



## Legislation Details (With Text)

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<b>Type:</b>	Minutes	<b>Status:</b>		<b>Status:</b>	Consent Agenda
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<b>On agenda:</b>	5/25/2017	<b>Final action:</b>		<b>Final action:</b>	
<b>Title:</b>	Presentation, possible action, and discussion on a development agreement between CTX Land Investments, LLC and the City of College Station to facilitate the extension of the Dartmouth at the Harvey Mitchell intersection.				
<b>Sponsors:</b>	Natalie Ruiz				
<b>Indexes:</b>					
<b>Code sections:</b>					
<b>Attachments:</b>	<a href="#">Dartmouth EDA with CTX Signature for CC 5-25-17</a>				

Date	Ver.	Action By	Action	Result
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Presentation, possible action, and discussion on a development agreement between CTX Land Investments, LLC and the City of College Station to facilitate the extension of the Dartmouth at the Harvey Mitchell intersection.

### Relationship to Strategic Goals:

- Diverse Growing Economy
- Core Infrastructure
- Financially Sustainable City

Recommendation(s): Staff recommends approval of the Development Agreement as proposed.

Summary: CTX Land Investments, LLC owns approximately 28 acres near the future intersection of Harvey Mitchell Parkway and Southwest Parkway. CTX is partnering with the adjacent owner of the 6.99 acre tract on future development of residential and commercial land uses. The extension of Dartmouth from Harvey Mitchell Parkway to Texas Avenue is shown on the City’s Thoroughfare Plan as a future 3-lane major collector roadway. The construction of this roadway cannot be borne by one land owner given the estimated cost of construction, extent of the roadway and physical conditions including smaller tracts of land and the 100 year floodplain.

The Comprehensive Plan identified the larger area as a potential small area plan in which a more detailed study would be given with respect to land uses, transportation and development intensity. A majority of the property owners met in 2015 to initiate that effort and examined more commercial land uses and an alignment of Dartmouth. At that time, the group determined that a larger partnership and funding sources are needed to facilitate the extension of Dartmouth. Staff has taken two approaches to funding Dartmouth:

1. Tax Reinvestment - Partner with Brazos County to fund design and construction

through a synthetic tax increment reinvestment zone. Simply stated, a portion of County and City taxes generated from new value will be dedicated to the construction of Dartmouth. This agreement has been drafted and should be considered by the Commissioner's Court.

2. Property Owners - Partner with land owners to construct Phase I of Dartmouth to activate the majority of the property for development. This development agreement may be duplicated near the intersection of Dartmouth and Texas Avenue to insure that the developer pays for their fair share of the roadway.

The agreement with CTX provides for the construction of Phase I of Dartmouth through the adjacent Timberjack property. This provides for the initial connection to Harvey Mitchell Parkway into the 28 acre property. Instead of constructing a portion of roadway that does not connect to Harvey Mitchell, CTX is building Dartmouth through the Timberjack tract. The City will also participate in the initial construction costs of 25%, not to exceed \$250,000.

Budget & Financial Summary: The City's participation up to \$250,000 is available through the Economic Development Fund.

Legal Review: Yes.

Attachments:

Infrastructure Agreement with CTX Land Investments, LLC

**DEVELOPMENT AGREEMENT  
BETWEEN CTX LAND INVESTMENTS, LLC  
AND CITY OF COLLEGE STATION**

This Agreement ("Agreement") is entered into by and between CTX Land Investments, LLC, a Texas limited liability company ("CTX Land"), and the City of College Station, Texas, a Texas home-rule municipal corporation ("City").

WHEREAS, Dartmouth is a public roadway that currently dead ends at its intersection with Harvey Mitchell Parkway aka Farm to Market Road 2818 ("FM 2818") both located within the City; and

WHEREAS, Texas Timberjack, Inc. owns approximately 6.99 acres of land immediately adjacent to FM 2818 which is further shown in Exhibit "A" attached hereto and made a part hereof ("Timberjack Property");

WHEREAS, CTX Land owns approximately 27.87 acres of land, a portion of which is immediately adjacent to the Timberjack Property which is further shown in Exhibit "A" attached hereto and made a part hereof ("CTX Land Property");

WHEREAS, the City's Thoroughfare Plan shows Dartmouth to be extended from FM 2818 through a portion of the Timberjack Property and the CTX Land Property and through other properties to Texas Avenue as roughly depicted in Exhibit "A" attached hereto and made a part hereof ("Dartmouth Extension"); and

WHEREAS, the Dartmouth Extension is anticipated to be constructed in phases beginning with constructing a portion through the Timberjack Property; and

WHEREAS, in order to have the initial phase of the Dartmouth Extension through the Timberjack Property constructed up to the CTX Land Property, CTX Land desires to assume responsibility for the construction of the Dartmouth Extension through the Timberjack Property under the terms and conditions of this Agreement; and

WHEREAS, CTX Land represents to City it desires to prepare the CTX Land Property so as to be developed in a manner consistent and in accordance with appropriate zoning designations, the City's Unified Development Ordinance and other applicable rules and regulations, and which currently includes plans to develop a portion situated along FM 2818 commercially and a portion as high density residential; and

WHEREAS, based upon this and other information the parties agree that it is reasonable and desirable for CTX Land to construct the first phase of the Dartmouth Extension through the Timberjack Property and for the City to assist constructing and otherwise assisting in the funding of a subsequent phase of the Dartmouth Extension through the CTX Land Property in accordance with the terms and conditions set forth in this Agreement to enhance the economic viability of this area to the mutual benefit of the parties; and

WHEREAS, the parties agree and understand that doing the foregoing will improve access to CTX Land Property for its purposes and will assist the City and its citizens overall in the construction of much-needed public infrastructure; and

WHEREAS, the City is authorized under Chapter 380 Texas Local Government Code to create certain economic development programs for public purposes, including the promotion of local economic development and the stimulation of business and commercial activity within the City, including mechanisms for building much-needed public infrastructure such as portions of the Dartmouth Extension; and

WHEREAS, as authorized under Article III, Section 52-a of the Texas Constitution and related statutory authority the parties desire to adopt a program as set forth herein and recognize that doing so will promote economic development activity including one or more of the following: job creation, increased tax revenues, increased opportunity for expediting construction of public infrastructure projects, creation of new businesses, infrastructure commitments and streamlined implementation; and

WHEREAS, the parties hereto agree to share in the costs and construction of a portion of the Dartmouth Extension as set forth herein; now therefore

For and in consideration of the promises and the mutual agreements set forth herein, the parties hereby agree as follows:

## **Article I General Terms**

- 1.1 Incorporation of Recitals. The recitals to this Agreement are hereby incorporated for all purposes.
- 1.2 Definitions and Terms. In addition to the terms identified in the recitals, the following additional definitions and terms shall apply:

“Commencement of Construction” means that plans have been prepared and all approvals required by applicable governmental authorities have been obtained for construction of a portion of Dartmouth Extension including all necessary permits for the applicable phase. Where the City is to perform construction, this term also means that all public procurement requirements to proceed with construction have been met, such as award of bid.

“Completion of Construction” means that the construction of the applicable phase of the Dartmouth Extension has been substantially completed such that the City Engineer has issued a Letter of Completion for all associated public infrastructure for acceptance and maintenance by the City following a one year maintenance period in accordance with applicable City standards, rules and regulations.

“Dartmouth Extension” means the extension of Dartmouth roadway from Farm to Market Road 2818 to Texas Avenue excluding traffic signalization proposed to be constructed in phases as set forth herein depicted in Exhibit “A” attached hereto and made a part hereof.

“Effective Date” means the date this Agreement is duly approved by the parties hereto.

“Event of Bankruptcy or Insolvency” means the dissolution or termination of a party’s existence as a going business, insolvency, appointment of receiver for any significant part of such party’s property or specifically the Timberjack Property or the CTX Land Property, including foreclosure, and such appointment is not terminated within 90 days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against a party, or foreclosure laws relating to the Timberjack Property or the CTX Land Property, and such proceeding is not dismissed within 90 days after the filing thereof.

“Force Majeure” means any contingency or cause beyond the reasonable control of a party including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, adverse weather, government or de facto governmental action (unless caused by acts or omissions of such party), terroristic acts, fires, explosions or floods, strikes, slowdowns or work stoppages.

“Public Procurement” means the process by which the City must purchase work for construction of public works, including public roadways.

“Phase 1” means the portion of the Dartmouth Extension that runs through the Timberjack Property as shown in Exhibit “A” attached hereto and made a part hereof, as a three lane major collector including construction of the roadway and all associated improvements such as drainage, sidewalk, and lighting improvements but excluding turning lanes, landscaping and other requirements directly related to private development under applicable laws.

“Phase 2” means the portion of the Dartmouth Extension that runs through the CTX Land Property as shown in Exhibit “A” attached hereto and made a part hereof, as a three lane major collector including construction of the roadway and all associated improvements such as drainage, sidewalk, and lighting improvements but excluding turning lanes, landscaping and other requirements directly related to private development under applicable laws.

## **Article II Dartmouth Extension**

### **2.1 Design of the Dartmouth Extension.**

2.1.1 Timing and costs. Upon the earliest of the following events to occur: a) application for development of the Timberjack Property for final plat approval; b) application by CTX Land for development of the CTX Land Property for final plat approval; or c) earlier as mutually agreed upon by the parties, CTX Land shall be responsible for the design of Phase 1 of the Dartmouth Extension from FM 2818 through the Timberjack Property and ending with a temporary turnaround as required by the Unified Development Ordinance on CTX Land Property. The design of Phase I will take into consideration the signalization of Dartmouth at its intersection with FM 2818, but will exclude the design of the signal itself. CTX Land shall assume responsibility

for securing and paying a professional engineering firm to perform the design of the Dartmouth Extension.

The currently anticipated cost of design of Phase 1 of the Dartmouth Extension is approximately \$45,000.

The design phase of the Dartmouth Extension shall be completed within 180 days from entering into the contract with an appropriate engineering firm for design of same unless agreed upon otherwise in writing by the City.

2.1.2 Standards for Design. The design of Phase 1 of the Dartmouth Extension must adhere to all applicable rules and regulations, including City standards. CTX Land agrees to perform a traffic impact analysis and to comply with all additional development requirements not addressed in this Agreement as it progresses through the development process relating to CTX Land Property pursuant to applicable rules and regulations. The parties agree and understand that the design of Dartmouth will be for a Portland cement concrete, 3-lane, major collector roadway. Additional lane width may be required in order to transition from the ultimate signalized intersection at FM 2818 to the main roadway. Since it is anticipated by the parties that the Dartmouth Extension will be constructed in phases, design of Phase 1 must include a temporary turnaround or other alternative street terminus as provided for in the Bryan/College Station Joint Design Guidelines.

2.1.3 Notification and Approval. CTX Land agrees to advise the City when it has entered into a contract with an engineering firm to design the Dartmouth Extension. CTX Land agrees to provide the City a copy of any and all written documents relating to said design, including all working documents, payment schedules and proofs, other information from consultant as same become available and to provide a copy of the final accounting of costs.

CTX Land shall provide City with a final accounting of all costs associated with the design of the Dartmouth Extension.

CTX Land agrees to consult with the City when the design process is approximately 30%, 60% and 90% complete, in the engineering firm's estimation, before providing the City with the proposed final design.

The design of Phase 1 of the Dartmouth Extension shall be considered complete upon written approval by the City, which approval will not be unreasonably withheld.

## 2.2. Construction of Phase 1.

2.2.1 Timing and Costs. CTX Land agrees to bear responsibility, including cost, of construction of Phase 1 of the Dartmouth Extension as set forth herein.

Within 120 days after the later of successful completion of the design of Dartmouth Extension and public dedication of the Phase I portion of the Dartmouth Extension by Timberjack, CTX Land agrees to Commencement of Construction of Phase 1. CTX Land must have Completion of Construction of Phase 1 within 18 months after Commencement of Construction except to the degree the force majeure provisions of this Agreement may apply.

2.2.2 Standards and Responsibilities. CTX Land agrees to assume all responsibilities associated with securing and managing one or more contracts for the construction of Phase 1, including, without limitation, making all payments due under said contract or contracts. CTX Land shall be responsible for securing any and all required permits, authorizations, and approvals, and for adhering to applicable rules, regulations and standards. It is specifically agreed and understood by the parties that Phase 1 shall be a Portland cement concrete roadway and shall be constructed in a manner that meets all the requirements associated therewith and as set forth in this Agreement.

Since Phase 1 is intended to become a public roadway, CTX Land is responsible for ensuring there is a guarantee of performance for acceptance of public infrastructure as required under Section 12-8.7 of the City Code of Ordinances. Upon Commencement of Construction, this requirement shall survive termination of this Agreement.

2.2.3 Notifications, Approvals and Access. CTX Land shall provide copies of all construction documentation relating to the construction of Phase 1, including plans, specifications, contracts, contract amendments and change orders, test results, payment schedules, proof of payment, and other related matters as same become available. Upon Completion of Construction, CTX Land will provide copies of the as-builts to the City as well as a copy of the final accounting setting forth all costs and expenditures relating to Phase 1 construction.

Upon Completion of Construction of Phase 1, CTX Land shall provide a final accounting of all costs associated therewith and provide a copy of same to the City.

CTX Land shall allow the City reasonable access to its records and books and all other relevant records related to the construction of Phase 1 during normal business hours. The confidentiality of such records and information shall be maintained by the parties unless disclosure of such records and information shall be required by a court order, a lawfully issued subpoena or at the direction of the Office of the Texas Attorney General.

2.2.4 Operation and Maintenance. Upon successful Completion of Construction of Phase 1 the City shall assume ownership of same and be responsible for its operation and maintenance in accordance with applicable rules and regulations as set forth in City's Uniform Development Ordinance.

2.2.5 Reimbursement by City. Upon Completion of Construction of Phase 1 and upon a final accounting by CTX Land to City of all costs related thereto as required pursuant to this Agreement, CTX Land may request reimbursement for a portion of its actual costs from City as set forth herein. Upon a properly submitted written request from CTX Land, City shall reimburse CTX Land for 25% of its actual costs of construction of Phase 1 up to a maximum of \$250,000 within 30 days of receipt of such written request. Nothing herein shall prevent City from reimbursing itself for the costs it incurs in paying this amount pursuant to an agreement it may enter into with Brazos County relating to the funding of improvements in the Dartmouth & Harvey Mitchell Parkway Development Area.

2.2.6 Credit Toward Road Impact Fees. Upon Completion of Construction of Phase 1, CTX Land, its affiliated entity CTX Development Company or any third party that develops all or a portion of CTX Land Property, will be entitled to a dollar for dollar credit for funds CTX Land expends without reimbursement or payment from others not a party to this Agreement, on Phase 1 up to the maximum amount of roadway impact fees which may be assessed on new development in the future within the CTX Land Property. Such dollar for dollar credit must be supported by an affidavit submitted with proof of the expenditure of such funds by CTX Land without reimbursement establishing same to the satisfaction of the City. Upon assessment of impact fees on some or all of the CTX Land Property, such credit shall be applied first and any additional amount due shall occur only after application of such credit thereto.

2.2.7 Platting and Development of CTX Land. Upon Completion of Construction of Phase 1 of the Dartmouth Extension and compliance with all terms of this agreement, CTX Land, or its successors and assigns in accordance with Article 8 of this Agreement, shall be entitled to proceed with platting, development, construction of improvements and sale of lots within the CTX Land in accordance with the Unified Development Ordinance. Compliance with all terms of this Agreement satisfies CTX Land's responsibility to construct Phase II of the Dartmouth extension. The fact that CTX Land is engaged in design and construction of Phase 1 of the Dartmouth

Extension shall not, by itself, be a cause for a delay by City in processing applications for platting and other approvals related to developing CTX Land Property. Nothing in this Agreement shall serve as a waiver of or as having satisfied other applicable rules, regulations, ordinances and other laws relating to developing CTX Land Property other than with respect to constructing Phase 1 and Phase 2 as set forth herein.

2.3 Construction of Phase 2.

2.3.1 Construction by City. The City shall be obligated to construct Phase 2 at their discretion upon the occurrence of all of the following:

- a. When there is adequate funding available to City as established pursuant to its agreement with Brazos County relating to the funding of improvements in the Dartmouth & Harvey Mitchell Parkway Development Area;
- b. Upon Completion of Construction of Phase 1;
- c. Upon CTX Land obtaining City final plat approval within the area of the CTX Land Property through which Phase 2 is to run or earlier as may be mutually agreed upon by the parties; and
- d. Upon dedication by CTX Land to City in fee of such property for Phase 2 and of such temporary construction easements as needed in order for City to construct Phase 2 in accordance with this Agreement. Notwithstanding any provision to the contrary, in the event CTX Land conveys some or all of the CTX Land Property to another, CTX Land is still obligated to dedicate the property needed to construct Phase 2 as determined by the City and as set forth in this Agreement. The form of dedications shall be by plat and as set forth in Exhibit "B" and shall be of a standard width and nature in accordance with the City's applicable practices, rules and regulations.

Upon the occurrence of the above, Commencement of Construction of Phase 2 shall occur as soon as reasonably possible following the Public Procurement process.

2.3.2 Construction by CTX Land. Alternatively, in lieu of constructing Phase 2 in accordance with Section 2.3.1 above, CTX Land may construct Phase 2, but is under no obligation to construct Phase 2, under any circumstances. The parties understand that it is not the present intention of CTX Land to construct Phase 2. If CTX Land elects to construct Phase 2, the costs of design and construction will be reimbursed by the City a) upon Completion of Construction of Phase 2; b) as funds become available to the City pursuant to the terms of its agreement with Brazos County relating to the funding of improvements in the Dartmouth & Harvey Mitchell Parkway Development Area; and c) provided there is Commencement of Construction of Phase 2 by CTX Land on or before January 1, 2021.

The City shall reimburse CTX Land for its costs for design and construction of Phase 2 up to the amount of funds available to City pursuant to its agreement with Brazos County relating to the funding of improvements in the Dartmouth & Harvey Mitchell Parkway Development Area as set forth herein. The parties understand there is a Phase 3 of the Dartmouth Extension beginning where Phase 2 ends to Texas Avenue, the design and construction for which is not the subject matter of this Agreement. The parties expressly agree the City may reimburse or expend funds available to City pursuant to its agreement with Brazos County for both Phase 2 and Phase 3 of the Dartmouth Extension at a rate and amount among the two phases determined appropriate by the City in order to best meet the development and transit needs in the area.



2.3.3 Standards and Responsibilities. If Phase 2 is constructed pursuant to Section 2.3.1 above, City assumes all responsibilities associated with securing, making all payments and managing one or more contracts for the construction of Phase 2. Likewise, if Phase 2 is constructed pursuant to Section 2.3.2 above, CTX Land assumes all responsibilities associated with securing, making all payments and managing one or more contracts for the construction of Phase 2.

Such responsibilities include following public procurement requirements when applicable, securing any and all required permits, authorizations, and approvals, and adhering to applicable rules, regulations and standards. It is specifically agreed and understood by the parties that Phase 2 shall be a Portland cement concrete roadway and shall be constructed in a manner that meets all the requirements associated therewith and as set forth elsewhere in this Agreement.

Since Phase 2 is intended to become a public roadway, if CTX Land assumes responsibility for construction it shall ensure there is a guarantee of performance for acceptance of public infrastructure as required under Section 12-8.7 of the City Code of Ordinances which requirement shall survive termination of this Agreement.

Since Phase 2 is intended to become a public roadway, and as a home-rule municipality of the state of Texas, if City is responsible for construction it shall ensure there are both payment bonds and performance bonds relating to its construction of Phase 2 pursuant to Chapter 2253 Texas Government Code and other applicable law. Upon Commencement of Construction, this requirement shall survive termination of this Agreement.

#### 2.3.4 Notifications and Approvals.

a. CTX Land. If CTX Land constructs Phase 2 pursuant to the terms of this Agreement, CTX Land shall do so in accordance with the public procurement process and shall provide copies of all construction documentation relating to the construction of Phase 2 including plans, specifications, contracts, contract amendments and change orders, test results, payment schedules, proof of payment, and other related matters as same become available. Upon Completion of Construction, CTX Land will provide copies of the as-builts to the City as well as a copy of the final accounting setting forth all costs and expenditures relating to Phase 2 construction.

CTX Land shall allow the City reasonable access to its records and books and all other relevant records related to the construction of Phase 2 during normal business hours. The confidentiality of such records and information shall be maintained by the parties unless disclosure of such records and information shall be required by a court order, a lawfully issued subpoena or at the direction of the Office of the Texas Attorney General.

b. If City constructs Phase 2 pursuant to the terms of this Agreement, the City shall make any and all records available to CTX Land to review during normal business hours except those as may be protected by applicable law.

2.3.5 Operation and Maintenance. Upon Completion of Construction of Phase 2, and upon acceptance by the City if constructed by CTX Land following the warranty period, the City shall assume ownership of same, and shall be responsible for its operation and maintenance.

2.4 Later phases of Construction of Dartmouth Extension. The parties agree and understand that Phase 1 and Phase 2 are only portions of the Dartmouth Extension. In order to complete the Dartmouth Extension, it will be necessary for the City to acquire additional property through which to construct the remaining part. To the degree reasonable and appropriate, and at no cost to CTX Land, CTX Land agrees to assist the City in identifying possible opportunities to procure land necessary to complete the Dartmouth Extension.

### **Article III Representations of the Parties**

3.1 Authorization. The parties hereto represent to the other that each is duly authorized to enter into this Agreement and that each will abide by the terms and obligations recited herein. The parties further represent that the individuals signing on behalf of each is duly authorized to do so.

3.2 Additional Requirements. Except for the design and construction of a portion of the Dartmouth Extension as set forth under this Agreement, and except as provided in Sections 2.2.6 and 2.2.7, the terms and obligations herein are additional and supplemental to, and not in substitution of, any other requirements imposed by the City on the development or subdivision of land or the issuance of building permits for the Timberjack Property and the CTX Land Property.

3.3 No litigation. Each party hereto represents to the other there are no litigation or governmental proceedings pending or, to the knowledge of a party or their officers, threatened against or affecting such party that may result in any material adverse change in such party's business, properties or operation as relates to their respective obligations hereunder. Each party represents that no further consent, approval or authorization of or registration or declaration within any governmental authority or other authority is required in connection with the execution of this Agreement or the transactions contemplated hereby.

3.4. Incentive under Chapter 380. The parties understand and agree that this Agreement is to implement an economic development program, and each expressly understands and agrees that the obligations, terms and conditions herein for the Dartmouth Extension are for such purpose.

CTX Land specifically understands and agrees that to the degree this Agreement may provide a "public subsidy" pursuant to Chapter 2264 Texas Government Code and 8 U.S.C. Section 1324a(f) that CTX Land certifies it and any branch, division or department of its business does not and will not knowingly employ an undocumented worker. In the event of a final conviction of an offense under 8 U.S.C. Section 1324a(f), related to knowingly employing an undocumented worker, CTX Land will refund the City the full value of the public subsidy amount provided to it with interest as provided for herein not later than the 120<sup>th</sup> day after the date the City notifies CTX Land of the violation of this Section. The interest shall be at the rate equal to the 90-day Treasury Bill plus one-half percent (½%) per annum, and shall begin accruing thirty (30) days after the date the City notifies the applicable party of the violation.

If convicted of an offense under 8 U.S.C. Section 1324a(f) related to knowingly employing an undocumented worker, CTX Land shall also reimburse the City for any and all court costs and reasonable attorney's fees and costs incurred by the City as a result of any action required to obtain reimbursement of such public subsidy under any circumstance. Such court costs and reasonable legal fees reimbursement shall be due and payable thirty (30) days after CTX Land receives written notice of default beyond the cure period pursuant to other provisions in this Agreement.

3.5 Ability to Perform. Subject to the conditions precedent set forth below, the parties hereto each and separately represent that to the best of their respective knowledge, each has acquired and maintained all necessary rights, funding, licenses, permits and authority to carry on its business and to fulfill its obligations under this Agreement and that each will continue to use its best efforts to maintain same. Furthermore, the parties each and separately represent there is no Event of Bankruptcy or Insolvency currently pending or contemplated, nor any potential

Event of Bankruptcy or Insolvency involuntarily or similar actions relating to insolvency or inability to meet the respective obligations herein.

#### **Article IV Default and Remedy**

4.1 Default and Remedies. CTX Land or the City shall be deemed in default under this Agreement which shall be deemed a breach hereunder if either fails to materially perform, observe or comply with any of its covenants, agreements or obligations hereunder or breaches or violates any of its representations contained in this Agreement; but only if performance has not been cured within 30 days from the receipt of written notice from the other party, which 30 day period may be extended pursuant to the Force Majeure provisions in this Agreement and/or by written mutual agreement of the parties. Thereafter CTX Land and the City shall be entitled to any and all remedies available in this Agreement or otherwise at law or equity unless otherwise stated herein.

#### **Article V Events of Force Majeure**

5.1 Event of Force Majeure. It is expressly understood and agreed by the parties that if the performance by a party of any obligation hereunder is delayed by reason of an event of Force Majeure, the party so obligated or permitted shall be excused from doing or performing the same for the time and to the extent necessary to allow the affected party to overcome the event of Force Majeure and resume performance thereof. The party claiming the delay of performance as a result of an event of Force Majeure shall deliver written notice of the commencement of such delay to the other party as soon as reasonably practicable after the claiming party becomes aware of the same, and if the claiming party fails to so notify the other party of delay caused by a Force Majeure event, the claiming party shall not be entitled to extend the time for performance as provided herein.

#### **Article VI Termination and Condition Precedent**

6.1 Termination. This Agreement shall remain in effect until there is completion of all the obligations of the parties hereto unless this Agreement is terminated upon the occurrence of one or more of the following:

6.1.1 in the event there is no Commencement of Construction of Phase 1 within two years from the Effective Date;

6.1.2 in the event of default following an opportunity to cure in accordance with the provisions of this Agreement;

6.1.3 the execution by the parties of a written agreement terminating this Agreement;

6.1.4 at the option of the City, a violation of 8 U.S.C. Section 1324a(f) relating to employing undocumented workers; or

6.1.5 at the option of the City, upon an Event of Bankruptcy or Insolvency for CTX Land, or its successors and assigns.

6.2 Condition Precedent.

6.2.1. Condition Precedent for City. The obligations of the parties relating to the construction of the Dartmouth Extension as set out in Article II hereof shall not apply until the City enters into an agreement with Brazos County relating to the funding of improvements in the Dartmouth & Harvey Mitchell Parkway Development Area.

6.2.2 Condition Precedent for CTX Land. The obligations of the parties relating to the construction of the Dartmouth Extension as set out in Article II hereof shall not apply unless CTX Land, at no cost to CTX Land, obtains the public dedication in fee of land needed to construct Phase 1 from Timberjack or the owner of the Timberjack Property if not Timberjack.

## **Article VII Indemnification**

7.1 INDEMNIFICATION. CTX LAND COVENANTS AND AGREES TO FULLY INDEMNIFY AND HOLD HARMLESS THE CITY AND THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS, VOLUNTEERS AND REPRESENTATIVES OF THE CITY, INDIVIDUALLY OR COLLECTIVELY, FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND SUITS OF ANY KIND AND NATURE, INCLUDING BUT NOT LIMITED TO, PERSONAL OR BODILY INJURY, DEATH AND PROPERTY DAMAGE, MADE UPON THE CITY, DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO CTX LAND'S OBLIGATIONS UNDER THIS AGREEMENT, INCLUDING ACTS OR OMISSIONS OF ITS AGENTS, OFFICERS, DIRECTORS, REPRESENTATIVES, EMPLOYEES, CONSULTANTS, CONTRACTORS OR SUBCONTRACTORS WHILE IN THE PERFORMANCE OF THE RIGHTS AND DUTIES UNDER THIS AGREEMENT.

7.2 NOTIFICATION. CTX LAND AGREES TO PROMPTLY ADVISE THE CITY IN WRITING OF ANY CLAIM OR DEMAND AGAINST IT RELATING TO THIS AGREEMENT, AND SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND IN A TIMELY MANNER AND AT NO COST TO THE CITY.

7.3 DUTY TO DEFEND. CTX LAND AGREES TO DEFEND AT ITS OWN EXPENSE AND ON BEHALF OF THE CITY AND IN THE NAME OF THE CITY, ANY CLAIM OR LITIGATION BROUGHT AGAINST THE CITY AND ITS ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES, IN CONNECTION WITH ANY SUCH INJURY, DEATH, OR DAMAGE FOR WHICH THIS INDEMNITY SHALL APPLY, AS SET FORTH ABOVE. THIS OBLIGATION FOR CTX LAND SHALL SURVIVE TERMINATION OF THIS AGREEMENT. FURTHERMORE, THE CITY SHALL HAVE THE RIGHT BUT NOT AN OBLIGATION AT ITS OPTION AND AT ITS OWN EXPENSE TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING CTX LAND OF ANY OF ITS OBLIGATIONS UNDER THIS ARTICLE.

7.4 NO WAIVER. NOTHING IN THIS AGREEMENT SHALL CONSTITUTE ANY WAIVER OF GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND DOES NOT WAIVE ANY OF ITS DEFENSES UNDER TEXAS LAW. THE PROVISIONS OF THIS INDEMNIFICATION ARE SOLELY FOR THE BENEFIT OF THE CITY AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

## **Article VIII Assignability**

8.1 Assignability. Except as provided in this Section, this Agreement may not be assigned without the express written consent of the non-assigning party. CTX Land may assign this Agreement to CTX Development Company, provided CTX Development Company assumes legally in writing all of the obligations of CTX Land under this Agreement. Any assignment by CTX Land must be furnished in a form acceptable to the City and be provided at least 30 days prior to the effective assignment date. The City agrees to notify the potential assignee of any known defaults, but such notification shall not excuse defaults that are not yet known to the City.

## **Article IX Miscellaneous**

9.1 Time of the Essence. Time is of the essence of this Agreement. The parties will make every reasonable effort to expedite the subject matters hereof and acknowledge that the successful performance of this Agreement requires their continued cooperation.

9.2 Entire Agreement. This Agreement, including any exhibits hereto, contains the entire agreement between the parties with respect to the transactions contemplated herein.

9.3 Exhibits, Titles of Articles, Sections and Subsections. The exhibits attached to this Agreement, if any, are incorporated herein and shall be considered a part of this Agreement for the purposes stated herein. All titles or headings are only for the convenience of the parties and shall not be construed to have any effect or meaning as to the agreement between the parties hereto. Any reference herein to a section or subsection shall be considered a reference to such section or subsection of this Agreement unless otherwise stated. Any reference herein to an exhibit shall be considered a reference to the applicable exhibit attached hereto unless otherwise stated.

9.4 Amendments. Unless otherwise expressly provided for otherwise, this Agreement may only be amended, altered or terminated by written instrument signed by both parties.

9.5 Successors and Assigns. Except as expressly set forth otherwise, no party may assign its rights or obligations hereunder without the written consent of the other. This Agreement will be binding upon, inure to the benefit of, and be enforceable by the parties and their respective successors and assigns.

9.6 Applicable Law and Venue. This Agreement is made, and shall be construed and interpreted under the laws of the State of Texas. Venue for any legal proceedings shall lie in state courts located in Brazos County, Texas. Venue for any matters in federal court will be in the United States District Court for the Southern District of Texas, Houston, Division.

9.7 Notices. Notices under this Agreement are sufficient if given by nationally recognized overnight courier service, certified mail, return receipt requested, facsimile with electronic confirmation, or personal delivery to the other party at the address below. If no address is listed for a party, notice to such party will be effective if given to the last known address. Notice is effective: (a) when delivered personally, (b) three business days after sending by certified mail, (c) on the business day after sending by a nationally recognized overnight courier service, or (d) on the business day after sending by facsimile with electronic confirmation to the sender. Each party may update its contact information by notice to the other. Routine business and technical correspondence may be in electronic form. The contact information for each party is as follows:

**CTX Land:**

CTX Land Investments, LLC  
4090 Highway 6 South  
College Station, TX 77840

**City:**

City of College Station  
Attn: Mayor  
1101 Texas Avenue  
P.O. Box 9960  
College Station, Texas 77842  
Telephone: (979) 764-3500  
Facsimile: (979) 764-6377

With a copy to:

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

9.8 Severability. In the event any provision of this Agreement is illegal, invalid, or unenforceable under the applicable present or future laws, then, and in that event, it is the intention of the parties that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the parties to this Agreement that in lieu of each clause or provision that is found to be illegal, invalid, or unenforceable a provision be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision held to be illegal, invalid or unenforceable.

9.9 No Waiver. Failure of either 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, nor any part hereof, nor the right of any party thereafter to enforce each and every provision hereof. No term of this Agreement shall be deemed waived or breach excused, unless the waiver shall be in writing and signed by the party claimed to have waived. Furthermore, any consent to or waiver of a breach will not constitute consent to or waiver of or excuse of any other different or subsequent breach unless expressly so stated therein.

9.10 Third Parties. The parties intend that this Agreement shall not benefit nor create any right or cause of action in or on behalf of any third-party beneficiary, nor any individual or entity other than the parties hereto and their respective assignees in accordance with this Agreement.

9.11 Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement.

9.12 Interpretation. This Agreement has been jointly negotiated by the parties and shall not be construed against a party because that party may have primarily assumed responsibility for the drafting of this Agreement.

9.13 No Joint Venture. It is acknowledged and agreed by the parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture among the parties.

IN TESTIMONY OF WHICH this instrument has been executed in multiple counterparts, each of equal dignity and effect, on behalf of the parties effective as set forth above.

Exhibits:

- "A" Map of Dartmouth Extension
- "B-1" Dedication Deed Form
- "B-2" Temporary Construction Easement Form

**CTX Land Investments, LLC**



Name: Douglas D. French  
Title: Manager and President  
Date: \_\_\_\_\_

**City of College Station**

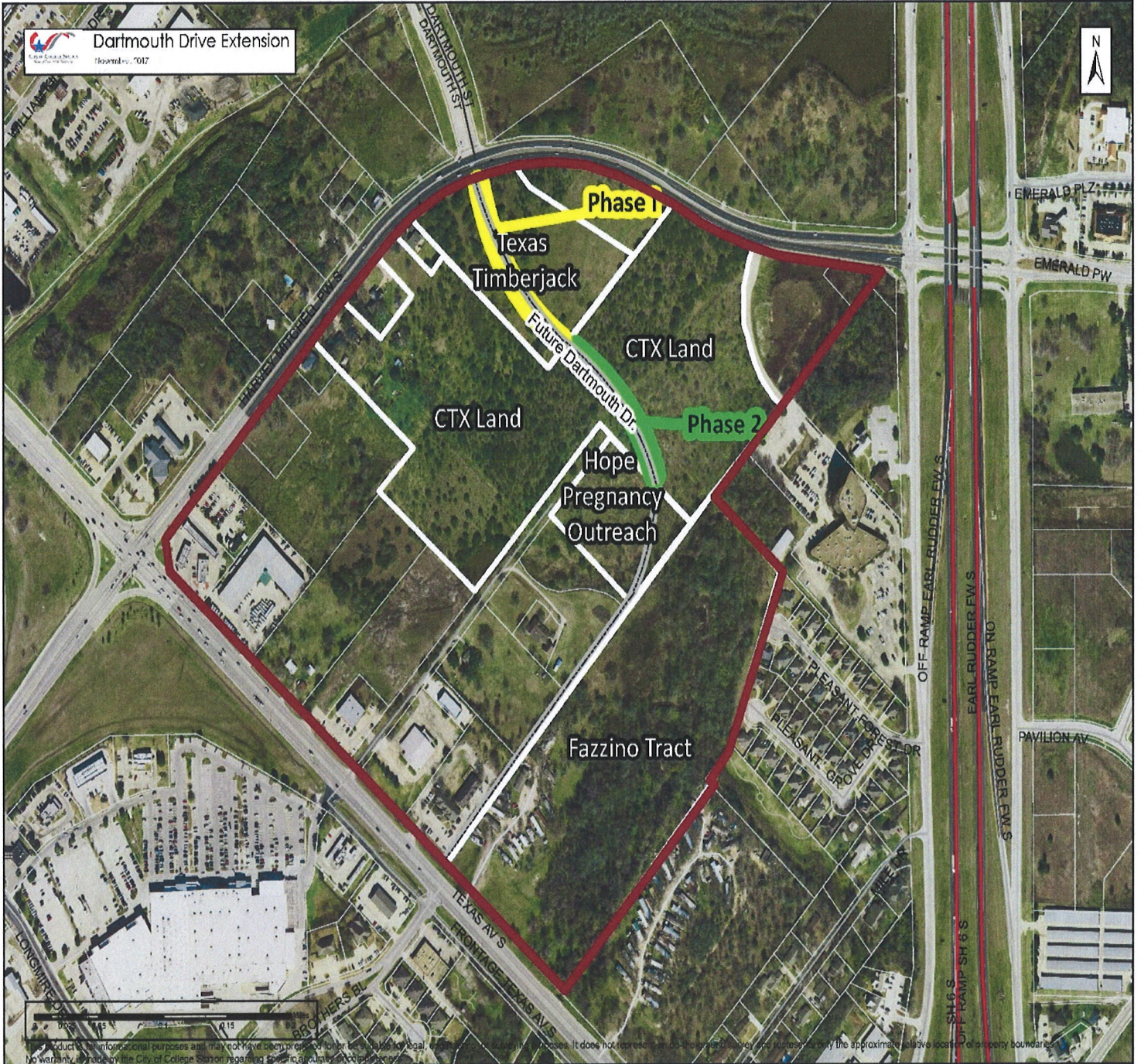
\_\_\_\_\_  
Karl Mooney, Mayor

ATTEST:

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



# EXHIBIT "A" DARTMOUTH EXTENSION





**EXHIBIT "B-1"**  
**DEDICATION DEED FORM**

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

**DEDICATION DEED**

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

**GRANTOR:**

**GRANTOR'S MAILING ADDRESS:**  
(including County)

\_\_\_\_\_ County

**GRANTEE:** CITY OF COLLEGE STATION, TEXAS

**GRANTEE'S MAILING ADDRESS:**

1101 Texas Avenue  
Brazos County  
College Station, Texas 77842

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

**PROPERTY:**

***INSERT PROPERTY DESCRIPTION***

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

***INSERT INFORMATION FROM TITLE REPORT/COMMITMENT***

GRANTOR waives all rights with respect to the surface and no owner of the mineral estate shall ever have rights of ingress or egress except as may have been reserved by GRANTOR under the reservations and exceptions expressly listed in this deed or its predecessors in title.

GRANTOR, for the consideration and subject to the reservations from and exceptions to conveyance and warranty, GIVES and DEDICATES 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 bind GRANTOR and GRANTOR's 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, except as to the reservations from and exceptions to conveyance and warranty.

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

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

---

City Attorney

THE STATE OF TEXAS

ACKNOWLEDGMENT

COUNTY OF BRAZOS

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_,  
\_\_\_\_\_, by \_\_\_\_\_.

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

**PREPARED IN THE OFFICE OF:**

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

**AFTER RECORDING, RETURN TO:**

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

**EXHIBIT "B-2"**  
**TEMPORARY CONSTRUCTION EASEMENT FORM**

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

**TEMPORARY CONSTRUCTION EASEMENT**

**DATE:** \_\_\_\_\_

**GRANTOR:** \_\_\_\_\_

**GRANTOR'S MAILING ADDRESS:** \_\_\_\_\_  
(including County) Brazos County  
\_\_\_\_\_, Texas \_\_\_\_\_

**GRANTEE:** CITY OF COLLEGE STATION, TEXAS

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

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

**PROPERTY:**

**(INSERT PROPERTY DESCRIPTION)**

GRANTOR grants to GRANTEE a temporary construction easement only as to the above-described Property more particularly described by metes and bounds on the attached Exhibit "A", known as the "Temporary Construction Easement Area", which area is necessary for \_\_\_\_\_ (i.e. the construction of various improvements and utilities, the installation of sidewalks, etc.) in connection with the City of College Station \_\_\_\_\_ Project.

It is understood and agreed that any and all equipment and facilities placed upon said Property shall remain the property of GRANTEE.

It is further understood and agreed that this Temporary Construction Easement shall exist from the date construction begins on this project until completion of the project.

GRANTEE expressly agrees to return the Temporary Construction Easement Area to its original condition, or as close thereto as is reasonably possible.

It is expressly understood that the GRANTOR or future Owners of this property reserve the right to use this Temporary Construction Easement Area during the construction phase for all purposes which do not interfere with or prevent its use by the GRANTEE.

GRANTOR expressly subordinates all rights of surface use incident to the mineral estate to the above described uses of said surface by GRANTEE, and agrees to lenders' subordinations on behalf of GRANTEE, if any. GRANTORS will provide GRANTEE with the names and addresses of all lenders, if any.

TO HAVE AND TO HOLD the rights and interests herein described unto the CITY OF COLLEGE STATION, TEXAS, and its successors and assigns, forever, and GRANTOR does hereby bind herself, her heirs and administrators, to warrant and forever defend, all and singular, these rights and interests unto the CITY OF COLLEGE STATION, TEXAS, and its successors and assigns, against every person whomsoever lawfully claiming, or to claim same, or any part thereof.

\_\_\_\_\_  
  
\_\_\_\_\_

APPROVED AS TO FORM

THIS DOCUMENT MAY NOT  
BE CHANGED WITHOUT  
RE-SUBMISSION FOR APPROVAL.

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

CONSENT AND SUBORDINATION BY LIENHOLDER

Lienholder, as the holder of liens(s) on the fee simple title to the Easement Property, consents to the above grant of an easement, including the terms and conditions of such grant, and Lienholder subordinates its lien(s) to the rights and interests of the easement, such that a foreclosure of the lien(s) will not extinguish the rights and interests of the easement.

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

THE STATE OF TEXAS     §  
  §     ACKNOWLEDGMENT  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on this the \_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_, by \_\_\_\_\_.

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

THE STATE OF TEXAS

§

ACKNOWLEDGMENT

§

COUNTY OF \_\_\_\_\_

§

This instrument was acknowledged before me on this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, \_\_\_\_\_ of \_\_\_\_\_, on behalf of \_\_\_\_\_.

\_\_\_\_\_  
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

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