

August 10, 2023
Item No. 7.5.
Real Estate Contract for Fire Station 7

Sponsor: Jennifer Cain, Director Capital Projects

Reviewed By CBC: City Council

Agenda Caption: Presentation, discussion, and possible action regarding a Real Estate Contract with Jerry P. Windham and Patricia Windham, for the purchase of 4.0 acres of land on Greens Prairie Road for the purchase price of \$784,080.00 for the development of Fire Station 7.

Relationship to Strategic Goals:

Core Services and Infrastructure

Recommendation(s): Staff recommends that the City Council approve and the Mayor sign the Real Estate Contract. Approval will authorize the City Attorney to complete the purchase.

Summary: This property is for the development of a new fire station. Fire Station #7 was part of the 2022 Bond Program approved by voters in November 2022.

The property being considered for purchase is 4.0 acres of land on Greens Prairie Road, across from its intersection with Dalton Drive.

The contract is on file with the City Secretary's Office.

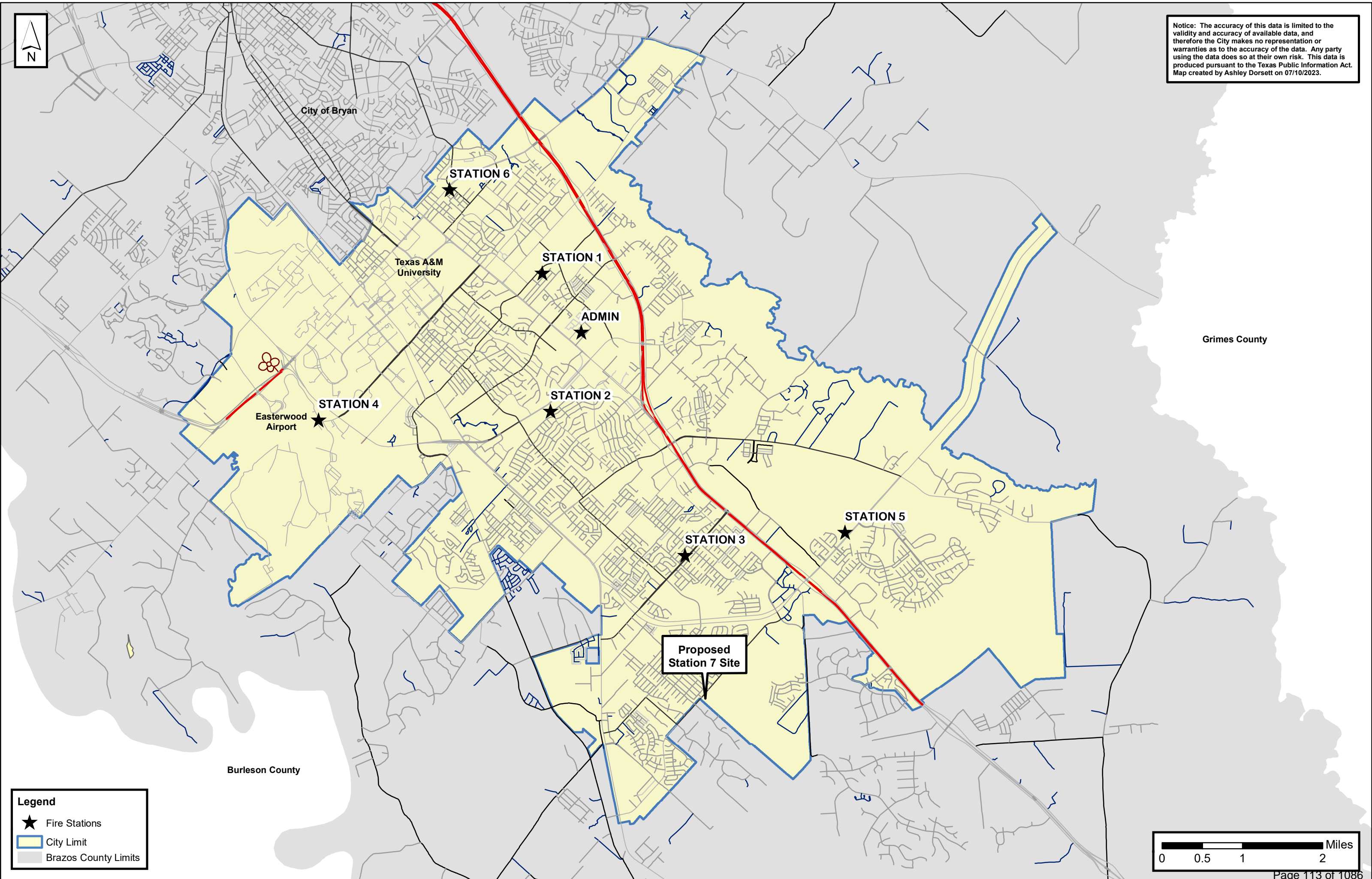
Budget & Financial Summary: The purchase price is \$784,080.00, which is 13% more than the appraised value of \$696,960.00.

A budget of \$18,000,000 is included in the General Government Capital Improvements Projects Fund with \$32,883 expended or committed to date, leaving a balance of \$17,967,117 for this contract and future expenses.

Attachments:

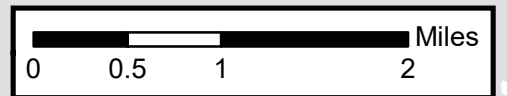
1. Current Fire Stations and NEW #7 Site - 07-10-2023
2. Real Estate Contract Windham 07-27-2023-COCS-Final

Notice: The accuracy of this data is limited to the validity and accuracy of available data, and therefore the City makes no representation or warranties as to the accuracy of the data. Any party using the data does so at their own risk. This data is produced pursuant to the Texas Public Information Act. Map created by Ashley Dorsett on 07/10/2023.



Legend

- ★ Fire Stations
- City Limit
- Brazos County Limits



REAL ESTATE CONTRACT

THIS CONTRACT OF SALE (the “Real Estate Contract”) is made by and between JERRY P. WINDHAM and wife PATRICIA WINDHAM (“SELLER”), and the CITY OF COLLEGE STATION, TEXAS, a Texas Home Rule Municipal Corporation, whose mailing address is P. O. Box 9960, College Station, Brazos County, Texas 77842 (“BUYER”), upon the terms and conditions set forth herein:

ARTICLE I PURCHASE AND SALE

1.1 Property. SELLER agrees to sell and convey by Special Warranty Deed, and BUYER agrees to purchase and pay for:

a fee simple interest in and to all that certain tract or parcel of land containing approximately 4.00 acres of land (to be determined by a new survey), more or less, lying and being situated in the Jesse Bledsoe Survey, Abstract No. 71 in College Station, Brazos County, Texas, being out of and a part of that certain 230.13 acre tract described in the deed to Jerry P. Windham, recorded in Volume 763, Page 656, of the Official Records of Brazos County, Texas; said approximate 4.00 acre tract of land being more particularly depicted on diagram marked **EXHIBIT A** attached hereto and made a part hereof for all intents and purposes, together with: (i) all and singular, the rights, benefits, privileges, easements, tenements, hereditaments, and appurtenances therein or in anywise appertaining to such real property; (ii) all air, water, riparian, and solar rights related thereto; and, (iii) all and singular the rights and appurtenances pertaining thereto, including all right, title and interest of SELLER in and to adjacent roads, streets, alleys, or rights-of-way, (all of such real property, rights, and appurtenances being herein referred to as the "PROPERTY"), for the consideration and subject to the terms, provisions, and conditions set forth herein.

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

1.3 Title Commitment. SELLER has requested LAWYERS TITLE COMPANY OF BRAZOS COUNTY (the “Title Company”) to furnish a Commitment for Title Insurance (“Title Commitment”) to insure title to the BUYER for BUYER’s review together with legible copies of all instruments referred to in the Title Commitment. SELLER shall request the title company to furnish these items to BUYER within fifteen (15) calendar days of the date of this Real Estate Contract.

1.4 Title Review. BUYER shall have a period of fifteen (15) business days (the “Title Review Period”) following the Effective Date of this Real Estate Contract or following the receipt of the Title Commitment and all copies of the instruments referred to in Schedules B and C, whichever

occurs last, to make exceptions by notifying SELLER of BUYER's objection to any item shown on or referenced by those documents ("Title Reviewable Matters"). Any Title Reviewable Matter to which BUYER does not object within the Title Review Period shall be deemed to be accepted by BUYER. If BUYER objects to any such Title Reviewable Matter and gives notice to SELLER as provided herein, SELLER may at SELLER's election, on or before closing, attempt to cure same. If SELLER fails to cure same by the Closing Date, or is unwilling to cure same, the Closing Date shall be extended for five (5) business days for BUYER to either:

- (a) waive such objections and accept such title as SELLER is able to convey; or
- (b) terminate this Real Estate Contract by written notice to the Title Company and to SELLER, in which case BUYER shall receive a prompt refund of the Earnest Money and neither SELLER nor BUYER shall have any further rights or obligations under this Real Estate Contract.

1.5 Survey. BUYER, at its expense, will provide a survey of PROPERTY, showing, without limitation, all adjacent property lines, record ownership of adjoining properties, encroachments, easements, rights-of-way and other encumbrances of record. The survey will reflect any encroachments onto or by PROPERTY onto adjoining properties.

(a) Survey Review Period. BUYER shall have a period of fifteen (15) business days ("Survey Review Period") following the Effective Date of this Real Estate Contract or following the receipt of the Survey, whichever comes last, within which to notify SELLER of BUYER's objection to any item shown on or referenced on the Survey ("Survey Reviewable Matter"). Any Survey Reviewable Matter to which BUYER does not object within the Survey Review Period shall be deemed to be accepted by BUYER. If BUYER objects to any such Reviewable Matter and gives notice to SELLER as provided herein, SELLER may at SELLER's election, on or before closing, attempt to cure same. If SELLER fails to cure same by the Closing Date, or is unwilling to cure same, the Closing Date shall be extended for five (5) business days for BUYER to either:

(i) waive such objections and accept such title as SELLER is able to convey;
or

(ii) terminate this Real Estate Contract by written notice to the Title Company and to SELLER, in which case BUYER shall receive a prompt refund of the Earnest Money and neither SELLER nor BUYER shall have any further rights or obligations under this Real Estate Contract.

(b) Survey Requirements. The survey drawing shall be addressed to and certified in favor of BUYER and LAWYERS TITLE COMPANY OF BRAZOS COUNTY. The field note description along with the survey plat or diagram of PROPERTY as prepared by the surveyor shall be used in the respective conveyance document.

1.6 Environmental Site Assessment. BUYER and BUYER's representatives have SELLER's permission, at BUYER's risk and expense, to enter the PROPERTY at any reasonable time before

closing to inspect the PROPERTY and conduct any and all investigations BUYER deems necessary, including surveys, environmental site assessments, and appraisals. No inspections, assessments or surveys of the PROPERTY by BUYER shall be conducted in a manner which disturbs or interferes with SELLER use of the PROPERTY.

1.7 Taxes. The parties agree that general real estate taxes on the PROPERTY for the then current year and all prior years, interest on any existing indebtedness, and rents, if any, shall be prorated as of the Closing Date and shall be adjusted in cash at closing. SELLER alone shall be liable for any taxes assessed and levied for prior years resulting from any change in use subsequent to the conveyance to BUYER. If the closing shall occur before the tax rate is fixed for the current year, the apportionment of taxes shall be upon the basis of the tax rate for the next preceding year applied to the latest assessed valuation. SELLER agrees and understands that BUYER assumes no responsibility for rollback taxes, if any. BUYER is a tax-exempt entity.

1.8 Feasibility Period.

- (a) BUYER requires adequate time to complete due diligence. As such, BUYER shall have a feasibility period of sixty (60) calendar days from the Effective Date as set forth below (the “Feasibility Period”). BUYER shall have through the last day of the Feasibility Period in which to examine, inspect, and investigate the PROPERTY and, in BUYER’s sole and absolute judgment and discretion, to determine whether the PROPERTY is acceptable to BUYER and to obtain all necessary internal approvals. Notwithstanding anything to the contrary in this Real Estate Contract, BUYER may terminate this Real Estate Contract for any reason whatsoever by giving notice of termination to SELLER on or before the last day of the Feasibility Period. If BUYER does not give the notice of termination, this Real Estate Contract shall continue in full force and effect. If this Real Estate Contract terminates pursuant to this Section 1.8, the Earnest Money shall be refunded to BUYER immediately upon request, and all further rights and obligations of the parties under this Real Estate Contract shall terminate except for all indemnity obligations of the parties hereto or other provisions of this Real Estate Contract that expressly survive the termination of this Real Estate Contract.

- (b) During the pendency of this Real Estate Contract, BUYER shall have reasonable access to the PROPERTY for the purpose of conducting surveys, architectural, engineering, geotechnical, and environmental inspections, and tests (including intrusive inspection and sampling) and any other inspections, studies, or tests reasonably required by BUYER. SELLER shall cooperate with BUYER in connection with BUYER’S due diligence as reasonably requested by BUYER. To the extent allowed under applicable law, the BUYER agrees to indemnify SELLER and to hold harmless and defend SELLER from and against any and all claims, demands, causes of action, damages, liabilities, costs, and expenses including, without limitation, reasonable attorneys’ fees and court costs, which are asserted against, suffered, or incurred by SELLER as a result of any inspection, testing, or examination of the Property by BUYER or its agents or representatives; provided, however, that in no event shall such indemnity apply to either: (i) matters merely discovered by BUYER or any of BUYER’s representatives or agents, but not originally caused or exacerbated by any of BUYER or BUYER’s representatives or agents; or, (ii) to

the extent caused by the gross negligence or willful misconduct of SELLER or any of its representatives or agents. BUYER further agrees that it shall be solely responsible for any and all costs associated with the inspections described in this Section 1.8 and agrees to promptly discharge or contest (after first depositing adequate security therefor with Seller) any liens that are filed against the PROPERTY as a result of such inspections. Promptly following each such inspection, BUYER shall restore the PROPERTY to substantially the same condition as existed prior to such inspections. In the course of its inspections BUYER may make inquiries to third parties including, without limitation, lenders, contractors, parties to service contracts, and municipal, local, and other government officials and representatives, and SELLER consents to such inquiries. The terms of this Section 1.8 shall survive the Closing and any termination of this Real Estate Contract.

(c) The Feasibility Period cannot be extended without the written consent of both parties.

1.9 Conveyance Documents. The sale of the PROPERTY shall be made by the Special Warranty Deed conveying PROPERTY from SELLER to BUYER in the form prepared by BUYER as substantially set forth in **EXHIBIT B**.

ARTICLE II PURCHASE PRICE

2.1 The purchase price for said PROPERTY shall be the sum of SEVEN HUNDRED EIGHTY FOUR THOUSAND EIGHTY AND NO/100 DOLLARS (\$784,080.00).

2.2 The purchase price shall be payable in full at closing.

ARTICLE III EARNEST MONEY AND FEASIBILITY FEE

3.1 Earnest Money. BUYER agrees to deposit with LAWYERS TITLE COMPANY OF BRAZOS COUNTY at 1450 Copperfield Parkway, Suite 100, College Station, Texas 77845-7343 (the "Title Company") as an earnest money deposit, the sum of **TEN THOUSAND AND NO/100 DOLLARS (\$10,000.00)** in cash (the "Earnest Money"). Within seven (7) business days after the full execution of this Real Estate Contract by BUYER and SELLER, BUYER will deposit the sum of **TEN THOUSAND AND NO/100 DOLLARS (\$10,000.00)** with the Title Company. The Title Company shall be directed to invest the Earnest Money in an interest-bearing account mutually acceptable to SELLER and BUYER. Any interest earned on this account shall be added to the Earnest Money and considered a part of the Earnest Money. The Earnest Money shall be credited to the Purchase Price at Closing.

If BUYER terminates this Real Estate Contract at any time for any reason in BUYER's sole discretion by written notice to SELLER on or before the end of the Feasibility Period hereinafter defined, or if the transaction contemplated by this Real Estate Contract fails to close by reason of default or breach of SELLER (or the failure of a condition precedent), the Earnest

Money shall be returned to BUYER. Should BUYER determine not to go forward with purchasing the PROPERTY, BUYER's sole recourse shall be to terminate this Real Estate Contract prior to the expiration of the Feasibility Period and receive the return of the Earnest Money as provided above. If the transaction contemplated by this Real Estate Contract fails to close by reason of default or breach of BUYER, then SELLER shall be entitled to receive and retain from BUYER the Earnest Money as liquidated damages and as SELLER's sole and exclusive remedy against BUYER. Upon BUYER and SELLER'S joint written notice to the Title Company of the termination of this Real Estate Contract, the Title Company shall disburse such Earnest Money and any accrued interest thereon to BUYER and/or SELLER as instructed therein.

3.2 Feasibility Fee. Within seven (7) business days after the full execution of this Real Estate Contract by BUYER and SELLER, BUYER will deliver to SELLER the sum of **TEN AND NO/100 DOLLARS (\$10.00)** in cash ("Feasibility Fee") as the required fee for the sixty (60) day Feasibility Period as defined herein above. This Feasibility Fee is non-refundable, and it will not be a credit to the purchase price.

ARTICLE IV REPRESENTATIONS AND WARRANTIES OF SELLER

4.1 SELLER hereby represents and warrants to BUYER as follows:

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

(b) SELLER has no actual knowledge of any third parties in possession of any portion of the PROPERTY, either as lessees, tenants at sufferance, trespassers, or other persons in possession (excepting utility providers). Additionally, SELLER has no actual knowledge of any action by adjacent landowners, or any natural or artificial conditions upon the PROPERTY, or any significant adverse fact or condition relating to the PROPERTY, which has not been disclosed in writing to BUYER by SELLER, which would prevent, limit, impede or render more costly BUYER's contemplated acquisition and use of the PROPERTY.

(c) SELLER has no actual knowledge of any pending or threatened condemnation or similar proceedings or assessment affecting the PROPERTY or any part thereof. SELLER has no actual knowledge of any such proceedings or assessments contemplated by any governmental entity.

(d) SELLER has no actual knowledge that the PROPERTY does not have full and free access to and from public highways, streets, or roads. SELLER has no actual knowledge that there are pending or threatened governmental proceedings that would impair or result in the termination of such access. If SELLER obtains actual knowledge of any such matter subsequent to the date of this Real Estate Contract that would make any of the representations or warranties untrue if made as of closing, SELLER shall notify BUYER, and BUYER shall have the election of terminating the Real Estate Contract, in which case neither party shall have any further obligation to the other.

(e) The PROPERTY has not been illegally subdivided or otherwise held, managed, or maintained in violation of any federal, state, or local law.

(f) SELLER has no actual knowledge that SELLER has not complied with all applicable laws, ordinances, regulations, statutes, rules and restrictions relating to the PROPERTY or any part thereof.

(g) If SELLER obtains actual knowledge of any such matter subsequent to the date of this Real Estate Contract that would make any of the representations or warranties untrue if made as of closing, SELLER shall notify BUYER, and BUYER shall have the election of terminating the Real Estate Contract, in which case neither party shall have any further obligation to the other.

(h) SELLER has no actual knowledge that the PROPERTY contains any environmental hazard.

(i) SELLER is not a “foreign person” within the meaning of the Internal Revenue Code of 1986, as amended, Sections 1445 and 7701 (i.e., SELLER is not a non-resident alien, a foreign corporation, foreign partnership, foreign trust or foreign estate as those terms are defined in the Code and regulations promulgated thereunder).

(j) To the best of SELLER’s knowledge there are no unpaid charges, debts, liabilities, claims or obligations arising from any construction, occupancy, ownership, use or operation of the PROPERTY, or the business operated thereon, if any, which could give rise to any mechanic’s or materialmen’s or other statutory lien against the PROPERTY, or any part thereof, or for which BUYER will be responsible.

**ARTICLE V
REPRESENTATIONS AND WARRANTIES OF BUYER**

4.1 BUYER represents and warrants to SELLER as of the Effective Date and as of the Closing Date that:

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

**ARTICLE VI
CLOSING**

6.1 The closing shall be held at LAWYERS TITLE COMPANY OF BRAZOS COUNTY, on or before October 20, 2023 (the “Closing Date”). SELLER and BUYER may mutually agree, in writing, to extend the Closing Date. The City Manager is authorized to extend the Closing Date on behalf of the BUYER.

6.2 At the closing, SELLER shall:

- (a) Deliver to BUYER the duly executed and acknowledged Special Warranty Deed prepared by BUYER conveying good and indefeasible title in the PROPERTY, free and clear of any and all liens, encumbrances, except for the Title Reviewable Matters and subject to the BUYER's election to terminate this Real Estate Contract in the event BUYER disapproves of any Title Reviewable Matter, which objection may be cured by SELLER on or prior to the closing as provided by Article I of this Real Estate Contract.
- (b) Deliver possession of the PROPERTY to BUYER.
- (c) Deliver to BUYER, at SELLER'S expense, a Title Policy insuring indefeasible title issued by LAWYERS TITLE COMPANY OF BRAZOS COUNTY, in BUYER's favor in the full amount of the purchase price, insuring BUYER's interest in the PROPERTY subject only to such exceptions as shown on the Title Commitment and not objected to by BUYER prior to closing.
- (d) Pay any and all required property taxes for all prior years and prorated taxes for the current year up to the date of closing.
- (e) Pay any and all homeowner's or maintenance fees, if any, for all prior years and for the current year prorated up to the date of closing.
- (f) Pay the costs to obtain, deliver and record any documents necessary to clear title associated with co-ownership, if any, required at closing.
- (g) Pay the costs to obtain and deliver releases or partial releases of all liens, if any, to be released at closing.
- (h) Pay the title insurance premium.
- (i) Pay the SELLER's expenses and attorney fees.
- (j) Pay all other closing costs customary to SELLER.

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

- (a) Pay the purchase price.
- (b) Pay the cost of the survey of the PROPERTY and pay the additional premium for the survey/boundary deletion in the title policy, if the deletion is requested by BUYER.
- (c) Pay the cost for any and all environmental assessments and other inspections of the PROPERTY, if any.
- (d) Prepare, at its cost, the Special Warranty Deed and pay the cost to record same, provided however the SELLER shall have the right to approve the Deed.

- (e) Pay the escrow fees of the title company and costs of tax certificates.
- (f) Pay the costs to record releases or partial releases of all liens, if any, to be released at closing.
- (f) Pay the costs to obtain, deliver and record all documents other than those to be recorded at SELLER's expense, specifically those associated with clearing title objections related to oil and gas surface waivers and pipeline easements, if any.
- (g) Pay the BUYER's expenses or attorney fees.
- (h) Pay all other closing costs customary to BUYER.

ARTICLE VII SPECIAL CONDITIONS

7.1 The Special Warranty Deed will contain the following reservation and information:

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

GRANTORS waive 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 GRANTORS under the reservations and exceptions expressly listed in this deed or its predecessors in title.

7.2 In the event the sale of the PROPERTY is finalized, BUYER agrees to construct and maintain, at BUYER's expense, an ornamental wood, block or metal fence to screen the remainder of SELLER's property bordering the PROPERTY. BUYER may choose to construct a temporary fence of a different material before constructing the ornamental wood, block or metal fence described above. Before the BUYER opens an entrance on the Greens Prairie Road from the PROPERTY, the BUYER shall complete the construction of the above referenced temporary or permanent fence to prevent the SELLER'S livestock located on the SELLER'S remaining PROPERTY from escaping onto Greens Prairie Road. The design of, and material used in, the construction of any fence constructed on the PROPERTY by BUYER will be at BUYER's sole discretion so long as it prevents the SELLER's livestock located on SELLER's remaining PROPERTY from escaping onto Greens Prairie Road.

**ARTICLE VIII
DEFAULT BY SELLER**

8.1 If this transaction fails to close as a result of SELLER's default, then BUYER shall be entitled, as its sole and exclusive remedy, to: (i) terminate this Real Estate Contract, receive the Earnest Money, and recover from SELLER all of BUYER's out-of-pocket costs and expenses incurred in connection with this Real Estate Contract; or, (ii) enforce specific performance of SELLER's obligations hereunder.

**ARTICLE IX
DEFAULT BY BUYER**

9.1 If this transaction fails to close due to the default of BUYER, then SELLER's sole and exclusive remedy shall be to terminate this Real Estate Contract and retain the Earnest Money as agreed liquidated damages, SELLER waiving all other rights or remedies in the event of such default by BUYER. The parties acknowledge that SELLER's actual damages in the event of such default by BUYER under this Real Estate Contract will be difficult to ascertain, and that such liquidated damages represent the parties' best estimate of such damages. BUYER shall not refuse to consent to the release of the Earnest Money to SELLER if required to do so by the terms of this Real Estate Contract.

**ARTICLE X
MISCELLANEOUS**

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

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

SELLER: JERRY P. WINDHAM and PATRICIA WINDHAM
2000 Windham Ranch Road
College Station, Texas 77845
Telephone: 979-820-0091
Email: windham.ranch@verizon.net

COPY TO: JAY DON WATSON
WATSON LAW FIRM
1450 Copperfield Pkwy, Suite 300
College Station, Texas 77845
Telephone: 979-703-4044
Email: jwatson@watsonlawyers.com

BUYER: City of College Station
City Attorney's Office

P. O. Box 9960
College Station, Texas 77842
Telephone: 979-764-3507
Facsimile: 979-764-3481
Email: alongoria@cstx.gov

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

10.4 Parties Bound. Neither party may assign this Real Estate Contract without the prior written consent of the other. Subject to the foregoing, this Real Estate Contract shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns. The persons executing this Real Estate Contract do so in their capacities as set forth below and in no other capacity whatsoever, and such persons shall have no personal liability for executing this Real Estate Contract in a representative capacity. All such liability is limited to the principal for which they execute this document as a representative.

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

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

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

10.8 Time. Time is of the essence to this Real Estate Contract. However, if this Real Estate Contract requires any act to be done or action to be taken on a date which is a Saturday, Sunday, legal holiday, City holiday for City staff, the Friday after Thanksgiving, or Christmas Eve, such act or action shall be deemed to have been validly done or taken if done or taken on the next succeeding day which is not a Saturday, Sunday, legal holiday, the Friday after Thanksgiving, or Christmas Eve, and the successive periods shall be deemed extended accordingly. The term "business day" excludes Saturdays, Sundays, legal holidays, the Friday after Thanksgiving, and Christmas Eve.

10.9 Insurance Requirements. If and when this Real Estate Contract requires insurance coverage, then the SELLER shall obtain and to cause all of its agents to obtain comprehensive liability insurance coverage, including workers' compensation or a self-insurance plan in lieu thereof, at all times during the term of this Real Estate Contract in the amounts acceptable to the BUYER, with the BUYER to be named as additional insured on certain coverages on a primary and non-contributory basis due to any damage, injury, or death attributed to the SELLER or its agents while performing this Real Estate Contract, and with the SELLER providing waivers of subrogation in favor of the BUYER on all coverages. The SELLER shall submit copies of the endorsements required in this provision with its certificate of insurance.

10.10 No Waiver of Immunity. THE PARTIES EXPRESSLY ACKNOWLEDGE AND AGREE THAT NO PROVISION OF THIS REAL ESTATE CONTRACT IS IN ANY WAY INTENDED TO CONSTITUTE A WAIVER BY EITHER PARTY OF ANY IMMUNITIES FROM SUIT OR LIABILITY THAT EITHER PARTY MAY HAVE BY OPERATION OF LAW. THE BUYER SHALL RETAIN ANY AND ALL GOVERNMENTAL IMMUNITIES IT HAS, OR MAY OBTAIN, SUBSEQUENT TO THE EXECUTION OF THIS REAL ESTATE CONTRACT.

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

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

10.13 Real Estate Contract Execution. This Real Estate Contract by BUYER to purchase the PROPERTY is subject to approval by the City Council of the City of College Station, Texas; such approval indicated by signature of BUYER's representative to this Real Estate Contract. Once this Real Estate Contract is executed by the SELLER, the Effective Date shall be the date this Real Estate Contract is approved by the City Council.

[Signatures Follow on Next Page]

FULLY EXECUTED on this the _____ day of _____, 2023 (“Effective Date”).

SELLER:

BUYER:

CITY OF COLLEGE STATION, TEXAS
a Texas Home Rule Municipal Corporation

JERRY P. WINDHAM
Date: _____

By: _____
JOHN P. NICHOLS, Mayor
Date: _____

PATRICIA WINDHAM
Date: _____

ATTEST:

City Secretary

APPROVED:

BRYAN C. WOODS, City Manager
Date: _____

Assistant City Manager/CFO
Date: _____

City Attorney
Date: _____

Attached Exhibits:
EXHIBIT A – Property Depiction
EXHIBIT B – Special Warranty Deed

THE STATE OF TEXAS §
 § ACKNOWLEDGMENT
COUNTY OF BRAZOS §

This instrument was acknowledged before me on the ____ day of _____, 2023,
by JERRY P. WINDHAM.

NOTARY PUBLIC in and for the State of Texas

THE STATE OF TEXAS §
 § ACKNOWLEDGMENT
COUNTY OF BRAZOS §

This instrument was acknowledged before me on the ____ day of _____, 2023,
by PATRICIA WINDHAM.

NOTARY PUBLIC in and for the State of Texas

THE STATE OF TEXAS §
 § ACKNOWLEDGMENT
COUNTY OF BRAZOS §

This instrument was acknowledged before me on the ___ day of _____, 2023,
by JOHN P. NICHOLS, Mayor of the CITY OF COLLEGE STATION, TEXAS, a Texas Home
Rule Municipal Corporation, on behalf of said municipality.

NOTARY PUBLIC in and for the State of Texas

Exhibit "A" - 4.0 acres

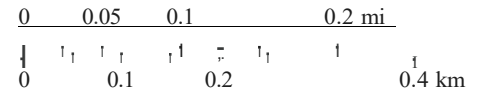


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D Abstracts

D Parcels

1:9,028



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EXHIBIT B - SPECIAL WARRANTY DEED

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

SPECIAL WARRANTY DEED

DATE: _____, 2023

GRANTORS: JERRY P. WINDHAM and PATRICIA WINDHAM

GRANTORS' MAILING ADDRESS: 2000 Windham Ranch Road
(including County) Brazos County
College Station, Texas 77845

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:

Being all that certain tract or parcel of land containing 4.00 acres of land, more or less, lying and being situated in the Jesse Bledsoe Survey, Abstract No. 71 in College Station, Brazos County, Texas, being out of and a part of that certain 230.13 acre tract described in the deed to Jerry P. Windham, recorded in Volume 763, Page 656, of the Official Records of Brazos County, Texas, said 4.00 acre tract being more particularly described by metes and bounds and shown on survey diagram marked **EXHIBIT A** attached hereto and made a part hereof for all intents and purposes.

PROPERTY DESCRIPTION will be amended to reflect the new survey.

RESERVATIONS FROM AND EXCEPTIONS TO CONVEYANCE AND WARRANTY:

1. Right of Way Easement dated March 10, 1947, from Fred L. Cavitt to Sinclair Refining Company, recorded in Volume 132, Page 90, Deed Records of Brazos County, Texas. ASSIGNED by ARCO Transportation Alaska, Inc. formerly known as ARCO Pipe Line Company to ARCO Pipe Line Company, in Assignment of Right of Way Easements dated effective March 1, 1991, recorded in Volume 1559, Page 175, Official Public Records of Brazos County, Texas. ASSIGNED by ARCO Pipe Line Company to CITGO Products Pipeline Company, in Assignment and Assumption Agreement dated effective September 30, 1994, recorded in Volume 2217, Page 231, Official Public Records of Brazos County, Texas. AMENDED by Amendment to Right of Way Agreement dated May 9, 2000, executed by and between CITGO Products Pipeline Company and Jerry P. Windham and Patricia Windham, recorded in Volume 3820, Page 3, of the Official Public Records of Brazos County, Texas.
2. Easement and Right of Way Agreement dated October 19, 1999, from Jerry P. Windham and Patricia Windham to Williams Communications, Inc. dba Vyvx, Inc. in Texas, recorded in Volume 3638, Page 42, of the Official Public Records of Brazos County, Texas. AMENDED by Amendment of Easement and Right of Way Agreement dated May 8, 2000, executed by Jerry P. Windham and Patricia Windham, recorded in Volume 3803, Page 335, Official Public Records of Brazos County, Texas.
3. Right of Way Easement dated September 29, 1999, from Jerry P. Windham to Wellborn Special Utility District, recorded in Volume 3645, Page 282, Official Public Records of Brazos County, Texas.
4. Public Utility Easement dated March 16, 2021, from Jerry P. Windham and Patricia Windham to City of College Station, Texas recorded in Volume 16820, Page 171, Official Public Records of Brazos County, Texas.
5. Temporary Construction Easement dated March 16, 2021, from Jerry P. Windham and Patricia Windham to City of College Station, Texas recorded in Volume 16820, Page 181, Official Public Records of Brazos County, Texas.
6. Mineral reservation set out in Warranty Deed dated December 10, 1981, from Nelson D. Durst and Henry Bl Clay, Joint Independent Executors of the Estate of Edith Cavitt, Deceased, and Ethel Cavitt, Deceased, conveying the surface estate to Bernath Concrete Products Company and the mineral estate to Jerry Windham, Individually, recorded in Volume 502, Page 672, Deed Records of Brazos County, Texas.

7. Oil, Gas and Mineral Lease dated August 15, 1977, from Nelson D. Durst, Guardian of the Estates and Persons of Edith Cavitt and Ethel Cavitt to Cayuga Exploration, Inc., recorded in Volume 27, Page 530, Oil and Gas Lease Records of Brazos County, Texas.
8. Oil, Gas and Mineral Lease dated September 21, 1990 from Jerry P. Windham and wife, Patricia A. Windham, Brian Neil Windham, Ray Allen Windham, Sandra Gail Windham and James Stegall, Trust Officer for First City, Texas of Bryan, Custodian for Ray Allen Windham, Brian Neil Windham and Sandra Gail Windham to Union Pacific Resources Company, recorded in Volume 1222, Page 822, Official Records of Brazos County, Texas.
9. Oil, Gas and Mineral Lease dated December 21, 1993 from Jerry P. Windham and wife, Patricia A. Windham, Brian Neil Windham, Ray Allen Windham, Sandra Gail Windham and James Stegall for Victoria Bank & Trust, Custodian for Ray Allen Windham, Brian Neil Windham and Sandra Gail Windham to Heritage Energy Corporation, recorded in Volume 1996, Page 246, Official Public Records of Brazos County, Texas.
10. Oil, Gas and Mineral Lease dated December 10, 1993, from First Presbyterian Church of Bryan to Heritage Energy Corporation, recorded in Volume 2032, Page 291, Official Public Records of Brazos County, Texas.
11. Oil, Gas and Mineral Lease dated December 10, 1993, from Brazos Valley Rehabilitation Center, Inc. to Heritage Energy Corporation, recorded in Volume 2032, Page 295, Official Public Records of Brazos County, Texas.
12. Oil, Gas and Mineral Lease dated December 10, 1993, from Boy's Club of Bryan, Inc. to Heritage Energy Corporation, recorded in Volume 2032, Page 299, Official Public Records of Brazos County, Texas.
13. Oil, Gas and Mineral Lease dated December 10, 1993, from Austin College to Heritage Energy Corporation, recorded in Volume 2084, Page 279, Official Public Records of Brazos County, Texas.
14. Oil, Gas and Mineral Lease dated November 10, 1994, from Presbyterian Children's Home and Service Agency to Apache Corp., recorded in Volume 2278, Page 144, Official Public Records of Brazos County, Texas.
15. Oil, Gas and Mineral Lease dated November 10, 1994, from Methodist Retirement Services, Inc. to Apache Corp., recorded in Volume 2337, Page 152, Official Public Records of Brazos County, Texas.
16. Oil, Gas and Mineral Lease dated November 10, 1994, from Methodist Retirement Communities to Apache Corp., recorded in Volume 2831, Page 279, Official Public Records of Brazos County, Texas.

17. Memorandum of Oil and Gas Lease dated June 15, 2015, from Jerry Windham and wife, Patricia Windham to Juneau Energy, LLC, recorded in Volume 12795, Page 249, Official Public Records of Brazos County, Texas.
18. Memorandum of Oil and Gas Lease dated April 1, 2019, from Jerry Windham and wife, Patricia Windham to JETX Energy, LLC, recorded in Volume 15668, Page 206, Official Public Records of Brazos County, Texas.

RESERVATIONS FROM AND EXCEPTIONS TO CONVEYANCE AND WARRANTY may be amended to delete or add exceptions once the new survey is received and delivered to the title company for review and an updated title commitment is issued based on the new survey.

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

GRANTORS waive 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 GRANTORS under the reservations and exceptions expressly listed in this deed or its predecessors in title.

GRANTORS, for the consideration and subject to the reservations from and exceptions to conveyance and warranty, GRANT, SELL, and CONVEY 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. GRANTORS binds themselves, their successors and assigns, to warrant and forever defend all and singular the property to GRANTEE and GRANTEE's successors and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through, or under GRANTOR but not otherwise, and except as to the reservations from and exceptions to conveyance and warranty recited above.

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

JERRY P. WINDHAM

PATRICIA WINDHAM

THE STATE OF TEXAS §
 § ACKNOWLEDGMENT
COUNTY OF BRAZOS §

This instrument was acknowledged before me on this the ____ day of _____, 2023, by JERRY P. WINDHAM.

NOTARY PUBLIC in and for the State of Texas

THE STATE OF TEXAS §
 § ACKNOWLEDGMENT
COUNTY OF BRAZOS §

This instrument was acknowledged before me on this the ____ day of _____, 2023, by PATRICIA WINDHAM.

NOTARY PUBLIC in and for the State of Texas

PREPARED IN THE OFFICE OF:
City of College Station
City Attorney’s Office
P. O. Box 9960
College Station, Texas 77842-9960

RETURN ORIGINAL DOCUMENT TO:
City of College Station
City Attorney’s Office
P. O. Box 9960
College Station, Texas 77842-9960