them to the City, then all machinery, equipment, tools, materials, or supplies left on the site of the work shall be turned over to the Contractor.

## 30. COMPLIANCE WITH LAW

30.01. The Contractor's work and materials shall comply with all state and federal laws, municipal ordinances, regulations, codes, and directions of inspectors appointed by proper authorities having jurisdiction.

30.02. The Contractor shall perform and require all subcontractors to perform the work in accordance with applicable laws, codes, ordinances, and regulations of the State of Texas and the United States and in compliance with OSHA and other laws as they apply to its employees. In the event any of the conditions of the specifications violate the code for any industry, then such code conditions shall prevail.

30.03. The Contractor shall follow all applicable state and federal laws, municipal ordinances, and guidelines concerning soil erosion and sediment control throughout the Project and warranty term.

## 31. SAFETY PRECAUTIONS

31.01. All safety measures, policies and precautions at the site are a part of the construction techniques and processes for which the Contractor shall be solely responsible. The Contractor is solely responsible for handling and use of hazardous materials or waste, and informing employees of any such hazardous materials or waste. The Contractor shall provide copies of all hazardous materials and waste data sheets to the College Station Fire Department marked "Attn.: Assistant Chief".

31.02. The Contractor has the sole obligation to protect or warn any individual of potential hazards created by the performance of the work set forth herein. The Contractor shall, at its own expense, take such precautionary measures for the protection of persons, property, and the work as may be necessary.

31.03. The Contractor shall be held responsible for all damages to property, personal injuries and/or death due to failure of safety devices of any type or nature that may be required to protect or warn any individual of potential hazards created by the performance of the work set forth herein; and when any property damage is incurred, the damaged portion shall immediately be replaced or compensated for by the Contractor at its own cost and expense.

31.04. Contractor agrees that it shall not transport to, use, generate, dispose of, or install at the Project site any Hazardous Substance (as defined in Paragraph 31.07, except in accordance with applicable Environmental Laws. Further, in performing the Work, Contractor shall not cause any release of Hazardous Substances into, or contamination of, the environment, including the soil, the atmosphere, any water course or ground water, except in accordance with applicable Environmental Laws (as hereafter defined at Paragraph 31.07). **In the event Contractor engages in any of the activities prohibited in this Paragraph 31.04 to the fullest extent permitted by law, Contractor hereby indemnifies and holds City and all of its respective officials, agents and employees harmless from and against any and all claims, damages, losses, causes of action, suits and liabilities of every kind, including, but not limited to, expenses of litigation, court costs, punitive damages and attorneys' fees, arising out of, incidental to or resulting from the activities prohibited in this Paragraph 31.04.**

31.05. In the event Contractor encounters on the Project site any Hazardous Substance, or what Contractor may reasonably believe to be a Hazardous Substance, and which is being introduced to the Work, or exists on the Project site, in a manner violative of any applicable Environmental Laws, Contractor shall immediately stop work in the area affected and report the condition to City in writing. The Work in the affected area shall not thereafter be resumed except by written authorization of City if in fact a Hazardous Substance has been encountered and has not been rendered harmless. In the event Contractor fails to stop the Work upon encountering a Hazardous Substance at the Project site, **to the fullest extent permitted by law, Contractor hereby indemnifies and holds City and all of its officials, agents and employees harmless from and against any and all claims, damages, losses, causes of action, suits and liabilities of every kind, including, but not limited to, expenses of litigation, court costs, punitive damages and attorneys' fees, arising out of, incidental to or resulting from Contractor's failure to stop the Work.**

31.06. City and Contractor may enter into a separate agreement and/or Change Order for Contractor to remediate and/or render harmless the Hazardous Substance, but Contractor shall not be required to remediate and/or render harmless the Hazardous Substance absent such agreement. Contractor shall not be required to resume work in any area affected by the Hazardous Substance until such time as the Hazardous Substance has been remediated and/or rendered harmless.

31.07. For purposes of this Agreement, the term "Hazardous Substance" shall mean and include any element, constituent, chemical, substance, compound, or mixture, which are defined as a hazardous

substance by any local, state or federal law, rule, ordinance, by-law, or regulation pertaining to environmental regulation, contamination, clean-up or disclosure, including, without limitation, The Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), The Resource Conservation and Recovery Act ("RCRA"), The Toxic Substances Control Act ("TSCA"), The Clean Water Act ("CWA"), The Clean Air Act ("CAA"), and the Marine Protection Research and Sanctuaries Act ("MPRSA"), The Occupational Safety and Health Act ("OSHA"), The Superfund Amendments and Reauthorization Act of 1986 ("SARA"), or other state superlien or environmental clean-up or disclosure statutes including all state and local counterparts of such laws (all such laws, rules and regulations being referred to collectively as "Environmental Laws"). It is the Contractor's responsibility to comply with this Paragraph 31.07 based on the law in effect at the time its services are rendered and to comply with any amendments to those laws for all services rendered after the effective date of any such amendments.

### **32. TRENCH SAFETY**

The Contractor must comply with Texas law regarding trench excavation exceeding five feet in depth and in accordance with the following items:

32.01 The Contractor must comply with the requirements of Tex. Health & Safety Code Ann. §756.022-023 (Vernon 1992), as amended, and the requirements of 29 C.F.R., Sections 1926.650 through 1926.653 inclusive, "Excavation, Trenching and Shoring," of the Occupational Safety and Health Administration Standards, as amended.

32.02 The Contractor must include a separate pay item for trench safety complying with trench safety requirements, stating a unit price per linear foot of trench safety systems, as measured along the centerline of trench including manholes and other line structures.

32.03 Before beginning work on this project, the Contractor must submit to the City a complete trench safety program that complies with state and federal regulations. It is the sole duty, responsibility and prerogative of the Contractor, not the City, to determine the specific applicability of the designed trench safety systems to each field condition encountered on the project.

32.04 The Contractor must provide the City the name of the "competent person" required by OSHA standards to perform the trench safety inspections. The Contractor must make daily inspections to ensure that the systems comply with all applicable laws and regulations, and must maintain a permanent record of daily inspections available for examination by the City or other government authority.

32.05 If evidence of possible cave-ins or slides is apparent, the Contractor must cease all work in the trench and surrounding area until the necessary precautions have been taken by the Contractor to safeguard personnel entering the trench.

### **33. INDEMNITY**

**33.01. CONTRACTOR SHALL PROTECT, DEFEND, HOLD HARMLESS AND INDEMNIFY THE CITY FROM ANY AND ALL CLAIMS, DEMANDS, EXPENSES, LIABILITY OR CAUSES OF ACTION FOR INJURY TO ANY PERSON, INCLUDING DEATH, AND FOR DAMAGE TO ANY PROPERTY, TANGIBLE OR INTANGIBLE, OR FOR ANY BREACH OF CONTRACT ARISING OUT OF OR IN ANY MANNER CONNECTED WITH THE WORK DONE BY ANY PERSON UNDER THIS CONTRACT. IT IS THE INTENT OF THE PARTIES THAT THIS PROVISION SHALL EXTEND TO, AND INCLUDE, ANY AND ALL CLAIMS, CAUSES OF ACTION OR LIABILITY CAUSED BY THE CONCURRENT, JOINT AND/OR CONTRIBUTORY NEGLIGENCE OF THE CITY, AN ALLEGED**

**BREACH OF AN EXPRESS OR IMPLIED WARRANTY BY THE CITY OR WHICH ARISES OUT OF ANY THEORY OF STRICT OR PRODUCTS LIABILITY.**

33.02. The indemnifications contained in paragraphs 33.01 shall include but not be limited to the following specific instances:

- (a) In the event the City is damaged due to the act, omission, mistake, fault or default of the Contractor, then the Contractor shall indemnify and hold harmless and defend the City for such damage.
- (b) The Contractor shall indemnify and hold harmless and defend the City from any claims for payment for goods or services brought by any material suppliers, mechanics, laborers, or other subcontractors.
- (c) The Contractor shall indemnify and hold harmless and defend the City from any and all injuries to or claims of adjacent property owners caused by the Contractor, its agents, employees, and representatives.
- (d) The Contractor shall be responsible for any damage to the floor, walls, etc., caused by the Contractor's personnel or equipment during installation.
- (e) The Contractor shall also be responsible for the removal of all related debris.
- (f) The Contractor shall also be responsible for subcontractors hired by it.
- (g) The Contractor shall indemnify, hold harmless, and defend the City from any liability caused by the Contractor's failure to comply with applicable federal, state, or local regulations, that touch upon or concern the maintenance of a safe and protected working environment and the safe use and operation of machinery and equipment in that working environment, no matter where fault or responsibility lies.

33.03. The indemnification obligations of the Contractor under this section shall not extend to include the liability of any professional engineer, the architect, their consultants, and agents or employees of any of them arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications, or (2) the giving of or the failure to give directions or instructions by the professional engineer, the architect, their consultants, and agents and employees of any of them, provided such giving or failure to give is the primary cause of the injury or damage.

33.04. 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 Paragraph 33.01, 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.

**34. RELEASE**

The Contractor assumes full responsibility for the work to be performed hereunder, and hereby releases, relinquishes, and discharges the City, its officers, agents, and employees from all claims, demands, and causes of action of every kind and character, including the cost of defense thereof, for any injury to or death of any person (whether employees of either party or other third parties) and any loss of or damage to any property (whether property of either of the parties hereto, their

employees, or of third parties) that is caused by or alleged to be caused by, arising out of, or in connection with the Contractor's 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 in the event of injury, death, property damage, or loss suffered by the Contractor, any subcontractor, or any person or organization directly or indirectly employed by any of them to perform or furnish work on the Project, this release shall apply regardless of whether such injury, death, loss, or damage was caused in whole or in part by the negligence of the City.

**35. PERMITS AND LICENSES**

The Contractor shall secure and pay for all necessary permits and licenses, governmental fees, and inspections necessary for the proper execution and completion of the work. During this Agreement term and/or period during which the Contractor is working, it shall give all notices and comply with all laws, ordinances, rules, regulations, and lawful orders of any public authority bearing on the performance of the work.

**36. ROYALTIES AND LICENSING FEES**

The Contractor shall pay all royalties and licensing fees. The Contractor shall hold the City harmless and indemnify the City from the payment of any royalties, damages, losses or expenses including attorney's fees for suits, claims or otherwise, growing out of infringement or alleged infringement of patents, materials and methods used in the Project. It shall defend all suits or claims for infringement of any patent rights. Further, if the Contractor has reason to believe that the design, service, process, or product specified is an infringement of a patent, it shall promptly give such information to City's Representative.

**37. BREACH OF CONTRACT & DAMAGES**

37.01. The City shall have the right to declare the Contractor in breach of this Agreement for cause when the City determines that this Agreement is not being performed according to its understanding of the intent and meaning of this Agreement. Such breach shall not in any way invalidate, abrogate, or terminate the Contractor's obligations under this Agreement.

37.02. Without prejudice to any other legal or equitable right or remedy that the City would otherwise possess hereunder or as a matter of law, the City upon giving the Contractor five (5) calendar days prior written notice shall be entitled to damages for breach of contract, upon but not limited to the following occurrences:

- (a) If the Contractor shall fail to remedy any default after written notice thereof from City's Representative, as City's Representative shall direct; or
- (b) If the Contractor shall fail for any reason other than the failure by City's Representative to make payments called upon when due; or
- (c) If the Contractor commits a substantial default under any of the terms, provisions, conditions, or covenants contained in this Agreement.

**38. TERMINATION FOR CAUSE**

Without prejudice to any other legal or equitable right or remedy that the City would otherwise possess hereunder or as a matter of law, the City upon giving the Contractor five (5) calendar days prior written notice shall be entitled to terminate this Agreement in its entirety at any time for any of the following:

38.01. If the Contractor becomes insolvent, commits any act of bankruptcy, makes a general assignment for the benefit of creditors, or becomes the subject of any proceeding commenced under any statute or law

for the relief of debtors and, after notice, fails to provide adequate assurance that it can remedy all of its defaults; or

38.02. If a receiver, trustee, or liquidator of any of the property or income of the Contractor shall be appointed; or

38.03. If the Contractor shall fail to prosecute the work or any part thereof with diligence necessary to insure its progress and completion as prescribed by the time schedules; or

38.04. If the Contractor shall fail to remedy any default within ten (10) calendar days after written notice thereof from City's Representative, as City's Representative shall direct; or

38.05. If the Contractor shall fail for any reason other than the failure by City's Representative to make payments called upon when due; or

38.06. If the Contractor abandons the Work.

38.07. If the Contractor commits a substantial default under any of the terms, provisions, conditions, or covenants contained in this Agreement.

### **39. TERMINATION FOR CONVENIENCE**

39.01. The performance of the work may be terminated at any time in whole or, from time to time, in part, by the City for its convenience. Any such termination shall be effected by delivery to the Contractor of a written notice (notice of termination) specifying the extent to which performance of the work is terminated, and the date upon which termination becomes effective.

39.02. In the event of termination for convenience, the Contractor shall only be paid the reasonable value of the Work performed prior to the effective date of the termination notice and shall be further subject to any claim the City may have against the Contractor under other provisions of this Agreement or as a matter of law. In the event of termination for convenience, Contractor Waives and Releases any claim for lost profit, other than profit on Work performed prior to the effective date of such termination.

### **40. RIGHT TO COMPLETE**

If this Agreement is terminated for cause, the City shall have the right but shall not be obligated to complete the work itself or by others; and to this end, the City shall be entitled to take possession of and use such equipment, without rental obligation therefor, and materials as may be on the job site, and to exercise all rights, options, and privileges of the Contractor under its subcontracts, purchase orders, or otherwise; and the Contractor shall promptly assign such rights, options, and privileges to City. If the City elects to complete the work itself or by others, pursuant to the foregoing, then the Contractor and/or Contractor's surety will reimburse City for all costs incurred by the City (including, without limitation, applicable, general, administrative expenses, field overhead, the cost of necessary equipment, materials, field labor, additional fees paid to architects, engineers, attorneys or others to assist the City in connection with the termination and liquidated damages) in completing and/or correcting work by the Contractor that fails to meet any requirement of this Agreement or the other Contract Documents.

### **41. CLOSE OUT**

41.01. After receipt of a notice of termination, whether for cause or convenience, unless otherwise directed by City's Representative, the Contractor shall, in good faith and to the best of its ability, do all things necessary in the light of such notice to assure the efficient and proper closeout of the terminated work

(including the protection of City's property). Among other things, the Contractor shall, except as otherwise directed or approved by City's Representative, do the following:

- (a) Stop the work on the date and to the extent specified in the notice of termination;
- (b) Place no further orders or subcontracts for services, equipment, or materials, except as may be necessary for completion of such portion of the work as is not terminated;
- (c) Terminate all orders and subcontracts to the extent that they relate to the performance of the work terminated by the notice of termination;
- (d) Assign to City's Representative, in the manner and to the extent directed by it, all of the right, title, and interest of the Contractor under the orders or subcontracts so terminated; in which case, City's Representative shall have the right to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
- (e) With the approval of City's Representative, settle all outstanding liabilities and all claims arising out of such termination, orders, and subcontracts;
- (f) Deliver to City's Representative, when directed by City's Representative, all documents and all property, which if the work had been completed, Contractor would have been required to account for or deliver to City's Representative, and transfer title to such property to City's Representative to the extent not already transferred; and/or

#### **42. TERMINATION CONVERSION**

Upon determination of Court of competent jurisdiction that termination of the Contractor pursuant to Paragraph 38 was wrongful and/or otherwise improper, such termination will be deemed converted to a termination for convenience pursuant to Paragraph 39 and Contractor's remedy for such termination shall be limited to the recovery of the payments permitted for termination for convenience as set forth in Paragraph 39.

#### **43. HIRING**

During the term of this Agreement and for a period of one (1) year thereafter, the Contractor agrees not to solicit for hire any employee or employees of the City that were associated with work specified under this Agreement. In the event that this provision is breached by the Contractor, the Contractor agrees to pay the City damages in the amount equal to twelve (12) months of the employee's total compensation plus any legal expenses associated with enforcement of this provision.

#### **44. ASSIGNMENT**

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

#### **45. EFFECTIVE DATE**

The effective date of this contract shall be the date of award of the contract.

#### **46. OTHER TERMS**

46.01. **Invalidity.** If any provision of this Agreement shall be held to be invalid, illegal or unenforceable by a court or other tribunal of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The parties shall use their best

efforts to replace the respective provision or provisions of this Agreement with legal terms and conditions approximating the original intent of the parties.

46.02. **Written Notice.** Unless otherwise specified, written notice shall be deemed to have been duly served if delivered in person to the individual or to a member of the firm or to any officer of the corporation for whom it is intended or if it is delivered or sent certified mail to the last business address as listed herein. Each party will have the right to change its business address by at least thirty (30) calendar days written notice to the other parties in writing of such change.

46.03. **Entire Agreement.** It is understood that this Agreement contains the entire agreement between the parties and supersedes any and all prior agreements, arrangements, or understandings between the parties relating to the subject matter. No oral understandings, statements, promises or inducements contrary to the terms of this Agreement exist. This Agreement cannot be changed or terminated orally. No verbal agreement or conversation with any officer, agent or employee of the City, either before or after the execution of this Agreement, shall affect or modify any of the terms or obligations hereunder.

46.04. **Amendment.** No amendment to this Agreement shall be effective and binding unless and until it is reduced to writing and signed by duly authorized representatives of both parties.

46.05. **Mediation.** After receipt of a Notice of Claim, the Owner may elect to refer the matter to the Architect, Owner's Representative or another party for review. Contractor will attend meetings called to review and discuss the Claims and mitigation of the problem, and shall furnish any reasonable factual backup for the Claim requested. The Owner may also elect to defer consideration of the Claim until the Work is completed, in which case the same review options shall be available to the Owner at the completion of the Work. At any stage, the Owner, at its sole discretion, is entitled to refer a Claim to mediation under the Construction Industry Mediation Rules of the American Arbitration Association, and, if this referral is made, Contractor will take part in the mediation process. The filing, mediation or rejection of a Claim does not entitle Contractor to stop performance of the Work. The Contractor shall proceed diligently with performance of the Contract during the pendency of any claim, excepting termination or under Owner's direction to stop the Work. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. The parties shall share the Mediator's fee and any filing fees equally and the Mediation shall be held in College Station, Texas.

46.06. **Arbitration.** In the event of a dispute and upon the mutual written consent of both parties, the parties may agree to arbitration without waiving any of their other rights hereunder.

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

46.08. **Authority to do business.** The Contractor represents that it has a certificate of authority, authorizing it to do business in the State of Texas, a registered agent and registered office during the duration of this contract.

46.09 **Authority to Contract.** Each party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each party has been properly authorized and empowered to enter into this Agreement. The persons executing this Agreement hereby represent that they have authorization to sign on behalf of their respective corporations.

46.10. **Waiver.** Failure of any party, at any time, to enforce a provision of this Agreement shall in no way constitute a waiver of that provision nor in any way affect the validity of this Agreement, any part hereof, or the right of the City thereafter to enforce each and every provision hereof. No term of this Agreement shall be deemed waived or breach excused unless the waiver shall be in writing and signed by the party claimed to

have waived. Furthermore, any consent to or waiver of a breach will not constitute consent to or waiver of or excuse of any other different or subsequent breach.

46.11. **Headings, Gender, Number.** The article headings are used in this Agreement for convenience and reference purposes only and are not intended to define, limit, or describe the scope or intent of any provision of this Agreement and shall have no meaning or effect upon its interpretation. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, and vice versa, unless the context requires otherwise.

46.12. **Agreement Read.** The parties acknowledge that they have had opportunity to consult with counsel of their choice, have read, understand and intend to be bound by the terms and conditions of this Agreement.

46.13. **Multiple Originals.** It is understood and agreed that this Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes.

46.14. **Notice of Indemnification.** City and Contractor hereby acknowledge and agree that this Agreement contains certain indemnification obligations and covenants.

**PROGRESSIVE COMMERCIAL  
AQUATICS, INC.**

By: J. Chris Davis  
Printed Name: J. Chris Davis  
Title: President  
Date: 3-23-11

**CITY OF COLLEGE STATION**

By: \_\_\_\_\_  
City Manager  
Date: \_\_\_\_\_

APPROVED:

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

\_\_\_\_\_  
Assistant City Manager/CFO  
Date: \_\_\_\_\_

**Exhibit A**  
**DAVIS BACON WAGE RATES**

General Decision Number: TX160016 01/08/2016 TX16

Superseded General Decision Number: TX20150016

State: Texas

Construction Types: Heavy and Highway

Counties: Atascosa, Bandera, Bastrop, Bell, Bexar, Brazos, Bureson, Caldwell, Comal, Coryell, Guadalupe, Hays, Kendall, Lampasas, McLennan, Medina, Robertson, Travis, Williamson and Wilson Counties in Texas.

HEAVY (excluding tunnels and dams, not to be used for work on Sewage or Water Treatment Plants or Lift / Pump Stations in Bell, Coryell, McClennon and Williamson Counties) and HIGHWAY Construction Projects

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.15 for calendar year 2016 applies to all contracts subject to the Davis-Bacon Act for which the solicitation was issued on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.15 (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2016. The EO minimum wage rate will be adjusted annually. Additional information on contractor requirements and worker protections under the EO is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).

Modification Number	Publication Date
0	01/08/2016

\* SUTX2011-006 08/03/2011

	Rates	Fringes
CEMENT MASON/CONCRETE FINISHER (Paving and Structures).....	\$ 12.56	
ELECTRICIAN.....	\$ 26.35	
FORM BUILDER/FORM SETTER		
Paving & Curb.....	\$ 12.94	
Structures.....	\$ 12.87	
LABORER		
Asphalt Raker.....	\$ 12.12	
Flagger.....	\$ 9.45	
Laborer, Common.....	\$ 10.50	
Laborer, Utility.....	\$ 12.27	
Pipelayer.....	\$ 12.79	

Work Zone Barricade	
Servicer.....	\$ 11.85
PAINTER (Structures).....	\$ 18.34
POWER EQUIPMENT OPERATOR:	
Agricultural Tractor.....	\$ 12.69
Asphalt Distributor.....	\$ 15.55
Asphalt Paving Machine.....	\$ 14.36
Boom Truck.....	\$ 18.36
Broom or Sweeper.....	\$ 11.04
Concrete Pavement	
Finishing Machine.....	\$ 15.48
Crane, Hydraulic 80 tons	
or less.....	\$ 18.36
Crane, Lattice Boom 80	
tons or less.....	\$ 15.87
Crane, Lattice Boom over	
80 tons.....	\$ 19.38
Crawler Tractor.....	\$ 15.67
Directional Drilling	
Locator.....	\$ 11.67
Directional Drilling	
Operator.....	\$ 17.24
Excavator 50,000 lbs or	
Less.....	\$ 12.88
Excavator over 50,000 lbs...	\$ 17.71
Foundation Drill, Truck	
Mounted.....	\$ 16.93
Front End Loader, 3 CY or	
Less.....	\$ 13.04
Front End Loader, Over 3 CY.	\$ 13.21
Loader/Backhoe.....	\$ 14.12
Mechanic.....	\$ 17.10
Milling Machine.....	\$ 14.18
Motor Grader, Fine Grade....	\$ 18.51
Motor Grader, Rough.....	\$ 14.63
Pavement Marking Machine....	\$ 19.17
Reclaimer/Pulverizer.....	\$ 12.88
Roller, Asphalt.....	\$ 12.78
Roller, Other.....	\$ 10.50
Scraper.....	\$ 12.27
Spreader Box.....	\$ 14.04
Trenching Machine, Heavy....	\$ 18.48
Servicer.....	\$ 14.51
Steel Worker	
Reinforcing.....	\$ 14.00
Structural.....	\$ 19.29
TRAFFIC SIGNAL INSTALLER	
Traffic Signal/Light Pole	
Worker.....	\$ 16.00
TRUCK DRIVER	
Lowboy-Float.....	\$ 15.66

Off Road Hauler.....\$ 11.88  
 Single Axle.....\$ 11.79  
 Single or Tandem Axle Dump  
 Truck.....\$ 11.68  
 Tandem Axle Tractor w/Semi  
 Trailer.....\$ 12.81

WELDER.....\$ 15.97  
 -----

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

1. Payment greater than prevailing wage rate as listed within this document not prohibited per Texas Government Code, Chapter 2258, Prevailing Wage Rates, Subchapter A. General Provisions.
2. Not less than the following hourly rates shall be paid for the various classifications of work required by this project. Workers in classifications where rates are not identified shall be paid not less than the general prevailing rate of "laborer" for the various classifications of work therein listed.
3. The hourly rate for legal holiday and overtime work shall not be less than one and one-half (1 & 1/2) times the base hourly rate.
4. The rates listed are journeyman rates. Helpers may be used on the project and may be compensated at a rate determined mutually by the worker and employer, commensurate with the experience and skill of the worker but not at a rate less than 60% of the journeyman's wage as shown. Apprentices (enrolled in a federally certified apprentice program) may be used at the percentage rates of the journeyman scale stipulated in their apprenticeship agreement. At no time shall a journeyman supervise more than two (2) apprentices or helpers. All apprentices or helpers shall be under the direct supervision of a journeyman working as a crew.

**Exhibit B**  
**INSURANCE REQUIREMENTS**

During the term of this Agreement Contractor's insurance policies shall meet the following requirements:

I. Standard Insurance Policies Required:

- A. Commercial General Liability
- B. Business Automobile Liability
- C. Umbrella / Excess Liability – required for contract amounts exceeding \$1,000,000
- D. Workers' Compensation
- E. Builder's Risk – provides coverage for contractor's labor and materials for a project during construction that involves a structure such as a building or garage. builder's risk policy shall be written on "all risks" form.

II. General Requirements Applicable to All Policies:

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

III. Commercial General Liability

- A. General Liability insurance shall be written by a carrier with a "A:VIII" or better rating in accordance with the current Best Key Rating Guide.
- B. Limit of \$1,000,000.00 per occurrence for bodily injury and property damage with an annual aggregate limit of \$2,000,000.00 which limits shall be endorsed to be per Project.
- C. Coverage shall be at least as broad as ISO form GC 00 01.
- D. No coverage shall be excluded from the standard policy without notification of individual exclusions being attached for review and acceptance.

- E. The coverage shall include but not be limited to the following: premises/operations with separate aggregate; independent contracts; products/completed operations; contractual liability (insuring the indemnity provided herein) Host Liquor Liability, Personal & Advertising Liability; and Explosion, Collapse, and Underground coverage.

IV. Business Automobile Liability

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

V. Excess Liability

Umbrella form excess liability coverage following the form of the underlying coverage with a minimum limit of \$5,000,000.00 or the total value of the contract, whichever is greater, per occurrence/aggregate when combined with the lowest primary liability coverage, is required for contracts exceeding \$1,000,000 in total value.

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

VII. Workers Compensation Insurance

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

used.

- B. Workers compensation insurance shall include the following terms:
1. Employer's Liability minimum limits of \$1,000,000.00 for each accident/each disease/each employee are required.
  2. "Texas Waiver of Our Right to Recover From Others Endorsement, WC 42 03 04" shall be included in this policy.
  3. Texas must appear in Item 3A of the Workers Compensation coverage or Item 3C must contain the following: All States except those listed in Item 3A and the States of NV, ND, OH, WA, WV, and WY.
- C. Pursuant to the explicit terms of Title 28, Section 110.110(c) (7) of the Texas Administrative Code, the bid specifications, this Agreement, and all subcontracts on this Project must include the following terms and conditions in the following language, without any additional words or changes, except those required to accommodate the specific document in which they are contained or to impose stricter standards of documentation:
- "A. *Definitions:*
- Certificate of coverage ("certificate") – An original certificate of insurance, a certificate of authority to self-insure issued by the Division of Workers Compensation, or a coverage agreement (DWC-81, DWC-83, or DWC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.*
- Duration of the project - includes the time from the beginning of the work on the project until the Contractor's/person's work on the project has been completed and accepted by the governmental entity.*
- Persons providing services on the project ("subcontractors" in § 406.096 [of the Texas Labor Code]) - includes all persons or entities performing all or part of the services the Contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the Contractor and regardless of whether that person has employees. This includes, without limitation, independent Contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.*
- B. *The Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, that meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the Contractor providing services on the project, for the duration of the project.*
- C. *The Contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.*
- D. *If the coverage period shown on the Contractor's current certificate of coverage ends during the duration of the project, the Contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.*

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

*calendar days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and*

(7) *Contractually require each person with whom it contracts to perform as required by paragraphs (a) - (g), with the certificates of coverage to be provided to the person for whom they are providing services.*

J. *By signing this contract, or providing, or causing to be provided a certificate of coverage, the Contractor is representing to the governmental entity that all employees of the Contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project; that the coverage will be based on proper reporting of classification codes and payroll amounts; and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the Commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.*

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

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

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

**Exhibit C**  
**PERFORMANCE AND PAYMENT BONDS**

PERFORMANCE BOND

Project No. 16300350

THE STATE OF TEXAS

§

KNOW ALL MEN BY THESE PRESENTS:

THE COUNTY OF BRAZOS

§

§

**THAT WE,** Progressive Commercial Aquatics, Inc., as Principal, hereinafter called "Contractor" and the other subscriber hereto Liberty Mutual Insurance Company, as Surety, do hereby acknowledge ourselves to be held and firmly bound to the City of College Station, a municipal corporation, in the sum of Seventy Nine Thousand Seven Hundred Twenty Two and 00/100 Dollars (\$79,722.00) for the payment of which sum, well and truly to be made to the City of College Station and its successors, the said Contractor and Surety do bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally.

**THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:**

**WHEREAS,** the Contractor has on or about this day executed a Contract in writing with the City of College Station for Painting and Repair of Adamson Lagoon Slides

\_\_\_\_\_ all of such work to be done as set out in full in said Contract Documents therein referred to and adopted by the City Council, all of which are made a part of this instrument as fully and completely as if set out in full herein.

**NOW THEREFORE,** if the said Contractor shall faithfully and strictly perform Contract in all its terms, provisions, and stipulations in accordance with its true meaning and effect, and in accordance with the Contract Documents referred to therein and shall comply strictly with each and every provision of the Contract, including all warranties and indemnities therein and with this bond, then this obligation shall become null and void and shall have no further force and effect; otherwise the same is to remain in full force and effect.

It is further understood and agreed that the Surety does hereby relieve the City of College Station or its representatives from the exercise of any diligence whatever in securing compliance on the part of the Contractor with the terms of the Contract, including the making of payments thereunder and, having fully considered its Principal's competence to perform the Contract in the underwriting of this Performance Bond, the Surety hereby waives any notice to it of any default, or delay by the Contractor in the performance of his Contract and agrees that it, the Surety, shall be bound to take notice of and shall be held to have knowledge of all acts or omissions of the Contractor in all matters pertaining to the Contract. The Surety understands and agrees that the provision in the Contract that the City of College Station shall retain certain amounts due the Contractor until the expiration of thirty days from the acceptance of the Work is intended for the City's benefit, and the City of College Station shall have the right to pay or withhold such retained amounts or any other amount owing under the Contract without changing or affecting the liability of the Surety hereon in any degree.

It is further expressly agreed by Surety that the City of College Station or its representatives are at liberty at any time, without notice to the Surety, to make any change in the Contract Documents and in the Work to be done thereunder, as provided in the Contract, and in the terms and conditions thereof, or to make any change in, addition to, or deduction from the work to be done thereunder; and that such changes, if made, shall not in any way vitiate the obligation in this bond and undertaking or release the Surety therefrom.

It is further expressly agreed and understood that the Contractor and Surety will fully indemnify and hold harmless the City of College Station from any liability, loss, cost, expense, or damage arising out of or in connection with the work done by the Contractor under the Contract. In the event that the City of College Station shall bring

any suit or other proceeding at law on the Contract or this bond or both, the Contractor and Surety agree to pay to the City the actual amounts of attorneys' fees incurred by the city in connection with such suit.

This bond and all obligations created hereunder shall be performable in Brazos County, Texas. This bond is given in compliance with the provisions of Chapter 2253 of the Texas Government Code, as amended, which is incorporated herein by this reference. However, all of the express provisions hereof shall be applicable whether or not within the scope of said statute.

Notices required or permitted hereunder shall be in writing and shall be deemed delivered when actually received or, if earlier, on the third day following deposit in a United State Postal Service post office or receptacle, with proper postage affixed (certified mail, return receipt requested), addressed to the respective other party at the address prescribed in the Contract Documents, or at such other address as the receiving party may hereafter prescribe by written notice to the sending party.

**IN WITNESS THEREOF**, the said Contractor and Surety have signed and sealed this instrument on the respective dates written below their signatures and have attached current Power of Attorney.

ATTEST and SEAL: (if a corporation) (SEAL)  
WITNESS: (if not a corporation)

By: [Signature]  
Name: Steve E. Davis  
Title: V.P.

Progressive Commercial Aquatics, Inc.  
(Name of Contractor)

By: [Signature]  
Name: J. Chris Davis  
Title: President  
Date: 4-14-16

ATTEST/WITNESS (SEAL)

By: [Signature]  
Name: Tara Benford  
Title: Account Manager  
Date: April 14, 2016

Liberty Mutual Insurance Company  
(Full Name of Surety)  
450 Plymouth Road, Suite 400  
Plymouth Meeting, PA 19462-8284  
(Address of Surety for Notice)

By: [Signature]  
Name: Alicia Cantavella  
Title: Attorney-in-Fact  
Date: April 14, 2016

REVIEWED:

THE FOREGOING BOND IS ACCEPTED  
ON BEHALF OF  
THE CITY OF COLLEGE STATION, TEXAS:

\_\_\_\_\_  
City Attorney's Office

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

NOTE: Date of bonds must be equal to or after the date of execution by City.

TEXAS STATUTORY PAYMENT BOND

Project No. 16300350

THE STATE OF TEXAS §

§

THE COUNTY OF BRAZOS §

§

KNOW ALL MEN BY THESE PRESENTS:

**THAT WE,** Progressive Commercial Aquatics, Inc., as Principal, hereinafter called "Principal" and the other subscriber hereto Liberty Mutual Insurance Company, a corporation organized and existing under the laws of the State of Massachusetts, licensed to business in the State of Texas and admitted to write bonds, as Surety, herein after called "Surety", do hereby acknowledge ourselves to be held and firmly bound to the City of College Station, a municipal corporation, in the sum of Seventy Nine Thousand Seven Hundred Twenty Two and 00/100 Dollars (\$79,722.00) for payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns jointly and severally.

**THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:**

**WHEREAS,** Principal has entered into a certain contract with the City of College Station, dated the \_\_\_\_\_ day of \_\_\_\_\_, 2016, for Painting and Repair of Adamson Lagoon Slides

\_\_\_\_\_ which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

**NOW THEREFORE,** the condition of this obligation is such that if Principal shall pay all claimants supplying labor and material to him or a subcontractor in the prosecution of the work provided for in said contract, then, this obligation shall be null and void; otherwise to remain in full force and effect;

**PROVIDED, HOWEVER,** that this bond is executed pursuant to the provisions of Chapter 2253 of the Texas Government Code and all liabilities on this bond shall be determined in accordance with the provisions, conditions and limitations of said Code to the same extent as if it were copied at length herein.

**IN WITNESS THEREOF,** the said Principal and Surety have signed and sealed this instrument on the respective dates written below their signatures.

ATTEST and SEAL: (if a corporation) (SEAL)  
WITNESS: (if not a corporation)

By: [Signature]  
Name: STEVE B. DAVIS  
Title: V.P.

Progressive Commercial Aquatics, Inc.  
(Name of Contractor)

By: [Signature]  
Name: J. Chris Davis  
Title: President  
Date: 4-14-16

ATTEST/WITNESS (SEAL)

By: [Signature]  
Name: Tara Benford  
Title: Account Manager  
Date: April 14, 2016

Liberty Mutual Insurance Company  
(Full Name of Surety)

450 Plymouth Road, Suite 400  
Plymouth Meeting, PA 19002-8284  
(Address of Surety for Notice)

By: [Signature]  
Name: Alicia Cantavella  
Title: Attorney-in-Fact  
Date: April 14, 2016

REVIEWED:

THE FOREGOING BOND IS ACCEPTED  
ON BEHALF OF  
THE CITY OF COLLEGE STATION, TEXAS:

\_\_\_\_\_  
City Attorney's Office

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

NOTE: Date of bonds must be equal to or after the date of execution by City.

**THIS POWER OF ATTORNEY IS NOT VALID UNLESS IT IS PRINTED ON RED BACKGROUND.**

This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

Certificate No. 7083332

American Fire and Casualty Company  
The Ohio Casualty Insurance Company

Liberty Mutual Insurance Company  
West American Insurance Company

**POWER OF ATTORNEY**

KNOWN ALL PERSONS BY THESE PRESENTS: That American Fire & Casualty Company and The Ohio Casualty Insurance Company are corporations duly organized under the laws of the State of New Hampshire, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint, Alicia Cantavella; Cheryl A. Sanders; Dennis M. Descant, Jr.; Jeffrey Lee Brady

all of the city of Houston, state of TX each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 12th day of August, 2015.

American Fire and Casualty Company  
The Ohio Casualty Insurance Company  
Liberty Mutual Insurance Company  
West American Insurance Company

By: David M. Carey  
David M. Carey, Assistant Secretary



STATE OF PENNSYLVANIA ss  
COUNTY OF MONTGOMERY

On this 12th day of August, 2015, before me personally appeared David M. Carey, who acknowledged himself to be the Assistant Secretary of American Fire and Casualty Company, Liberty Mutual Insurance Company, The Ohio Casualty Insurance Company, and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at Plymouth Meeting, Pennsylvania, on the day and year first above written.



COMMONWEALTH OF PENNSYLVANIA  
Notarial Seal  
Teresa Pastella, Notary Public  
Plymouth Twp., Montgomery County  
My Commission Expires March 28, 2017  
Member, Pennsylvania Association of Notaries

By: Teresa Pastella  
Teresa Pastella, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of American Fire and Casualty Company, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company which resolutions are now in full force and effect reading as follows:

**ARTICLE IV – OFFICERS** – Section 12. Power of Attorney. Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

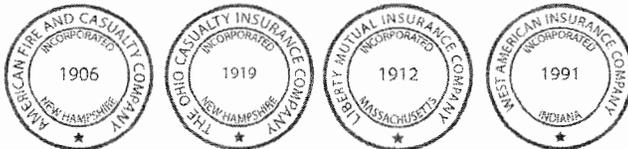
**ARTICLE XIII – Execution of Contracts – SECTION 5. Surety Bonds and Undertakings.** Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

**Certificate of Designation** – The President of the Company, acting pursuant to the Bylaws of the Company, authorizes David M. Carey, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

**Authorization** – By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, Gregory W. Davenport, the undersigned, Assistant Secretary, of American Fire and Casualty Company, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy of the Power of Attorney executed by said Companies, is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 14th day of April, 2016.



By: Gregory W. Davenport  
Gregory W. Davenport, Assistant Secretary

Not valid for mortgage, note, loan, letter of credit, currency rate, interest rate or residual value guarantees.

To confirm the validity of this Power of Attorney call 1-610-832-8240 between 9:00 am and 4:30 pm EST on any business day.



TEXAS  
IMPORTANT NOTICE

To obtain information or make a complaint:

You may call toll-free for information or to make a complaint at  
1-877-751-2641

You may also write to:

Interchange Corporate Center  
450 Plymouth Road, Suite 400  
Plymouth Meeting, PA 79462-8284

You may contact the Texas Department of Insurance to obtain information on companies, coverages, rights or complaints at  
1-800-252-3439

You may write the Texas Department of Insurance Consumer Protection (111-1A)  
P. O. Box 149091  
Austin, TX 78714-9091  
FAX: (512) 490-1007  
Web: <http://www.tdi.texas.gov>  
E-mail: [ConsumerProtection@tdi.texas.gov](mailto:ConsumerProtection@tdi.texas.gov)

PREMIUM OR CLAIM DISPUTES:

Should you have a dispute concerning your premium or about a claim you should first contact the agent or call 1-800-843-6446. If the dispute is not resolved, you may contact the Texas Department of Insurance.

ATTACH THIS NOTICE TO YOUR POLICY:

This notice is for information only and does not become a part or condition of the attached document.

TEXAS  
AVISO IMPORTANTE

Para obtener informacion o para someter una queja:

Usted puede llamar al numero de telefono gratis para informacion o para someter una queja al  
1-877-751-2641

Usted tambien puede escribir a:

Interchange Corporate Center  
450 Plymouth Road, Suite 400  
Plymouth Meeting, PA 79462-8284

Puede comunicarse con el Departamento de Seguros de Texas para obtener informacion acerca de companias, coberturas, derechos o quejas al  
1-800-252-3439

Puede escribir al Departamento de Seguros de Texas Consumer Protection (111-1A)  
P. O. Box 149091  
Austin, TX 78714-9091  
FAX # (512) 490-1007  
Web: <http://www.tdi.texas.gov>  
E-mail: [ConsumerProtection@tdi.texas.gov](mailto:ConsumerProtection@tdi.texas.gov)

DISPUTAS SOBRE PRIMAS O RECLAMOS:

Si tiene una disputa concerniente a su prima o a un reclamo, debe comunicarse con el agente o primero. Si no se resuelve la disputa, puede entonces comunicarse con el departamento (TDI)

UNA ESTE AVISO A SU POLIZA:

Este aviso es solo para proposito de informacion y no se convierte en parte o condicion del documento adjunto.

**Exhibit D**

**CERTIFICATES OF INSURANCE AND ENDORSEMENTS**



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
3/23/2016

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).

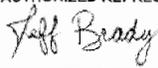
<b>PRODUCER</b> Brady, Chapman, Holland & Associates 10055 West Gulf Bank Houston TX 77040	<b>CONTACT NAME:</b> PHONE (A/C, No, Ext): 713-688-1500      FAX (A/C, No): 713-688-7967 E-MAIL ADDRESS: eCSR24@bch-insurance.com	
	<b>INSURER(S) AFFORDING COVERAGE</b> <b>NAIC #</b>	
<b>INSURED</b> PROGRESSIV2 Progressive Commercial Aquatics, Inc 2510 Farrell Rd Houston TX 77073	<b>INSURER A:</b> Transportation Insurance Co. (CNA)      20494	
	<b>INSURER B:</b> American Casualty Co of Reading PA-      20427	
	<b>INSURER C:</b> Continental Casualty Co. (CNA)      20443	
	<b>INSURER D:</b> Texas Mutual Insurance Co      22945	
	<b>INSURER E:</b> Endurance American Specialty (AmWin)	
<b>INSURER F:</b>		

**COVERAGES**      **CERTIFICATE NUMBER: 719613184**      **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
A	<input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input checked="" type="checkbox"/> LOC <input type="checkbox"/> OTHER:			5094992447	3/31/2015	3/31/2016	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$100,000 MED EXP (Any one person) \$5,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000 \$
B	<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS			C5095120963	3/31/2015	3/31/2016	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
C	<input checked="" type="checkbox"/> <b>UMBRELLA LIAB</b> <input type="checkbox"/> OCCUR <input type="checkbox"/> <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000			C5095120879 EXC10006702100	3/31/2015 3/31/2015	3/31/2016 3/31/2016	EACH OCCURRENCE \$5,000,000 AGGREGATE \$5,000,000 \$
D	<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			TSF0001223875	3/31/2015	3/31/2016	<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
A	Leased/Rented Equipment Installation Floater			5094992447 6012835254	3/31/2015 3/31/2015	3/31/2016 3/31/2016	Any One Item \$150,000 Maximum \$300,000 \$100,000 Limit IF \$1,000 Ded

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES** (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
The policy includes Blanket additional insured on the general liability per form G140331D0113 and automobile per form CA20481013, with a waiver of subrogation on the general liability per form CG24040509, automobile per form CNA633590412 and workers compensation per form WC420304A when required by written contract. This insurance is primary and non-contributory as respects general liability G140331D0113. Umbrella additional insured per form G15057C, waiver of subrogation per form G48437A and primary and non-contributory per form G300429A.

<b>CERTIFICATE HOLDER</b>  City of College Station Attn: Heather Pavelka 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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**Exhibit E**  
**TECHNICAL SPECIFICATIONS AND PLANS**



Project Name: Adamson Lagoon Slides  
Attn: Amy Atkins  
Date: 3/16/16  
Buyboard#451-14

**Quote:**

- \$45,000.00 ---BOTH Slides Refinished inside and out with the color of their choosing. Seams removed and re-caulked, any fiberglass repair work, bolts checked, and replaced where needed.
- \$32,400.00— Slide Structure sand/prime/repaint.
- Since Payment Performance Bond is needed please add 3% to the total which is \$2,322.
- Estimated time to complete the slide resurfacing and structure would be between 20-25 days.
- Buyboard Hourly Rate is \$95/hr plus all materials and travel. Refinishing Projects are all custom to each facility so each facility is quoted based on amount of labor, materials and travel.

**Grand Total with Bond: \$79,722**

Myles Phelps  
Progressive Commercial Aquatics, Inc.

15616 Schmidt Loop Manor, Texas 78653 (512) 278-0801 Fax (512) 350-2154  
Website [www.proaquatic.com](http://www.proaquatic.com) E-Mail [TPHELPS4@austin.rr.com](mailto:TPHELPS4@austin.rr.com)

### Scope of Work:

The following scope of work summary is based on the attached engineering report:

- Both flumes of the slide refinished inside and out with the color of City's choosing.
- Both flumes of the slide seams removed and re-caulked.
- Both flumes of the slide any fiberglass repair work needed completed.
- Both flumes of the slide bolts checked, and replaced where needed.
- Metal slide structure sand, prime, repaint.

December 18, 2015

Mr. Rusty Warncke  
City of College Station  
P.O. Box 9973  
College Station, Texas 77842

Re: Forensic Inspection  
Adamson Lagoon Slide Structure  
1900 Anderson St,  
College Station, Texas 77840  
Gessner Engineering Job No.: 15-1019

Dear Mr. Warncke:

A visual inspection of the steel framing for the slide and bridge structures at the Adamson Lagoon in College Station, Texas was performed by Nikolas Gomes, E.I.T., with Gessner Engineering on December 14, 2015. This inspection was requested to provide a visual evaluation of the existing steel structures and to provide general recommendations for remediation, as required. A full engineering analysis of the existing framing or engineering of specific additional structural elements is beyond the scope of this report. The items listed are not meant to represent a total or exhaustive list of defects which may be present. Gessner Engineering neither extends nor implies any warranty as a result of this inspection or any repair performed upon the facilities. The results of this inspection are provided in the following paragraphs and are for the exclusive use of the City of College Station.

### Introduction

For purposes of this report, the inspected areas will be broken into three distinct areas as noted below (Figure 1): the bridge, the slide tower, and slides A & B. The scope of this inspection was limited to the structural steel components throughout the various areas. Each area will be discussed followed by general recommendations for remediation.



Figure 1- Site View

## **Bridge - Observations & Recommendations**

The bridge structure is framed with various steel elements, totaling a footprint of approximately 40 feet long by 4 feet wide. Four pairs of hollow structural steel (HSS) columns, approximately 2'-3" apart, are supported on isolated foundations and spaced along the length of the bridge, up to 11'-4" apart. A rectangular HSS beam spans over each pair of columns, overhanging each column slightly to support steel channel stringers and beams that frame the width of the stairs and bridge. A steel angle runs the length of the channels at the sides of the bridge, supporting aluminum deck panels. Periodic channels are placed below the deck, framing into the channel beams along the bridge in conjunction with back-to-back channels centered at perimeter beam splice locations. The same aluminum deck panels used at the bridge are used as treads to form the stairs on both ends of the bridge. A section of the stringer's web was punched out and folded inward to provide a support and connection surface on which the aluminum treads are mounted. A wood nailer was bolted into the web of the channel beams and stringers, to which the wood handrail verticals were bolted.

The aluminum deck panels appeared to be in good condition, and adequately attached to the supporting steel. Various steel components appeared to have experienced oxidation; however, significant section degradation did not appear to be prevalent. The following components showed notable signs of rust and require additional attention during the proposed remediation process:

- 1.1. One stair tread at the southwest stair appeared to have been cut shorter than the requisite width of the stairs. To accommodate the slightly shorter length, an additional bearing plate was welded over the original that extended into the stair width. This plate appears to have experienced significant rusting.
- 1.2. The rectangular tube over the northern-most pair of columns showed signs of water collecting at the end of the tube, and along the underlying horizontal plate which extended beyond the sides of the tube.
- 1.3. Bolts utilized at steel to steel connections appeared to be in serviceable condition; however, the associated steel angles and beams at these connections were rusted.
- 1.4. The steel angles and foundation anchors at the base of the northern stair stringers have experienced significant deterioration.
- 1.5. Column baseplates, specifically at the northern-most pair of columns, had rusted around the perimeter.

Gessner Engineering recommends all steel components be cleaned and repaired in accordance with the procedures described in the "General Recommendations" section of this report. The following recommendations correspond to the above noted deficiencies:

- 1.1. The tread shall be removed and the specified plate shall be replaced with an angle of equal dimension and thickness, welded to the interior of the stringer. The tread may be re-attached to the provided angle.
- 1.2. Once the components have been properly cleaned, Gessner Engineering recommends the tube be sealed with a new cap plate to prevent potential water infiltration.
- 1.3. Steel connections shall be deconstructed as described above, to properly clean the components. Components fully covered with rust shall be replaced. If significant section loss is noted at a portion of a framing member, the contractor shall contact Gessner Engineering for further evaluation.
- 1.4. The steel angles at the base of the noted stringers shall be removed in their entirety and replaced with an equivalent angle. The new angles shall be welded to the interior of the existing steel stringer, and anchored to the foundation with an equally sized diameter, galvanized threaded rod, drilled and epoxied a minimum of 4 inches into the existing foundation.

## **GESSNER ENGINEERING**

- 1.5. Baseplates shall be cleaned in accordance with the specified procedures. Once baseplates and anchors have been cleaned down to bare, clean material, Gessner Engineering shall be contacted to evaluate the remaining conditions.

Reference the “General Remediation” section of this report for additional recommendations regarding the cleaning and re-finishing of the various steel components and aluminum decking.

### **Slide Tower - Observations & Recommendations**

The slide tower is framed around six steel HSS columns, placed in a 2x3 matrix and equally spaced at approximately seven and a half feet. Columns are supported on isolated foundations, forming a total interior footprint of approximately 110 square feet. Two levels of cable x-bracing frame between orthogonally adjacent columns, with horizontal angles at the base of each level. Steel channel stringers form the approximately three and a half foot wide stairs that wrap around the exterior of the tower. Periodic landings (6 total) are cantilevered off of the main tower columns with steel HSS beams and diagonal braces from the column. The two lowest landings each have an additional column to support the framing at the foundation level. At the top of the approximately 19 foot tower is the main platform framed with a combination of steel wide flanges and channels supporting the aluminum plank decking. Channels line the perimeter of the platform, with a wide flange beam separating the two square bays. Two channels span perpendicular to the wide flange beam in each bay, acting as joists to support the aluminum plank decking above. Additional channel framing was used to cantilever to the south of the tower and provide the top landing for the stairs. Steel handrailing lines the stairs and perimeter of the platform, with openings to allow access to the two slide entries at the north and west sides of the platform.

Similar to the bridge, the aluminum deck panels and treads appeared to typically be in good condition and various steel components have experienced oxidation. Unlike the bridge however, significant section degradation did appear to have occurred at various locations throughout the tower. The following components showed notable signs of rust or other issues, and require additional attention during the proposed remediation process:

- 2.1. Handrailing adjacent to the western slide (slide 2) showed significant signs of rust near the bases.
- 2.2. The four interior channel joists showed significant signs of deterioration and loss of section. These defects were noted at beam flanges and webs at various locations along each beam.
- 2.3. Various perimeter beams displayed similar signs of loss of section; however, these appeared to be at isolated locations, such as a discrete portion of the bottom flange or along the web at the end of a beam.
- 2.4. Loss of section and significant signs of rust were noted at tension rod ends, connection assemblies, and horizontal angle members.
- 2.5. Pipe bracing and connection brackets had significantly corroded at the south side of the tower and had begun to rust the column.
- 2.6. Handrails along the stairs at north of the tower and at the northwest corner landing had significantly corroded at various bases, even to the point of complete section loss at one location.
- 2.7. Steel stringers and associated connections along the north and west sides of the stairs and landings appear to have experienced significant deterioration in conjunction with the handrail damage noted above.
- 2.8. Tube beams below the steel stringers noted above appear to also have experienced similar damage, both along the member length and at connection plates to the columns.

- 2.9. The beam, column support, stringers, and stringer foundation connection at the bottom of the stairs are significantly deteriorated and almost entirely encompassed in rust.
- 2.10. Column baseplates displayed signs of deterioration at the perimeter of the plate, and in some locations throughout the top of the plate and signs of rust at the base of the columns. Additionally, some anchor bolts and associated nuts showed signs of rust at the top of the elements.

Gessner Engineering recommends all steel components be cleaned and repaired in accordance with the procedures described in the “General Recommendations” section of this report. The following recommendations correspond to the above noted deficiencies

- 2.1. Affected handrails shall be removed and replaced in their entirety.
- 2.2. These joists shall be removed and replaced with equivalent members. These members shall be galvanized or primed and painted in accordance with the specified recommendations.
- 2.3. The contractor may elect to remove and replace the entire member, as noted above, or clean the member in accordance with the specified processes. Should the contractor elect to clean and retain the members, areas where flaking was noted shall be plated over with ¼” A36 plate, reaching a minimum 4 inches beyond the affected areas. Connections may be shimmed as required in order to accommodate the additional thickness. New bolts may be required at these locations, ensuring that the bolt extends a minimum of two threads beyond the end of the nut.
- 2.4. Where flaking has occurred or significant signs of rust are present, the contractor shall remove and replace the affected rod, connection assembly, or horizontal angle, in its entirety.
- 2.5. These brackets shall be removed in their entirety and replaced. Affected areas of the attaching columns shall be cleaned as specified, and a ¼” A36 plate shall be welded over each side of affected column area. The finished area shall be primed and painted as specified.
- 2.6. Affected handrails shall be removed and replaced in their entirety.
- 2.7. Gessner Engineering recommends the steel stringers with multiple areas of section loss be removed and replaced in their entirety. Should the owner wish to clean and retain the elements, they may contact Gessner Engineering after the components have been cleaned as specified to evaluate the remaining conditions.
- 2.8. Tube beams shall be cleaned as specified, and a ¼” A36 plate shall be welded over the affected areas. Connection plates at the mid-height, north landing may be un-bolted, cleaned, primed and painted, and re-assembled. Connection plates at the lower, northwest corner landing showed significantly worse signs of deterioration than those noted above. The contractor may choose to remove and replace these plates, or disassemble the connection, clean the components as specified, and then contact Gessner Engineering for further evaluation of the remaining conditions.
- 2.9. These components shall be removed in their entirety. The stringers shall be replaced with equivalent members and isolated foundations shall be placed beneath each stringer, with columns connecting to the stringers. A horizontal component shall be installed between the two stringers, beneath the landing, to prevent the elements from displacing laterally. New angles at the base of the stringers, equivalent to those provided initially, shall be welded to the exterior of the new stringer. They shall be anchored to the foundation with (2) galvanized threaded rods matching the diameter of the existing, drilled and epoxied a minimum of 4 inches into the existing foundation.
- 2.10. Baseplates and anchors shall be cleaned as recommended and nuts shall be replaced where encapsulated in rust. Once baseplates and anchors have been cleaned down to bare, clean material, Gessner Engineering shall be contacted to evaluate the remaining conditions.

## GESSNER ENGINEERING

Reference the “General Remediation” section of this report for additional recommendations regarding the cleaning and re-finishing of the various steel components and aluminum decking.

### **Slides A & B - Observations and Recommendations**

Slide A consists of two large central columns, and one shorter support column, all three being round, HSS columns. The tallest column (Column A), centered in the first circle formed by the slide, has four branches reaching out to support the slide at varying elevations as it progresses around the curve. The second column (Column B) is centered in the second circle formed by the slide and has five branches reaching out to support the slide. The third and final column (Column C), sits directly beneath the slide as it nears pool deck, and contains one knife plate supporting the slide above.

Slide B consists of three large central columns, and two shorter support columns, all five being round, HSS columns. The tallest column (Column D) is centered in the first circle formed by the slide and has four branches that reach out to support the slide at varying elevations. The next column (Column E) is located at the center of the following turn radius and has three branches. The third column (Column F) is centered in the final slide circle, and has four branches. The final two columns (Column G and Column H, respectively) sit directly beneath the slide as it makes its final turn.

The branches off of the center columns described above are comprised of horizontal HSS members that sit directly below the given slide elevation and a diagonal strut that reaches out from the column to the bottom of the horizontal HSS. These three elements, the column, horizontal HSS, and diagonal strut, are bolted to one another through specific welded-up plate connections. The slide structure is bolted to a vertical steel plate at the top of the horizontal HSS, at each given branch location. Each column is supported on its own isolated foundation.

Overall, these structures did not have as much visible damage as the bridge or tower framing. The following deficiencies were noted at various locations throughout the columns, branches, and connectors, unless noted at a specific location:

- 3.1. Bolts and associated nuts and washers connecting the various components of each branch were covered by rust in some locations.
- 3.2. Horizontal HSS beams were at times rusted below the slide connection and/or at the ends of the tubes.
- 3.3. Various vertical steel plates used to connect the slide to the supporting steel frame had experienced significant deterioration, noted specifically at Columns B & C.
- 3.4. Connection plates from the branch components showed signs of rust at Column E & F.
- 3.5. Various baseplates showed signs of rust around the exterior of the plates, and in some cases the bolts and nuts showed signs of rust.
- 3.6. The baseplate for Column G was entirely covered in mud.

Gessner Engineering recommends all steel components be cleaned and repaired in accordance with the procedures described in the “General Recommendations” section of this report. The following recommendations correspond to the above noted deficiencies

- 3.1. All bolts, nuts, and washers showing significant signs of rust shall be removed and replaced with equally sized, galvanized A325 bolts and associated components.

## **GESSNER ENGINEERING**

- 3.2. Where this rust had resulted in section loss, a ¼" A36 steel plate shall be placed over the affected area, after having been cleaned as specified. This plate shall extend a minimum 4" to either side of the affected area. Rusted ends of the tubes shall be cleaned as specified and sealed with a new cap plate so as to not allow potential water infiltration.
- 3.3. These plates and associated bolts shall be removed and replaced in their entirety.
- 3.4. If the rust is limited to the accessible side of the plates, the components may be cleaned in place and re-finished. Deconstruction of the bracing components may be required if rust is noted at the inaccessible side of the plates in order to properly remove the rust and refinish the surface.
- 3.5. Baseplates and anchors shall be cleaned as recommended and nuts shall be replaced where encapsulated in rust. Once baseplates and anchors have been cleaned down to bare, clean material, Gessner Engineering shall be contacted to evaluate the remaining conditions.
- 3.6. Site remediation shall be conducted to ensure the adjacent grade is not above the top of the pier.

Reference the "General Remediation" section of this report for additional recommendations regarding the cleaning and re-finishing of the various steel components.

### **General Remediation Recommendations**

The above noted deficiencies are not intended to represent a complete and exhaustive list of defects which may be present. All steel members and components shall be cleaned and re-finished in accordance with the procedures specified below. If the repair of an item is not specifically detailed above, it shall still be cleaned, refinished, and reassembled. It is important to note that partial deconstruction may be required in order to properly clean components or conduct the proposed remediation. If any bolts or associated connectors are damaged or unable to be adequately cleaned, an equivalent component, either galvanized or primed and painted, shall be used in its place. Should the contractor note any components with damage similar to that explicitly described above, they shall contact Gessner Engineering for further evaluation, prior to refinishing the component.

The undersides of all aluminum panels shall be power washed so as to remove standing debris and organic matter. Once this has been conducted, the contractor shall ensure that all panels are appropriately connected to their supporting steel framing members.

Where rust is present, Gessner Engineering recommends the surface of all rusted steel be cleaned to meet The Society of Protective Coatings (SSPC) standard SP3. Remove all loose mill scale, loose rust, loose paint, and other loose detrimental foreign matter by power wire brushing, power sanding, power grinding, power tool shipping, and/or power tool descaling. Primer and paint shall then be applied to the steel. Primer shall be a lead and chromate free, non-asphaltic and rust-inhibiting primer. Paint shall be a high-zinc dust content paint with dry film containing not less than 93 percent zinc dust by weight, complying with SSPC. Do not begin application of coatings until substrates have been properly prepared. Apply all coatings with manufacturer specifications in mind, using methods recommended by manufacturer. Regardless of the number of coats specified, apply as many coats as necessary for complete and uniform appearance. New steel components shall be coated with the same procedures used for any existing steel.

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## General Conclusions

Signs of rust and deterioration are prevalent throughout the inspected steel framing. Damage ranges from complete section loss requiring replacement of the given components to minimal surficial rusting adequately remediated through the cleaning and re-finishing process noted above. The contractor shall ensure that all components are repaired in accordance with the recommendations detailed above. Gessner Engineering shall be contacted for additional evaluation of remaining conditions where noted throughout the report, prior to re-finishing those given components.

Gessner Engineering appreciates the opportunity to work with you and trusts that this letter is responsive to your project needs. If you need any assistance or have any questions with respect to this letter please feel free to contact us.

Sincerely,

GESSNER ENGINEERING, LLC (F-7451)



Nikolas A. Gomes, E.I.T.



Thomas E. Gessner, P.E.



**GESSNER ENGINEERING**

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# Appendix



Image 1- Adamson Lagoon Slide & Bridge



Image 2- Adamson Lagoon Bridge



Image 3- Rusted Stair Support (1.1)



Image 4- Rusted Beam and Plate (1.2)

## Appendix



Image 5- Rusted Stringer Foundation Connection (1.4)



Image 6- Deteriorating Base Plate (1.5)



Image 7- Deteriorating Handrailing at Platform (2.1)



Image 8- Deteriorating Platform Framing (2.2 & 2.3)

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## Appendix



Image 9- Deteriorating  
Tension Rod Assembly (2.4)



Image 10- Pipe Bracing &  
Column Deterioration (2.5)

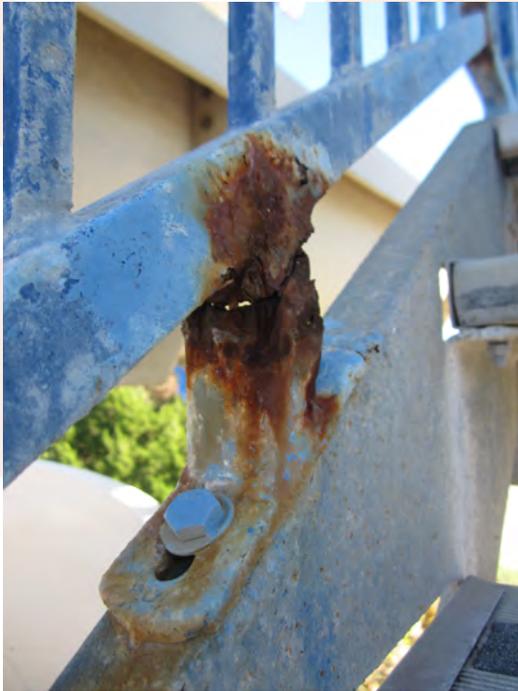


Image 11- Corroded  
Handrail Base (2.6)



Image 12- Corroded  
Handrailing (2.6)

## Appendix



Image 13- Rusting Stringer & Landing Framing (2.7)



Image 14- Tube Steel Connection Rusting (2.8)



Image 15- Deteriorating Low Landing Framing (2.9)



Image 16- Rusting at Column Base (2.10)

## Appendix



Image 17- Branch Bolts  
Rusting (3.1)



Image 18- Horizontal HSS  
Beam Deterioration (3.2)



Image 19- Vertical Plate  
Deterioration (3.3)



Image 20- Deteriorating  
Connection Plates (3.4)



## Legislation Details (With Text)

**File #:** 16-0188      **Version:** 1      **Name:** TexPool Resolution Amendment  
**Type:** Presentation      **Status:** Consent Agenda  
**File created:** 3/29/2016      **In control:** City Council Regular  
**On agenda:** 4/14/2016      **Final action:**  
**Title:** Presentation, possible action, and discussion on a resolution amending the authorized representatives on the local government pool account, TexPool.  
**Sponsors:** Jeff Kersten  
**Indexes:**  
**Code sections:**  
**Attachments:** [TEXPOOL Resolution](#)

Date	Ver.	Action By	Action	Result
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Presentation, possible action, and discussion on a resolution amending the authorized representatives on the local government pool account, TexPool.

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

**Summary:** Organized in 1989, TexPool is the largest and oldest local government investment pool in the State of Texas. TexPool currently provides investment services to over 1,700 communities throughout Texas. The State Comptroller oversees TexPool, and Federated Investors manage the daily operations of the pool under a contract with the Comptroller. TexPool is managed conservatively to provide a safe, efficient, and liquid investment alternative to Texas governments. The pool seeks to maintain a \$1.00 value per share as required by the Texas Public Funds Investment Act. TexPool investments consist exclusively of U. S. Government securities, repurchase agreements collateralized by U. S. Government securities, and AAA-rated no-load money market mutual funds. TexPool is rated AAAM by Standard & Poor's, the highest rating a local government investment pool can achieve. The weighted average maturity of the pool cannot exceed 60 days, with the maximum maturity of any investment limited to 13 months. TexPool, like the City, is governed by the Texas Public Funds Investment Act.

The resolution amendment is to add Finance Director, Mary Ellen Leonard and Finance Analyst, Brandi Whittenton as an authorized representative to the account. Kelly Templin, City Manager, and Jeff Kersten, Assistant City Manager will remain on the account as designate employees that are able to authorize transactions for the City's TexPool account.

**Budget & Financial Summary:** None

**Reviewed and Approved by Legal:** Yes

**Attachments:**

1. Resolution Amending Authorized Representatives





# Resolution Amending Authorized Representatives

Please use this form to amend or designate Authorized Representatives.

This document supersedes all prior Authorized Representative forms.

\* Required Fields

## 1. Resolution

WHEREAS,

City of College Station

Participant Name\*

7 7 1 8 1

Location Number\*

("Participant") is a local government of the State of Texas and is empowered to delegate to a public funds investment pool the authority to invest funds and to act as custodian of investments purchased with local investment funds; and

WHEREAS, it is in the best interest of the Participant to invest local funds in investments that provide for the preservation and safety of principal, liquidity, and yield consistent with the Public Funds Investment Act; and

WHEREAS, the Texas Local Government Investment Pool ("TexPool/ Texpool Prime"), a public funds investment pool, were created on behalf of entities whose investment objective in order of priority are preservation and safety of principal, liquidity, and yield consistent with the Public Funds Investment Act.

NOW THEREFORE, be it resolved as follows:

- A. That the individuals, whose signatures appear in this Resolution, are Authorized Representatives of the Participant and are each hereby authorized to transmit funds for investment in TexPool / TexPool Prime and are each further authorized to withdraw funds from time to time, to issue letters of instruction, and to take all other actions deemed necessary or appropriate for the investment of local funds.
- B. That an Authorized Representative of the Participant may be deleted by a written instrument signed by two remaining Authorized Representatives provided that the deleted Authorized Representative (1) is assigned job duties that no longer require access to the Participant's TexPool / TexPool Prime account or (2) is no longer employed by the Participant; and
- C. That the Participant may by Amending Resolution signed by the Participant add an Authorized Representative provided the additional Authorized Representative is an officer, employee, or agent of the Participant;

List the Authorized Representative(s) of the Participant. Any new individuals will be issued personal identification numbers to transact business with TexPool Participant Services.

1. Kelly Templin

Name

City Manager

Title

(979)764-3510 / (979)764-6377 / ktemplin@cstx.gov

Phone/Fax/Email

Signature

2. Jeffrey Kersten

Name

Assistant City Manager

Title

(979)764-3555 / (979)764-3899 / jkersten@cstx.gov

Phone/Fax/Email

Signature





## Legislation Details (With Text)

**File #:** 16-0189      **Version:** 1      **Name:** TexStar Resolution Amendment  
**Type:** Presentation      **Status:** Consent Agenda  
**File created:** 3/29/2016      **In control:** City Council Regular  
**On agenda:** 4/14/2016      **Final action:**  
**Title:** Presentation, possible action, and discussion on a resolution amending the authorized representatives on the local government pool account, Texas Short Term Asset Reserve ("TexSTAR").  
**Sponsors:** Jeff Kersten  
**Indexes:**  
**Code sections:**  
**Attachments:** [TEXSTAR Resolution](#)

Date	Ver.	Action By	Action	Result
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Presentation, possible action, and discussion on a resolution amending the authorized representatives on the local government pool account, Texas Short Term Asset Reserve ("TexSTAR").

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

**Summary:** Organized in 2002, TexSTAR is the second largest local government investment pool in the State of Texas. TexSTAR currently provides investment services to over 600 Texas cities, counties, school districts and other public entities. TexSTAR offers investment options that provide security, liquidity and efficiency and their conservatively managed fund operates in full compliance with the Texas Public Funds Investment Act. TexSTAR's pool is rated AAAM by Standard & Poor's, the highest rating a local government investment pool can achieve. The pool seeks to maintain a \$1.00 value per share as required by the Texas Public Funds Investment Act and a weighted average maturity of 60 days, with the maximum maturity of any investment limited to 13 months. TexSTAR investments consist exclusively of U. S. Government securities, repurchase agreements collateralized by U. S. Government securities, and AAA-rated no-load money market mutual funds. TexSTAR, like the City, is governed by the Texas Public Funds Investment Act. First Southwest oversees TexSTAR, and JP Morgan Fleming Asset Management manages the daily operations of the pool.

The resolution amendment is to add Finance Director, Mary Ellen Leonard and Finance Analyst, Brandi Whittenton as authorized representative to the account. Kelly Templin, City Manager, and Jeff Kersten, Assistant City Manager will remain on the account as designate employees that are able to authorize transactions for the City's TexStar account.

**Budget & Financial Summary:** None.

**Reviewed and Approved by Legal:** Yes

**Attachments:**

1. Resolution Amending Authorized Representatives





## AMENDING RESOLUTION

WHEREAS, City of College Station -02103

(the "Government Entity") by authority of the Application for Participation in TexSTAR (the "Application") has entered into an Interlocal Agreement (the "Agreement") and has become a participant in the public funds investment pool created there under known as TexSTAR Short Term Asset Reserve Fund ("TexSTAR");

WHEREAS, the Application designated on one or more "Authorized Representatives" within the meaning of the Agreement;

WHEREAS, the Government Entity now wishes to update and designate the following persons as the "Authorized Representatives" within the meaning of the Agreement;

NOW, THEREFORE, BE IT RESOLVED:

SECTION 1. The following officers, officials or employees of the Government Entity specified in this document are hereby designated as "Authorized Representatives" within the meaning of the Agreement, with full power and authority to open accounts, to deposit and withdraw funds, to agree to the terms for use of the website for online transactions, to designate other authorized representatives, and to take all other action required or permitted by Government Entity under the Agreement created by the application, all in the name and on behalf of the Government Entity.

SECTION 2. This document supersedes and replaces the Government Entity's previous designation of officers, officials or employees of the Government Entity as Authorized Representatives under the Agreement

SECTION 3. This resolution will continue in full force and effect until amended or revoked by Government Entity and written notice of the amendment or revocation is delivered to the TEXSTAR Board.

SECTION 4. Terms used in this resolution have the meanings given to them by the Application.

**Authorized Representatives.** Each of the following Participant officials is designated as Participant's Authorized Representative authorized to give notices and instructions to the Board in accordance with the Agreement, the Bylaws, the Investment Policy, and the Operating Procedures:

1. Name: Kelly Templin Title: City Manager  
 Signature: [Handwritten Signature] Phone: (979)764-3510  
 Email: ktemplin@cstx.gov
2. Name: Jeffrey Kersten Title: Assistant City Manager  
 Signature: [Handwritten Signature] Phone: (979) 764-3555  
 Email: jkersten@cstx.gov
3. Name: Mary Ellen Leonard Title: Finance Director  
 Signature: [Handwritten Signature] Phone: (979)764-3555  
 Email: mleonard@cstx.gov
4. Name: Brandi Whittenton Title: Finance Analyst  
 Signature: [Handwritten Signature] Phone: (979)764-3814  
 Email: bwhittenton@cstx.gov

**{REQUIRED} PRIMARY CONTACT:** List the name of the Authorized Representative listed above that will be designated as the Primary Contact and will receive all TexSTAR correspondence including transaction confirmations and monthly statements

Name: Mary Ellen Leonard

**{OPTIONAL} INQUIRY ONLY CONTACT:** In addition, the following additional Participant representative (not listed above) is designated as an **Inquiry Only** Representative authorized to obtain account information:

Name: Brandi Whittenton Title: Finance Analyst  
 Signature: [Handwritten Signature] Phone: (979) 764-3818  
 Email: bwhittenton@cstx.gov

Participant may designate other authorized representatives by written instrument signed by an existing Participant Authorized Representative or Participant's chief executive officer.

DATED \_\_\_\_\_  
City of College Station - 02103  
 \_\_\_\_\_  
 (NAME OF PARTICIPANT)

SIGNED BY: \_\_\_\_\_  
 (Signature of official)  
Nancy Berry, Mayor  
 \_\_\_\_\_  
 (Printed name and title)

ATTESTED BY: \_\_\_\_\_  
 (Signature of official)  
Sherry Mashburn, City Secretary  
 \_\_\_\_\_  
 (Printed name and title)

**\*REQUIRED\***  
**PLACE OFFICIAL SEAL OF ENTITY HERE**

**FOR INTERNAL USE ONLY**  
**APPROVED AND ACCEPTED: TEXAS SHORT TERM ASSET RESERVE FUND**  
 .....  
 AUTHORIZED SIGNER



## Legislation Details (With Text)

<b>File #:</b>	16-0196	<b>Version:</b>	1	<b>Name:</b>	Holleman Real Estate Contract
<b>Type:</b>	Contract	<b>Status:</b>		<b>Status:</b>	Consent Agenda
<b>File created:</b>	3/31/2016	<b>In control:</b>		<b>In control:</b>	City Council Regular
<b>On agenda:</b>	4/14/2016	<b>Final action:</b>		<b>Final action:</b>	
<b>Title:</b>	Presentation, possible action, and discussion regarding a Real Estate Contract with Red Rock Alchemy, LLC conveying 5.621 acres of City property described as Lots 6-14, Block 1 of the Pooh's Park Subdivision Section One located at Holleman Drive at Lassie Lane in the amount of \$2,495,000.				
<b>Sponsors:</b>	Natalie Ruiz, Debbie Eller				
<b>Indexes:</b>					
<b>Code sections:</b>					
<b>Attachments:</b>	<a href="#">Holleman Property - Location Map</a> <a href="#">Real Estate Contract - Holleman</a>				

Date	Ver.	Action By	Action	Result
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Presentation, possible action, and discussion regarding a Real Estate Contract with Red Rock Alchemy, LLC conveying 5.621 acres of City property described as Lots 6-14, Block 1 of the Pooh's Park Subdivision Section One located at Holleman Drive at Lassie Lane in the amount of \$2,495,000.

### Relationship to Strategic Goals:

- Financially Sustainable City
- Core Services and Infrastructure

**Recommendation:** Staff recommends approval of the real estate contract and related documents to convey approximately 5.621 acres of land to Red Rock Alchemy, LLC.

**Summary:** College Station acquired 6.125 acres of property from Don Ray Dale, Ltd in October 2009. The tract was intended to be developed as a mixed use project that would include affordable housing and economic development. After two requests for proposals and substantial changes in the financial markets, the City Council directed staff to reject bids and not pursue the project. Since December 2011, the City has marketed the property for sale and entertained various proposals that were rejected. Staff performed a methodical marketing process for the property, completing with a "Request for Offers". There were several interested parties and in December 2015, four Letters of Intent were received. The contract that is being considered today represents the highest offer.

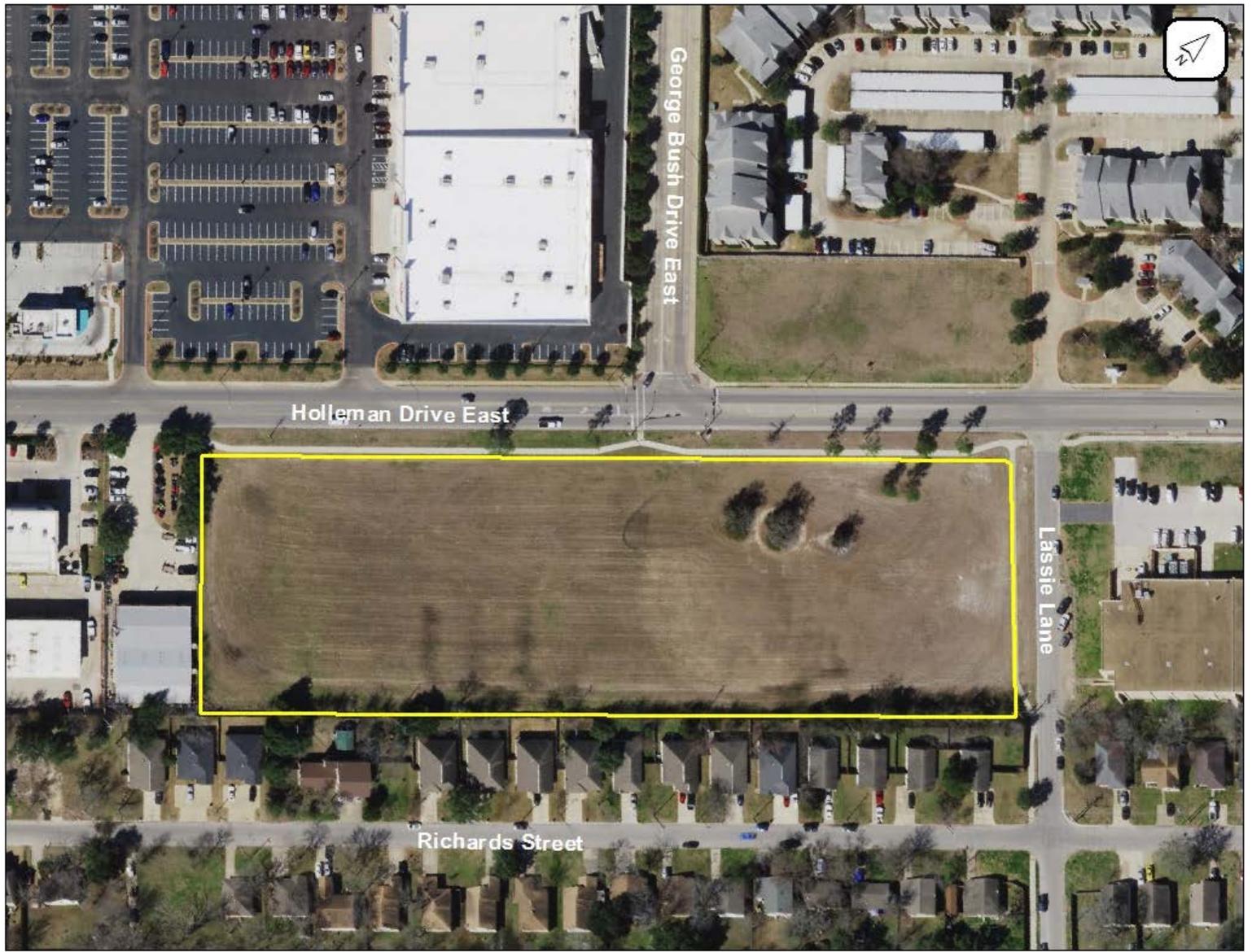
Note that the property being sold is 5.621 acres, which represents the 6.125 acres purchased in October 2009, less 0.504 acres that will be retained by the City for street right-of-way.

**Budget & Financial Summary:** The sales price is \$2,495,000.00. Proceeds in the amount of

\$2,390,844.31, amount previously drawn from the Community Development Block Grant, will be reimbursed to the City's Line of Credit with the U. S. Department of Housing and Urban Development. The balance, after closing costs, will reimburse the General Fund for amounts previously repaid to HUD. The amount available in the Line of Credit will be available for use on another eligible project, subject to grant timeliness requirements.

**Attachments:**

1. Map
2. Real Estate Contract



## REAL ESTATE CONTRACT

THIS CONTRACT OF SALE is made by and between the CITY OF COLLEGE STATION, TEXAS, a Texas Home Rule Municipal Corporation, situated in Brazos County, Texas ("SELLER"), and RED ROCK ALCHEMY, LLC, a Texas limited liability company, and/or its assigns, ("BUYER") upon the terms and conditions set forth herein.

### ARTICLE I PURCHASE AND SALE

1.1 SELLER agrees to sell and convey by Special Warranty Deed and BUYER agrees to purchase and pay for a fee simple interest in and to all those certain lots, tracts or parcels of land lying and being situated in Brazos County, Texas and being Lots Six (6), Seven (7), Eight (8), Nine (9), Ten (10), Eleven (11), Twelve (12), Thirteen (13), and Fourteen (14), Block One (1), POOH'S PARK SUBDIVISION, SECTION ONE, an addition to the City of College Station, Texas, according to plat recorded in Volume 314, Page 618, of the Deed Records of Brazos County, Texas, a copy of Land Title Survey Plat prepared by Kerr Surveying LLC on March 6, 2014 depicting said lots is attached hereto as **EXHIBIT A**, SAVE AND EXCEPT therefrom all that certain tract or parcel of land containing 0.504 acre of an acre of land, more or less, lying and being situated in College Station, Brazos County, Texas, said tract being a portion of Lots 6-14, Block 1, Pooh's Park Subdivision, Section One, according to the plat recorded in Volume 314, Page 618, of the Deed Records of Brazos County, Texas; said 0.504 acre tract being more particularly described by metes and bounds on **EXHIBIT B** attached hereto and made a part hereof for all intents and purposes, together with all and singular the rights and appurtenances pertaining to the PROPERTY, including all right, title and interest of SELLER in and to adjacent roads, streets, alleys or rights-of-way (all of such real property, rights, and appurtenances being herein referred to as the "PROPERTY"), for the consideration and subject to the terms, provisions, and conditions set forth herein.

1.2 City Council Approval. This Real Estate Contract to sell and purchase the PROPERTY is subject to approval by the City Council of the City of College Station, Texas; such approval indicated by signature of SELLER's representatives to this Real Estate Contract.

1.3 Title Commitment. SELLER has provided a Commitment for Title Insurance (the "Title Commitment") issued by BRAZOS COUNTY ABSTRACT COMPANY to insure title to BUYER; said Title Commitment attached hereto as **EXHIBIT C** and made a part hereof for all intents and purposes.

1.4 Survey. SELLER has provided to BUYER (1) a copy of the Land Title Survey Plat of Lots 6 - 14, Block 1, of POOH'S PARK SUBDIVISION, SECTION ONE, recorded in Volume 314, Page 618, of the Deed Records of Brazos County, Texas prepared by Kerr Surveying LLC on March 6, 2014; which survey plat reflects the subject PROPERTY and is attached hereto as **EXHIBIT A** and (2) a copy of the metes and bounds description of the 0.504 acre tract SAVE

Contract No. \_\_\_\_\_

Page 1

AND EXCEPTED therefrom, which description is attached hereto as **EXHIBIT B**. BUYER may, at its sole cost and expense, order a survey of the PROPERTY made by a registered professional land surveyor acceptable to the Title Company and BUYER's lender, if any.

1.5 Environmental Assessment. BUYER may, at its sole cost, order a Phase 1 and/or Phase 2 Environmental Site Assessment.

1.6 Taxes. The parties agree that general real estate taxes on the PROPERTY for the then current year, interest on any existing indebtedness shall be prorated as of the closing date and shall be adjusted in cash at the closing. SELLER is a tax-exempt entity. BUYER agrees and understands that SELLER assumes no responsibility for rollback taxes, if any.

1.7 Feasibility Period. BUYER requires adequate time to complete all engineering and developmental approvals by the CITY OF COLLEGE STATION, TEXAS ("City"). As such, BUYER shall have an initial period of Two Hundred Forty-Eight (248) calendar days plus an additional four (4) calendar month period and a subsequent additional four (4) calendar month period from **Opening of Escrow** as set forth below (the "Feasibility Period") in which to conduct pre-marketing studies, engineering, environmental, feasibility, land plan or land use studies or reviews, inspections, investigations and reviews of the PROPERTY, and review of information and documents as set forth in **EXHIBIT E**. BUYER may assist City in any planning and development services applications. BUYER and its employees, agents and/or independent contractors may come upon said PROPERTY at any time during the Feasibility Period in connection with the BUYER's review of the PROPERTY (**provided that BUYER shall indemnify and hold harmless SELLER from and against any and all liability, responsibility or damages incurred or sustained by SELLER as a result of the actions of BUYER, its employees, agents or independent contractors in connection therewith**). BUYER shall, at its expense, promptly repair and restore any damage to the PROPERTY caused by BUYER and/or its agents in connection with such inspections, studies or tests. **BUYER hereby agrees to indemnify, defend and hold SELLER harmless from and against all loss, cost, damage, claims or cause of action actually incurred by SELLER or asserted against SELLER arising from personal injury or property damage caused by actions taken at the PROPERTY by BUYER or its agents, engineers or consultants**. SELLER acknowledges that BUYER intends to conduct an investigation of the PROPERTY, which may include examination of any and all documentation with respect to the PROPERTY, examination of the title to the PROPERTY, conduct tests to determine the presence or absence of hazardous waste, asbestos, radon and other similar materials and substances, and determine the compliance of the PROPERTY with all applicable laws, rules, codes and regulations. Notwithstanding anything contained herein to the contrary, BUYER's repair and indemnification obligations pursuant to this Section shall survive closing hereunder or termination of this Agreement (regardless of the reason for termination), as the case may be.

Prior to the expiration of the Feasibility Period, BUYER shall provide the SELLER and the Title Company with written notice that either (i) the PROPERTY is acceptable and BUYER desires to consummate the transaction contemplated herein or (ii) the PROPERTY is not acceptable and BUYER desires to terminate this Agreement. BUYER's election to close the

transaction contemplated with respect to the PROPERTY shall constitute BUYER's election that the PROPERTY is acceptable.

1.7 The sale of the PROPERTY shall be made by a Special Warranty Deed in the form prepared by BUYER attached hereto as **EXHIBIT D**.

## ARTICLE II PURCHASE PRICE

2.1 Purchase Price. The Purchase Price for the PROPERTY shall be **TWO MILLION FOUR HUNDRED NINETY FIVE THOUSAND AND NO/100 (\$2,495,000.00)**. The entire Purchase Price shall be payable in full at closing.

## ARTICLE III EARNEST MONEY AND CONTINGENCIES

3.1 Earnest Money. BUYER agrees to deposit with BRAZOS COUNTY ABSTRACT COMPANY at 3800 Cross Park Drive, Bryan, Texas 77802 (the "Title Company") as an earnest money deposit, the sum of TWENTY THOUSAND AND NO/100 DOLLARS (\$20,000.00) in cash (the "Earnest Money"). Within three (3) business days after the full execution of this Real Estate Contract by BUYER and SELLER, BUYER will deposit the sum of TWENTY THOUSAND AND NO/100 DOLLARS (\$20,000.00) with the Title Company. The date on which such Earnest Money is deposited with the Title Company is referred to herein as "**Opening of Escrow**". The Title Company shall be directed to invest the Earnest Money in an interest-bearing account mutually acceptable to SELLER and BUYER. Any interest earned on this account shall be added to the Earnest Money and considered a part of the Earnest Money. The Earnest Money shall be credited to the Purchase Price at Closing.

If BUYER terminates this Agreement at any time for any reason in BUYER's sole discretion by written notice to SELLER on or before the end of the Feasibility Period hereinafter defined, or if the transaction contemplated by this Agreement fails to close by reason of default or breach of SELLER (or the failure of a condition precedent), the Earnest Money shall be returned to BUYER. BUYER has identified the matters set forth on **EXHIBIT E** attached hereto as being issues that BUYER will need to resolve with the City during the Feasibility Period in order for BUYER to proceed with the transaction contemplated herein. If such matters are not resolved to BUYER's satisfaction, in its sole discretion, then its sole recourse shall be to terminate this Agreement prior to the expiration of the Feasibility Period and receive the return of the Earnest Money as provided above. If the transaction contemplated by this Agreement fails to close by reason of default or breach of BUYER, then SELLER shall be entitled to receive and retain from BUYER the Earnest Money as liquidated damages and as SELLER's sole and exclusive remedy against BUYER. Upon BUYER and SELLER'S joint written notice to the Title Company of the termination of this Real Estate Contract, the Title Company shall disburse such Earnest Money and any accrued interest thereon to BUYER and/or SELLER as instructed therein.

Contract No. \_\_\_\_\_

Page 3

3.2 Feasibility Fee.

- (a) Within three (3) business days after the full execution of this Real Estate Contract by BUYER and SELLER, BUYER will deposit an additional TWENTY THOUSAND AND NO/100 DOLLARS (\$20,000.00) in cash with the Title Company ("Initial Feasibility Fee") as the required fee for the initial 248 calendar day Feasibility Period as defined herein above. The Title Company shall be directed to invest the Initial Feasibility Fee in an interest-bearing account mutually acceptable to SELLER and BUYER. Any interest earned on this account shall be added to the Initial Feasibility Fee and considered a part of the Initial Feasibility Fee. This Initial Feasibility Fee and any accrued interest thereon shall be credited to the Purchase Price at Closing.
- (b) Should the Feasibility Period be required to be extended after the initial 248 day period, BUYER will deposit an additional TWO THOUSAND AND NO/100 DOLLARS (\$2,000.00) in cash per month with the Title Company, at the time BUYER gives notice of its exercise of the first additional Feasibility Period, for the next four (4) calendar months ("Additional Feasibility Fee"). The Title Company shall be directed to invest the Additional Feasibility Fee in an interest-bearing account mutually acceptable to SELLER and BUYER. Any interest earned on this account shall be added to the Additional Feasibility Fee and considered a part thereof. The SELLER shall be entitled to receive the Additional Feasibility Fee due and owing, together with any accrued interest thereon, and such amount will be paid to SELLER, at Closing, in addition to the Purchase Price.
- (c) In the event the Feasibility Period is required to be further extended after the initial 248 day period and the first 4 calendar month extension, BUYER will deposit an additional TEN THOUSAND AND NO/100 DOLLARS (\$10,000.00) in cash with the Title Company, at the time BUYER gives notice of its exercise of the second additional Feasibility Period, for the following four (4) calendar month period ("Subsequent Additional Feasibility Fee"). The Title Company shall be directed to invest the Subsequent Additional Feasibility Fee in an interest-bearing account mutually acceptable to SELLER and BUYER. Any interest earned on this account shall be added to the Subsequent Additional Feasibility Fee and considered a part thereof. The SELLER shall be entitled to receive the Subsequent Additional Feasibility Fee due and owing, together with any accrued interest thereon, and such amount will be paid to SELLER, at Closing, in addition to the Purchase Price.

If the transaction contemplated by this Agreement fails to close by reason of default or breach of BUYER, then SELLER shall be entitled to receive the entire Initial Feasibility Fee, Additional Feasibility Fee, and/or Subsequent Additional Feasibility Fee due and owing, together with any interest accrued thereon. Upon SELLER'S written request to the Title Company, the Title Company shall disburse such Initial Feasibility Fee, Additional Feasibility Fee, and/or Subsequent Additional Feasibility Fee, and any accrued interest thereon, to SELLER.

Contract No. \_\_\_\_\_

Page 4

3.3 Contingency. BUYER shall have until no later than sixteen (16) months after the **Opening of Escrow** within which to inspect the PROPERTY and review any and all documents, etc. to determine the PROPERTY's suitability and feasibility for BUYER's intended use and to investigate all other aspects of this transaction, including any financing BUYER may seek to obtain. This Agreement is contingent upon BUYER securing third party financing with an interest rate not to exceed six percent (6%), amortized for a term not to exceed thirty (30) years, and with points or financing fees not to exceed two (2) points. If BUYER, in its sole discretion, is not satisfied with the results of its inspection, or is unable to obtain acceptable third party financing, BUYER may terminate this Agreement by delivering written notice of its intention to so terminate to SELLER at any time within the Feasibility Period. In such event, this Agreement shall terminate, the Earnest Money and Initial Feasibility Fee deposit and any interest accrued thereon shall be returned to BUYER, the Additional Feasibility Fee and Subsequent Additional Fee and any interest accrued thereon shall be paid to SELLER, and the parties shall have no further obligations hereunder. If BUYER fails to give such notice to terminate within the Feasibility Period, BUYER shall be obligated hereunder without further contingency and the Earnest Money and any Feasibility Fees shall be nonrefundable to BUYER except in the event of a default hereunder by SELLER.

ARTICLE IV  
REPRESENTATIONS AND WARRANTIES OF SELLER

4.1 SELLER hereby represents and warrants to BUYER as follows:

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

**THERE ARE NO OTHER WARRANTIES OR REPRESENTATIONS.**

**BUYER ACKNOWLEDGES THAT SELLER HAS NOT MADE AND DOES NOT MAKE ANY REPRESENTATIONS AS TO THE PHYSICAL CONDITION OF THE PROPERTY, OR ANY OTHER MATTER AFFECTING OR RELATED TO THE PROPERTY (OTHER THAN WARRANTIES OF TITLE AS PROVIDED AND LIMITED HEREIN). BUYER EXPRESSLY AGREES THAT TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE PROPERTY IS CONVEYED "AS IS" AND "WITH ALL FAULTS", AND SELLER EXPRESSLY DISCLAIMS, AND BUYER ACKNOWLEDGES AND ACCEPTS THAT SELLER HAS DISCLAIMED, ANY AND ALL REPRESENTATIONS, WARRANTIES OR GUARANTIES OF ANY KIND, ORAL OR WRITTEN EXPRESS OR IMPLIED, (EXCEPT AS TO TITLE AS HEREIN PROVIDED AND LIMITED CONCERNING THE PROPERTY, INCLUDING WITHOUT LIMITATION, (I) THE VALUE, CONDITION, MERCHANTABILITY, HABITABILITY, MARKETABILITY, PROFITABILITY, SUITABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE, OF THE**

**PROPERTY, (II) THE MANNER OR QUALITY OF THE CONSTRUCTION OR MATERIALS, IF ANY, INCORPORATED INTO ANY IMPROVEMENTS ON THE PROPERTY HEREIN CONVEYED, AND (III) THE MANNER OF REPAIR, QUALITY OF REPAIR, STATE OF REPAIR OR LACK OF REPAIR OF ANY SUCH IMPROVEMENTS.**

ARTICLE V  
REPRESENTATIONS AND WARRANTIES OF BUYER

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

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

ARTICLE VI  
CLOSING

6.1 The closing shall be held at Brazos County Abstract Company, within forty-five (45) days after the expiration of the Feasibility Period defined herein. SELLER and BUYER may mutually agree, in writing, to extend the closing date, but in no event shall the closing be extended more than thirty (30) days. The City Manager is authorized to extend the closing date on behalf of SELLER.

6.2 At the closing, SELLER shall:

- (a) Prepare and deliver to BUYER the duly executed and acknowledged Special Warranty Deed prepared by SELLER conveying the PROPERTY, free and clear of any and all liens and encumbrances, except for those listed on Schedule B of the Title Commitment attached as **EXHIBIT C** and those additional easements and reservations set forth in the Special Warranty Deed attached hereto as **EXHIBIT D**.
- (b) Deliver possession of the PROPERTY to BUYER.
- (c) Deliver to BUYER, at SELLER's expense, a Title Policy insuring indefeasible title issued by Brazos County Abstract Company, in BUYER's favor in the full amount of the Purchase Price, insuring BUYER's FEE SIMPLE interest in the PROPERTY subject only to such exceptions as shown on the Title Commitment attached as **EXHIBIT C** and those additional easements and reservations set forth in the Special Warranty Deed attached hereto as **EXHIBIT D**.

- (d) Pay real estate commission to Scott Ball, Real Estate Broker, in an amount not to exceed two percent (2%) of the Purchase Price.
- (e) Receive the Purchase Price, Additional Feasibility Fee and Subsequent Additional Feasibility Fee, together with any accrued interest thereon.

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

- (a) Pay the balance of the Purchase Price, less the Earnest Money and Initial Feasibility Fee and any accrued interest thereon.
- (b) Pay the BUYER's expenses or attorney fees.
- (c) Pay the escrow fees.
- (d) Pay the cost for tax certificates.
- (e) Pay any and all other costs associated with the closing of the transaction.
- (f) Pay the costs to obtain, deliver and record all documents other than those to be recorded at SELLER's expense.
- (g) Pay its Broker fees, if any.

#### ARTICLE VII SPECIAL CONDITIONS

7.1 The Special Warranty Deed will contain the following reservations and the following AS IS language:

**“GRANTOR hereby reserves for itself, its successors and assigns, all of the Reserved Groundwater Rights. As used in this Special Warranty Deed, the following terms shall have the following meanings: Groundwater – All of the underground water, percolating water, artesian water, and any other water from any and all reservoirs, formations, depths and horizons beneath the surface of the earth, excluding underflow or flow in a defined subterranean channel; Reserved Groundwater - All of the Groundwater now or in the future located in, on or under the Property; and Reserved Groundwater Rights - All of the Reserved Groundwater, together with the right to explore for, drill for, pump, develop, withdraw, produce and transport the Reserved Groundwater and Groundwater produced from other properties, on, under and over the Property, and all personal property rights and entitlements relating to or applicable to the Reserved Groundwater, including, without limitation, permits, licenses, historical use entitlements, wells, pumps, and infrastructure. However, GRANTOR waives, releases and conveys to GRANTEE, all of GRANTOR's rights of ingress and egress to, from and on the surface estate of the Property relating to the Groundwater Rights and Reserved Groundwater Rights reserved by GRANTOR.**

Nothing herein, however, restricts or prohibits the pooling or unitization of the groundwater estate owned by GRANTOR with land other than the Property.

**GRANTOR hereby reserves unto itself, its successors and assigns, any and all coal, lignite, oil, gas and other minerals, in, on or under the premises described above; provided that there shall never in any event be any ingress or egress on or across the surface of the above described premises for the purposes of exploration, development, production or transportation of such coal, lignite, oil, gas or other minerals, it being expressly contemplated by the parties to this instrument that any production of such minerals shall be from the surface of other adjacent property and that there shall be no development of any minerals that would require mining, shaft mining, pit mining or any other kind of mining that would require utilization of the surface, or through the pooling of such mineral interests for the development with adjacent parcels.**

**GRANTEE ACKNOWLEDGES THAT GRANTOR HAS NOT MADE AND DOES NOT MAKE ANY REPRESENTATIONS AS TO THE PHYSICAL CONDITION OF THE PROPERTY, OR ANY OTHER MATTER AFFECTING OR RELATED TO THE PROPERTY (OTHER THAN WARRANTIES OF TITLE AS PROVIDED AND LIMITED HEREIN). GRANTEE EXPRESSLY AGREES THAT TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE PROPERTY IS CONVEYED "AS IS" AND "WITH ALL FAULTS", AND GRANTOR EXPRESSLY DISCLAIMS, AND GRANTEE ACKNOWLEDGES AND ACCEPTS THAT GRANTOR HAS DISCLAIMED, ANY AND ALL REPRESENTATIONS, WARRANTIES OR GUARANTIES OF ANY KIND, ORAL OR WRITTEN, EXPRESS OR IMPLIED (EXCEPT AS TO TITLE AS HEREIN PROVIDED AND LIMITED) CONCERNING THE PROPERTY, INCLUDING WITHOUT LIMITATION (i) THE VALUE, CONDITION, MERCHANTABILITY, HABITABILITY, MARKETABILITY, PROFITABILITY, SUITABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE, OF THE PROPERTY (ii) THE MANNER OR QUALITY OF THE CONSTRUCTION, OR THE MATERIALS, IF ANY, INCORPORATED INTO THE CONSTRUCTION, OF ANY IMPROVEMENTS TO THE PROPERTY AND (iii) THE MANNER OF REPAIR, QUALITY OF REPAIR, STATE OF REPAIR OR LACK OF REPAIR OF ANY SUCH IMPROVEMENTS. BY GRANTEE'S ACCEPTANCE OF THIS DEED, GRANTEE REPRESENTS THAT GRANTEE HAS MADE (i) ALL INSPECTIONS OF THE PROPERTY TO DETERMINE ITS VALUE AND CONDITION DEEMED NECESSARY OR APPROPRIATE BY GRANTEE, INCLUDING, WITHOUT LIMITATION, INSPECTIONS FOR THE PRESENCE OF ASBESTOS, PESTICIDE RESIDUES, HAZARDOUS WASTE AND OTHER HAZARDOUS MATERIALS AND (ii) INVESTIGATIONS TO DETERMINE WHETHER ANY PORTION OF THE PROPERTY LIES WITHIN ANY FLOOD HAZARD AREA AS DETERMINED BY THE U.S. ARMY CORPS OF ENGINEERS OR OTHER APPLICABLE AUTHORITY."**

ARTICLE VIII  
BREACH BY BUYER

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

- (a) Enforce specific performance of this Contract;
- (b) Collect the Earnest Money and any Feasibility Fees; and/or
- (c) Bring suit for damages against BUYER.

ARTICLE VIX  
BREACH BY SELLER

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

ARTICLE X  
MISCELLANEOUS

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

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

BUYER: RED ROCK ALCHEMY, LLC  
c/o Scott Ball  
4711 Johnson Creek Loop  
College Station, Texas 77845  
Telephone: 979-777-5477  
Email: [sball@suddenlink.net](mailto:sball@suddenlink.net)

SELLER: City of College Station  
Attention: Legal Department  
P. O. Box 9960  
College Station, Texas 77842  
Telephone: 979-764-3507

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

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

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

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

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

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

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

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

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

10.12 Assignment: BUYER may give written notice to SELLER of BUYER's intent to assign this contract to an entity under its control or the control of Scott Ball. SELLER must give written consent to the assignment, which shall not be unreasonably withheld.

EXECUTED on this the \_\_\_\_\_ day of \_\_\_\_\_, 2016.

**SELLER:**

CITY OF COLLEGE STATION, TEXAS

**BUYER:**

RED ROCK ALCHEMY, LLC,  
A Texas limited liability company

BY: \_\_\_\_\_

Mayor

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

By: Scott Ball

SCOTT BALL, Manager

ATTEST:

By: Janice Bradshaw

JANICE BRADSHAW, Manager

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

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

APPROVED:

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

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

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

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

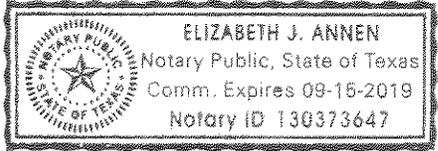
\_\_\_\_\_  
City Attorney

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

Contract No. \_\_\_\_\_

THE STATE OF TEXAS   §  
                                  §       ACKNOWLEDGMENT  
COUNTY OF BRAZOS   §

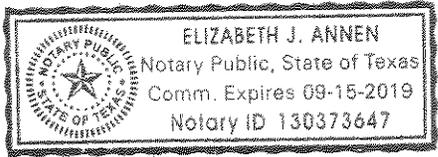
This instrument was acknowledged before me on the 28<sup>th</sup> day of March, 2016, by SCOTT BALL, Manager of RED ROCK ALCHEMY, LLC, a Texas limited liability company.



Elizabeth J. Annen  
NOTARY PUBLIC in and for the State of Texas

THE STATE OF TEXAS   §  
                                  §       ACKNOWLEDGMENT  
COUNTY OF BRAZOS   §

This instrument was acknowledged before me on the 28<sup>th</sup> day of March, 2016, by JANICE BRADSHAW, Manager of RED ROCK ALCHEMY, LLC, a Texas limited liability company.



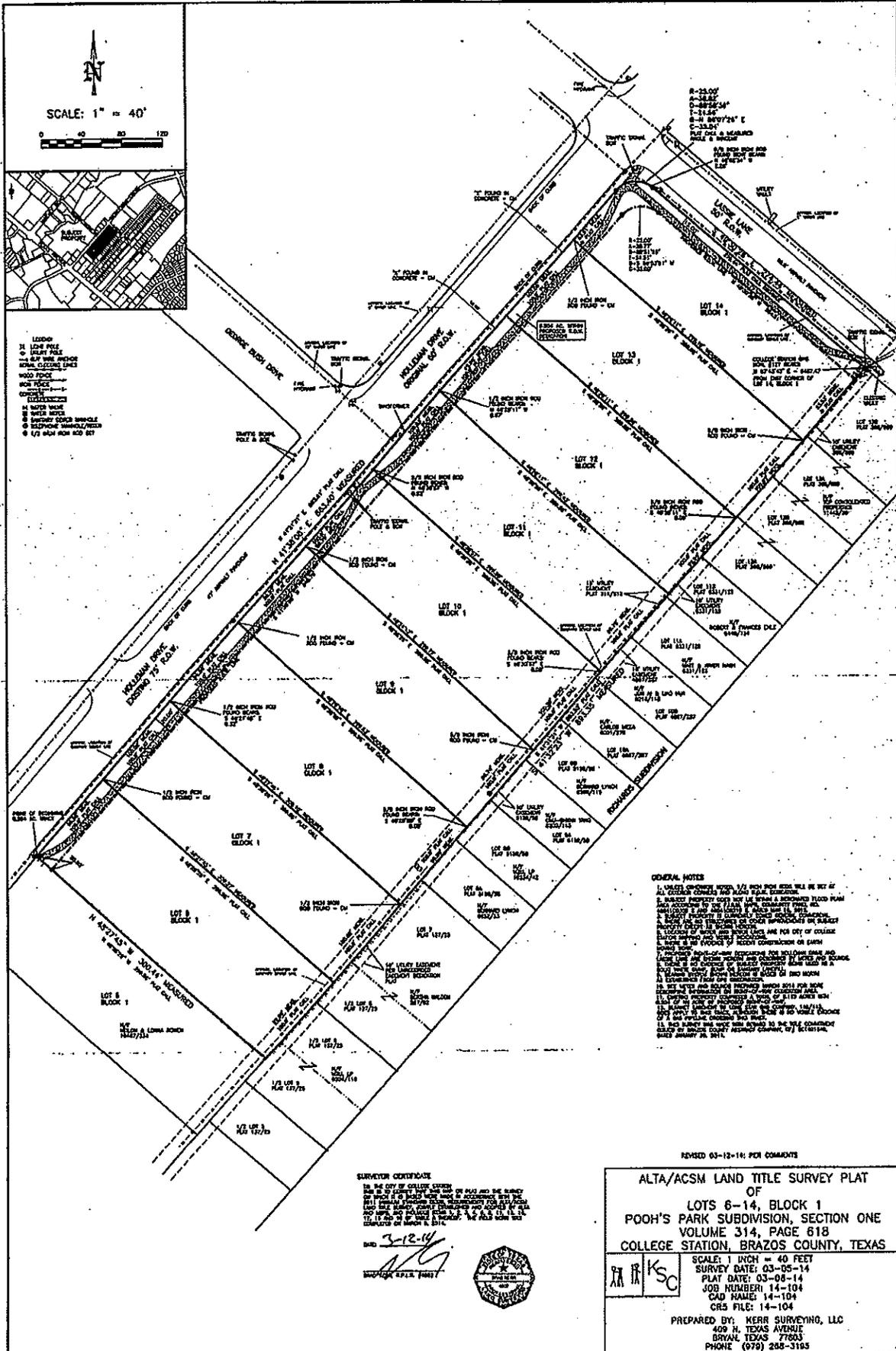
Elizabeth J. Annen  
NOTARY PUBLIC in and for the State of Texas

THE STATE OF TEXAS   §  
                                  §       ACKNOWLEDGMENT  
COUNTY OF BRAZOS   §

This instrument was acknowledge before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2016, by NANCY BERRY, as Mayor of the CITY OF COLLEGE STATION, a Texas Home Rule Municipal Corporation, on behalf of said municipality.

\_\_\_\_\_  
NOTARY PUBLIC in and for the State of Texas

# EXHIBIT A TO REAL ESTATE CONTRACT



# EXHIBIT B TO REAL ESTATE CONTRACT

**METES AND BOUNDS DESCRIPTION  
OF A  
0.504 ACRE TRACT  
PROPOSED RESERVED RIGHT-OF-WAY  
POOH'S PARK SUBDIVISION, SECTION ONE  
COLLEGE STATION, BRAZOS COUNTY, TEXAS**

METES AND BOUNDS DESCRIPTION OF ALL THAT CERTAIN TRACT OF LAND LYING AND BEING SITUATED IN COLLEGE STATION, BRAZOS COUNTY, TEXAS. SAID TRACT BEING A PORTION OF LOTS 6-14, BLOCK 1, POOH'S PARK SUBDIVISION, SECTION ONE, ACCORDING TO THE PLAT RECORDED IN VOLUME 314, PAGE 618 OF THE DEED RECORDS OF BRAZOS COUNTY, TEXAS.

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

**BEGINNING** AT A 1/2 INCH IRON ROD SET ON THE SOUTHEAST LINE OF HOLLEMAN DRIVE (75' R.O.W. AT THIS POINT) MARKING THE WEST CORNER OF SAID LOT 6 AND THE NORTH CORNER OF LOT 5, BLOCK 1;

**THENCE:** N 41° 38' 08" E ALONG THE SOUTHEAST LINE OF HOLLEMAN DRIVE, AT 99.98 FEET PASS A 1/2 INCH IRON ROD FOUND MARKING THE NORTH CORNER OF SAID LOT 6 AND THE WEST CORNER OF SAID LOT 7, AT 299.98 FEET PASS A 1/2 INCH IRON ROD FOUND MARKING THE NORTH CORNER OF SAID LOT 8 AND THE WEST CORNER OF SAID LOT 9, AT 399.95 FEET PASS A 1/2 INCH IRON ROD FOUND MARKING THE NORTH CORNER OF SAID LOT 13 AND THE WEST CORNER OF SAID LOT 14, CONTINUE ON FOR A TOTAL DISTANCE OF 863.40 FEET TO A 1/2 INCH IRON ROD SET MARKING THE BEGINNING OF A CLOCKWISE CURVE HAVING A RADIUS OF 25.00 FEET;

**THENCE:** ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 88° 58' 36" FOR AN ARC DISTANCE OF 38.82 FEET (CHORD BEARS: N 86° 07' 26" E - 35.04 FEET) TO A 1/2 INCH IRON ROD SET ON THE SOUTHWEST LINE OF LASSIE LANE (50' R.O.W.) MARKING THE END OF SAID CURVE, FOR REFERENCE A 5/8 INCH IRON ROD FOUND BENT BEARS: N 48° 02' 34" W FOR A DISTANCE OF 2.26 FEET;

**THENCE:** S 49° 30' 26" E ALONG THE SOUTHWEST LINE OF LASSIE LANE FOR A DISTANCE OF 274.44 FEET TO A 1/2 INCH IRON ROD SET MARKING THE EAST CORNER OF SAID LOT 14 AND THE NORTH CORNER OF LOT 13B, RICHARDS SUBDIVISION, ACCORDING TO THE PLAT RECORDED IN VOLUME 368, PAGE 669 OF THE DEED RECORDS OF BRAZOS COUNTY, TEXAS;

**THENCE:** S 41° 32' 23" W ALONG THE COMMON LINE OF SAID LOT 14 AND SAID LOT 13B FOR A DISTANCE OF 15.00 FEET TO A 1/2 INCH IRON ROD SET, FOR REFERENCE A 5/8 INCH IRON ROD FOUND ON THE NORTHWEST LINE OF LOT 13A, RICHARDS SUBDIVISION, (PLAT 368/669) MARKING THE SOUTH CORNER OF SAID LOT 14 BEARS: S 41° 32' 23" W FOR A DISTANCE OF 78.53 FEET;

**THENCE:** N 49° 30' 26" W THROUGH SAID LOT 14, 15.00 FEET FROM AND PARALLEL TO THE SOUTHWEST LINE OF LASSIE LANE, FOR A DISTANCE OF 254.51 FEET TO A 1/2 INCH IRON ROD SET MARKING THE BEGINNING OF A COUNTERCLOCKWISE CURVE HAVING A RADIUS OF 25.00 FEET;

**THENCE:** CONTINUING THROUGH SAID LOT 14 AND ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 88° 51' 26" FOR AN ARC DISTANCE OF 38.77 FEET (CHORD BEARS: S 86° 03' 51" W - 35.00 FEET) TO A 1/2 INCH IRON ROD SET MARKING THE END OF SAID CURVE;

**THENCE:** S 41° 38' 08" W CONTINUING THROUGH SAID LOT 14 AND THROUGH SAID LOTS 13-6, 20.00 FEET FROM AND PARALLEL TO THE SOUTHEAST LINE OF HOLLEMAN DRIVE, FOR A DISTANCE OF

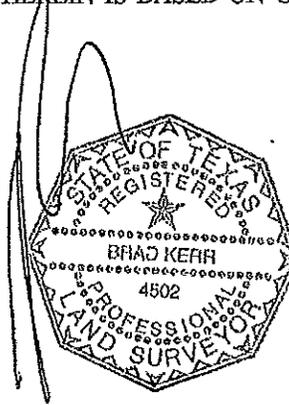
# EXHIBIT B TO REAL ESTATE CONTRACT

848.76 FEET TO A 1/2 INCH IRON ROD SET ON THE COMMON LINE OF SAID LOT 6 AND THE AFOREMENTIONED LOT 5, BLOCK 1, POOH'S PARK SUBDIVISION;

**THENCE:** N 48° 27' 45" W ALONG THE COMMON LINE OF SAID LOT 6 AND SAID LOT 5 FOR A DISTANCE OF 20.00 FEET TO THE POINT OF BEGINNING CONTAINING 0.504 OF AN ACRE OF LAND, MORE OR LESS, AS SURVEYED ON THE GROUND MARCH 2014. SEE PLAT PREPARED MARCH 2014 FOR MORE DESCRIPTIVE INFORMATION. BEARING SYSTEM SHOWN HEREIN IS BASED ON GRID NORTH AS ESTABLISHED FROM GPS OBSERVATION.

BRAD KERR  
REGISTERED PROFESSIONAL  
LAND SURVEYOR No. 4502

D:/WORK/MAB/14-104.MAB



# EXHIBIT C TO REAL ESTATE CONTRACT



TEXAS  
COMMITMENT FOR TITLE INSURANCE (T-7)  
ISSUED BY  
WFG NATIONAL TITLE INSURANCE COMPANY

THE FOLLOWING COMMITMENT FOR TITLE INSURANCE IS NOT VALID UNLESS YOUR NAME AND THE POLICY AMOUNT ARE SHOWN IN **SCHEDULE A**, AND OUR AUTHORIZED REPRESENTATIVE HAS COUNTERSIGNED BELOW.

We, WFG NATIONAL TITLE INSURANCE COMPANY, will issue our title insurance policy or policies (the Policy) to You (the proposed insured) upon payment of the premium and other charges due, and compliance with the requirements in Schedule C. Our Policy will be in the form approved by the Texas Department of Insurance at the date of issuance, and will insure your interest in the land described in Schedule A. The estimated premium for our Policy and applicable endorsements is shown on Schedule D. There may be additional charges such as recording fees, and expedited delivery expenses.

This Commitment ends ninety (90) days from the effective date, unless the Policy is issued sooner, or failure to issue the Policy is our fault. Our liability and obligations to you are under the express terms of this Commitment and end when this Commitment expires.

WFG NATIONAL TITLE INSURANCE COMPANY

BY:

Patrick Stone, President

ATTEST:

Steve Winkler, Secretary



BRAZOS COUNTY ABSTRACT COMPANY

By \_\_\_\_\_

Authorized Signature

## CONDITIONS AND STIPULATIONS

1. If you have actual knowledge of any matter which may affect the title or mortgage covered by this Commitment, that is not shown in Schedule B, you must notify us in writing. If you do not notify us in writing, our liability to you is ended or reduced to the extent that your failure to notify us affects our liability. If you do notify us, or we learn of such matter, we may amend Schedule B, but we will not be relieved of liability already incurred.

2. Our liability is only to you, and others who are included in the definition of Insured in the Policy to be issued. Our liability is only for actual loss incurred in your reliance on this Commitment to comply with its requirements, or to acquire the interest in the land.

# EXHIBIT C TO REAL ESTATE CONTRACT

Our liability is limited to the amount shown in Schedule A of this Commitment and will be subject to the following terms of the Policy: Insuring Provisions, Conditions and Stipulations, and Exclusions.

# EXHIBIT C TO REAL ESTATE CONTRACT

## WFG NATIONAL TITLE INSURANCE COMPANY

### TEXAS TITLE INSURANCE INFORMATION

Title insurance insures you against loss resulting from certain risks to your title. The commitment for Title Insurance is the title insurance company's promise to issue the title insurance policy. The commitment is a legal document. You should review it carefully to completely understand it before your closing date.	El seguro de titulo le asegura en relación a pérdidas resultantes de ciertos riesgos que pueden afectar el titulo de su propiedad. El Compromiso para Seguro de Titulo es la promesa de la compañía aseguradora de titulos de emitir la póliza de seguro de titulo. El Compromiso es un documento legal. Usted debe leerlo cuidadosamente y entenderlo completamente antes de la fecha para finalizar su transacción.
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Your Commitment for Title Insurance is a legal contract between you and us. The Commitment is not an opinion or report of your title. It is a contract to issue you a policy subject to the Commitment's terms and requirements.

Before issuing a Commitment for Title Insurance (the Commitment) or a Title Insurance Policy (the Policy), the Title Insurance Company (the Company) determines whether the title is insurable. This determination has already been made. Part of that determination involves the Company's decision to insure the title except for certain risks that will not be covered by the Policy. Some of these risks are listed in Schedule B of the attached Commitment as Exceptions. Other risks are stated in the Policy as Exclusions. These risks will not be covered by the Policy. The Policy is not an abstract of title nor does a Company have an obligation to determine the ownership of any mineral interest.

---**MINERALS AND MINERAL RIGHTS** may not be covered by the Policy. The Company may be unwilling to insure title unless there is an exclusion or an exception as to Minerals and Mineral Rights in the Policy. Optional endorsements insuring certain risks involving minerals, and the use of improvements (excluding lawns, shrubbery and trees) and permanent buildings may be available for purchase. If the title insurer issues the title policy with an exclusion or exception to the minerals and mineral rights, neither this Policy, nor the optional endorsements, ensure that the purchaser has title to the mineral rights related to the surface estate.

Another part of the determination involves whether the promise to insure is conditioned upon certain requirements being met. Schedule C of the Commitment lists these requirements that must be satisfied or the Company will refuse to cover them. You may want to discuss any matters shown in Schedules B and C of the Commitment with an attorney. These matters will affect your title and your use of the land.

When your Policy is issued, the coverage will be limited by the Policy's Exception, Exclusions and Conditions, defined below.

---**EXCEPTIONS** are title risks that a Policy generally covers but does not cover in a particular instance. Exceptions are shown on Schedule B or discussed in Schedule C of the Commitment. They can also be added if you do not comply with the Conditions section of the Commitment. When the Policy is issued, all Exceptions will be on Schedule B of the Policy.

---**EXCLUSIONS** are title risks that a Policy generally does not cover. Exclusions are contained in the Policy but not shown or discussed in the Commitment.

---**CONDITIONS** are additional provisions that qualify or limit your coverage. Conditions include your responsibilities and those of the Company. They are contained in the Policy but not shown or discussed in the Commitment. The Policy Conditions are not the same as the Commitment Conditions.

You can get a copy of the policy form approved by the Texas Department of Insurance by calling WFG National Title Insurance Company at 1-877-366-8781 or by calling the title insurance agent that issued the Commitment. The Texas Department of Insurance may revise the policy form from time to time.

You can also get a brochure that explains the policy from the Texas Department of Insurance by calling 1-800-252-3439.

## EXHIBIT C TO REAL ESTATE CONTRACT

Before the Policy is issued, you may request changes in the Policy. Some of the changes to consider are:

---Request amendment of the "area and boundary" exception (Schedule B, paragraph 2). To get this amendment, you must furnish a survey and comply with other requirements of the Company. On the Owner's Policy, you must pay an additional premium for the amendment. If the survey is acceptable to the Company and if the Company's other requirements are met, your Policy will insure you against loss because of discrepancies or conflicts in boundary lines, encroachments or protrusions, or overlapping of improvements. The Company may then decide not to insure against specific boundary or survey problems by making special exceptions in the Policy. Whether or not you request amendment of the "area and boundary" exception, you should determine whether you want to purchase and review a survey if a survey is not being provided to you.

---Allow the Company to add an exception to "rights of parties in possession." If you refuse this exception, the Company or the title insurance agent may inspect the property. The Company may except to and not insure you against the rights of specific persons, such as renters, adverse owners or easement holders who occupy the land. The Company may charge you for the inspection. If you want to make your own inspection, you must sign a Waiver of Inspection form and allow the Company to add this exception to your Policy.

The entire premium for a Policy must be paid when the Policy is issued. You will not owe any additional premiums unless you want to increase your coverage at a later date and the Company agrees to add an Increased Value Endorsement.

# EXHIBIT C TO REAL ESTATE CONTRACT

## DELETION OF ARBITRATION PROVISION (Not applicable to the Texas Residential Owner Policy)

ARBITRATION is a common form of alternative dispute resolution. It can be a quicker and cheaper means to settle a dispute with your Title Insurance Company. However, if you agree to arbitrate, you give up your right to take the Title Insurance Company to court and your rights to discovery of evidence may be limited in the arbitration process. In addition, you cannot usually appeal an arbitrator's award.

**Your policy contains an arbitration provision (shown below). It allows you or the Company to require arbitration if the amount of insurance is \$2,000,000 or less. If you want to retain your right to sue the Company in case of a dispute over a claim, you must request deletion of the arbitration provision before the policy is issued. You can do this by signing this form and returning it to the Company at or before the closing of your real estate transaction or by writing to the Company.**

The arbitration provision in the Policy is as follows:

"Either the Company or the Insured may demand that the claim or controversy shall be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association ("Rules"). Except as provided in the Rules, there shall be no joinder or consolidation with claims or controversies of other persons. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Insured arising out of or relating to this policy, any service in connection with its issuance or the breach of a policy provision, or to any other controversy or claim arising out of the transaction giving rise to this policy. All arbitrable matters when the Amount of Insurance is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Insured, unless the Insured is an individual person (as distinguished from an Entity). All arbitrable matters when the Amount of Insurance is in excess of \$2,000,000 shall be arbitrated only when agreed to by both the Company and the Insured. Arbitration pursuant to this policy and under the Rules shall be binding upon the parties. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court of competent jurisdiction."

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

# EXHIBIT C TO REAL ESTATE CONTRACT

## COMMITMENT FOR TITLE INSURANCE T-7 ISSUED BY

*WFG NATIONAL TITLE INSURANCE COMPANY*

### SCHEDULE A

Effective Date: **November 4, 2015, 8:00 am**

GF No. **BC1401549**

Commitment No. issued **November 5, 2015,**

1. The policy or policies to be issued are:
  - a. OWNER'S POLICY OF TITLE INSURANCE (Form T-1)  
(Not applicable for improved one-to-four family residential real estate)  
Policy Amount:  
PROPOSED INSURED:
  - b. TEXAS RESIDENTIAL OWNER'S POLICY OF TITLE INSURANCE  
ONE-TO-FOUR FAMILY RESIDENCES (Form T-1R)  
Policy Amount:  
PROPOSED INSURED:
  - c. LOAN POLICY OF TITLE INSURANCE (Form T-2)  
Policy Amount:  
PROPOSED INSURED:  
Proposed Borrower:
  - d. TEXAS SHORT FORM RESIDENTIAL LOAN POLICY OF TITLE INSURANCE (Form T-2R)  
Policy Amount:  
PROPOSED INSURED:  
Proposed Borrower:
  - e. LOAN TITLE POLICY BINDER ON INTERIM CONSTRUCTION LOAN (Form T-13)  
Binder Amount:  
PROPOSED INSURED:  
Proposed Borrower:
  - f. OTHER  
Policy Amount:  
PROPOSED INSURED:
2. The interest in the land covered by this Commitment is: **Fee Simple**
3. Record title to the land on the Effective Date appears to be vested in:  
  
**City of College Station, Texas**
4. Legal description of land:  
  
**Being all those certain lots, tracts or parcels of land lying and being situated in Brazos County, Texas and being Lots Six (6), Seven (7), Eight (8), Nine (9), Ten (10), Eleven (11), Twelve (12), Thirteen (13) and Fourteen (14), Block One (1), POOH'S PARK SUBDIVISION, SECTION ONE, an addition in the City of College Station, Texas, according to plat recorded in Volume 314, page 618, Deed Records of Brazos County, Texas.**

# EXHIBIT C TO REAL ESTATE CONTRACT

## COMMITMENT FOR TITLE INSURANCE T-7 ISSUED BY

GF No. BC1401549

*WFG NATIONAL TITLE INSURANCE COMPANY*

### SCHEDULE B

#### EXCEPTIONS FROM COVERAGE

In addition to the Exclusions and Conditions and Stipulations, your Policy will not cover loss, costs, attorney's fees, and expenses resulting from:

1. The following restrictive covenants of record itemized below (We must either insert specific recording data or delete this exception):

**Item No. 1 is hereby deleted in its entirety.**

2. Any discrepancies, conflicts, or shortages in area or boundary lines, or any encroachments or protrusions, or any overlapping of improvements.
3. Homestead or community property or survivorship rights, if any of any spouse of any insured. (Applies to the Owner's Policy only.)
4. Any titles or rights asserted by anyone, including, but not limited to, persons, the public, corporations, governments or other entities,
  - a. to tidelands, or lands comprising the shores or beds of navigable or perennial rivers and streams, lakes, bays, gulfs or oceans, or
  - b. to lands beyond the line of the harbor or bulkhead lines as established or changed by any government, or
  - c. to filled-in lands, or artificial islands, or
  - d. to statutory water rights, including riparian rights, or
  - e. to the area extending from the line of mean low tide to the line of vegetation, or the rights of access to that area or easement along and across that area.(Applies to the Owner's Policy only.)
5. Standby fees, taxes and assessments by any taxing authority for the year 2016, and subsequent years; and subsequent taxes and assessments by any taxing authority for prior years due to change in land usage or ownership, but not those taxes or assessments for prior years because of an exemption granted to a previous owner of the property under Section 11.13, Texas Tax Code, or because of improvements not assessed for a previous tax year. (If Texas Short Form Residential Loan Policy of Title Insurance (T-2R) is issued, that policy will substitute "which become due and payable subsequent to Date of Policy" in lieu of "for the year 2016 and subsequent years.")
6. The terms and conditions of the documents creating your interest in the land.
7. Materials furnished or labor performed in connection with planned construction before signing and delivering the lien document described in Schedule A, if the land is part of the homestead of the owner. (Applies to the Loan Title Policy Binder on Interim Construction Loan only, and may be deleted if satisfactory evidence is furnished to us before a binder is issued.)
8. Liens and leases that affect the title to the land, but that are subordinate to the lien of the insured mortgage. (Applies to Loan Policy (T-2) only.)
9. The Exceptions from Coverage and Express Insurance in Schedule B of the Texas Short Form Residential Loan Policy of Title Insurance (T-2R). (Applies to Texas Short Form Residential Loan Policy of Title Insurance (T-2R) only.) Separate exceptions 1 through 8 of this Schedule B do not apply to the Texas Short Form Residential Loan Policy of Title Insurance (T-2R).

# EXHIBIT C TO REAL ESTATE CONTRACT

Continuation of Schedule B

GF No. BC1401549

10. The following matters and all terms of the documents creating or offering evidence of the matters (We must insert matters or delete this exception.):
- a. **Rights of Parties in Possession.**
  - b. **Easements, or claims of easements, which are not recorded in the public records.**
  - c. **Easements as shown of record on plat of Pooh's Park Subdivision, Section One, recorded in Volume 314, page 618, Deed Records of Brazos County, Texas.**
  - d. **Easement from Albert Richardson et al to Lone Star Gas Company, dated December 15, 1950, recorded in Volume 148, page 413, Deed Records of Brazos County, Texas.**
  - e. **Mineral Deed from Dondaco, Inc. to The Dale Family Irrevocable Trust, dated June 18, 1992, recorded in Volume 1532, page 15, Official Records of Brazos County, Texas. Title to this mineral interest has not been traced subsequent to the date of the above-cited instrument.**
  - f. **Mineral reservation in Deed from Dondaco, Inc. to Don Ray Dale, Ltd., dated December 16, 1999, recorded in Volume 3682, page 260, Official Records of Brazos County, Texas. Title to this reservation has not been traced subsequent to the date of the above-cited instrument.**
  - g. **Mineral reservation in Deed from Pooh's Park Development, Ltd. to Don Ray Dale, Ltd., dated December 16, 1999, recorded in Volume 3682, page 270, Official Records of Brazos County, Texas. Title to this reservation has not been traced subsequent to the date of the above-cited instrument.**
  - h. **Terms and conditions pertaining to Waiver of Surface Use contained in Deed executed by Don Ray Dale, Ltd., dated October 29, 2009, recorded in Volume 9368, page 120, corrected by instrument recorded in Volume 9377, page 256, Official of Brazos County, Texas.**
  - i. **All leases, grants, exceptions or reservations of coal, lignite, oil, gas and other minerals, together with all rights, privileges and immunities relating thereto, appearing in the Public Records whether listed in Schedule B or not. There may be leases, grants, exceptions or reservations of mineral interests that are not listed.**
  - j. **The Tax Certificate furnished by the taxing authorities is issued on real estate only. It does not include minerals and/or personal property, therefore, no liability is assumed herein for the payment of said mineral and/or personal property tax.**

# EXHIBIT C TO REAL ESTATE CONTRACT

## COMMITMENT FOR TITLE INSURANCE T-7 ISSUED BY

GF No. BC1401549

### WFG NATIONAL TITLE INSURANCE COMPANY SCHEDULE C

Your Policy will not cover loss, costs, attorneys' fees, and expenses resulting from the following requirements that will appear as Exceptions in Schedule B of the Policy, unless you dispose of these matters to our satisfaction, before the date the Policy is issued:

1. Documents creating your title or interest must be approved by us and must be signed, notarized and filed for record.
2. Satisfactory evidence must be provided that:
  - a. no person occupying the land claims any interest in that land against the persons named in paragraph 3 of Schedule A,
  - b. all standby fees, taxes, assessments and charges against the property have been paid,
  - c. all improvements or repairs to the property are completed and accepted by the owner, and that all contractors, sub-contractors, laborers and suppliers have been fully paid, and that no mechanic's, laborer's or materialmen's liens have attached to the property,
  - d. there is legal right of access to and from the land,
  - e. (on a Loan Policy only) restrictions have not been and will not be violated that affect the validity and priority of the insured mortgage.
3. You must pay the seller or borrower the agreed amount for your property or interest.
4. Any defect, lien or other matter that may affect title to the land or interest insured, that arises or is filed after the effective date of this Commitment.
5. NOTE: Procedural Rule P-27 as provided for in Article 9.39A of the Texas Insurance Code requires that "Good Funds" be received and deposited before a Title Agent may disburse from its Trust Fund Account..
6. **NOTE: We find no outstanding liens of record affecting the subject property. Inquiry should be made concerning the existence of any unrecorded lien or other indebtedness which could give rise to any security interest claim in the subject property.**
7. **Company will require tax certificates on the subject property showing all taxes paid up to and including the year 2015.**
8. **Company will require a properly executed Waiver of Inspection.**
9. **Company requires an Affidavit as to Debts and Liens to be executed at closing.**
10. **"The title insurance policy being issued to you contains an Arbitration Provision. It allows you or the Company to require arbitration if the amount of Insurance is \$2,000,000 or less. If you want to retain your right to sue the Company in case of a dispute over a claim, you must request deletion of the Arbitration Provision before the policy is issued. If you are the purchaser in the transaction and elect deletion of the Arbitration Provision, a form will be presented to you at closing for execution. If you are the lender in the transaction and desire deletion of the Arbitration Provision, please inform us through your Closing Instructions."**

# EXHIBIT C TO REAL ESTATE CONTRACT

Continuation of Schedule C

GF No. BC1401549

Countersigned  
Brazos County Abstract Company



By  
Authorized Countersignature

# EXHIBIT C TO REAL ESTATE CONTRACT

## COMMITMENT FOR TITLE INSURANCE

### SCHEDULE D

GF No. **BC1401549**

Effective Date: **November 4, 2015, 8:00 am**

Pursuant to the requirements of Rule P-21, Basic Manual of Rules, Rates and Forms for the writing of Title Insurance in the State of Texas, the following disclosures are made:

1. The following individuals are directors and/or officers, as indicated, of the Title Insurance Company issuing this Commitment
2. The following disclosures are made by the Title Insurance Agent issuing this Commitment : Brazos County Abstract Company
  - a. The names of each shareholder, owner, partner or other person having, owning or controlling one percent (1%) or more of the Title Insurance Agent that will receive a portion of the premium are as follows: Texan Title Holdings, LLC
  - b. Each shareholder, owner, partner or other person having, owning or controlling ten percent (10%) or more of an entity that has, owns or controls one percent (1%) or more of the Title Insurance Agent that will receive a portion of the premium are as follows: Texan Title Holdings, LLC is owned 100% by Patrick F. Doyle
  - c. The following persons are officers and directors of the Title Insurance Agent:

DIRECTORS

Patrick F. Doyle

OFFICERS

Patrick F. Doyle, President  
Randal Seewald, Chief Operating Officer  
Jaclyn Driskell, Vice President  
Andrea Goodson, Vice President  
Lisa Kemp, Vice President  
Colleen Marie Waller, Vice President  
Diane C. Ganzer, VP Controller/Secretary/Treasurer

3. You are entitled to receive advance disclosure of settlement charges in connection with the proposed transaction to which this commitment relates. Upon your request, such disclosure will be made to you. Additionally, the name of any person, firm or corporation receiving a portion of the premium from the settlement of this transaction will be disclosed on the closing or settlement statement.

You are further advised that the estimated title premium\* is:

Owner's Policy	<u>\$0.00</u>
Loan Policy	<u>\$0.00</u>
Endorsement Charges	<u>\$0.00</u>
Other	<u>\$0.00</u>
Total	<u>\$0.00</u>

Of this total amount: 15% will be paid to the policy issuing Title Insurance Company; 85% will be retained by the issuing Title Insurance Agent; and the remainder of the estimated premium will be paid to other parties as follows:

<u>Amount</u>	<u>To Whom</u>	<u>For Services</u>
---------------	----------------	---------------------

" \*The estimated premium is based upon information furnished to us as of the date of this Commitment for Title Insurance. Final determination of the amount of the premium will be made at closing in accordance with the Rules and Regulations adopted by the Commissioner of Insurance."

# EXHIBIT C TO REAL ESTATE CONTRACT

## COMMITMENT FOR TITLE INSURANCE (Form T-7)

### TEXAS TITLE INSURANCE INFORMATION

Title insurance insures you against loss resulting from certain risks to your title.

The commitment for Title Insurance is the title insurance company's promise to issue the title insurance policy. The commitment is a legal document. You should review it carefully to completely understand it before your closing date.

El seguro de título le asegura en relación a pérdidas resultantes de ciertos riesgos que pueden afectar el título de su propiedad.

El Compromiso para Seguro de Título es la promesa de la compañía aseguradora de títulos de emitir la póliza de seguro de título. El Compromiso es un documento legal. Usted debe leerlo cuidadosamente y entenderlo completamente antes de la fecha para finalizar su transacción.

Your Commitment of Title insurance is a legal contract between you and us. The Commitment is not an opinion or report of your title. It is a contract to issue you a policy subject to the Commitment's terms and requirements.

Before issuing a Commitment for Title Insurance (the Commitment) or a Title Insurance Policy (the Policy), the Title Insurance Company (the Company) determines whether the title is insurable. This determination has already been made. Part of that determination involves the Company's decision to insure the title except for certain risks that will not be covered by the Policy. Some of these risks are listed in Schedule B of the attached Commitment as Exceptions. Other risks are stated in the Policy as Exclusions. These risks will not be covered by the Policy. The Policy is not an abstract of title nor does a Company have an obligation to determine the ownership of any mineral interest.

- **MINERALS AND MINERAL RIGHTS** may not be covered by the Policy. The Company may be unwilling to insure title unless there is an exclusion or an exception as to Minerals and Mineral Rights in the Policy. Optional endorsements insuring certain risks involving minerals, and the use of improvements (excluding lawns, shrubbery and trees) and permanent buildings may be available for purchase. If the title insurer issues the title policy with an exclusion or exception to the minerals and mineral rights, neither this Policy, nor the optional endorsements, ensure that the purchaser has title to the mineral rights related to the surface estate.

Another part of the determination involves whether the promise to insure is conditioned upon certain requirements being met. Schedule C of the Commitment lists these requirements that must be satisfied or the Company will refuse to cover them. You may want to discuss any matters shown in Schedules B and C of the Commitment with an attorney. These matters will affect your title and your use of the land.

When your policy is issued, the coverage will be limited by the Policy's Exceptions, Exclusions and Conditions, defined below.

- **EXCEPTIONS** are title risks that a Policy generally covers but does not cover in a particular instance. Exceptions are shown on Schedule B or discussed in Schedule C of the Commitment. They can also be added if you do not comply with the Conditions section of the Commitment. When the Policy is issued, all Exceptions will be on Schedule B of the Policy.

- **EXCLUSIONS** are title risks that a Policy generally does not cover. Exclusions are contained in the Policy but not shown or discussed in the Commitment.

- **CONDITIONS** are additional provisions that qualify or limit your coverage. Conditions include your responsibilities and those of the Company. They are contained in the Policy but not shown or discussed in the Commitment. The Policy Conditions are not the same as the Commitment Conditions.

# EXHIBIT C TO REAL ESTATE CONTRACT

Continuation of Texas Title Insurance Information

GF No. **BC1401549**

You can get a copy of the policy form approved by the Texas Department of Insurance by calling the Title Insurance Company at (210) 444-9120 or by calling the title insurance agent that issued the Commitment. The Texas Department of Insurance may revise the policy form from time to time.

You can also get a brochure that explains the policy from the Texas Department of Insurance by calling 1-800-252-3439.

Before the Policy is issued, you may request changes in the policy. Some of the changes to consider are:

- Request amendment of the "area and boundary" exception (Schedule B, paragraph 2). To get this amendment, you must furnish a survey and comply with other requirements of the Company. On the Owner's Policy, you must pay an additional premium for the amendment. If the survey is acceptable to the Company and if the Company's other requirements are met, your Policy will insure you against loss because of discrepancies or conflicts in boundary lines, encroachments or protrusions, or overlapping of improvements. The Company may then decide not to insure against specific boundary or survey problems by making special exceptions in the Policy. Whether or not you request amendment of the "area and boundary" exception, you should determine whether you want to purchase and review a survey if a survey is not being provided to you.
- Allow the Company to add an exception to "rights of parties in possession." If you refuse this exception, the Company or the title insurance agent may inspect the property. The Company may except to and not insure you against the rights of specific persons, such as renters, adverse owners or easement holders who occupy the land. The Company may charge you for the inspection. If you want to make your own inspection, you must sign a Waiver of Inspection form and allow the Company to add this exception to your Policy.

The entire premium for a Policy must be paid when the Policy is issued. You will not owe any additional premiums unless you want to increase your coverage at a later date and the Company agrees to add an Increased Value Endorsement.

# EXHIBIT C TO REAL ESTATE CONTRACT

## DELETION OF ARBITRATION PROVISION *(Not applicable to the Texas Residential Owner's Policy)*

ARBITRATION is a common form of alternative dispute resolution. It can be a quicker and cheaper means to settle a dispute with your Title Insurance Company. However, if you agree to arbitrate, you give up your right to take the Title Insurance Company to court and your rights to discovery of evidence may be limited in the arbitration process. In addition, you cannot usually appeal an arbitrator's award.

Your policy contains an arbitration provision (shown below). It allows you or the Company to require arbitration if the amount of insurance is \$2,000,000 or less. If you want to retain your right to sue the Company in case of a dispute over a claim, you must request deletion of the arbitration provision before the policy is issued. You can do this by signing this form and returning it to the Company at or before the closing of your real estate transaction or by writing to the Company.

The arbitration provision in the Policy is as follows:

"Either the Company or the Insured may demand that the claim or controversy shall be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association ("Rules"). Except as provided in the Rules, there shall be no joinder or consolidation with claims or controversies of other persons. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Insured arising out of or relating to this policy, any service in connection with its issuance or the breach of a policy provision, or to any other controversy or claim arising out of the transaction giving rise to this policy. All arbitrable matters when the Amount of Insurance is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Insured, unless the Insured is an individual person (as distinguished from an Entity). All arbitrable matters when the Amount of Insurance is in excess of \$2,000,000 shall be arbitrated only when agreed to by both the Company and the Insured. Arbitration pursuant to this policy and under the Rules shall be binding upon the parties. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court of competent jurisdiction."

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

*(Not applicable to the Texas Residential Owner's Policy)*

# EXHIBIT C TO REAL ESTATE CONTRACT

WFG National Title Insurance Company

Premium Amount	Rate Rules	Property Type	County Code	Liability at Reissue Rate	6	7	8
1 <b>\$0.00</b>	2	3 3	4 41	5	6	7	8

# EXHIBIT D TO REAL ESTATE CONTRACT

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

## SPECIAL WARRANTY DEED

**DATE:** \_\_\_\_\_, 2016

**GRANTOR:** THE CITY OF COLLEGE STATION, TEXAS

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

**GRANTEE:** RED ROCK ALCHEMY, LLC,  
A Texas limited liability company

**GRANTEE'S MAILING ADDRESS:** 4711 Johnson Creek Loop  
(including county) Brazos County  
College Station, Texas 77845

**CONSIDERATION:** TEN AND NO/ Dollars (\$10.00) and other good and valuable consideration

### **PROPERTY:**

All those certain lots, tracts or parcels of land lying and being situated in Brazos County, Texas, and being Lots Six (6), Seven (7), Eight (8), Nine (9), Ten (10), Eleven (11), Twelve (12), Thirteen (13) and Fourteen (14), Block One (1), POOH'S PARK SUBDIVISION, SECTION ONE, an addition in the City of College Station, Texas according to plat recorded in Volume 314, page 618, Deed Records of Brazos County, Texas; said lots being shown on plat attached hereto as **EXHIBIT A**.

## EXHIBIT D TO REAL ESTATE CONTRACT

**SAVE AND EXCEPT HEREFROM** all that certain tract or parcel of land containing 0.504 of an acre of land, more or less, lying and being situated in College Station, Brazos County, Texas, said tract being a portion of Lots 6-14, Block 1, Pooh's Park Subdivision, Section One, according to the plat recorded in Volume 314, Page 618, of the Deed Records of Brazos County, Texas; said 0.504 acre tract being more particularly described by metes and bounds on **EXHIBIT B** attached hereto and made a part hereof for all intents and purposes.

### **RESERVATIONS FROM AND EXCEPTIONS TO CONVEYANCE AND WARRANTY:**

1. Easements as shown of record on plat of Pooh's Park Subdivision, Section One, recorded in Volume 314, page 618, Deed Records of Brazos County, Texas.
2. Easement from Albert Richardson et al to Lone Star Gas Company, dated December 15, 1950, recorded in Volume 148, page 413, Deed Records of Brazos County, Texas.
3. Mineral Deed from Dondaco, Inc. to The Dale Family Irrevocable Trust, dated June 18, 1992, recorded in Volume 1532, page 15, Official Records of Brazos County, Texas.
4. Mineral reservation in Deed from Dondaco, Inc. to Don Ray Dale, Ltd., dated December 16, 1999, recorded in Volume 3682, page 260, Official Records of Brazos County, Texas.
5. Mineral reservation in Deed from Pooh's Park Development, Ltd. to Don Ray Dale, Ltd., dated December 16, 1999, recorded in Volume 3682, page 270, Official Records of Brazos County, Texas.
6. Terms and conditions pertaining to Waiver of Surface Use contained in Deed executed by Don Ray Dale, Ltd. to the City of College Station, Texas, dated October 29, 2009, recorded in Volume 9368, Page 120, corrected by instrument recorded in Volume 9377, Page 256, Official Records of Brazos County, Texas.

***RESERVED FOR ADDITIONAL EXCEPTIONS, IF ANY, WHICH MAY BE LISTED ON UPDATED TITLE COMMITMENT PROVIDED IMMEDIATELY PRIOR TO CLOSING.***

**GRANTOR hereby reserves for itself, its successors and assigns, all of the Reserved Groundwater Rights. As used in this Special Warranty Deed, the following terms shall have the following meanings: Groundwater – All of the underground water, percolating water, artesian water, and any other water from any and all reservoirs, formations, depths and horizons beneath the surface of the earth, excluding underflow or flow in a defined subterranean channel; Reserved**

## EXHIBIT D TO REAL ESTATE CONTRACT

Groundwater - All of the Groundwater now or in the future located in, on or under the Property;  
And Reserved Groundwater Rights - All of the Reserved Groundwater, together with the right to explore for, drill for, pump, develop, withdraw, produce and transport the Reserved Groundwater and Groundwater produced from other properties, on, under and over the Property, and all personal property rights and entitlements relating to or applicable to the Reserved Groundwater, including, without limitation, permits, licenses, historical use entitlements, wells, pumps, and infrastructure. However, GRANTOR waives, releases and conveys to GRANTEE, all of GRANTOR's rights of ingress and egress to, from and on the surface estate of the Property relating to the Groundwater Rights and Reserved Groundwater Rights reserved by GRANTOR. Nothing herein, however, restricts or prohibits the pooling or unitization of the groundwater estate owned by GRANTOR with land other than the Property.

GRANTOR hereby reserves unto itself, its successors and assigns, any and all oil, gas and other minerals in, on or under the premises described above; provided that there shall never in any event be any ingress or egress on or across the surface of the above described premises for the purposes of exploration, development, production or transportation of such oil, gas or other minerals, it being expressly contemplated by the parties to this instrument that any production of such minerals shall be from the surface of other adjacent property and that there shall be no development of any minerals that would require mining, shaft mining, pit mining or any other kind of mining that would require utilization of the surface, or through the pooling of such mineral interests for the development with adjacent parcels.

GRANTEE ACKNOWLEDGES THAT GRANTOR HAS NOT MADE AND DOES NOT MAKE ANY REPRESENTATIONS AS TO THE PHYSICAL CONDITION OF THE PROPERTY, OR ANY OTHER MATTER AFFECTING OR RELATED TO THE PROPERTY (OTHER THAN WARRANTIES OF TITLE AS PROVIDED AND LIMITED HEREIN). GRANTEE EXPRESSLY AGREES THAT TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE PROPERTY IS CONVEYED "AS IS" AND "WITH ALL FAULTS", AND GRANTOR EXPRESSLY DISCLAIMS, AND GRANTEE ACKNOWLEDGES AND ACCEPTS THAT GRANTOR HAS DISCLAIMED, ANY AND ALL REPRESENTATIONS, WARRANTIES OR GUARANTIES OF ANY KIND, ORAL OR WRITTEN, EXPRESS OR IMPLIED (EXCEPT AS TO TITLE AS HEREIN PROVIDED AND LIMITED) CONCERNING THE PROPERTY, INCLUDING WITHOUT LIMITATION (i) THE VALUE, CONDITION, MERCHANTABILITY, HABITABILITY, MARKETABILITY, PROFITABILITY, SUITABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE, OF THE PROPERTY (ii) THE MANNER OR QUALITY OF THE CONSTRUCTION, OR THE MATERIALS, IF ANY, INCORPORATED INTO THE CONSTRUCTION, OF ANY IMPROVEMENTS TO THE PROPERTY AND (iii) THE MANNER OF REPAIR, QUALITY OF REPAIR, STATE OF REPAIR OR LACK OF REPAIR OF ANY SUCH IMPROVEMENTS. BY GRANTEE'S ACCEPTANCE OF THIS DEED, GRANTEE REPRESENTS THAT GRANTEE HAS MADE (i) ALL INSPECTIONS OF THE PROPERTY TO DETERMINE ITS VALUE AND CONDITION DEEMED NECESSARY OR APPROPRIATE BY GRANTEE, INCLUDING, WITHOUT LIMITATION, INSPECTIONS FOR THE PRESENCE OF ASBESTOS, PESTICIDE RESIDUES, HAZARDOUS WASTE AND OTHER HAZARDOUS MATERIALS AND (ii) INVESTIGATIONS TO DETERMINE WHETHER ANY PORTION OF THE PROPERTY LIES WITHIN ANY FLOOD HAZARD AREA AS

# EXHIBIT D TO REAL ESTATE CONTRACT

**DETERMINED BY THE U.S. ARMY CORPS OF ENGINEERS OR OTHER APPLICABLE AUTHORITY.**

GRANTOR, for the consideration and subject to the reservations from and exceptions to conveyance and warranty, GRANTS, SELLS, and CONVEYS to GRANTEE the Property, together with all and singular the rights and appurtenances thereto in any wise belonging, to have and hold it to GRANTEE and GRANTEE's successors and assigns forever. GRANTOR binds GRANTOR and GRANTOR's legal representatives, successors and assigns to warrant and forever defend all and singular the property to GRANTEE and GRANTEE's successors and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through, or under GRANTOR but not otherwise, and except as to the reservations from and exceptions to conveyance and warranty recited above.

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

**CITY OF COLLEGE STATION, TEXAS**

By: \_\_\_\_\_  
NANCY BERRY, Mayor

ATTEST:  
\_\_\_\_\_  
SHERRY MASHBURN, City Secretary

THE STATE OF TEXAS §  
  §  
COUNTY OF BRAZOS §

## ACKNOWLEDGMENT

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2016, by **NANCY BERRY**, as Mayor of the City of College Station, a Texas municipal corporation, on behalf of said municipality.

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

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

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



# EXHIBIT D TO REAL ESTATE CONTRACT

## EXHIBIT B

**METES AND BOUNDS DESCRIPTION  
OF A  
0.504 ACRE TRACT  
PROPOSED RESERVED RIGHT-OF-WAY  
POOH'S PARK SUBDIVISION, SECTION ONE  
COLLEGE STATION, BRAZOS COUNTY, TEXAS**

METES AND BOUNDS DESCRIPTION OF ALL THAT CERTAIN TRACT OF LAND LYING AND BEING SITUATED IN COLLEGE STATION, BRAZOS COUNTY, TEXAS. SAID TRACT BEING A PORTION OF LOTS 6-14, BLOCK 1, POOH'S PARK SUBDIVISION, SECTION ONE, ACCORDING TO THE PLAT RECORDED IN VOLUME 314, PAGE 618 OF THE DEED RECORDS OF BRAZOS COUNTY, TEXAS.

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

**BEGINNING** AT A 1/2 INCH IRON ROD SET ON THE SOUTHEAST LINE OF HOLLEMAN DRIVE (75' R.O.W. AT THIS POINT) MARKING THE WEST CORNER OF SAID LOT 6 AND THE NORTH CORNER OF LOT 5, BLOCK 1;

**THENCE:** N 41° 38' 08" E ALONG THE SOUTHEAST LINE OF HOLLEMAN DRIVE, AT 99.98 FEET PASS A 1/2 INCH IRON ROD FOUND MARKING THE NORTH CORNER OF SAID LOT 6 AND THE WEST CORNER OF SAID LOT 7, AT 299.98 FEET PASS A 1/2 INCH IRON ROD FOUND MARKING THE NORTH CORNER OF SAID LOT 8 AND THE WEST CORNER OF SAID LOT 9, AT 399.95 FEET PASS A 1/2 INCH IRON ROD FOUND MARKING THE NORTH CORNER OF SAID LOT 9 AND THE WEST CORNER OF SAID LOT 10, AT 799.79 FEET PASS A 1/2 INCH IRON ROD FOUND MARKING THE NORTH CORNER OF SAID LOT 13 AND THE WEST CORNER OF SAID LOT 14, CONTINUE ON FOR A TOTAL DISTANCE OF 863.40 FEET TO A 1/2 INCH IRON ROD SET MARKING THE BEGINNING OF A CLOCKWISE CURVE HAVING A RADIUS OF 25.00 FEET;

**THENCE:** ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 88° 58' 36" FOR AN ARC DISTANCE OF 38.82 FEET (CHORD BEARS: N 86° 07' 26" E - 35.04 FEET) TO A 1/2 INCH IRON ROD SET ON THE SOUTHWEST LINE OF LASSIE LANE (50' R.O.W.) MARKING THE END OF SAID CURVE, FOR REFERENCE A 5/8 INCH IRON ROD FOUND BENT BEARS: N 48° 02' 34" W FOR A DISTANCE OF 2.26 FEET;

**THENCE:** S 49° 30' 26" E ALONG THE SOUTHWEST LINE OF LASSIE LANE FOR A DISTANCE OF 274.44 FEET TO A 1/2 INCH IRON ROD SET MARKING THE EAST CORNER OF SAID LOT 14 AND THE NORTH CORNER OF LOT 13B, RICHARDS SUBDIVISION, ACCORDING TO THE PLAT RECORDED IN VOLUME 368, PAGE 669 OF THE DEED RECORDS OF BRAZOS COUNTY, TEXAS;

**THENCE:** S 41° 32' 23" W ALONG THE COMMON LINE OF SAID LOT 14 AND SAID LOT 13B FOR A DISTANCE OF 15.00 FEET TO A 1/2 INCH IRON ROD SET, FOR REFERENCE A 5/8 INCH IRON ROD FOUND ON THE NORTHWEST LINE OF LOT 13A, RICHARDS SUBDIVISION, (PLAT 368/669) MARKING THE SOUTH CORNER OF SAID LOT 14 BEARS: S 41° 32' 23" W FOR A DISTANCE OF 78.53 FEET;

**THENCE:** N 49° 30' 26" W THROUGH SAID LOT 14, 15.00 FEET FROM AND PARALLEL TO THE SOUTHWEST LINE OF LASSIE LANE, FOR A DISTANCE OF 254.51 FEET TO A 1/2 INCH IRON ROD SET MARKING THE BEGINNING OF A COUNTERCLOCKWISE CURVE HAVING A RADIUS OF 25.00 FEET;

**THENCE:** CONTINUING THROUGH SAID LOT 14 AND ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 88° 51' 26" FOR AN ARC DISTANCE OF 38.77 FEET (CHORD BEARS: S 86° 03' 51" W - 35.00 FEET) TO A 1/2 INCH IRON ROD SET MARKING THE END OF SAID CURVE;

**THENCE:** S 41° 38' 08" W CONTINUING THROUGH SAID LOT 14 AND THROUGH SAID LOTS 13-6, 20.00 FEET FROM AND PARALLEL TO THE SOUTHEAST LINE OF HOLLEMAN DRIVE, FOR A DISTANCE OF

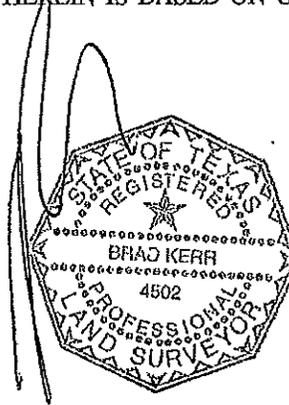
# EXHIBIT D TO REAL ESTATE CONTRACT EXHIBIT B

848.76 FEET TO A 1/2 INCH IRON ROD SET ON THE COMMON LINE OF SAID LOT 6 AND THE AFOREMENTIONED LOT 5, BLOCK 1, POOH'S PARK SUBDIVISION;

**THENCE:** N 48° 27' 45" W ALONG THE COMMON LINE OF SAID LOT 6 AND SAID LOT 5 FOR A DISTANCE OF 20.00 FEET TO THE POINT OF BEGINNING CONTAINING 0.504 OF AN ACRE OF LAND, MORE OR LESS, AS SURVEYED ON THE GROUND MARCH 2014. SEE PLAT PREPARED MARCH 2014 FOR MORE DESCRIPTIVE INFORMATION. BEARING SYSTEM SHOWN HEREIN IS BASED ON GRID NORTH AS ESTABLISHED FROM GPS OBSERVATION.

BRAD KERR  
REGISTERED PROFESSIONAL  
LAND SURVEYOR No. 4502

D:/WORK/MAB/14-104.MAB



## **EXHIBIT E TO REAL ESTATE CONTRACT**

### Issues to be Resolved During Feasibility Period

1. Pre-marketing studies
2. Engineering
3. Environmental
4. Feasibility
5. Land plan or land use studies or reviews
6. Inspections of the property
7. Investigations of the property
8. Reviews of the property
9. Third Party Financing at an interest rate not to exceed 6%, with amortized term not to exceed thirty (30) years, and points or financing fees not to exceed two (2) points



## Legislation Details (With Text)

**File #:** 16-0197      **Version:** 2      **Name:** Agreement Designating Fire Station Site  
**Type:** Presentation      **Status:** Consent Agenda  
**File created:** 3/31/2016      **In control:** City Council Regular  
**On agenda:** 4/14/2016      **Final action:**  
**Title:** Presentation, possible action, and discussion to ratify an agreement between McAlister Opportunity Fund 2012, LP, and the City of College Station designating a two-acre site within the Brazos County Municipal Utility District #1 as a possible option site for a future fire station  
**Sponsors:** Eric Hurt  
**Indexes:**  
**Code sections:**  
**Attachments:** [Option Site Agreement Executed.pdf](#)

Date	Ver.	Action By	Action	Result
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Presentation, possible action, and discussion to ratify an agreement between McAlister Opportunity Fund 2012, LP, and the City of College Station designating a two-acre site within the Brazos County Municipal Utility District #1 as a possible option site for a future fire station

### Relationship to Strategic Goals:

- Core Services and Infrastructure

Recommendation(s): Staff recommends the Council ratify the Agreement Designating Fire Station Site

Summary: Effective March 12, 2015, the City entered into a development agreement with McAlister Opportunity Fund 2012, LP, for the development of land within the Brazos County Municipal Utility District #1. Under Article V of the development agreement, the developer agreed to grant the City a ten-year option to purchase a two-acre site within the development for a possible future fire station. Under Section 5.1(a) of the agreement, the parties were to agree on the location of the site on or before March 12, 2016. The parties agreed to a site located near the overpass located near the intersection of Highway 6 and the planned main entrance to the development. The Council's approval will ratify such agreement.

Budget & Financial Summary: None

Attachments: Agreement Designating Fire Station Site



AGREEMENT DESIGNATING FIRE STATION SITE

WHEREAS, McAlister Opportunity Fund 2012, LP (the "Developer") and the City of College Station, Texas ("City") entered into a Development Agreement effective March 12, 2015 ( the "Development Agreement") for the orderly, safe and healthful development of the land within the boundaries of Brazos County Municipal Utility District No. 1 (the "District"); and

WHEREAS, pursuant to Article V of the Development Agreement, the Developer agreed to grant the City an option to purchase a two acre fire station site within the District (the "Option Site") that will have reasonable access to the overpass located at or near the intersection of Highway 6 and the main entrance to the District; and

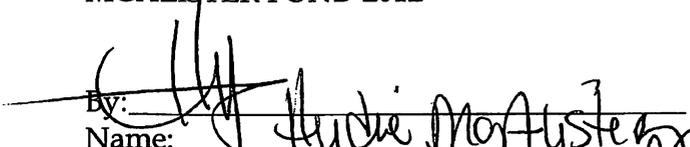
WHEREAS, pursuant to Section 5.1(a) of the Development Agreement, the City and Developer shall agree on the exact location of the Option Site within three hundred sixty five days after the effective date of the Agreement; NOW THEREFORE:

IT IS AGREED AND ACKNOWLEDGED THAT:

1. The Developer and City agree that the Option Site will generally be located at the location shown on "Exhibit A" attached hereto.
2. The Option Site will be two acres as agreed upon in the Development Agreement.
3. If the Developer's general plan changes, the City and Developer will agree to an alternate Option Site that meets the requirements of Article V of the Development Agreement.

EXECUTED TO BE EFFECTIVE as of the 12<sup>th</sup> of March, 2016.

MCALISTER FUND 2012

By: 

Name: Tydie McAlister

Title: manager General Partner

THE CITY OF COLLEGE STATION, TEXAS

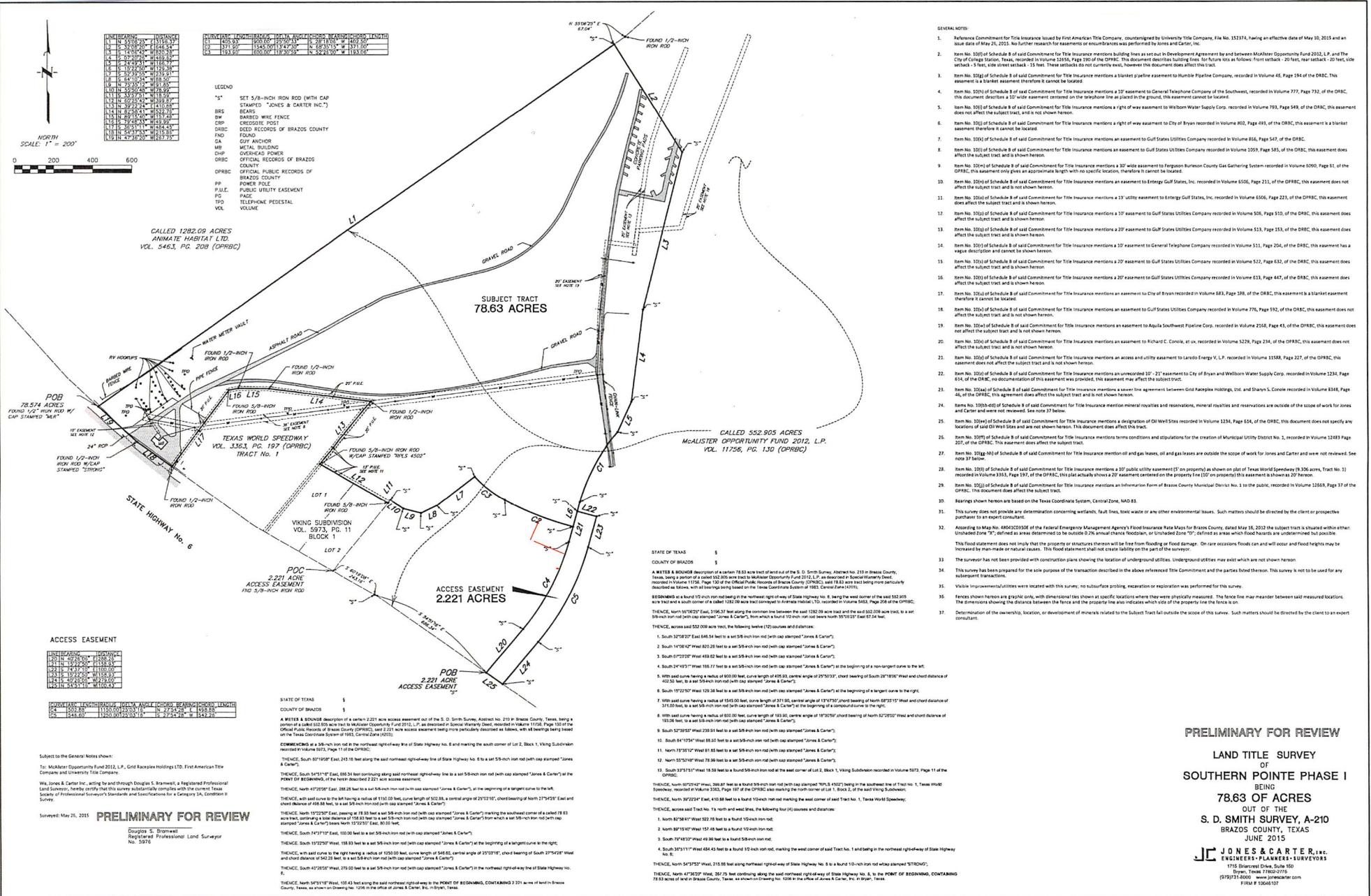


\_\_\_\_\_  
City Manager

APPROVED AS TO FORM:



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



MARKER	LENGTH	BEARING	MARKER	LENGTH	BEARING	MARKER	LENGTH	BEARING
1	0.50	S 115° 15' 00" E	11	0.50	S 115° 15' 00" E	21	0.50	S 115° 15' 00" E
2	0.50	S 115° 15' 00" E	12	0.50	S 115° 15' 00" E	22	0.50	S 115° 15' 00" E
3	0.50	S 115° 15' 00" E	13	0.50	S 115° 15' 00" E	23	0.50	S 115° 15' 00" E
4	0.50	S 115° 15' 00" E	14	0.50	S 115° 15' 00" E	24	0.50	S 115° 15' 00" E
5	0.50	S 115° 15' 00" E	15	0.50	S 115° 15' 00" E	25	0.50	S 115° 15' 00" E
6	0.50	S 115° 15' 00" E	16	0.50	S 115° 15' 00" E	26	0.50	S 115° 15' 00" E
7	0.50	S 115° 15' 00" E	17	0.50	S 115° 15' 00" E	27	0.50	S 115° 15' 00" E
8	0.50	S 115° 15' 00" E	18	0.50	S 115° 15' 00" E	28	0.50	S 115° 15' 00" E
9	0.50	S 115° 15' 00" E	19	0.50	S 115° 15' 00" E	29	0.50	S 115° 15' 00" E
10	0.50	S 115° 15' 00" E	20	0.50	S 115° 15' 00" E	30	0.50	S 115° 15' 00" E

**LEGEND**

- "S" SET 5/8-INCH IRON ROD (WITH CAP STAMPED "JONES & CARTER INC.")
- BEARS
- BW BARBED WIRE FENCE
- CRS CRESSGOTE ROCKS
- DRBC DEED RECORDS OF BRAZOS COUNTY
- FOUND FOUND
- GA GUY ANCHOR
- ME METAL BUILDING
- DUP OVERHEAD POWER
- DRBC OFFICIAL RECORDS OF BRAZOS COUNTY
- OPRBC OFFICIAL PUBLIC RECORDS OF BRAZOS COUNTY
- PP POWER POLE
- P.U.E. PUBLIC UTILITY EASEMENT
- PD PAGE
- TPO TELEPHONE PEDESTAL
- VOL VOLUME

CALLED 1282.09 ACRES  
ANIMATE HABITAT LTD.  
VOL. 5463, PG. 208 (OPRBC)

SUBJECT TRACT  
78.63 ACRES

CALLED 552,905 ACRES  
MCALISTER OPPORTUNITY FUND 2012, L.P.  
VOL. 11756, PG. 130 (OPRBC)

**ACCESS EASEMENT**

MARKER	LENGTH	BEARING	MARKER	LENGTH	BEARING
1	0.50	S 115° 15' 00" E	11	0.50	S 115° 15' 00" E
2	0.50	S 115° 15' 00" E	12	0.50	S 115° 15' 00" E
3	0.50	S 115° 15' 00" E	13	0.50	S 115° 15' 00" E
4	0.50	S 115° 15' 00" E	14	0.50	S 115° 15' 00" E
5	0.50	S 115° 15' 00" E	15	0.50	S 115° 15' 00" E
6	0.50	S 115° 15' 00" E	16	0.50	S 115° 15' 00" E
7	0.50	S 115° 15' 00" E	17	0.50	S 115° 15' 00" E
8	0.50	S 115° 15' 00" E	18	0.50	S 115° 15' 00" E
9	0.50	S 115° 15' 00" E	19	0.50	S 115° 15' 00" E
10	0.50	S 115° 15' 00" E	20	0.50	S 115° 15' 00" E

STATE OF TEXAS §  
COUNTY OF BRAZOS §

**COMMERCE** as a 5/8-inch iron rod in the northeast right-of-way line of State Highway No. 6, marking the east corner of Lot 1, Block 1, Viking Subdivision recorded in Volume 5973, Page 11 of the Official Public Records of Brazos County, Texas.

**THENCE**, South 87°02'00" East, 245.25 feet to a set 5/8-inch iron rod (with cap stamped "Jones & Carter") at the beginning of a tangent curve to the left.

**THENCE**, with said curve to the left having a radius of 1150.00 feet, curve length of 552.84 feet, central angle of 27°33'15", chord bearing of North 27°54'58" East and chord distance of 418.82 feet, to a set 5/8-inch iron rod (with cap stamped "Jones & Carter").

**THENCE**, North 19°22'00" East, bearing of 78.85 feet to a set 5/8-inch iron rod (with cap stamped "Jones & Carter") marking the southeast corner of a called 78.85 acre tract, containing a total area of 178.85 acres to a set 5/8-inch iron rod (with cap stamped "Jones & Carter") from which a set 5/8-inch iron rod (with cap stamped "Jones & Carter") has been set 172°25'00" East, 80.00 feet.

**THENCE**, South 74°17'00" East, 103.00 feet to a set 5/8-inch iron rod (with cap stamped "Jones & Carter").

**THENCE**, South 12°25'00" West, 188.83 feet to a set 5/8-inch iron rod (with cap stamped "Jones & Carter") at the beginning of a tangent curve to the right.

**THENCE**, with said curve to the right having a radius of 470.00 feet, curve length of 545.82 feet, central angle of 27°33'15", chord bearing of North 27°54'58" West and chord distance of 418.82 feet, to a set 5/8-inch iron rod (with cap stamped "Jones & Carter").

**THENCE**, South 12°25'00" West, 275.00 feet to a set 5/8-inch iron rod (with cap stamped "Jones & Carter") on the northeast right-of-way line of State Highway No. 6.

**THENCE**, North 45°15'00" East, 110.43 feet along the said northeast right-of-way line to the POINT OF BEGINNING, CONTAINING 2.221 acres of land in Brazos County, Texas, as shown on Drawing No. 1206 in the office of Jones & Carter, Inc. in Bryan, Texas.

**STATE OF TEXAS §**  
**COUNTY OF BRAZOS §**

**A WRITER & RECORD** description of a certain 78.63 acre tract of land of the S. D. Smith Survey, Acreage No. 210 in Brazos County, Texas, being a portion of a called 102.80 acre tract to McAlister Opportunity Fund 2012, L.P., as described in Special Warranty Deed, recorded in Volume 11756, Page 130 of the Official Public Records of Brazos County (OPRBC), said 78.63 acre tract being more particularly described as follows, with all bearings being based on the Texas Coordinate System of 1983, Central Zone (4303):

**BEING** and a 1/2-inch iron rod on the northeast right-of-way line of State Highway No. 6, being the west corner of the said 552,905 acre tract and a south corner of a called 102.80 acre tract connected to another tract, to a set 5/8-inch iron rod (with cap stamped "Jones & Carter"), from which a 1/2-inch iron rod has been set 55°02'30" East 67.64 feet.

- THENCE**, across said 552,905 acre tract, the following bearings (70) courses and distances:
- South 27°02'00" East 645.34 feet to a set 5/8-inch iron rod (with cap stamped "Jones & Carter").
  - South 17°02'00" West 802.28 feet to a set 5/8-inch iron rod (with cap stamped "Jones & Carter").
  - South 07°02'00" West 469.62 feet to a set 5/8-inch iron rod (with cap stamped "Jones & Carter").
  - South 24°49'31" West 165.77 feet to a set 5/8-inch iron rod (with cap stamped "Jones & Carter") at the beginning of a non-tangent curve to the left.
  - With said curve having a radius of 800.00 feet, curve length of 459.93 feet, central angle of 27°30'31", chord bearing of South 28°18'00" West and chord distance of 422.52 feet, to a set 5/8-inch iron rod (with cap stamped "Jones & Carter").
  - South 12°25'00" West 129.38 feet to a set 5/8-inch iron rod (with cap stamped "Jones & Carter") at the beginning of a tangent curve to the right.
  - With said curve having a radius of 1545.00 feet, curve length of 371.95 feet, central angle of 13°17'00", chord bearing of North 69°23'15" West and chord distance of 317.00 feet, to a set 5/8-inch iron rod (with cap stamped "Jones & Carter") at the beginning of a compound curve to the right.
  - With said curve having a radius of 600.00 feet, curve length of 619.00 feet, central angle of 19°30'00", chord bearing of North 42°00'00" West and chord distance of 129.86 feet, to a set 5/8-inch iron rod (with cap stamped "Jones & Carter").
  - South 27°02'00" West 239.82 feet to a set 5/8-inch iron rod (with cap stamped "Jones & Carter").
  - South 10°17'00" West 88.80 feet to a set 5/8-inch iron rod (with cap stamped "Jones & Carter").
  - North 72°31'00" West 81.85 feet to a set 5/8-inch iron rod (with cap stamped "Jones & Carter").
  - North 92°50'00" West 78.86 feet to a set 5/8-inch iron rod (with cap stamped "Jones & Carter").
  - North 92°50'00" West 78.86 feet to a set 5/8-inch iron rod (with cap stamped "Jones & Carter").
  - South 27°02'00" West 158.86 feet to a set 5/8-inch iron rod (with cap stamped "Jones & Carter") at the east corner of Lot 2, Block 1, Viking Subdivision recorded in Volume 5973, Page 11 of the Official Public Records of Brazos County, Texas.
  - THENCE**, North 07°02'00" West, 388.86 feet to a set 5/8-inch iron rod (with cap stamped "Jones & Carter") in the southeast line of Tract No. 1, Texas World Speedway, recorded in Volume 2163, Page 207 of the Official Public Records of Brazos County (OPRBC), also marking the north corner of Lot 1, Block 2, of the said Texas World Speedway.
  - THENCE**, North 30°22'00" East, 410.88 feet to a set 5/8-inch iron rod marking the east corner of said Tract No. 1, Texas World Speedway.
- THENCE**, across said Tract No. 1, to the north and west lines, the following four (4) courses and distances:
- North 87°04'00" West 322.48 feet to a found 1/2-inch iron rod.
  - North 89°15'00" West 157.48 feet to a found 1/2-inch iron rod.
  - South 77°45'00" West 49.98 feet to a found 1/2-inch iron rod.
  - South 95°11'00" West 184.43 feet to a found 1/2-inch iron rod, marking the west corner of said Tract No. 1 and being in the northeast right-of-way line of State Highway No. 6.
- THENCE**, North 54°35'00" West, 215.95 feet along the northeast right-of-way line of State Highway No. 6, to a found 1/2-inch iron rod (with cap stamped "JONES & CARTER").
- THENCE**, North 47°02'00" West, 397.75 feet along the said northeast right-of-way line of State Highway No. 6, to the POINT OF BEGINNING, CONTAINING 78.63 acres of land in Brazos County, Texas, as shown on Drawing No. 1206 in the office of Jones & Carter, Inc. in Bryan, Texas.

**GENERAL NOTES**

- Reference Commitment for Title Insurance issued by First American Title Company, (incorporated by University Title Company, No. 153734, having an effective date of May 10, 2015 and an issue date of May 26, 2015. No further research for easements or encumbrances was performed by Jones and Carter, Inc.
- Item No. 100(a) of Schedule B of said Commitment for Title Insurance mentions building lines as set out in Development Agreement and between McAlister Opportunity Fund 2012, L.P. and The City of Corpus Christi, Texas, 4/14/14 Volume 2216, Page 206 of the OPRBC. This document describes building lines for future lots as follows: front setback - 30 feet, rear setback - 30 feet, side setback - 15 feet, side street setback - 15 feet. These setbacks do not currently exist, however this document does affect this tract.
- Item No. 100(a) of Schedule B of said Commitment for Title Insurance mentions a blanket pipeline easement to Humble Pipeline Company, recorded in Volume 48, Page 194 of the OPRBC. This easement is a blanket easement and therefore cannot be located.
- Item No. 100(a) of Schedule B of said Commitment for Title Insurance mentions a 10' easement to General Telephone Company of the Southwest, recorded in Volume 777, Page 732 of the OPRBC. This document describes a 10' wide easement centered on the telephone line as placed in the ground, this easement cannot be located.
- Item No. 100(a) of Schedule B of said Commitment for Title Insurance mentions a right of way easement to Watson Water Supply Corp., recorded in Volume 793, Page 549 of the OPRBC. This easement does not affect the subject tract and is not shown hereon.
- Item No. 100(a) of Schedule B of said Commitment for Title Insurance mentions a right of way easement to City of Bryan recorded in Volume 802, Page 493 of the OPRBC, this easement is a blanket easement therefore it cannot be located.
- Item No. 100(a) of Schedule B of said Commitment for Title Insurance mentions an easement to Gulf States Utilities Company recorded in Volume 864, Page 547 of the OPRBC.
- Item No. 100(a) of Schedule B of said Commitment for Title Insurance mentions an easement to Gulf States Utilities Company recorded in Volume 1055, Page 545 of the OPRBC, this easement does not affect the subject tract and is not shown hereon.
- Item No. 100(a) of Schedule B of said Commitment for Title Insurance mentions a 30' wide easement to Ferguson Burleson County Gas Gathering System recorded in Volume 6000, Page 81 of the OPRBC, this easement only gives an easement as right with no specific location, therefore it cannot be located.
- Item No. 100(a) of Schedule B of said Commitment for Title Insurance mentions an easement to Entergy Gulf States, Inc., recorded in Volume 6506, Page 211 of the OPRBC, this easement does not affect the subject tract and is not shown hereon.
- Item No. 100(a) of Schedule B of said Commitment for Title Insurance mentions a 13' utility easement to Entergy Gulf States, Inc., recorded in Volume 6220, Page 223 of the OPRBC, this easement does not affect the subject tract and is not shown hereon.
- Item No. 100(a) of Schedule B of said Commitment for Title Insurance mentions a 30' easement to Gulf States Utilities Company recorded in Volume 505, Page 310 of the OPRBC, this easement does not affect the subject tract and is not shown hereon.
- Item No. 100(a) of Schedule B of said Commitment for Title Insurance mentions a 20' easement to Gulf States Utilities Company recorded in Volume 513, Page 213 of the OPRBC, this easement does not affect the subject tract and is not shown hereon.
- Item No. 100(a) of Schedule B of said Commitment for Title Insurance mentions a 10' easement to General Telephone Company recorded in Volume 511, Page 204 of the OPRBC, this easement has a vague description and cannot be shown hereon.
- Item No. 100(a) of Schedule B of said Commitment for Title Insurance mentions a 20' easement to Gulf States Utilities Company recorded in Volume 527, Page 632 of the OPRBC, this easement does not affect the subject tract and is not shown hereon.
- Item No. 100(a) of Schedule B of said Commitment for Title Insurance mentions a 20' easement to Gulf States Utilities Company recorded in Volume 633, Page 447 of the OPRBC, this easement does not affect the subject tract and is not shown hereon.
- Item No. 100(a) of Schedule B of said Commitment for Title Insurance mentions an easement to City of Bryan recorded in Volume 683, Page 398 of the OPRBC, this easement is a blanket easement therefore it cannot be located.
- Item No. 100(a) of Schedule B of said Commitment for Title Insurance mentions an easement to Gulf States Utilities Company recorded in Volume 776, Page 192 of the OPRBC, this easement does not affect the subject tract and is not shown hereon.
- Item No. 100(a) of Schedule B of said Commitment for Title Insurance mentions an easement to Richard C. Conco, et ux, recorded in Volume 5279, Page 234 of the OPRBC, this easement does not affect the subject tract and is not shown hereon.
- Item No. 100(a) of Schedule B of said Commitment for Title Insurance mentions an access and utility easement to Landco Energy V, L.P., recorded in Volume 11584, Page 227 of the OPRBC, this easement does not affect the subject tract and is not shown hereon.
- Item No. 100(a) of Schedule B of said Commitment for Title Insurance mentions an unrecorded 10' - 21' easement to City of Bryan and Watson Water Supply Corp., recorded in Volume 1224, Page 614 of the OPRBC, no documentation of this easement was provided, this easement may affect the subject tract.
- Item No. 100(a) of Schedule B of said Commitment for Title Insurance mentions a sewer line agreement between Gulf Raetgas Holdings, Ltd. and Dana S. Conole recorded in Volume 834, Page 48 of the OPRBC, this agreement does affect the subject tract and is not shown hereon.
- Item No. 100(a) of Schedule B of said Commitment for Title Insurance mentions mineral royalties and reservations, mineral royalties and reservations are outside of the scope of work for Jones and Carter and were not reviewed. See note 3 below.
- Item No. 100(a) of Schedule B of said Commitment for Title Insurance mentions a designation of Oil Well Sites recorded in Volume 1234, Page 114 of the OPRBC, this document does not specify any locations of said Oil Well Sites and are not shown hereon. This document does affect this tract.
- Item No. 100(a) of Schedule B of said Commitment for Title Insurance mentions terms conditions and stipulations for the creation of Municipal Utility District No. 1, recorded in Volume 1243, Page 207 of the OPRBC. This easement does affect the subject tract.
- Item No. 100(a) of Schedule B of said Commitment for Title Insurance mentions air and gas lines, oil and gas lines are outside the scope of work for Jones and Carter and were not reviewed. See note 3 below.
- Item No. 100(a) of Schedule B of said Commitment for Title Insurance mentions a 20' public utility easement (5' on property) as shown on plot of Texas World Speedway R 136 acre, Tract No. 1) recorded in Volume 3353, Page 197 of the OPRBC, this plat actually shows a 20' easement centered on the property line (10' on property) this easement is shown as 20' hereon.
- Item No. 100(a) of Schedule B of said Commitment for Title Insurance mentions an Information Form of Brazos County Municipal District No. 1 to the public, recorded in Volume 12689, Page 37 of the OPRBC. This document does affect the subject tract.
- Hearings shown hereon are based on the Texas Coordinate System, Central Zone, NAD 83.
- This survey does not provide any determination concerning wetlands, fault lines, tree water or any other environmental issues. Such matters should be directed by the client or prospective purchaser to an expert consultant.
- According to Map No. 4806-03100E of the Federal Emergency Management Agency's Flood Insurance Rate Maps for Brazos County, dated May 10, 2015, the subject tract is situated within either "Unshaded Zone", defined as an area determined to be outside of the Special Flood Hazard or "Shaded Zone", defined as an area in which flood hazards are undetermined but possible.
- This flood statement does not imply that the property or structures thereon will be free from flooding or flood damage. On rare occasions flood can and will occur and flood heights may be increased by man-made or natural factors. This flood statement shall not create liability on the part of the surveyor.
- The surveyor has not been provided with construction plans showing the location of underground utilities. Underground utilities may exist which are not shown hereon.
- This survey has been prepared for the sole purpose of the transaction described in the above referenced Title Commitment and the parties listed thereon. This survey is not to be used for any subsequent transactions.
- Visible Improvements/Utilities were located with this survey; no subsurface probing, excavation or exploration was performed for this survey.
- Fences shown hereon are graphic only, with dimensional lines shown on specific locations where they were physically measured. The fence line may meander between said measured locations. The dimensions showing the distance between the fence and the property line does not indicate which side of the property line the fence is on.
- Determination of the ownership, location, and dimensional of minerals related to the Subject Tract fall outside the scope of this survey. Such matters should be directed to the client to an expert consultant.

**PRELIMINARY FOR REVIEW**  
OF  
**LAND TITLE SURVEY**  
OF  
**SOUTHERN POINTE PHASE I**  
BEING  
**78.63 OF ACRES**  
OUT OF THE  
**S. D. SMITH SURVEY, A-210**  
BRAZOS COUNTY, TEXAS  
JUNE 2015

**J. C. JONES & CARTER, INC.**  
REGISTERED PROFESSIONAL SURVEYORS  
1718 Boardman Drive, Suite 150  
Bryan, Texas 77802-7175  
(979)331-6000 www.jonescarter.com  
FIRM # 12646107



## Legislation Details (With Text)

<b>File #:</b>	16-0198	<b>Version:</b>	1	<b>Name:</b>	FM 2154 Temporary Speed Limit Reduction
<b>Type:</b>	Ordinance	<b>Status:</b>		<b>Status:</b>	Consent Agenda
<b>File created:</b>	3/31/2016	<b>In control:</b>		<b>In control:</b>	City Council Regular
<b>On agenda:</b>	4/14/2016	<b>Final action:</b>		<b>Final action:</b>	
<b>Title:</b>	Presentation, possible action, and discussion on an ordinance amending Chapter 10, Traffic Code, Section 3, F., Temporary Speed Limits Established for Certain Described Streets, Traffic Schedule XIII - Temporary Speed Limits Speed Limits, of the College Station Code of Ordinances by amending the posted speed limit on FM 2154 between Mile Post 15.513 to Mile Post 15.994 to 50 mph and Greens Prairie Trail from the intersection with FM 2154 to Flagstone Court to 35 mph for the duration of the Texas Department of Transportation managed FM 2154 & Greens Prairie Trail Intersection Improvements project when reduced speed limit signs are posted.				
<b>Sponsors:</b>	Donald Harmon				
<b>Indexes:</b>					
<b>Code sections:</b>					
<b>Attachments:</b>	<a href="#">FM 2154 Temporary Speed Limit Reduction Ordinance.pdf</a> <a href="#">Project Map.pdf</a>				

Date	Ver.	Action By	Action	Result
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Presentation, possible action, and discussion on an ordinance amending Chapter 10, Traffic Code, Section 3, F., Temporary Speed Limits Established for Certain Described Streets, Traffic Schedule XIII - Temporary Speed Limits Speed Limits, of the College Station Code of Ordinances by amending the posted speed limit on FM 2154 between Mile Post 15.513 to Mile Post 15.994 to 50 mph and Greens Prairie Trail from the intersection with FM 2154 to Flagstone Court to 35 mph for the duration of the Texas Department of Transportation managed FM 2154 & Greens Prairie Trail Intersection Improvements project when reduced speed limit signs are posted.

### Relationship to Strategic Goals:

- Core Services and Infrastructure
- Improving Mobility

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

Summary: TXDOT is adding left and right turn lanes on FM 2154 at its intersection with Greens Prairie Trail as well as widening Greens Prairie Trail for approximately 200 feet. The project will include the reconstruction of the road subgrade, existing pavement and the additional pavement for the right and left turn lanes. The project is estimated to take 10 months to complete.

TXDOT has requested the speed limit reduction due to the construction activities that will need travel lane widths along FM 2154 & Greens Prairie Trail temporarily reduced. In addition to reduced lane widths during certain phases of construction it will be required that there be travel lane closures without barriers. This speed reduction will help improve the safety of motorists and construction crews. The reduced speed limit will only be utilized in the active work zone and when 50 mph speed limit signs are posted along FM 2154 and 35 mph speed limit signs are posted along Greens Prairie Trail. The

temporary speed reduction ordinance will expire at the completion of the project.

**Budget & Financial Summary:** The passage of this ordinance will not result in any direct costs to the City as the contractor will install and maintain the necessary speed limit signs associated with this temporary speed reduction.

**Attachments:**

1. Ordinance
2. Location Map

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

**AN ORDINANCE AMENDING CHAPTER 10, “TRAFFIC CODE”, SECTION 3, “SPEED LIMITS”, SUBSECTION F, “TEMPORARY SPEED LIMITS ESTABLISHED FOR CERTAIN DESCRIBED STREETS”, TRAFFIC SCHEDULE XIII, “TEMPORARY SPEED LIMITS”, OF THE CODE OF ORDINANCES OF THE CITY OF COLLEGE STATION, TEXAS, BY ADDING FM 2154 FOR TRAFFIC MOVING NORTH AND SOUTH FROM MILE POST 15.513 TO MILE POST 15.994, THE SPEED LIMIT SHALL BE FIFTY (50) MILES PER HOUR IN CONSTRUCTION ZONES WHEN POSTED AND GREENS PRAIRIE TRAIL FOR TRAFFIC MOVING EAST AND WEST FROM FM 2154 TO FLAGSTONE COURT, THE SPEED LIMIT SHALL BE THIRTY FIVE (35) MILES PER HOUR IN CONSTRUCTION ZONES WHEN POSTED, AS SET OUT BELOW; PROVIDING A SEVERABILITY CLAUSE; DECLARING A PENALTY; AND PROVIDING AN EFFECTIVE DATE.**

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

**PART 1:** That Chapter 10, “Traffic Code”, Section 3 “Speed Limits”, Subsection F (1) “Temporary Speed Limits Established For Certain Described Streets”, Traffic Schedule XIII, “Temporary Speed Limits”, of the Code of Ordinances of the City of College Station, Texas, be amended as set out in Exhibit “A”, attached hereto and made a part of this ordinance for all purposes.

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

**PART 3:** That any person, firm, or corporation violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not less than Twenty-five Dollars (\$25.00) nor more than Two Hundred Dollars (\$200.00). 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 when temporary speed limit signs are posted designating the reduced speed limit and expires when the temporary speed limit signs are removed at the completion of the Texas Department of Transportation’s managed FM 2154 & Greens Prairie Trail Intersection Improvements Project.

**PASSED, ADOPTED and APPROVED this 14<sup>th</sup> day of April, 2016.**

**APPROVED:**

\_\_\_\_\_  
**Mayor**

**ATTEST:**

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

**APPROVED:**

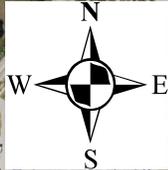
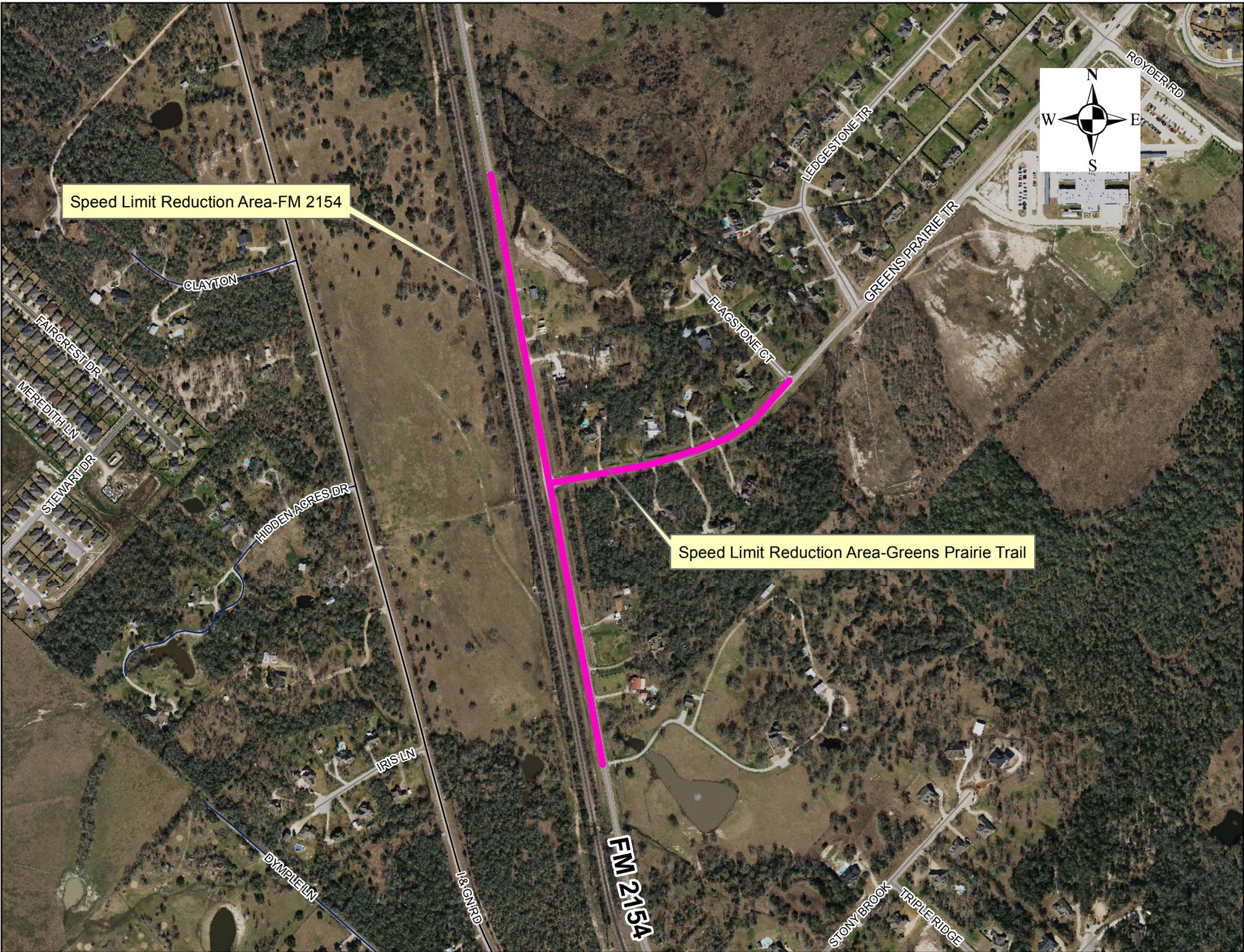
\_\_\_\_\_  
**City Attorney**

**EXHIBIT "A"**

Chapter 10, "Traffic Code", Section 3 "Speed Limits", Subsection F (1) "Temporary Speed Limits Established For Certain Described Streets" of the Code of Ordinances of the City of College Station, Texas, is hereby amended by adding the following to Traffic Schedule XIII:

**FM 2154** - for traffic moving north and south from Mile Post 15.513 to Mile Post 15.994, the speed limit shall be fifty (50) miles per hour in construction zones when posted. After the FM 2154 and Greens Prairie Trail Intersection Improvements Project completion and temporary speed limit signs are removed, speed limits shall revert to those established by Ordinance No. 2621 dated April 10, 2003. This ordinance does not repeal Ordinance No. 2621 dated April 10, 2003.

**Greens Prairie Trail** - for traffic moving east and west from FM 2154 to Flagstone Court, the speed limit shall be thirty five (35) miles per hour in construction zones when posted. After FM 2154 and Greens Prairie Trail Intersection Improvements Project completion and temporary speed limit signs are removed, speed limits shall revert to those established by Ordinance No. 2621 dated April 10, 2003. This ordinance does not repeal Ordinance No. 2621 dated April 10, 2003.



Speed Limit Reduction Area-FM 2154

Speed Limit Reduction Area-Greens Prairie Trail

CLAYTON

FAIRCREST DR

MEREDITH LN

STEWART DR

HIDDEN ACRES DR

IRIS LN

DYMPLE LN

I & G NRD

FM 2154

LEDGESTONE TR

FLAGSTONE CT

GREENS PRAIRIE TR

ROYDER RD

STONY BROOK

TRIPLE RIDGE



## Legislation Details (With Text)

**File #:** 16-0199      **Version:** 1      **Name:** Luther Street Construction Contract  
**Type:** Contract      **Status:** Consent Agenda  
**File created:** 3/31/2016      **In control:** City Council Regular  
**On agenda:** 4/14/2016      **Final action:**  
**Title:** Presentation, possible action, and discussion regarding approval of the construction contract (Contract No. 16300229) with Brazos Paving in the amount of \$1,099,608.81 for the Luther Street Rehabilitation Project.  
**Sponsors:** Donald Harmon  
**Indexes:**  
**Code sections:**  
**Attachments:** [Project Map.pdf](#)

Date	Ver.	Action By	Action	Result
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Presentation, possible action, and discussion regarding approval of the construction contract (Contract No. 16300229) with Brazos Paving in the amount of \$1,099,608.81 for the Luther Street Rehabilitation Project.

Relationship to Strategic Goals:

- Core Services and Infrastructure
- Improving Mobility

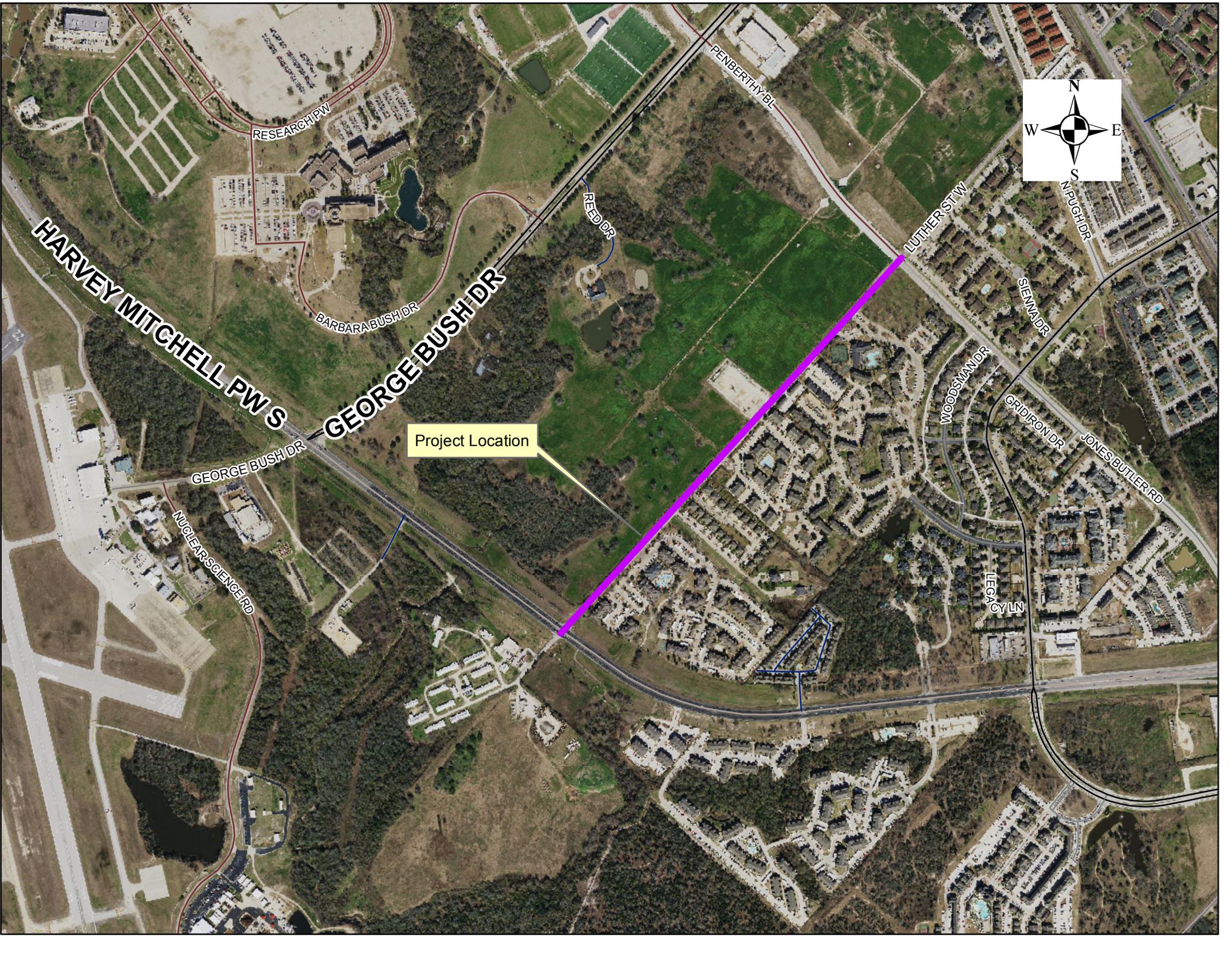
Recommendation(s): Staff recommends approval of the construction contract with Brazos Paving.

Summary: The Luther Street Rehabilitation Project will include reconstruction of 3500 LF of existing HMAC roadway from FM 2818 to Penberthy Dr. with a concrete roadway section. Also, the project will relocate approximately 400 LF of 16" waterline along this portion of Luther Street.

Budget & Financial Summary: A total of \$2,410,000 has been budgeted for this project. This includes \$2,220,000 in the Streets Capital Improvement Projects Fund and \$190,000 in the Water Capital Improvement Projects Fund. The construction contract for the streets portion of the project is significantly under budget due to adjustments from original project scope. The excess project budget will be transferred to other street capital improvement projects that are estimated to come in over budget.

Attachments:

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



Project Location





## Legislation Details (With Text)

**File #:** 16-0200      **Version:** 1      **Name:** Rock Prairie Road Widening Construction Contract

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

**File created:** 3/31/2016      **In control:** City Council Regular

**On agenda:** 4/14/2016      **Final action:**

**Title:** Presentation, possible action, and discussion on a construction contract (Contract No. 16300230) with Larry Young Paving in the amount of \$3,935,724.15 for the construction of the Rock Prairie Road Widening Project.

**Sponsors:** Donald Harmon

**Indexes:**

**Code sections:**

**Attachments:** [Rock Prairie West location map GIS.pdf](#)

Date	Ver.	Action By	Action	Result
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Presentation, possible action, and discussion on a construction contract (Contract No. 16300230) with Larry Young Paving in the amount of \$3,935,724.15 for the construction of the Rock Prairie Road Widening Project.

Relationship to Strategic Goals:

- Core Services and Infrastructure
- Improving Mobility

Recommendation(s): Staff recommends approval of the contract with Larry Young Paving.

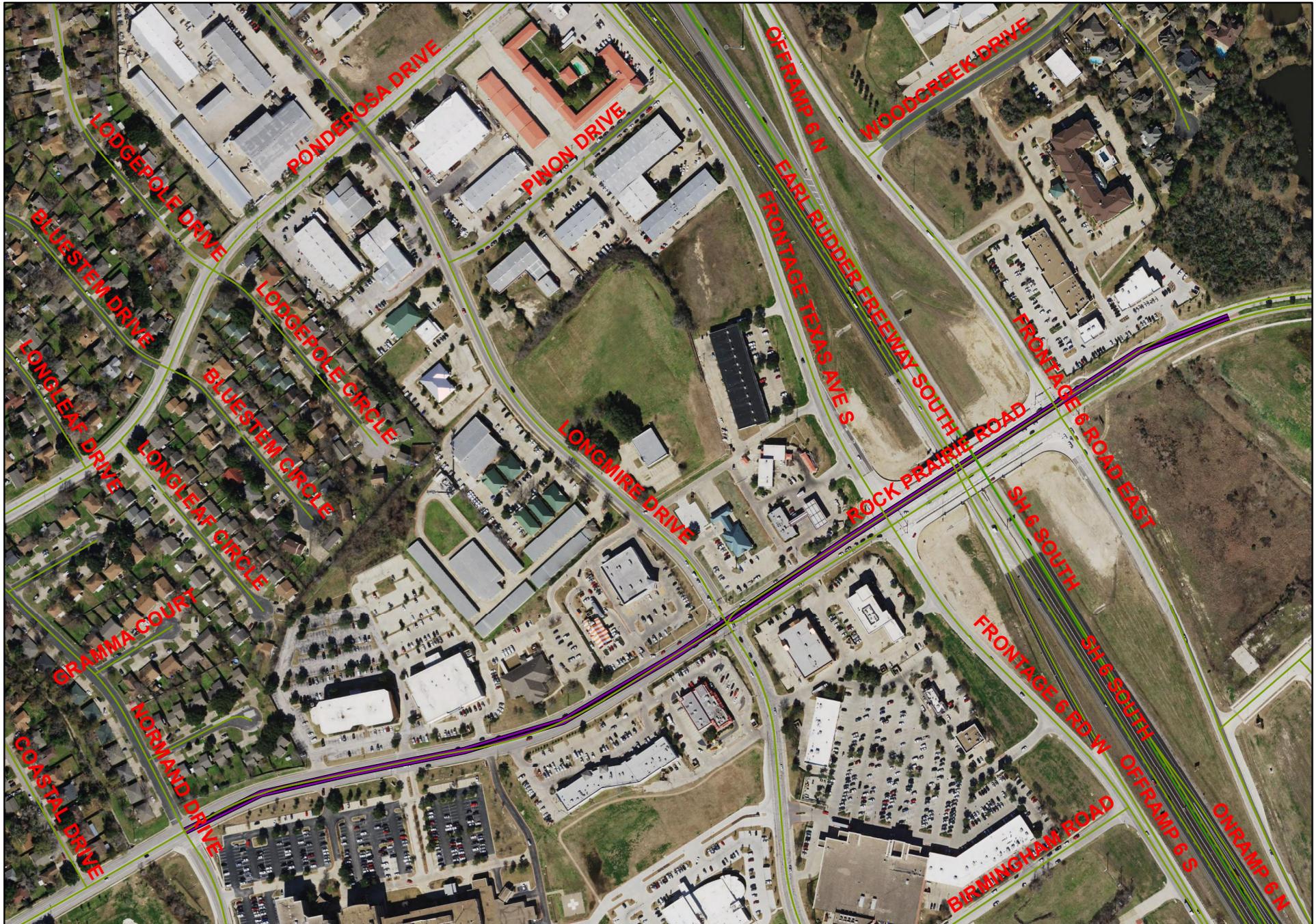
Summary: The scope of this contract is for the construction of the Rock Prairie Road West Widening Project. This project will improve the capacity of the street and align additional lanes with the Rock Prairie Road overpass. This project will extend from Normand Drive to the east approximately 450' past the northbound feeder road of State Highway 6. Improvements include concrete pavement, 8' and 10' sidewalks, a new traffic signal at Longmire, and underground duct bank for electrical utilities.

Budget & Financial Summary: The streets portion of the construction bid is \$3,120,241.65. A total project budget of \$2,597,921 is included for this project in the Streets Capital Improvement Projects Fund. A total of \$289,712 has been expended or committed to date, leaving a balance of \$2,308,209 for construction. As the construction contract exceeds the funds available, additional budget will be transferred from multiple projects to offset the overage. The remaining portion of the bid in the amount of \$815,482.50 is for the electric component of the project. The budget for this component of the project is included in the Electric Capital Improvement Projects Fund.

Attachments:

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





Rock Prairie Road West Widening Location



Legislation Details (With Text)

<b>File #:</b>	16-0201	<b>Version:</b>	1	<b>Name:</b>	Veterans Park and Athletic Complex Design Contract
<b>Type:</b>	Contract	<b>Status:</b>		<b>Status:</b>	Consent Agenda
<b>File created:</b>	3/31/2016	<b>In control:</b>		<b>In control:</b>	City Council Regular
<b>On agenda:</b>	4/14/2016	<b>Final action:</b>		<b>Final action:</b>	
<b>Title:</b>	Presentation, possible action, and discussion regarding approval of a Professional Services Contract (No. 16300135) with Halff Associates Inc. in the amount of \$389,509 for the professional engineering services related to design and associated construction phase services of the Veterans Park and Athletic Complex Build-Out, Phase 1.				
<b>Sponsors:</b>	Donald Harmon				
<b>Indexes:</b>					
<b>Code sections:</b>					
<b>Attachments:</b>					

Date	Ver.	Action By	Action	Result
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Presentation, possible action, and discussion regarding approval of a Professional Services Contract (No. 16300135) with Halff Associates Inc. in the amount of \$389,509 for the professional engineering services related to design and associated construction phase services of the Veterans Park and Athletic Complex Build-Out, Phase 1.

Relationship to Strategic Goals:

- Core Services and Infrastructure

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

Summary: The Veteran’s Park and Athletic Complex Build-Out, Phase 1 consists of adding two additional full size athletic fields, lighting, parking spaces, and amenities. Located on the University Drive side of the park, the multi-use athletic fields will be constructed of synthetic turf, similar to the recently installed synthetic turf fields adjacent to the American Pavilion.

Budget & Financial Summary: Budget in the amount of \$3,673,274 is included for this phase of the project in the Hotel Tax Fund.

Legal Review: Yes.

Attachments:

1. Contract No. 16300135 (on file with the City Secretary)



## Legislation Details (With Text)

<b>File #:</b>	16-0202	<b>Version:</b>	1	<b>Name:</b>	TXDOT AFA Resolution Revision
<b>Type:</b>	Resolution	<b>Status:</b>		<b>Status:</b>	Consent Agenda
<b>File created:</b>	3/31/2016	<b>In control:</b>		<b>In control:</b>	City Council Regular
<b>On agenda:</b>	4/14/2016	<b>Final action:</b>		<b>Final action:</b>	
<b>Title:</b>	Presentation, possible action, and discussion regarding approval of a resolution allowing the mayor to sign an Advance Funding Agreement with the Texas Department of Transportation (TXDOT) for the City of College Station's cost participation in the TXDOT FM 2154 and Green's Prairie Trail Intersection Improvements project.				
<b>Sponsors:</b>	Donald Harmon				
<b>Indexes:</b>					
<b>Code sections:</b>					
<b>Attachments:</b>	<a href="#">2 RES TXDOT-revised 452015.pdf</a> <a href="#">Partially Execute AFA FM2154 0540-04-072 CoCS.pdf</a> <a href="#">Project Map.pdf</a>				

Date	Ver.	Action By	Action	Result
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Presentation, possible action, and discussion regarding approval of a resolution allowing the mayor to sign an Advance Funding Agreement with the Texas Department of Transportation (TXDOT) for the City of College Station's cost participation in the TXDOT FM 2154 and Green's Prairie Trail Intersection Improvements project.

### Relationship to Strategic Goals:

- Core Services and Infrastructure
- Improving Mobility

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

Summary: The resolution was originally approved at the March 10<sup>th</sup> Council meeting and the agreement was signed on March 14<sup>th</sup>. After the partially executed agreement was delivered to TXDOT they requested that the resolution be redrafted and reapproved with references to utilities taken out. The resolution has been modified per TXDOT request but no language in the agreement has changed from the one approved on March 10<sup>th</sup>, 2016.

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. Resolution
2. Agreement
3. Project Map

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 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 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

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.** Prior to the performance of any engineering review work by the State, the Local Government will pay to the State the amount specified in Attachment C. At a minimum, this amount shall equal the Local Government's funding share for the estimated cost of preliminary engineering for the Project. At least sixty (60) days prior to the date set for receipt of the construction bids, the Local Government shall remit its remaining financial share for the State's estimated construction oversight and construction cost.
- 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 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.

**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. 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

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Not Research and Development

amended or the project has been formally closed out and no charges have been incurred within the current fiscal year.

**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

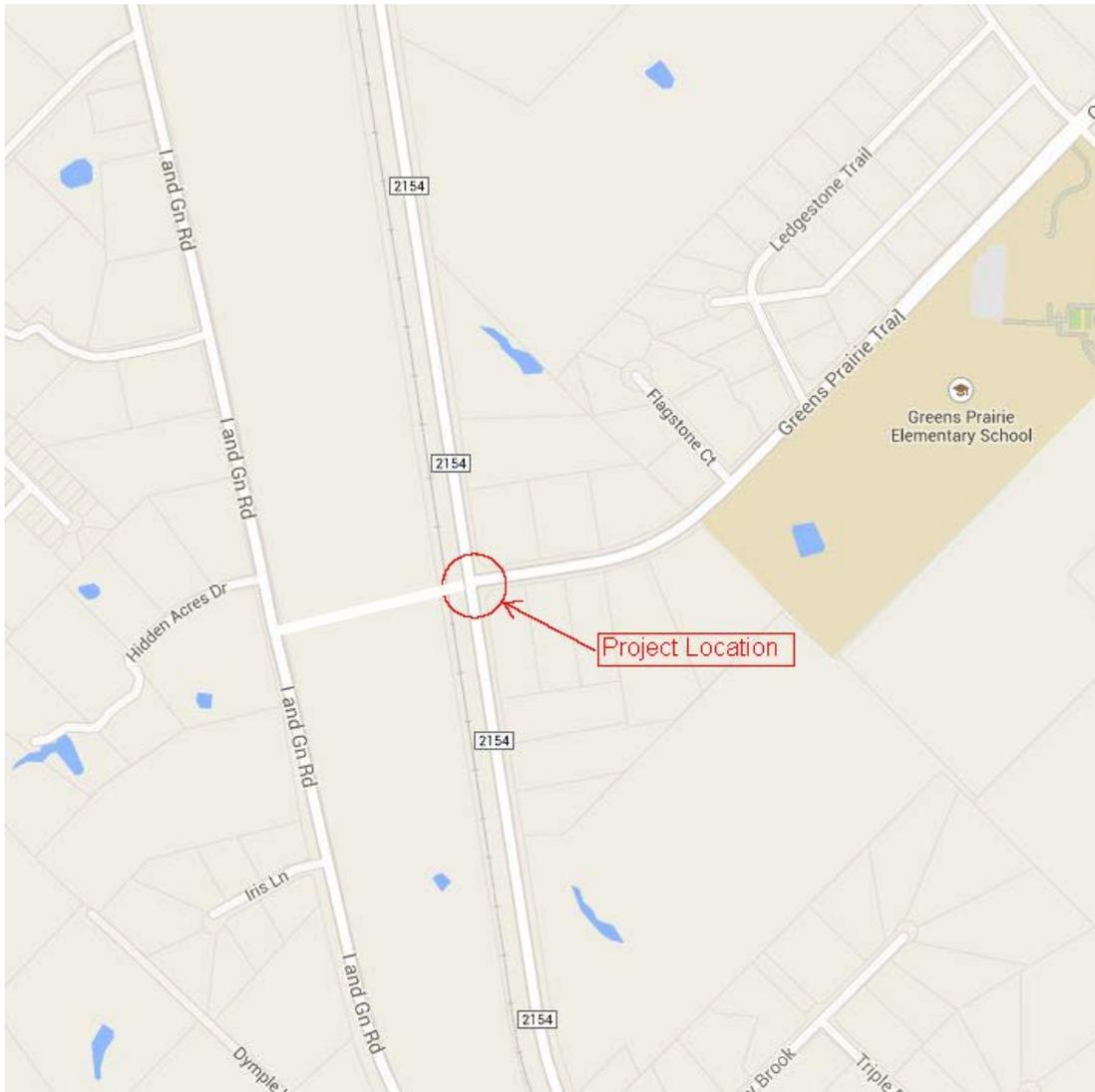
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**ATTACHMENT A**  
**RESOLUTION OR ORDINANCE**

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## ATTACHMENT B Location Map Showing Project



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 CFDA # 20.205  
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## 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>	\$1,790,000.00	\$1,350,000.00	\$0.00	\$440,000.00
<b>Utilities (By LG)</b>	\$150,000.00	\$0.00	\$0.00	\$150,000.00
Subtotal	\$1,940,000.00	\$1,350,000.00	\$0.00	\$590,000.00
<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>\$2,081,000.00</b>	<b>\$1,350,000.00</b>	<b>\$141,000.00</b>	<b>\$590,000.00</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: \$440,000.00

Total payment by the Local Government to the State: \$440,000.00

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