STATE OF TEXAS	§	
	§	**INTERLOCAL COOPERATION AND**
COUNTY OF BRAZOS	§	**JOINT DEVELOPMENT AGREEMENT**

This Interlocal Cooperation and Joint Development Agreement (the "Agreement") is made by and between the City of College Station, Texas ("College Station"), and the City of Bryan, Texas ("Bryan"), acting by and through their respective authorized representatives, pursuant to Chapter 791, Texas Government Code and Chapter 380, Texas Local Government Code, as amended. The Cities of College Station and Bryan are collectively referred to herein as the "Cities," or the "Parties," and each is individually referred to as a "City," or a "Party".

RECITALS:

WHEREAS, the Parties desire to enter into an agreement which sets forth the understandings and obligations of the Parties with respect to certain infrastructure projects and a joint economic development program known as the Joint Research Valley BioCorridor Development Project ("the Project"); and

WHEREAS, the Project is anticipated to be an international destination for education, research, development, commercialization and production of innovative technologies to improve global health which will promote the collaboration of professionals from diverse scientific and engineering disciplines, will foster the seamless transition of basic research into world-changing products and services, and will enhance the economic vitality of both Cities; and

WHEREAS, the development of the Project will build upon the multitude of existing resources that already call the area, generally known as the Research Valley BioCorridor, home, including the Institute for Innovative Therapeutics™, Texas A&M Health Science Center, Texas A&M University (including the College of Veterinary Medicine and Biomedical Sciences and Texas A&M Engineering), Texas A&M AgriLife, and Project GreenVax; and

WHEREAS, in addition to creating thousands of jobs for Texans, the Project will provide an ideal atmosphere for new product development, biosecurity and biomanufacturing, that will improve global health; and

WHEREAS, the Project is initially to be comprised of approximately 196 acres located on the western edge of both College Station and Bryan, as depicted in **Exhibit "A"** (the "Project Site"), which may from time to time be expanded by agreement of the Parties to include additional real property within one or the other of the Cities; and

WHEREAS, the actual metes and bounds description of the Project Site will be determined by a survey obtained by the Cities; and

WHEREAS, the Project Site includes approximately 147 acres of real property described in **Exhibit "B"** (the "Bryan Tract 1") located within the western portion of College Station and owned by Bryan, by and through the Bryan Commerce Development Corporation, a Texas non-profit corporation (the "BCD"), and approximately 49 acres of real property described in

Exhibits "C", "D" and "E" ("Bryan Tract 2, 3 and 4") owned by BCD and located within Bryan (the Bryan Tracts 1, 2, 3 and 4 collectively referred to as the "Bryan Site"); and

WHEREAS, the Bryan Tract 1 is located within an area for which College Station holds CCN's to provide water and sanitary sewer service from the TCEQ, and the Parties desire to address various CCN matters related thereto; and

WHEREAS, the Cities agree to transfer certain CCN's pursuant to this Agreement and acknowledge that the transfer of the CCN's will create on-going financial obligations; and

WHEREAS, BCD acquired Bryan Tract 1 with the intent of developing the area; and

WHEREAS, the parties have identified Infrastructure Projects that will enable incremental and phased development of the Project including, but not limited to, the extension and widening of Health Science Center Parkway (hereinafter defined as the "Roadway Project"), as depicted in **Exhibit "A"**, and certain sewer lift stations described herein; and

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

WHEREAS, the Cities have adopted programs for promoting economic development, and the activities of the Cities contemplated by this Agreement are in accordance with those programs; and

WHEREAS, the Cities are authorized by Article III, Section 52-a of the Texas Constitution and Texas Local Government Code Chapter 380 to provide economic development incentives and work cooperatively to promote economic development and to stimulate business and commercial activity in the Cities; and

WHEREAS, the Cities have determined that the Infrastructure Projects contemplated by this Agreement, including the Roadway Project and the water and sewer projects, will promote the public health, safety and welfare of the residents of each City; and

WHEREAS, the Cities acknowledge that the Infrastructure Projects contemplated by this Agreement require on-going financial obligations for maintenance, repair, and replacement; and

WHEREAS, the Cities agree that the scope of this Agreement is not limited to the infrastructure investments in the Research Valley BioCorridor, but implicates continuing obligations of each City for public services with the intended purpose to promote economic development in areas of both Cities where sewer services are not currently provided; and

WHEREAS, the Cities have also determined that actions contemplated by this Agreement are in accordance with their respective City economic development programs and will: (i) further the objectives of the Cities; (ii) benefit the Cities and the inhabitants of both

Cities; and (iii) will promote local economic development and stimulate business and commercial activity in the Cities; and

NOW THEREFORE, in consideration of the foregoing and the mutual covenants and promises set forth herein and other valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties agree as follows:

Article I
Purpose

The purpose of this Agreement is to set forth the understandings and obligations of the Parties relating to the Project and the transactions related thereto.

Article II
Definitions

For purposes of this Agreement, each of the following terms shall have the meaning set forth herein unless the context clearly indicates otherwise:

"CCN" means a certificate of convenience and public necessity issued by the TCEQ for water or sanitary sewer service in accordance with Chapter 13 of the Texas Water Code, as amended.

"Certificated Area" means the geographic service area for retail water or retail sanitary service set forth in a CCN adopted by TCEQ.

"Commencement of Construction" shall mean that (i) the plans have been prepared and all approvals thereof required by applicable governmental authorities have been obtained for construction of the respective Infrastructure Project; (ii) all necessary permits for the construction of the respective Infrastructure Project pursuant to the respective plans therefore have been issued by all applicable governmental authorities; and (iii) the grading of land has commenced.

"Completion of Construction" shall mean that (i) the construction of the respective Infrastructure Project has been substantially completed in accordance with the approved plans; and (ii) a certificate of occupancy or completion for the respective Infrastructure Project has been issued by the respective City or in the case of the Roadway Project, the respective City has accepted the Roadway Project.

"Dual-Served Area" means an area where water service is provided by one Party and sanitary sewer service is provided by the other Party.

"Freeport Goods" shall have the same meaning as assigned by Section 11.251 of the Tax Code and Article VIII, Section 1-j of the Texas Constitution, and are located on the Property. Freeport Goods does not include "Goods in Transit" as defined by Tax Code, Section 11.253.

"Goods-in-Transit" shall have the same meaning assigned by Tax Code, Section 11.253.

"Infrastructure Projects" shall mean the Roadway Project and the East Sewer Side Improvements and West Sewer Side Improvements as set forth in Exhibits F and G, respectively.

"Phase 1B" means the section of the Health Science Center Parkway from Highway 47 to its connection with the proposed minor connector street as a four-lane median divided roadway with the existing two lane section which may be modified but will not be significantly altered or reconstructed, and as depicted in **Exhibit "A"**.

"Phase 2A" means the section of the Health Science Center Parkway from the proposed minor connector street to its connection to Turkey Creek as a four-lane median divided roadway with the existing two lane section, to be consistent with Phase 1B, and which may be modified but will not be significantly altered or reconstructed and as depicted in **Exhibit "A"**.

"Roadway Project" means the design and construction of Phase 1B and Phase 2A of the Health Science Center Parkway as a four-lane divided roadway as depicted in **Exhibit "A".**

"Tangible Personal Property" shall have the same meaning assigned by Tax Code, Section 1.04 and shall mean all tangible personal property, equipment, fixtures, and machinery, owned or leased by a Target Company, and located in the Project Site on January 1 of a given tax year, but excluding Freeport Goods and Goods-in-Transit.

"Target Company" shall mean a person, company, partnership or other legal entity that acquires and/or leases land and/or improvements, or leases and/or acquires land and constructs improvements, and locates Tangible Personal Property within the Project Site adding a minimum Taxable Value of $ 15Million Dollars unless the City Managers agree in writing to a lesser amount.

"Taxable Value" shall mean the appraised value as certified by the appraisal district, or its successor, for a given year.

"TCEQ" means Texas Commission on Environmental Quality.

Article III
Revenue Sharing

3.01 Revenue Sharing.

a. **Intent.** The Parties intend and agree to share an amount of money equal to the ad valorem tax revenue assessed and collected against the Tangible Personal Property and real property and improvements of a Target Company within the Project Site by the respective City as set forth herein. Subject to the other provisions of this Section, each time a Target Company acquires, and/or leases land and improvements, and/or constructs improvements within the Project Site as

depicted in Exhibit "A", and locates Tangible Personal Property thereon (each a "Revenue Sharing Territory"), the City in which such Revenue Sharing Territory is located shall, during the term of this Agreement, on an annual basis, pay to the other City an amount equal to fifty percent (50%) of the City's ad valorem taxes assessed and collected for operation and maintenance costs against such land, improvements and Tangible Personal Property in the manner as set forth herein (the "Shared Revenue").

b. **Calculation.** The amount of Shared Revenue shall be calculated by multiplying the combined Taxable Value of the land, improvements and Tangible Personal Property comprising the property of the Target Company within the Revenue Sharing Territory by the lowest operation and maintenance tax rate (portion of the tax rate) of the two Cities, but not less than $0.24 per hundred dollars of valuation (the "O & M Rate") for such year x 50%. The Shared Revenue shall be paid annually on or before March 1, of each calendar year following the year for which the O & M rate was levied and collected except that the existence or subsequent creation of a Tax Increment Financing District shall affect neither the amount nor the calculation of Shared Revenue under this Agreement. For example, assume that (i) company XYZ acquires land within the Project Site, constructs improvements, and installs Tangible Personal Property thereon, (ii) the chief appraiser of the Brazos County Appraisal District assigns a combined Taxable Value of $30,000,000.00 for tax year 2013 to company XYZ's real and Tangible Personal Property in the Revenue Sharing Territory, (iii) the operation and maintenance rate portion of the Bryan 2013 tax rate is $0.55 per one hundred dollars of valuation, (iv) the operation and maintenance rate portion of the College Station 2013 tax rate is $0.22 per one hundred dollars of valuation, and (v) company XYZ pays in full all ad valorem taxes due including a portion which is directed to a Tax Increment Financing District. Based on the foregoing assumptions in the example, the Shared Revenue for tax year 2013 would be calculated by multiplying the Taxable Value of $30,000,000.00 x $0.24 per one hundred dollars of valuation x 50%, and would be paid March 1, 2014.

c. **Authority.** The Parties are authorized to participate in the Revenue Sharing contemplated by this Agreement pursuant to Article III, Section 52-a of the Texas Constitution and Chapter 380 of the Texas Local Government Code and all other applicable law. In the event subsequent Federal or State legislation or a final non-appealable court decision renders the Revenue Sharing contemplated by this Agreement invalid, illegal or unenforceable, such invalidity shall not affect the validity of the remainder of this Agreement or the Revenue Sharing contemplated in this Article III and Section 9.16.e, and the Parties agree to use their best efforts and cooperate with each other to amend this Agreement or enter into a lawful agreement to share revenue as contemplated herein. In the event any court renders a final non appealable decision that renders the Revenue Sharing contemplated by this Agreement invalid, illegal or unenforceable, and it is the intention of the parties that this Agreement be modified or amended by the court to render it

enforceable to the maximum extent permitted to effectuate the intent of the Parties to share revenue.

d. **Not a Debt.** The Parties intend and agree that the respective obligation of the Parties to provide Revenue Sharing payments and the Post Termination Revenue Sharing payments shall not constitute a debt for purposes of any provision of the Texas Constitution.

e. **Scope.** The Parties intend and agree that Shared Revenue and the Post Termination Shared Revenue (hereinafter defined) pursuant to this Agreement constitute and are intended to be an economic development grants or incentives for the promotion of economic development as authorized by Article III, Section 52-a of the Texas Constitution, and Chapter 380 of the Texas Local Government Code, consistent with the economic development guidelines and policies of the respective Parties.

f. **Commencement of Revenue Sharing.** Revenue Sharing shall commence on March 1 of the first full calendar year following the date of issuance of a certificate of occupancy for a Target Company located within a Revenue Sharing Territory. The Parties agree that the Infrastructure Projects provided for in this Agreement will create on-going public service obligations for each City and that using the Shared Revenue provided for under this Article to off-set the costs of the on-going public service obligations constitutes an on-going economic benefit to the Cities.

g. **Termination of Revenue Sharing.** The Parties intend and agree that the Revenue Sharing continue until terminated pursuant to the provisions of Section 9.16. Additionally, it is the intent of the Parties that Revenue Sharing shall continue into the future, before or past such time as all debts related to this Agreement have been satisfied to off-set the costs of the on-going public service obligations arising from the transfer of CCN's.

Article IV
Roadway Project

4.01 **General and Cost Sharing.** The Parties agree to jointly share in the costs of design and construction of the Roadway Project. The Parties agree that Bryan will solicit proposals for the design of the Roadway Project and award one or more contracts for such services subject to the approval of College Station. The Parties further agree that Bryan will solicit bids, award contract(s) for the construction of the Roadway Project, subject to the approval of College Station, and manage the construction of the Roadway Project. The Parties shall be responsible for the final costs of the Roadway Project, including, but not limited to, all costs related to design, construction and bidding. Bryan has already constructed and financed the existing two lane portion of the Roadway Project also sometimes known as Phase 1A. The Parties agree that Bryan shall receive a $472,500.00 reimbursement for the current two lane

portion of the Health Science Center Parkway roadway known as Phase 1A from College Station. Thus, the remaining financial responsibility of each Party for the Roadway Project shall be as follows:

Roadway Project Cost Allocation

Bryan share = (Cost of Phase 1B + Cost of Phase 2A)/2

College Station share = (Cost of Phase 1B + Cost of Phase 2A)/2 + $472,500.00.

College Station shall reimburse Bryan for the Roadway Project work or service and make such payments as such construction or design work progresses. At the time each City approves the contract, the Cities shall appropriate their share of the Roadway Project design or construction contract as applicable. Bryan shall provide College Station with written monthly progress reports and monthly invoices (as necessary or applicable) for the College Station share of the costs of the Roadway Project due and owing by College Station, which shall be paid within thirty (30) days after receipt thereof and Bryan shall also receive a reimbursement for its share of the Roadway Project currently constructed as described above on a pro rata basis as the construction of Phase 1B progresses. Invoices from Bryan shall separately itemize this reimbursement pro rata charge due from College Station. Both Cities must approve any contract for the design and/or construction of the Roadway Project, including the estimated costs thereof, prior to the commencement of any work. The Parties shall jointly approve any change orders to any contracts for the Roadway Project.

4.02 **Timing of Roadway Project Construction.** The Parties agree that Bryan shall award a contract for the design of the Roadway Project on or before ninety (90) days after the form of the contract has been agreed upon in the manner set forth below. The design of the Roadway Project shall be completed within 200 days from the date the design contract is awarded. The Parties agree that Bryan shall cause Commencement of Construction of Phase 1B of the Roadway Project to occur upon the completion of the design of the Roadway Project and the earlier of: (i) the date of acquisition of land within the Project Site by a Target Company, or (ii) the date of execution of a lease for land and/or improvements within the Project Site by a Target Company, and to cause Completion of Construction thereof to occur within eighteen (18) months thereafter. Bryan shall cause Commencement of Construction of Phase 2A of the Roadway Project to occur upon the completion of the design contract and the earlier of: (i) the date of acquisition of land within the Project Site located immediately adjacent to the proposed Phase 2A by a Target Company, or (ii) the date of execution of a lease for land and/or improvements within the Project Site located immediately adjacent to the proposed Phase 2A by a Target Company, unless the City Managers for the Parties agree in writing to an earlier date for Commencement of Construction of Phase 2A, and to cause Completion of Construction thereof to occur within eighteen (18) months thereafter.

The Parties also agree and understand that nothing herein shall prohibit College Station from entering into its own contract with the same person or entity selected to design the Roadway Project to also design a water line extension for College Station associated with the

provision of water services to the Project Site. Such design costs shall be the sole responsibility of College Station.

4.03 **Right-of-Way Acquisition.** Land acquisition for the Roadway Project shall include all easements and rights-of-way necessary to construct the Roadway Project with standard drainage improvements and to accommodate the placement of City owned utilities with the design of such utilities to be in accordance with the standards adopted by the B-CS Joint Standards Committee. Bryan shall, without costs or expense to College Station, dedicate and/or convey to College Station, from the real property owned by Bryan, the necessary right-of-way and easements for the Roadway Project located within College Station, by plat or by separate instrument in a form reasonably acceptable to College Station prior to construction of the Roadway Project. Bryan shall cause BCD to dedicate and/or convey to College Station at no cost or expense to College Station, from the real property owned by BCD, the necessary right-of-way or easements for the Roadway Project, by plat or by separate instrument in a form reasonably acceptable to College Station prior to construction of the Roadway Project. Any right-of-way or easement required for the Roadway Project in either City that is not owned by Bryan, BCD or College Station shall be acquired by the City in which the right-of-way or easement is located (the "Additional Right-of-Way"), including the exercise of eminent domain, with the costs of such acquisition, purchase, or conveyance in lieu of eminent domain, (including the costs of appraisals, expert testimony, damages or other compensation to be paid to the property owner) to be shared equally by the Parties. In the event eminent domain is required, selection of outside counsel shall be made by the City within which the land is located with approval by the other City. The City which acquires the Additional Right-of-Way (including through the exercise of eminent domain) shall be reimbursed by the other City as such costs are incurred and within thirty (30) days after receipt of an invoice for such costs. In the event of the exercise of eminent domain, the Cities shall pay directly to any applicable court, their respective share of any damages or compensation to be paid to a property owner, prior to taking title to, or possession of such right-of-way or easement. The Cities shall, within ninety (90) days after completion of the Roadway Project design, acquire the Additional Right-of-Way needed for Phase 2A and Phase 1B of the Roadway Project to be constructed, unless the exercise of eminent domain is required to acquire any portion of the Additional Right-of-Way, in which event the respective City shall initiate such eminent domain proceedings within such time period and diligently pursue such proceedings through completion.

4.04 **Roadway Project Contracts.**

a. The form of a contract for the design and a form of contract for the construction, of the Roadway Project, shall be submitted by Bryan to College Station within thirty (30) calendar days after the Effective Date College Station shall have thirty (30) calendar days to approve the forms of contract submitted by Bryan. In the event the Parties are unable to agree on the form of contract for the design and construction of the Roadway Project within the thirty (30) calendar day period, the form of contract(s) shall be prepared by outside legal counsel as provided in Article VIII hereof and approved by the City Attorney for each City. Such contract(s) shall provide that Bryan is the party to such contracts, and Bryan shall be the sole administrator of such contracts and manage such work or services.

Notwithstanding the foregoing, College Station agrees that it shall remain contractually obligated to Bryan for payment of College Station's share of the costs of the Roadway Project pursuant to this Agreement.

b. For the design of and for each phase of the Roadway Project to be constructed, Bryan shall submit the recommended bidder and/or professional, as the case may be, to College Station for review and approval. College Station shall have thirty (30) calendar days after receipt, to review and approve such recommended bidder and/or professional, as the case may be. Approval shall be deemed to have occurred if College Station has not notified Bryan in writing, within such period, of any objections to such bidder and/or professional. If College Station timely submits written objections to Bryan, Bryan shall in good faith attempt to resolve such written objections and, to the extent allowed by law, resubmit a recommended bidder and/or professional, as the case may be. This process shall continue until the Parties shall have approved a bidder and/or professional as the case may be.

c. The Parties agree that the Roadway Project shall be designed and constructed in accordance with all applicable ordinances of the City in which that portion of the Roadway Project is located and any unified development standards adopted pursuant to Article VI hereof, including but not limited to any applicable requirement relating to payment, performance and maintenance bonds. Bryan shall be responsible for making application and securing all necessary permits and approvals required by the College Station and any other applicable governmental authorities for the design and construction of the Roadway Project. College Station shall not unreasonably deny, delay or withhold approval of such permits or other approvals. Each City agrees to waive, or not charge the other City for any application, permit, inspection or other development fees and charges for the design and construction of the Infrastructure Projects.

d. Upon completion of construction of each phase of the Roadway Project, Bryan shall provide College Station with a final cost summary of all costs associated with the design, land acquisition and construction of that phase of the Roadway Project, and provide proof that all amounts owing to contractors and subcontractors have been paid in full evidenced by the customary affidavits executed by the contractors. College Station shall pay to Bryan within thirty (30) calendar days after receipt of a written invoice, its share of any – unpaid costs stated in the final cost summary that are due. Bryan, to the extent required, shall convey title to the improvements constituting the portion of the Roadway Project located within College Station to College Station by bill of sale or other appropriate instrument reasonably approved by College Station. From and after completion of construction of each phase of the Roadway Project each City shall be responsible for the maintenance of the portion of the Roadway Project, within their respective City.

Article V
Joint Approval of Economic Development Incentives

Neither City shall provide any tax abatement, payment in lieu of taxes (PILOT) or other economic development incentive to a business prospect or development within the Project Site without the prior written approval of the other City expressed by means of an ordinance or resolution of such City. No agreement shall be entered into by either City which shall reduce the amount of ad valorem taxes assessed or collected in the Project Site without prior written approval of the other City. It is expressly agreed by the Parties that rates for water, sewer and electric services shall not be considered an economic incentive.

Article VI
Joint Development Standards

The Parties agree to jointly develop unified zoning, subdivision, land use and design regulations for a Research Valley BioCorridor within both Cities, which shall include the Project Site, to be approved by both Cities. The Parties shall commence such efforts for the Project Site within thirty (30) days after the Effective Date and diligently pursue completion thereof within one hundred twenty (120) days after the Effective Date, unless the Parties agree otherwise.

Article VII
Provision of Utility Services

7.01 **Generally.** Except as otherwise provided in this Article VII, each Party will provide retail water and retail sanitary sewer service within the Project Site to the property located within that Party's respective Certificated Areas (as amended by this Agreement). In those cases in which a property is located in the Certificated Area of one Party but within the incorporated limits of the other Party, the Party holding the CCN for the Certificated Area shall provide the retail water and/or retail sanitary sewer service to that property in accordance with its CCN. The Parties understand, acknowledge, and agree that the retail water and retail wastewater rates shall be set by the City that has the service area or holds the CCN except as otherwise provided in Section 7.02. The Parties understand, acknowledge, and agree some property within the Project Area may be located in a Dual-Served Area.

7.02 **Rates and Fees.** The Parties understand, acknowledge, and agree that water and sanitary sewer customers located within the incorporated limits of a Party shall be required to pay the in-city rate charged by that Party for such services; provided, however, if the property is located in the Certificated Area of one Party but the incorporated limits of the other Party, the rates required to be paid by the customer shall be the rates charged by the CCN holder to its in-city customers.

7.03 **Metering and Billing.** The Parties agree they shall be responsible for reading water meters and for billing their respective customers for water service. The Parties further agree that with respect to a Dual-Served Area:

a. The Party providing water service shall provide the water meter reading information to the other Party within a reasonable time, but in no case more than five (5) business days after obtaining the meter reading information; and

b. If the Party providing sanitary sewer service to a customer is capable of reading the other Party's water meter for that customer, the Party providing water service will only be required to provide the water meter reading for such customer within three (3) business days following receipt of written request from the Party providing sanitary sewer service.

The Parties agree that within a reasonable time after the Effective Date to discuss with the vendor and/or manufacturer of the wireless water meter reading systems used by the Parties and determine the ability of Bryan to use its wireless water meter readers to gather water meter reading information directly from College Station's water meters within the West Sewer Service Area (hereinafter defined).

7.04 Delinquent Accounts; Disconnection in Dual-Served Areas.

a. With respect to Dual-Served Areas, in the event a customer of the City providing retail sanitary sewer service is delinquent in paying its sanitary sewer service charges, the City providing retail sanitary sewer service may, in accordance with applicable law and its established policies, request that the City providing retail water service disconnect water service with respect to such customer pursuant to procedures as set forth herein.

b. Notwithstanding Section 7.04.a. above, the City providing retail water service shall not be obligated to disconnect a customer's water service on the request of the City providing retail sanitary service with respect to any delinquent residential customer who establishes the applicability of and in accordance with the requirements set forth in 30 Texas Administrative Code § 291.88(f) that a person at the residence will become seriously ill or more seriously ill if water service is disconnected.

c. The City providing retail water service shall not be required to disconnect water service pursuant to Section 7.04.a. above on a day when said City's employees who perform such work are otherwise not required to work, in which case the disconnection shall be performed on the next business day.

d. To the extent applicable to the Cities, each disconnection of retail water service shall be made in full compliance with 30 Texas Administrative Code § 291.88(e).

e. Prior to requesting the City providing retail water service to disconnect water service to a customer, the City providing retail sanitary sewer service shall take the following actions:

1. Follow all applicable rules and policies regarding collecting the delinquent amount;

2. Coordinate with the City providing retail water service to the customer to determine the day or days each week that disconnects will be performed;

3. Deliver a written request for the disconnection to the other City's Director of Utilities or such other person as the Cities may designate in writing from time to time to receive such notice, which notice shall be in a form to be agreed by the Cities and shall further contain certification from the City making the request for disconnection that:

   i. the customer's account is delinquent as of the date of the request for disconnection;

   ii. all required notices of delinquency and termination have been properly given pursuant to applicable law and this Agreement; and

   iii. all state-required provisions related to serious illness of residents, when applicable, have been properly addressed.

4. Notify the delinquent customer of the possibility of disconnection of retail water service in writing mailed to the customer not less than ten (10) days prior to requesting such disconnection, such customer notice to be in a form agreed by the Cities, but which notice shall in any case include a statement that:

   i. the customer should contact personnel of the City requesting the disconnection (with contact information, including phone number, provided) with any questions regarding the disconnection or in order to arrange payment and/or reconnection, and

   ii. the customer should not contact City providing retail water service regarding the disconnection.

5. Provide any additional notices with the content and in the manner required in accordance with applicable law and the requesting City's established policies.

f. The City requesting the disconnection shall have personnel available during normal business hours to accept payment on the day retail water service is disconnected and the next business day after service is disconnected. Once the past due charges and applicable delinquent and reconnection fees are paid, the City requesting the disconnection will provide notice to the other City, and service will be restored by the other City within 36 hours after receiving the notice.

g. The City requesting the disconnection of water service shall reimburse the other City the maximum amount allowed by law for the disconnection of water service, which on the Effective Date is $50.00, for each requested disconnection which requires a trip to the customer location by an employee of the City providing retail water service, which amount shall be paid not later than thirty (30) days after receiving the invoice for such trip.

h. The Parties agree that to the extent it becomes necessary to share information from the customer's utility account in relating to performing a Party's obligations pursuant to this Section 7.04, the Party receiving the information agrees to maintain the confidentiality of such information and to not disclose such information to a person or entity that is not a party to this Agreement.

i. In the event state law or regulations are amended to otherwise prohibit a retail public water utility from disconnecting service as described in this Section 7.04, the Parties shall not be obligated to perform such disconnection in accordance with the provisions of this Section 7.04 but all other obligations of the Parties under this Agreement shall remain in force and effect.

7.05 **Sanitary Sewer CCN Additions and Adjustments.** The Parties agree as follows with respect to certain existing or future CCN's for sanitary sewer:

a. The Parties understand and acknowledge that Bryan has submitted an application for a CCN for sanitary sewer to the TCEQ designated as Application No. 36788-C ("the Bryan Sewer CCN Application") for a portion of Bryan's incorporated limits and extraterritorial jurisdiction ("ETJ"). Bryan hereby consents to and agrees that College Station shall be authorized to provide retail sanitary sewer service to those lands that are the subject of the Bryan Sewer CCN Application as depicted on **Exhibit "F",** hereto ("the East Sewer Service Area"). Bryan hereby agrees to provide such documentation to the TCEQ as may be required by the TCEQ to confirm the agreement that College Station shall be the exclusive provider of retail sanitary sewer service within the East Sewer Service Area. With respect to any portion of the East Sewer Service Area located within Bryan's incorporated limits or that otherwise constitutes an area for which Bryan is exclusively authorized to provide retail sanitary sewer service, this Agreement shall constitute an agreement for purposes of Texas Water Code §13.248 regarding the provision of retail sanitary sewer service for customers located in the East Sewer Service Area. The Parties understand, acknowledge, and agree that the provisions set forth in this Section 7.05.a. are exclusive to College Station and that College Station shall not further authorize or otherwise convey or assign any right to a third party to provide retail sanitary sewer service within the East Sewer Service Area without the prior written consent of Bryan; provided, however, nothing herein shall be construed as prohibiting College Station from contracting with a third-party to receive and treat wastewater collected by College Station from customers within the East Sewer Service Area if transmission of such wastewater

to a wastewater treatment facility owned by either College Station or Bryan is physically or economically impractical, as determined by College Station.

b. College Station hereby consents to and agrees that Bryan shall be authorized to provide retail sanitary sewer service to the area located within TCEQ CCN No. 20126 shown on **Exhibit "G"** hereto ("the West Sewer Service Area") and that such area shall be deleted from TCEQ CCN No. 20126 and become part of TCEQ CCN No. 20136. College Station agrees to provide such documentation to the TCEQ as may be required by the TCEQ to confirm the agreement regarding the provision of retail sanitary sewer service within the West Sewer Service Area and the transfer of the West Sewer Service Area to TCEQ CCN No. 20136. With respect to any portion of the West Sewer Service Area located within College Station's incorporated limits or that otherwise constitutes an area for which College Station is exclusively authorized to provide retail sanitary sewer service, this Agreement shall constitute an agreement for purposes of Texas Water Code §13.248 regarding the provision of retail sanitary sewer service for customers located in the West Sewer Service Area. The Parties understand, acknowledge, and agree that the provisions set forth in this Section 7.05.b. are exclusive to Bryan and that Bryan shall not further authorize, or convey or assign any right to, a third party to provide retail sanitary sewer service within the West Sewer Service Area without the prior written consent of College Station; provided, however, nothing herein shall be construed as prohibiting Bryan from contracting with a third-party to receive and treat wastewater collected by Bryan from customers within the West Sewer Service Area if transmission of such wastewater to a wastewater treatment facility owned by either College Station or Bryan is physically or economically impractical, as determined by Bryan.

c. As soon as practical, but in no case later than thirty (30) days after the Effective Date, the Parties agree to submit this Agreement to the TCEQ pursuant to Texas Water Code §13.248 and such other documents and fees as may be required in order to establish the transfers of Certificated Areas described in Sections 7.05.a. and 7.05.b., above. The Parties shall equally share in the cost of prosecuting said application, including, but not limited to, filing fees, outside consultants and engineers, surveyors, and travel expenses. No such costs or expenses shall be incurred by either Party without securing the prior written consent of an authorized representative of the other Party. Notwithstanding the foregoing, neither Party shall be obligated to pay or reimburse any costs or expenses incurred by the other Party associated with the certification of any lands other than the East Sewer Service Area and the West Sewer Service Area. In the event TCEQ does not authorize the transfer of service territories set forth above pursuant to this Agreement in accordance Texas Water Code §13.248 for any reason, the Parties shall jointly prepare and prosecute such other application(s) as may be necessary to cause sewer CCN certification of the East Sewer Service Area by College Station, and sewer CCN certification of the West Sewer Service Area by Bryan, and shall equally share the costs of preparation and prosecution of such applications.

d. The Parties understand and acknowledge that as of the Effective Date, there is pending before the State Office of Administrative Hearings ("SOAH") an application filed by Bryan and contested by College Station which has been designated as SOAH Docket No. 582-09-4315 (TCEQ Docket No. 582-09-4315) ("the Petition"), by which Bryan seeks decertification of the West Sewer Service Area from CCN No. 10169 and CCN No. 20126 (which are held by College Station) and inclusion of the area within CCN No. 10187 and CCN No. 20136 (which are held by Bryan). Not later than ten (10) business days following submission of the application described in Section 7.05.c., above, Bryan agrees to file such motions and applications as may be necessary to dismiss all pending actions with the TCEQ and the SOAH to the extent they seek decertification of any portion of CCN No. 10169 (i.e. College Station's Retail Water CCN) and CCN No. 20126 (i.e. College Station's Retail Sanitary Sewer CCN) or any other portion of College Station's Certificated Areas.

e. College Station agrees that upon approval by TCEQ of College Station's application for a CCN for the East Sewer Service Area, College Station will commence the planning for the extension of sanitary sewer service to the East Sewer Service Area, the implementation of such plan to be in accordance with College Station's policies with respect to utility extensions to newly developed areas and in accordance with this Agreement.

f. Bryan agrees that upon approval by TCEQ of Parties' application(s) pursuant to Texas Water Code §13.248 as described in this Section 7.04 relating to the West Sewer Service Area, Bryan will commence the planning for the extension of sanitary sewer service to the West Sewer Service Area, the implementation of such plan to be in accordance with Bryan's policies with respect to utility extensions to newly developed areas and in accordance with this Agreement, and such other agreements between the Parties regarding extensions of infrastructure to the Project Site.

7.06 **Development Standards Relating to Utilities.** The Parties agree that the development procedures and standards applicable to the design and construction of water and sanitary sewer systems located in East Sewer Service Area and West Sewer Service Area shall be determined as follows:

a. The design and construction standards adopted by the owner of the particular utility improvements being constructed shall apply with respect to the particular water system improvements and/or sanitary sewer system improvements being constructed.

b. The process and schedule for reviewing and approving concept plans, site plans, designs, specifications, plats (whether preliminary or final), and similar documents related to a particular development shall be in accordance with:

1. if the property being developed is located within the incorporated limits of one of the Parties, the procedures adopted and approved by the Party in which the property being developed is located; or

2. if the property being developed is located in the ETJ of one of the Parties, the procedures adopted and approved by the Party in whose ETJ the property being developed is located.

c. In the event the application of the design and construction standards of the Parties to a particular utility project results in an irreconcilable conflict in which one or the other utility system cannot be designed and constructed in accordance with the applicable standards, the Parties agree to make such reasonable variances and exceptions to their respective standards as may be allowed by state or federal law or regulation or local codes and/or ordinances in an effort to resolve the conflict and still maintain the integrity of the systems affected.

d. The Party in whose incorporated limits or ETJ where a development is located shall include representatives designated by the other Party in the development review process including, but not limited to, providing copies of applications, site plans, concept plans, plats and other documents submitted for review, inclusion in pre-application and post-application review meetings with the developer, owner, and/or their respective representatives, and notifications of public meetings in which consideration of matters related to a development are on the agenda. For purposes of this Section 7.06.d, each Party shall designate one person ("the Party Contact") who shall serve as the person to whom communications regarding development shall be directed by the other Party. The Party Contact shall be responsible for communicating to other employees or consultants of that Party regarding information received from the other Party regarding a development project. Each Party may change its Party Contact at any time by providing prior written notice thereof to the other Party.

7.07 **Oversize Participation.** The Party in whose incorporated limits or ETJ in which a water or sanitary sewer system within the West Sewer Service Area and East Sewer Service Area is to be constructed may agree to contribute (i) directly or (ii) indirectly through contribution from the owner or developer of the property to be served in the cost of any over-sizing of the system improvements owned by the other Party in anticipation of future development of other property. Prior to commencement of design of the proposed improvements, the Party designing the improvements shall provide the other Party not less than thirty (30) days to elect whether to participate in the cost of over-sizing the improvements. The decision as to whether to participate in the cost of over-sizing shall be made in the sole discretion of the Party in whose incorporated limits or ETJ the proposed improvements are located based upon whether or not the improvements are reasonably likely to serve retail customers of such Party. In the event that a Party responds that it does not have sufficient funds available to participate in the over-sizing costs, then the Party desiring to construct the improvements may proceed with construction at its sole cost and expense. Only the Party that advances the cost of over-sizing a utility system component through direct contribution shall be entitled to seek

reimbursement for such over-sizing from the owner(s) and/or developer(s) of the property to be served by the system. In the event both Parties contribute directly to the over-sizing of a utility facility pursuant to this Section 7.07, regardless of which party will own the facility to be constructed, the Parties shall be entitled to receive reimbursement for such over-sizing costs from the owner(s) and/or developer(s) of the property to be served by the system in direct proportion to such Party's contribution to the over-sizing.

7.08 Sewer Infrastructure and Related Mains and Facilities.

a. The Parties acknowledge and agree that the sanitary sewer systems constructed in both the East Sewer Service Area and West Sewer Service Area may require the construction of one or more lift stations, force mains, and/or gravity mains in order to convey wastewater collected from said areas to wastewater treatment facilities.

b. Subject to other provisions set forth in this Agreement, Bryan agrees to appropriate funds and award contract(s) for the design and construction, and to cause the Commencement of Construction of the lift station and related mains and facilities substantially as depicted in **Exhibit "G"** to provide service in the West Sewer Service Area to commence upon the award of the design contract for the Roadway Project and the earlier of (i) the date of acquisition of land within the Project Site by a Target Company, or (ii) the date of execution of a lease for land and/or improvements within the Project Site by a Target Company, unless the City Managers for the Parties agree in writing to an earlier date, and to cause Completion of Construction thereof to occur within eighteen (18) months thereafter. Bryan shall be the owner of such facilities and improvements serving the West Sewer Service Area and responsible for operation and maintenance thereof.

In the event acquisition of land requires eminent domain proceedings, the Party legally able to do so shall commence such proceedings with reasonable diligence. Such proceedings shall toll any timelines for completion of the West Sewer Side Improvements. Neither party shall be considered in default of this Agreement due to delays in obtaining the CCN swap or for acquisition of easements for the East and West Service Areas.

College Station agrees to appropriate funding for its share of the costs for the design and construction of the facilities for the West Sewer Service Area substantially as depicted in **Exhibit "G"** upon approval of the contract by the Parties and prior to the execution of the contract by Bryan. Bryan shall provide College Station with written monthly progress reports and monthly invoices (as necessary or applicable) for the share of the costs of the West Sewer Service Area due and owing by College Station, which shall be paid within thirty (30) days after receipt thereof. The Parties shall jointly approve any change orders to any contracts for the West Sewer Service Area.

c. Subject to other provisions of this Agreement, College Station agrees to appropriate funds and award contract(s) for the design and the construction, and to cause the Commencement of Construction of the lift station and related mains and facilities substantially as depicted in **Exhibit "F"**, to provide service in the East Sewer Service Area, to commence upon the award of the design contract for the Roadway Project and the earlier of (i) the date of acquisition of land within the Project Site by a Target Company, or (ii) the date of execution of a lease for land and/or improvements within the Project Site by a Target Company, unless the City Managers for the Parties agree in writing to an earlier date, and to cause Completion of Construction to occur within eighteen (18) months thereafter. College Station shall be the owner of such improvements serving the East Sewer Service Area and responsible for operation and maintenance thereof.

In the event acquisition of land requires eminent domain proceedings, the Party legally able to do so shall commence such proceedings with reasonable diligence. Such proceedings shall toll any timelines for completion of the East Sewer Side Improvements. Neither party shall be considered in default of this Agreement due to delays in obtaining the CCN swap or for acquisition of easements for the East and West Service Areas.

Bryan agrees to appropriate funding for its share of the costs for the design, land acquisition and construction of the facilities for the East Sewer Service Area substantially as depicted in **Exhibit "F"** upon approval of a contract by the Parties and prior to the execution of such contract by College Station. College Station shall provide Bryan with written monthly progress reports and monthly invoices (as necessary or applicable) for the share of the costs of the East Sewer Service Area due and owing by Bryan, which shall be paid within thirty (30) days after receipt thereof. The Parties shall jointly approve any change orders to any contracts for the East Sewer Service Area.

d. The Parties agree and acknowledge that the construction of such lift stations, force mains, and/or gravity mains will be beneficial to both Parties and their respective citizens regardless of which Party actually owns and operates such lift stations and/or force mains. The Parties agree to share equally in the cost of the design and construction of lift stations, force mains, and/or gravity mains constructed to provide service to the East Sewer Service Area and West Sewer Service Area. No contract for the design and/or construction of any sanitary sewer infrastructure pursuant to this Section 7.08 shall be advertised for bid until both Parties have reviewed, commented on, and consented to the design, specifications, and cost estimates for the proposed sanitary sewer infrastructure.

e. Upon execution of this Agreement, Bryan shall acquire all easements necessary for the facilities for the East Sewer Service Area as depicted in **Exhibit G**. All costs associated with the acquisition of easements for the East and West Service Areas shall be shared equally by the Parties.

7.09 Customer Regulations on Use of Sewer System. To the extent allowed by law, each Party agrees to reasonably assist in the enforcement of the laws, ordinances, and regulations relating to a customer's connection to, and use of, the other Party's sanitary sewer system which have been adopted by or applicable to the owner of the particular system when such customer is located within the incorporated limits of the City that does not own the system. The Party that does not own the sanitary sewer system in question shall not be required to incur any costs with respect to investigating or prosecuting any alleged violations relating to the use of other City's sanitary sewer system unless and until the Cities enter an agreement with respect to the payment of any costs related to such investigation and prosecution, it being the intent that the owner of the sanitary sewer system be responsible for investigating and prosecuting violations of its own rules and regulations.

7.10 Water Infrastructure. The Parties acknowledge and agree that, except as may otherwise agreed upon in a subsequent agreement to this Agreement, the Parties will be providing Retail Water Service only within their respective Certificated Areas with regard to the East Sewer Service Area and the West Sewer Service Area. However, if the Parties determine it is to the Parties' mutual benefit to construct an inter-connect between the Parties' respective water distribution systems, the Parties agree to share equally in the cost of the design, construction, maintenance, and repair of such interconnect.

Article VIII
Outside Legal Services

The Parties agree to retain joint outside legal counsel pursuant to an engagement agreement to be approved by both Parties for the purpose of obtaining legal advice and counsel with respect to preparation of the contracts indentified in Article IV of this Agreement. It is agreed that the responsibilities of the joint outside legal counsel shall be performed in conjunction with and not in conflict with the duties of the City Attorneys under their respective city charters. The parties agree to share equally all joint outside legal counsel costs incurred to prepare any contracts under Article IV by outside counsel.

Article IX
Miscellaneous

9.01 Notice. Any notice required or permitted to be delivered hereunder shall be deemed received when sent in the United States Mail, Postage Prepaid, Certified Mail, Return Receipt Requested, by hand-delivery or electronic or facsimile transmission confirmed by mailing written confirmation substantially the same time as such electronic or facsimile transmission, and addressed to the respective City at the following address:

If intended for City of College Station:

City of College Station, Texas
Attn: Mayor
1101 Texas Avenue
College Station, Texas 77840

With copy to:

City Attorney
1101 Texas Avenue
P.O. Box 9960 (77842)
College Station, Texas 77840

If intended for City of Bryan:

City of Bryan, Texas
Attn: Mayor
300 South Texas Avenue
Bryan, Texas 77803

With copy to:

City Attorney
300 South Texas Avenue
Bryan, Texas 77803

9.02 Governing Law. The validity of this Agreement and any of its terms and provisions as well as the rights and duties of the Cities shall be governed by the laws of the State of Texas; and venue for any action concerning this Agreement shall be in the State District Court of Brazos County, Texas. The Cities agree to submit to the personal and subject matter jurisdiction of said court.

9.03 Entire Agreement. This Agreement represents the entire agreement among the Cities with respect to the subject matter covered by this Agreement. There is no other collateral, oral or written agreement between the parties that in any manner relates to the subject matter of this Agreement.

9.04 Exhibits. All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

9.05 Recitals. The recitals to this Agreement are incorporated herein.

9.06 Amendment. This Agreement may be amended by the mutual written agreement of the Cities.

9.07 Place of Performance. Performance and all matters related thereto shall be in Brazos County, Texas, United States of America.

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

9.09 Representations. Each City represents to the best of its knowledge that the execution and delivery of this Agreement and the performance of its obligations hereunder will not conflict with any provision of any law or regulation to which such City is subject, nor conflict with, or result in a breach of, or constitute a default under the terms, conditions or

provisions of any agreement or instrument to which such City is a party, or by which such City is bound, nor violate or conflict with any judgment, order or decree applicable to such City.

9.10 Severability. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect the other provisions, and in lieu of each provision that is invalid, illegal or unenforceable, there shall be added a new provision to this Agreement as similar in terms to such invalid, illegal, or unenforceable provision as may be possible and yet be valid, legal and enforceable, by means of good faith negotiation by the Parties to this Agreement or by reform by a court of competent jurisdiction.

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

9.12 Assignment. Neither Party may assign this Agreement without the prior written consent of the other Party.

9.13 Consents. Unless expressly stated otherwise, whenever the consent or the approval of a Party is required herein, such party shall not unreasonably withhold, delay or deny such consent or approval.

9.14 Good Faith Negotiation; Dispute Mediation. Whenever a dispute or disagreement arises under the terms of this Agreement, the Parties agree to enter into good faith negotiations to resolve such disputes. If the matter continues to remain unresolved, the Parties shall refer the matter to outside mediation, the costs of which shall be shared equally, prior to engaging in litigation. The provisions of this Section 9.14 shall survive termination.

9.15 Survival of Covenants. Any of the representations, warranties, covenants, and obligations of the parties, as well as any rights and benefits of the Cities, pertaining to a period of time following the termination of this Agreement shall survive termination.

9.16 Term; Termination.

a. This Agreement shall become effective on the last date of execution hereof (the "Effective Date") following the approval of this Agreement by the governing bodies of both Parties and shall be in effect for an initial period of twenty-five (25) years, except as may be otherwise provided herein. Thereafter this Agreement shall automatically renew on an annual basis, unless sooner terminated as provided herein.

b. If either Party fails to perform a material obligation of such Party under this Agreement (the "Breaching Party"), the other Party (the "Non Breaching Party") may exercise any remedies available to it at law or in equity, including, without limitation, actual damages, injunctive relief, mandamus and specific performance after first attempting mediation in compliance with Section 9.14 above, and after complying with the provisions of this Section. The Parties find that this

Agreement is entered into subject to and in accordance with the provisions of Subchapter I of Chapter 271 of the Texas Local Government Code; and furthermore, that the mediation requirements set forth in this Agreement do not conflict with said statute.

c. Notwithstanding any of the foregoing, this Agreement may be terminated at anytime by the mutual written agreement of the Cities.

d. Following compliance with Section 9.14 above, this Agreement may be terminated by either Party if the other Party fails to perform a material obligation of such Party under this Agreement and such failure is not cured within one hundred and eighty (180) days after written notice thereof. Notwithstanding the foregoing, the Non-Breaching Party may grant additional time to cure or waive a failure to perform a material obligation.

e. In the event this Agreement is terminated pursuant to Section 9.16.d., above, following an uncured failure to perform a material obligation, the Parties agree that the actual damages that might be sustained by the Non-Breaching Party by reason of the uncured failure to perform a material obligation under this Agreement by the Breaching Party are uncertain and are difficult to ascertain or estimate, and the Parties hereby agree to accept as liquidated damages, and not as a penalty, the following amounts as reasonable compensation for the loss of the continued obligation of the Breaching Party to provide Shared Revenue, participation in the promotion of economic development, financial contribution for Infrastructure Projects, and for the loss of potential property tax, sales tax revenues and job creation as a result of such failure to perform a material obligation and termination of this Agreement:

i. The Breaching Party shall pay to the Non-Breaching Party the Shared Revenue from any Revenue Sharing Territory located within the corporate limits of the Breaching Party for a period of twenty-five (25) years following the date of termination; provided, however, notwithstanding Section 3.01 hereof, the amount of Shared Revenue for purposes of this Section 9.16.e. to be paid to the Non-Breaching Party shall be calculated by multiplying the ad valorem taxes assessed attributable to operation and maintenance assessed, but in no event less than $0.24 per one hundred dollars of valuation consistent in the manner as set forth in Section 3.01(b) above and collected by the Breaching Party each tax year against the land, improvements and Tangible Personal Property comprising the property of the Target Companies within the Revenue Sharing Territory of the Breaching Party, as of date of termination, by 50% (the "Post Termination Shared Revenue"), Post Termination Shared Revenue shall be paid annually on or before March 1 of each calendar year immediately following the delinquency date for payment of the Cities' respective ad valorem taxes; and

ii. The Breaching Party shall forfeit any right or entitlement to payment of Shared Revenue from any Revenue Sharing Territory located within the incorporated limits of the Non-Breaching Party and the obligation of the Breaching Party and Non Breaching Party to pay Shared Revenue pursuant to Section 3.01 shall terminate, except that the Breaching Party shall pay Post Termination Shared Revenue as set forth in this Section; and

iii. The Breaching Party shall pay to the Non-Breaching Party one-hundred percent (100%) of all costs necessary to cause Completion of Construction of any remaining Infrastructure Projects, including but not limited to, lift stations, force mains, and gravity mains yet to be constructed pursuant to this Agreement as of the date of the uncured failure to perform a material obligation. For purposes of this section, one-hundred percent (100%) of all costs includes any costs that were to be paid by the Non-Breaching Party had the Breaching Party not failed to perform a material obligation under this Agreement.

Post Termination Shared Revenue shall be calculated based on the taxes assessed and collected each tax year which includes any expansions of the land, improvements and Tangible Personal Property comprising the property of the Target Companies within the Revenue Sharing Territory of the breaching Party such property, and any reductions or increases in the taxable value of such property.

9.17 <u>Source of Payment</u>.

a. Except as provided elsewhere in this Section 9.17, each Party paying for the performance of governmental functions or services pursuant to this Agreement must make those payments from current revenues available to the paying Party or from funds otherwise lawfully available to the Party for use in the payment of the Party's obligations as set forth in this Agreement.

b. Bryan and College Station each covenant and represent to the other that such City has sufficient current revenue or other funding reasonably available to satisfy such City's obligations with respect to its share of the costs of design and construction of the Roadway Project and for the facilities to be constructed pursuant to Section 7.08 in the East Sewer Service Area and West Sewer Service Area.

c. The Parties agree that the Shared Revenue and the Post Termination Shared Revenue shall be payable from such funding sources authorized by Texas Constitution Article III, Section 52-a. and Chapter 380, Texas Local Government Code. It is the intent of the Parties that the Parties respective obligation to make Shared Revenue payments and the Post Termination Shared Revenue payments shall not constitute a debt for purposes of any provision of the Texas Constitution.

9.18 **Force Majeure.** Neither Party shall be liable to the other Party for any failure, delay, or interruption in the performance of any of the terms, covenants, or conditions of this Agreement due to causes beyond their respective control, including, but not limited to: war, nuclear disaster, strikes, boycotts, labor disputes, embargoes, acts of God, acts of the public enemy, acts of superior governmental authority, floods, riots, rebellion, sabotage, terrorism, or any other circumstance for which a party is not legally responsible or which is not reasonably within its power to control. The affected Party's obligation shall be suspended during the continuance of the inability then claimed, but for no longer period. To the extent possible, the Party shall endeavor to remove or overcome the inability claimed with all reasonable dispatch.

9.19 **Mutual Defense**. The Parties agree to jointly defend any litigation instituted by any third party to seek invalidation of this Agreement or to seek a declaratory judgment with regard to the obligations and rights of the Parties under the Agreement, and to share equally in the costs of such defense including but not limited to experts, court costs, depositions and legal fees.

List of Exhibits:
Exhibit "A" -- Project Site
Exhibit "B" -- Bryan Tract 1
Exhibit "C" -- Bryan Tract 2
Exhibit "D" -- Bryan Tract 3
Exhibit "E" -- Bryan Tract 4
Exhibit "F" -- Facilities for East Sewer Service Area
Exhibit "G" -- Facilities for West Sewer Service Area

(Signature page to follow)

EXECUTED this 15th day of DECEMBER, 2011.

CITY OF COLLEGE STATION, TEXAS

By: Nancy L Berry
Nancy Berry, Mayor

APPROVED AS TO FORM

By: [signature]
Carla Robinson, City Attorney
Mary Ann Powell, 1st Asst ACA

ATTEST:

By: Sherry Mashburn
Sherry Mashburn, City Secretary

EXECUTED this 15th day of December, 2011.

CITY OF BRYAN, TEXAS

By: Jason Bienski
Jason Bienski, Mayor

APPROVED AS TO FORM

By: [signature]
Janis Hampton, City Attorney

ATTEST:

By: Mary L Stratta
Mary Lynne Stratta, City Secretary

City of College Station Acknowledgment

STATE OF TEXAS §
§
COUNTY OF BRAZOS §

This instrument was acknowledged before me on the 15th day of December, 2011, by Nancy Berry, in her capacity as Mayor of the City of College Station, a Texas home-rule municipality, on behalf of said municipality.

TANYA MCNUTT
Notary Public, State of Texas
My Commission Expires
FEBRUARY 14, 2014

Tanya McNutt
Notary Public, State of Texas

City of Bryan Acknowledgment

STATE OF TEXAS §
§
COUNTY OF BRAZOS §

This instrument was acknowledged before me on the 15th day of December, 2011, by Jason Bienski, in his capacity as Mayor of the City of Bryan, a Texas home-rule municipality, on behalf of said municipality.

TANYA MCNUTT
Notary Public, State of Texas
My Commission Expires
FEBRUARY 14, 2014

Tanya McNutt
Notary Public, State of Texas

Exhibit "A"
Project Site

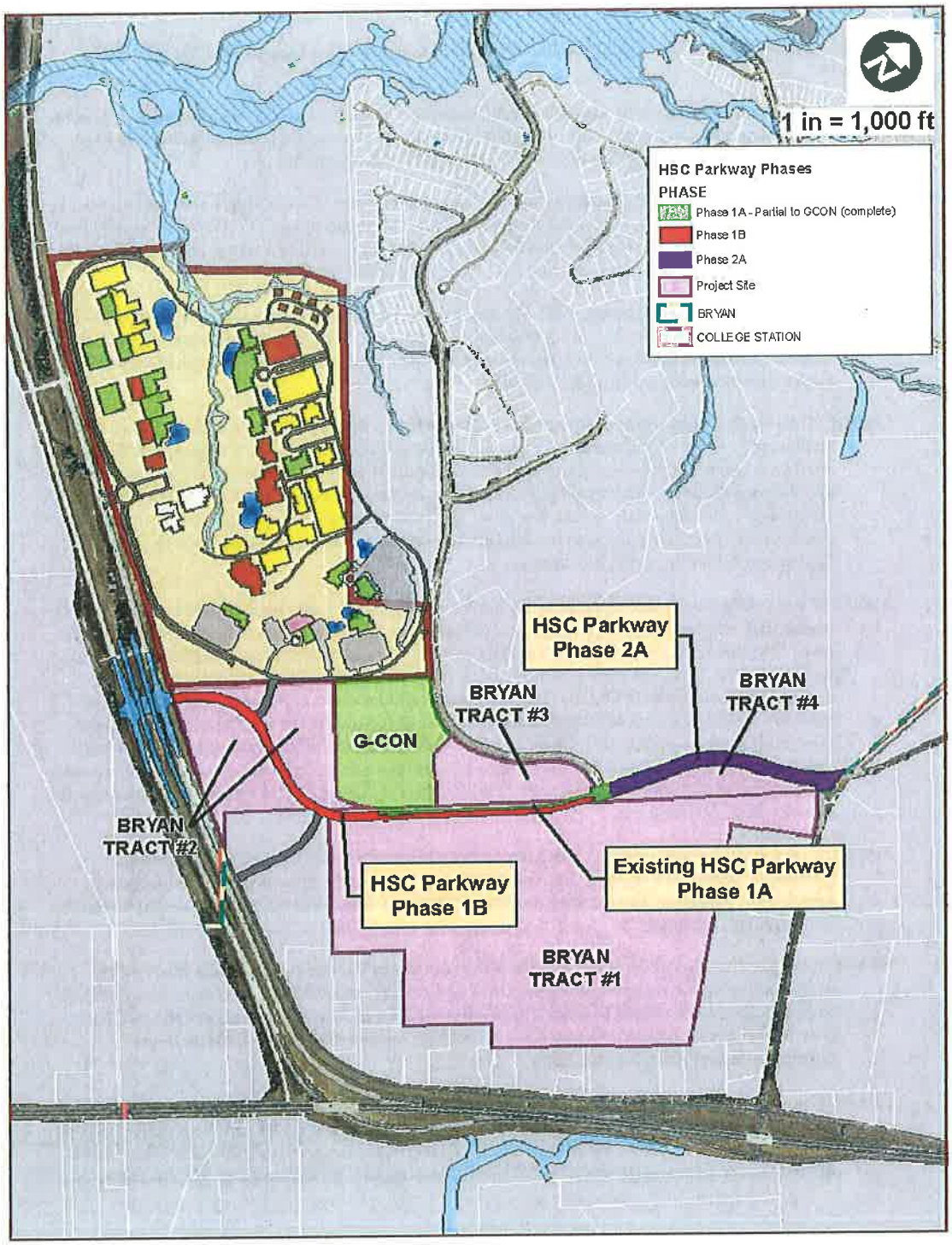


Exhibit "B"
Bryan Tract 1

BOUNDARY DESCRIPTION
CITY OF BRYAN 147 ACRE TRACT

BEING a tract or parcel of land situated in Brazos County, Texas, and being more particularly described as follows:

BEGINNING at a point lying on the southwest right-of-way line of Turkey Creek Road, same being a point in the city limits line of Bryan, Texas; said point being the most northerly corner of a 148 acre tract now or formerly owned by the Bryan Commerce & Development, Inc.;

THENCE along the southwest right-of-way line of Turkey Creek Road for a distance of 405 feet, more or less, to a point for corner; said point marking the most northerly corner of a 11.6 acre tract of land now or formerly owned by Sidney and Janet Loveless; said point also marking an exterior corner of the said 148.0 acre Bryan Commerce & Development, Inc. tract;

THENCE in a southwesterly direction, along the northwest line of the aforementioned 11.6 acre Loveless tract for a distance of 704 feet, more or less, to a point, said point marking the west corner of the said 11.6 acre Loveless tract; said point also marking an interior corner of the said 148.0 acre Bryan Commerce & Development, Inc. tract;

THENCE in a southeasterly direction along the southwest line of the said 11.6 acre Loveless tract, the southwest line of a 7.02 acre tract of land now or formerly owned by M.L. Cashion, Ind. Exec, the southwest line of a 4.57 acre tract of land now or formerly owned by Frank and Phyllis Palasota, and the southwest line of a 5 acre tract of land now or formerly owned by Anita A. Bailor for a distance of 1,898 feet, more or less, to a point, said point marking the southeast corner of the said 5 acre Bailor tract; said point also marking an exterior corner of the said 148.0 acre Bryan Commerce & Development, Inc. tract;

THENCE in a southwesterly direction along the northwest line of a 3.5 acre tract of land now or formerly owned by Chris and Margaret Dailey, the northwest line of a 2 acre tract of land now or formerly owned by Joanne W. Bell, the northwest line of a 1.53 acre tract of land now or formerly owned by David Ohendalski, the northwest line of a 4.45 acre tract of land now or formerly owned by Kappa Sigma-Mu Gamma Chapter, Inc., the northwest line of a 5.127 acre tract of land now or formerly owned by David and Sarah Shelby, and the northwest line of a 1.575 acre tract of land now or formerly owned by Shih-Chien Lin for a distance of 1633 feet, more or less, to a point, said point marking the east corner of a 4 acre tract of land now or formerly owned by William and Lula Meads; said point also marking an exterior corner of the said 148.0 acre Bryan Commerce & Development, Inc. tract;

THENCE in a northwesterly direction along the northeast line of the said 4 acre Meads tract for a distance of 207.94 feet, more or less, to a point, said point marking the north corner of the said Meads tract; said point also marking an interior corner of the said 148.0 acre Bryan Commerce & Development, Inc. tract;

THENCE in a southwesterly direction along the northwest line of the said 4 acre Meads tract and the northwest line of a 1.86 acre tract of land now or formerly owned by Karen Wilson for a distance of 803.33 feet, more or less, to a point, said point marking the southwest corner of the said 1.86 acre Wilson tract; said point also marking an exterior corner of the said 148.0 acre Bryan Commerce & Development, Inc. tract;

THENCE in a northwesterly direction along the northeast line of a 1.01 acre tract of land now or formerly owned by Welch Storage Inc., along the northeast line of a 1.01 acre tract of land now or formerly owned by Scott L. Welch and Jim G. Welch, along the northwest line of a 5.0 acre tract of land now or formerly owned by WP 47 Development, Ltd. for a distance of 638 feet, more or

less, to a point, said point marking the north corner of the said 5.0 acre WP 47 Development tract; said point also marking an interior corner of the said 148.0 acre Bryan Commerce & Development, Inc. tract;

THENCE in a southwesterly direction along the northwest line of the said 5.0 acre WP 47 Development tract for a distance of 625 feet, more or less, to a point, said point marking the west corner of the said 5.0 acre WP 47 Development tract; said point also marking an exterior corner of the said 148.0 acre Bryan Commerce & Development, Inc. tract;

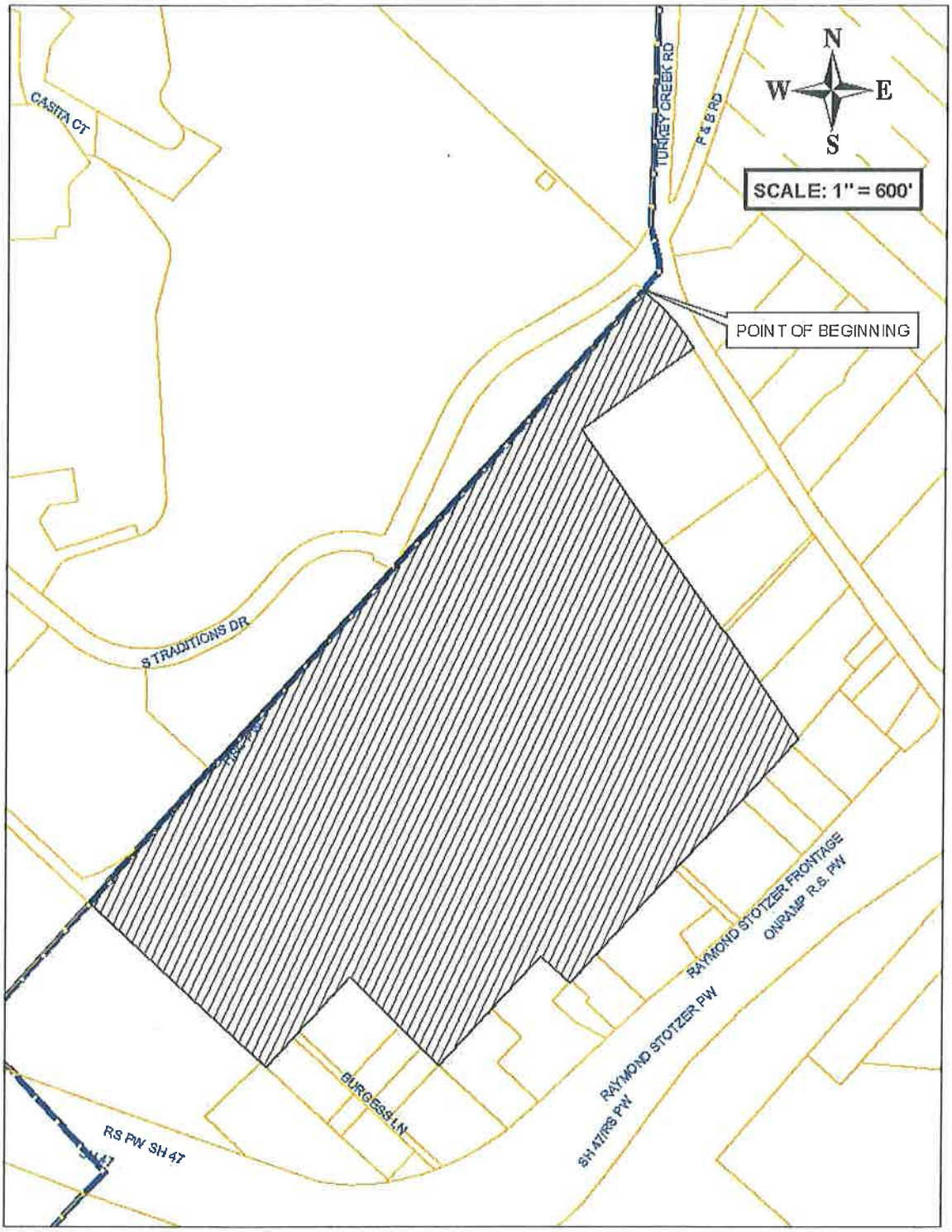
THENCE in a northwesterly direction along the northeast line of a 20.54 acre tract of land now or formerly owned by Camwest Traditions, LP., for a distance of 1226 feet, more or less, to a point, said point lying on the current common city limits line of Bryan, Texas and College Station, Texas; said point also marking the northeast corner of the said 20.54 acre Camwest Traditions tract;

THENCE in a northeasterly direction, along the said common city limits line of Bryan, Texas and College Station, Texas, for a distance of 2,273 feet more or less to a point, said point lying on the current common city limits line of Bryan, Texas and College Station, Texas; said point also lying within the right-of-way of HSC Parkway;

THENCE in a southeasterly direction, leaving the said common city limits line of Bryan, Texas and College Station, Texas, passing through the right-of-way of HSC Parkway for a distance of 18 feet, more or less, to a point; said point lying on the southeast right-of-way of the said HSC Parkway; said point also being an interior corner of the said 148.0 acre Bryan Commerce & Development, Inc. tract;

THENCE in a northeasterly direction along the said southeast right-of-way of the said HSC Parkway, same being the northwest line of the said 148.0 acre Bryan Commerce & Development, Inc. tract, for a distance of 61 feet, more or less, to a point; said point lying on the said southeast right-of-way of the said HSC Parkway; said point also lying on the said northwest line of the said 148.0 Bryan Commerce & Development, Inc. tract; said point also lying on the current common city limits line of Bryan, Texas and College Station, Texas;

THENCE continuing in a northeasterly direction, leaving the said southeast right-of-way of the said HSC Parkway, continuing along the said northwest line of the said 148.0 acre Bryan Commerce & Development, Inc. tract and the said current common city limits line of Bryan, Texas and College Station, Texas for a distance of 1,839 feet, more or less to the **POINT OF BEGINNING,** containing 147 acres of land more or less.


N
W
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S
SCALE: 1" = 600'
POINT OF BEGINNING
CASITA CT
TURKEY CREEK RD
F & S RD
S TRADITIONS DR
RAYMOND STOTZER FRONTAGE
ONRAMP R.S. PW
RAYMOND STOTZER PW
SH 47/RS PW
BURGESS LN
RS PW SH 47

Exhibit "C"
Bryan Tract 2

BOUNDARY DESCRIPTION
CITY OF BRYAN 32 ACRE TRACT

BEING a tract or parcel of land situated in Brazos County, Texas, and being more particularly described as follows:

BEGINNING at a point lying on the northeast right-of-way line of SH 47; said point being the most westerly corner of a 31.85 acre tract now or formerly owned by the Bryan Commerce & Development, Inc.; said point also being the most southerly corner of a 154 acre tract now or formerly owned by the Texas A&M University System;

THENCE in a northeasterly direction, leaving the said northeast right-of-way line of State Highway 47, along the northwest line of the said 31.85 acre Bryan Commerce & Development tract, continuing along the northwest line of a 1.93 acre tract now or formerly owned by Bryan Commerce & Development, Inc., for a distance of 1,410 feet, more or less, to a point; said point being the northeast corner of the said 1.93 acre Bryan Commerce & Development tract; said point also being the northwest corner of a 21. 4 acre tract now or formerly owned by the Texas A&M University System;

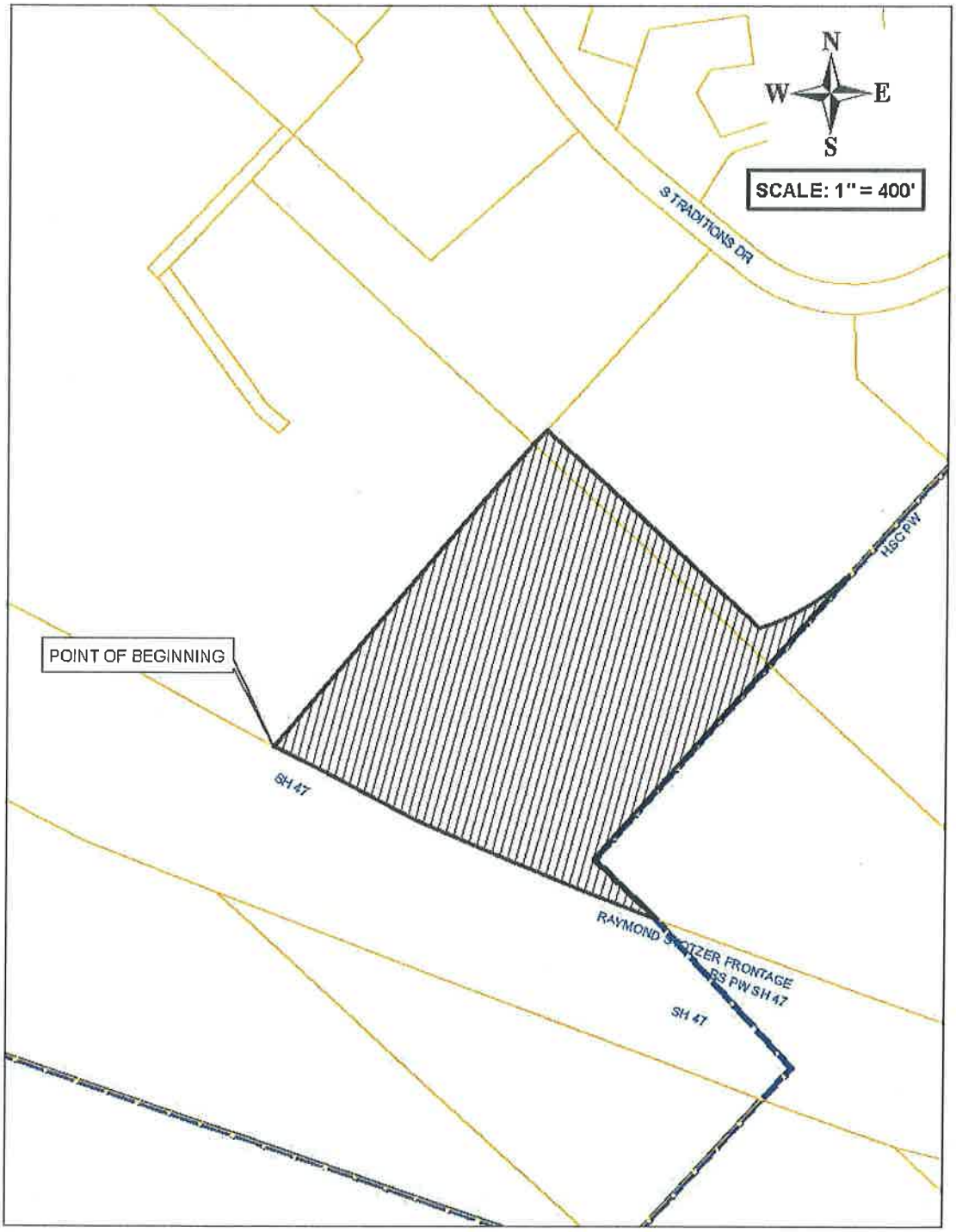
THENCE in a southeasterly direction along the common boundary line of the said 1.93 acre Bryan Commerce & Development tract and the 21.4 acre Texas A&M tract, for a distance of 982 feet, more or less, to a point;

THENCE continuing in a southeasterly direction, along the common boundary line of the said 1.93 acre Bryan Commerce & Development tract and the said 21.4 acre Texas A&M tract, for a distance of 356 feet, more or less, to a point; said point lying on the common boundary line between the said 21.4 acre Texas A&M tract and the said 148.0 acre Bryan Commerce & Development, Inc. tract; said point also lying on the said current common city limits line of Bryan, Texas and College Station, Texas;

THENCE in a southwesterly direction, along the said common city limits line of Bryan, Texas and College Station, Texas, same being the northwest line of the said 148.0 acre Bryan Commerce & Development, Inc. tract, for a distance of 1,288 feet more or less to a point, said point lying on the current common city limits line of Bryan, Texas and College Station, Texas; said point also marking the northwest corner of a 20.54 acre tract now or formerly owned by Camwest Traditions, L.P.;

THENCE in a southeasterly direction, continuing along the said common city limits line of Bryan, Texas and College Station, Texas, same being the southwest line of the said 20.54 acre Camwest Traditions, same being a southeast line of the said 31.85 acre Bryan Commerce & Development tract, for a distance of 298 feet more or less to a point, said point lying on the current common city limits line of Bryan, Texas and College Station, Texas; said point also marking an angle point of the said 20.54 acre Camwest Traditions tract; said point also lying on the northeast right-of-way line of State Highway 47;

THENCE in a northwesterly direction, leaving the said common city limits line, along the said northeast right-of-way line of State Highway 47, same being the southwest line of the said 31.85 acre Bryan Commerce & Development tract, for a distance of 1,426 feet more or less to a point; to the **POINT OF BEGINNING**, containing 32 acres of land, more or less.


N
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S
SCALE: 1" = 400'
S TRADITIONS DR
HSC PW
POINT OF BEGINNING
SH 47
RAYMOND SCHEITZER FRONTAGE
RS PW SH 47
SH 47

Exhibit "D"
Bryan Tract 3

BOUNDARY DESCRIPTION

CITY OF BRYAN 12 ACRE TRACT

BEING a tract or parcel of land situated in Brazos County, Texas, and being more particularly described as follows:

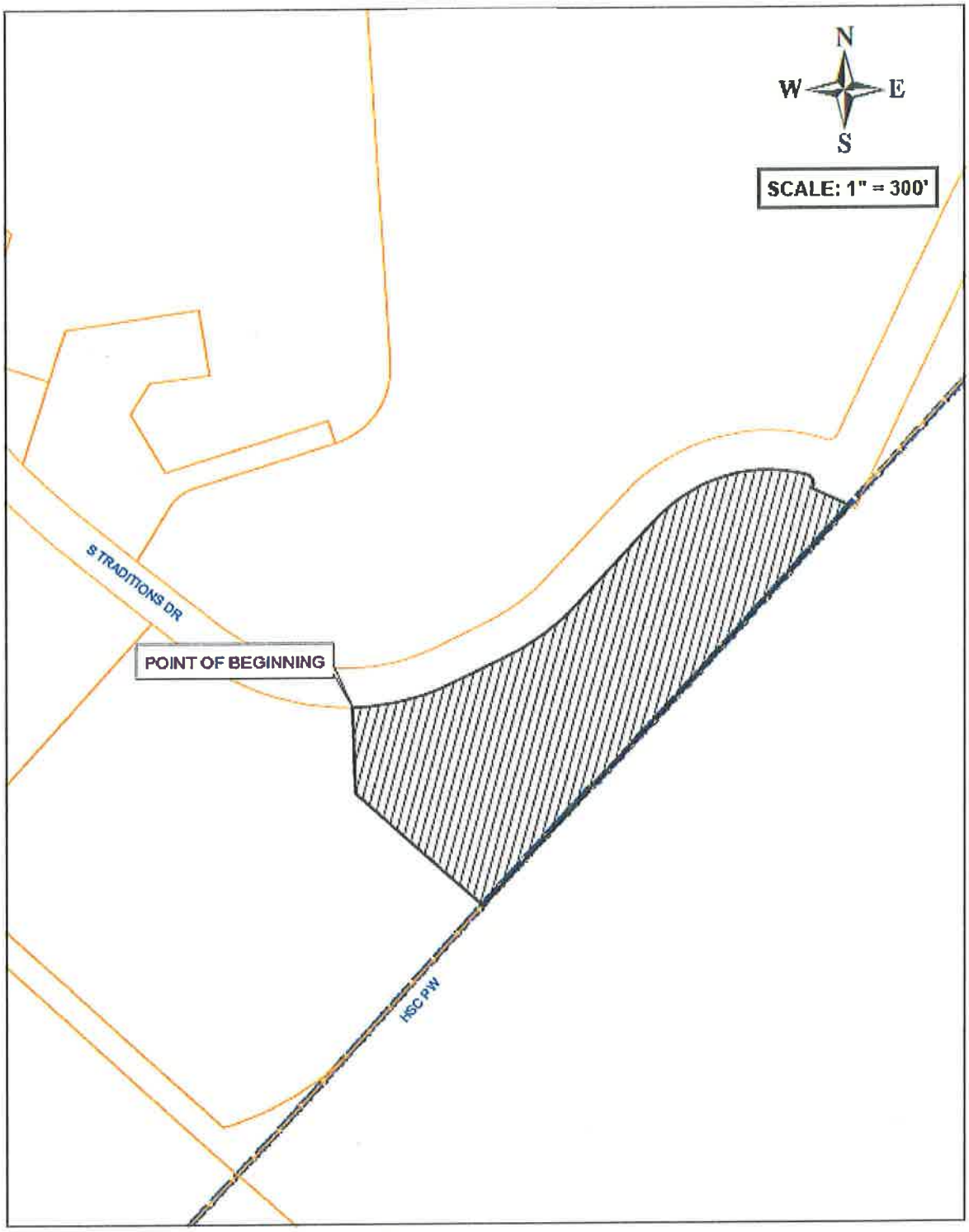
BEGINNING at a point lying on the southwest right-of-way line of S. Traditions Drive; said point being the most easterly corner of a 21.4 acre tract now or formerly owned by the Texas A&M University System; said point also being the most northwesterly corner of a 11.12 acre tract now or formerly owned by Bryan Commerce & Development, Inc.;

THENCE in a southeasterly direction along the said southwest right-of-way line of S. Traditions Drive for a distance of 1,370 feet, more or less, to a point; said point lying at the intersection of the said southwest right-of-way line of S. Traditions Drive and the northeast right-of-way line of HSC Parkway;

THENCE continuing in a southeasterly direction, crossing the right-of-way of HSC Parkway for a distance of 102 feet, more or less, to a point; said point lying on the current common city limits line of Bryan, Texas and College Station, Texas; said point also being an interior corner of a 148.0 acre tract now or formerly owned by Bryan Commerce & Development, Inc. tract;

THENCE in a southwesterly direction along the said common city limits line, same being the northwest line of the said 148.0 acre Bryan Commerce & Development, Inc. tract, for a distance of 1,360 feet, more or less, to a point; said point lying on the said northwest line of the said 148.0 Bryan Commerce & Development, Inc. tract; said point also lying on the current common city limits line of Bryan, Texas and College Station, Texas; said point also being the southeast corner of the said 21.4 acre Texas A&M tract; said point also being the southwest corner of the said 11.12 acre Bryan Commerce & Development, Inc. tract;

THENCE in a northwesterly direction, leaving the said common city limits line and the northeast boundary line of the said 148.0 acre Bryan Commerce & Development, Inc. tract, along the common boundary line between the said 11.12 acre Bryan Commerce & Development, Inc. tract and the said 21.4 acre Texas A&M tract for a distance of 646 feet, more or less to the **POINT OF BEGINNING**, containing 12 acres of land more or less.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SCALE: 1" = 300'
S TRADITIONS DR
POINT OF BEGINNING
HSC P/W

Exhibit "E"
Bryan Tract 4

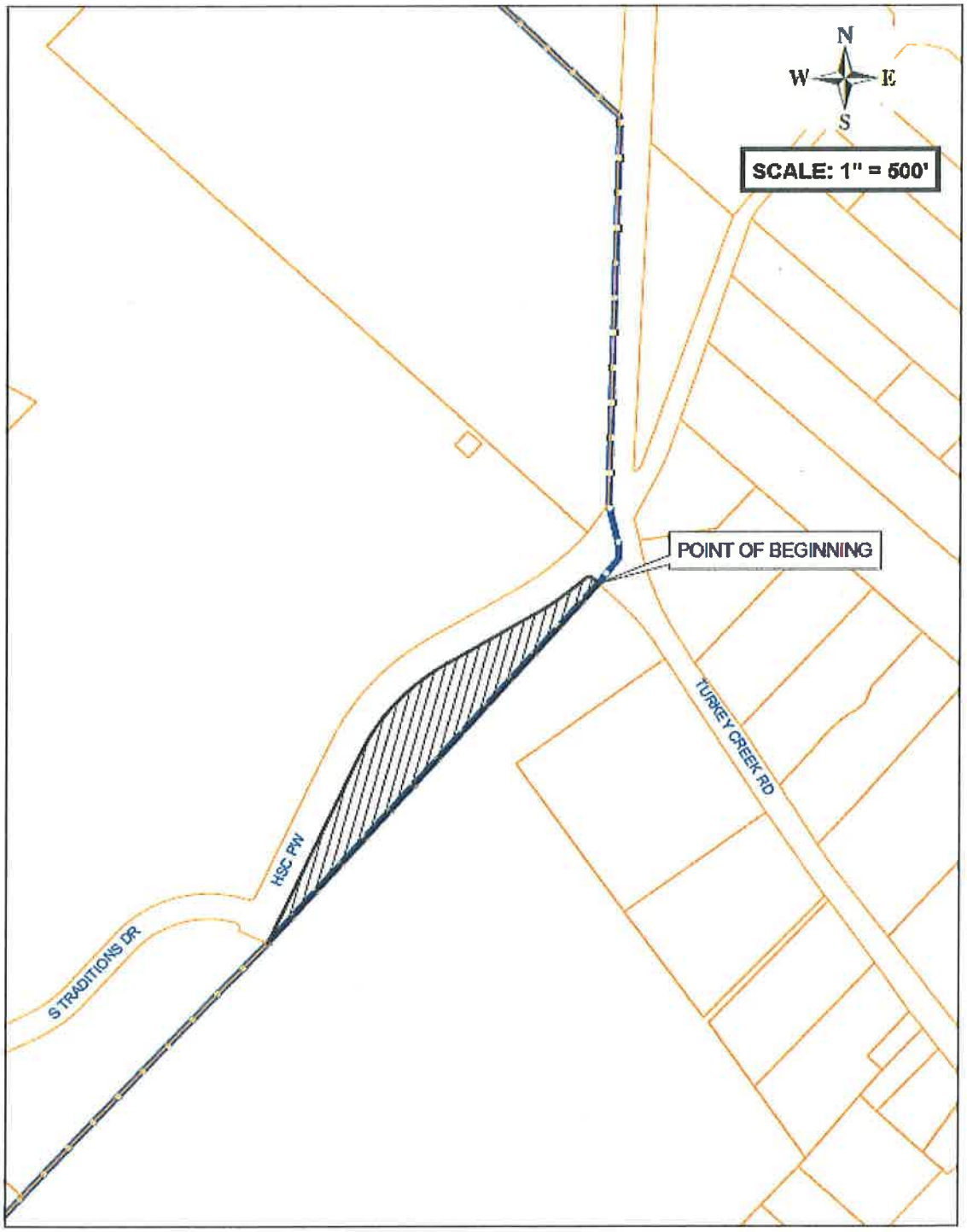
BOUNDARY DESCRIPTION
CITY OF BRYAN 6 ACRE TRACT

BEING a tract or parcel of land situated in Brazos County, Texas, and being more particularly described as follows:

BEGINNING at a point lying on the southwest right-of-way line of Turkey Creek Road, same being a point in the city limits line of Bryan, Texas; said point also being the most northerly corner of a 148 acre tract now or formerly owned by Bryan Commerce & Development, Inc.;

THENCE in a southwesterly direction along the said current city limits line of Bryan, Tx, same being the northwesterly line the said 148 acre Bryan Commerce & Development tract for a distance of 1,839 feet, more or less, to a point; said point lying on the southeast right-of-way line of HSC parkway; said point also lying on the said current city limits line of Bryan, Tx;

THENCE in a northeasterly direction, along the said southeast right-of-way of HSC Parkway, leaving the said current city limits line, for a distance of 2,005 feet, more or less, to the **POINT OF BEGINNING**, containing 6 acres of land more or less.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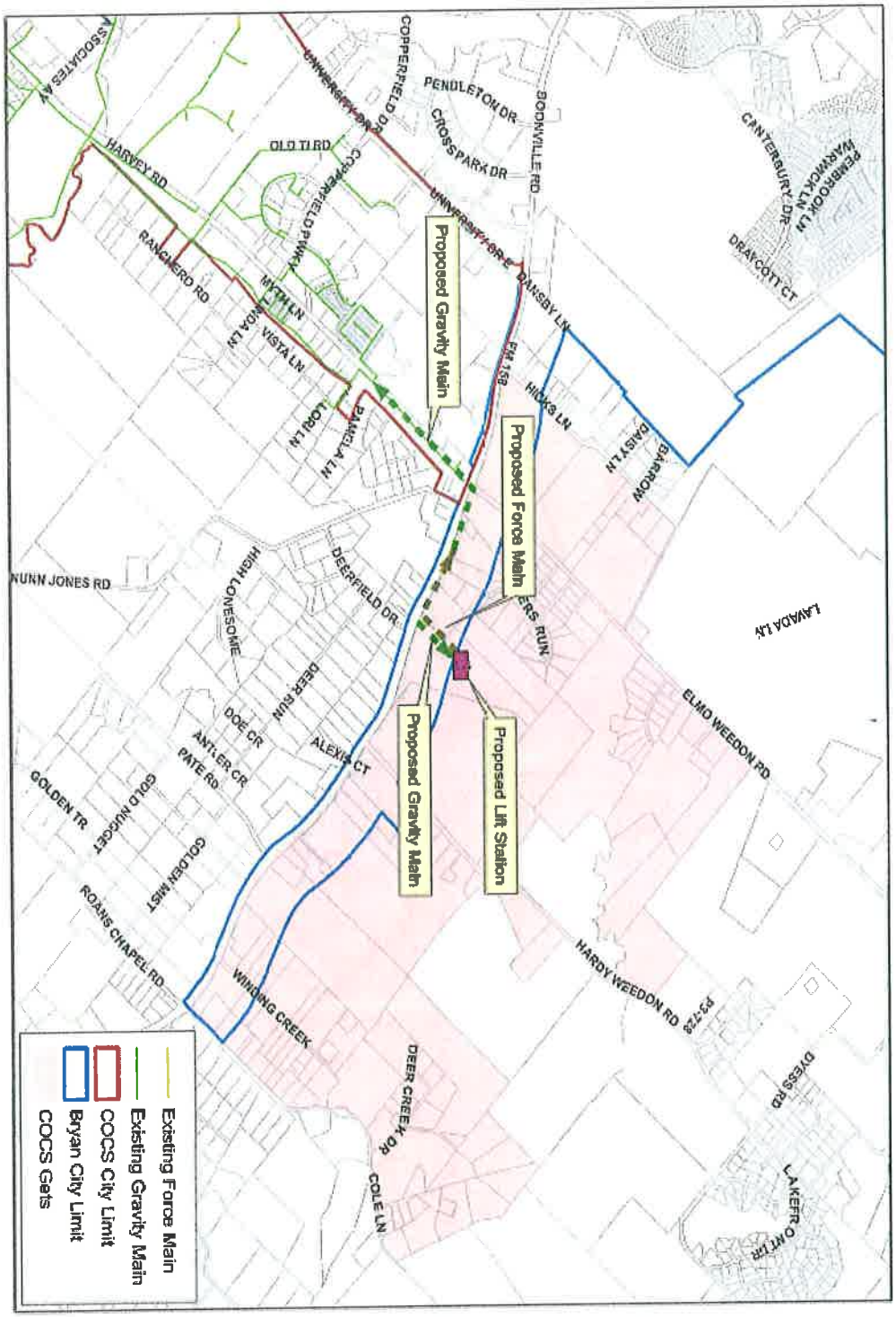
SCALE: 1" = 500'
POINT OF BEGINNING
TURKEY CREEK RD
HSC PW
S TRADITIONS DR

Exhibit "F"
Facilities for East Sewer Service Area



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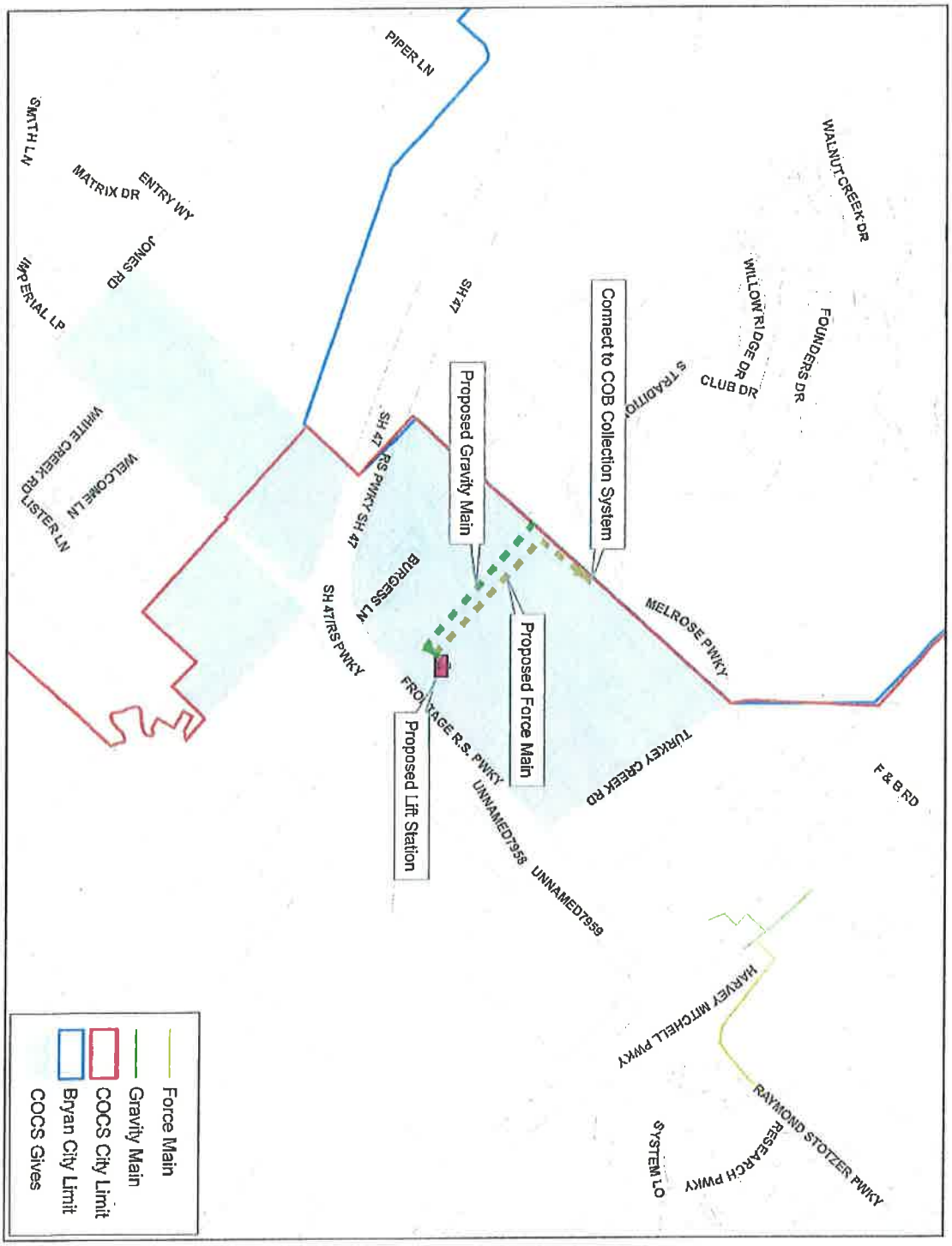
Exhibit "G"
Facilities for West Sewer Service Area