

September 11, 2025
Item No. 9.5.
Priority Power Management, LLC Real Estate Contract

Sponsor: Michael Ostrowski, Chief Development Officer

Reviewed By CBC: N/A

Agenda Caption: Presentation, discussion, and possible action regarding a real estate contract with Priority Power Management, LLC for the sale of approximately 200 acres of land in the Midtown Business Park at the intersection of Midtown Drive and Corporate Parkway in the amount of \$150,000 per acre. The final square footage of the property and the City's remaining property, if any, will be identified on the approved replat.

Relationship to Strategic Goals:

- Diverse & Growing Economy

Recommendation(s): Staff recommends approval of the real estate contract.

Summary: The City of College Station owns approximately 300 acres of land east of where Corporate Parkway terminates into Midtown Drive. Of this, around 200 acres are developable, with the remainder being natural areas. This property, zoned M-1 Light Industrial, is slated to become the next business/industrial park for the City of College Station, known as the Midtown Business Park. The M-1 Light Industrial district allows for a variety of uses, including manufacturing, processing, fabrication, assembly, packaging, storage, warehousing, distribution, and others. Priority Power Management, LLC (Priority Power) has submitted an offer to purchase up to all the available developable acres for a data center project. The project would include a 1-3 story data center or multiple data centers on the property. The size of the project will be determined based on how much power can be secured, which will not be known until a power study is complete. If the power study determines that enough power cannot be secured, Priority Power will not move forward with the project.

Priority Power, established in 2001 and based in Texas, is a full-service energy management firm. They provide services related to energy procurement, risk management, interconnection services, and renewable energy solutions, managing energy for over 8,500 clients.

The City has had this property for sale for several years. However, the property only has roadway access and utility infrastructure on Midtown Drive, limiting the sale of lots compared to other business parks where transportation networks and utility infrastructure are already established, such as the College Station Business Center. The Thoroughfare Plan for the city has identified Corporate Parkway as extending through the site to connect with Pebble Creek Parkway at William D Fitch Parkway. With this extension, utilities would likely be installed along this route and branch off where needed to serve future development. The estimated cost for the road and utility extension is \$25-\$30 million. Additionally, the property's lack of highway visibility limits its desirability for businesses seeking that amenity. If this project moves forward, the extension of Corporate Parkway and utilities would not need to occur, as this use would not generate a significant amount of traffic.

The sale for this development has several advantages, including:

- Land Sales Revenue: An approximate \$30 million sales price if the company purchases all 200 acres.
- Ongoing Tax and Other Revenue: The development of a data center project with a capital expenditure of \$1-\$4 billion, depending on the size of the development, resulting in \$10 to \$22 million in annual revenue to the city's general fund through property tax, sales tax, and electric fund transfer.
- Infrastructure Cost Savings: As this would be a single development with limited traffic, there would be no need to extend Corporate Parkway through the property, along with the associated utilities, creating an estimated savings of \$25-\$30 million.

While the data center project offers several advantages, there are also concerns that need to be addressed. These include:

- Noise: Data centers have raised concerns about noise in various communities, leading to the establishment of best practices to ensure these facilities are located a certain distance from residential areas. Guidelines recommend placing such facilities at least 200 feet away from any residential zones. To address this concern, the City would maintain ownership of the greenway portion between the nearest residential subdivision and the subject property, creating a 600-900-foot buffer between the property and the nearest residential subdivision. This does not include the additional setback the project would have on their property. Through the agreements, the City will be able to set additional minimum setback requirements for the project. Additionally, as part of the contract, Priority Power will be required to conduct a sound study to ensure the project complies with City ordinances regarding noise. The noise ordinance limits daytime and nighttime noise to 63 and 56 decibels, respectively. Finally, advancements in data center technologies have led to noise reduction through the use of new fans and alternative cooling devices, such as liquid-cooled facilities.
- Power: As part of this project, the City and Priority Power will need to enter into a separate power supply agreement outlining the terms and conditions for purchasing power. If an agreement cannot be reached, either party may terminate the contract.
- Water: As part of this project, the City and Priority Power will need to enter into a separate water supply agreement outlining the terms and conditions for purchasing water. If an agreement cannot be reached, either party may terminate the contract. Since this area was designated as an industrial park, it was planned for a specific usage of water by the users who would locate at the property. In conversations with Priority Power, they have confirmed that they do not plan to exceed the initially planned water consumption for this area.

As it relates to the real estate contract:

- Priority Power would pay \$150,000 per acre, totaling approximately \$30 million if all of the acreage is purchased.
- If not all of the developable acreage is purchased, the City would retain the property along Midtown Drive for future development opportunities.
- The feasibility period would be 180 days with a \$1,000 non-refundable fee and \$15,000 earnest money. A first extension could be exercised for another 180 days for an additional \$10,000. A second extension could then be exercised for an additional 360 days for \$200,000, of which \$50,000 would be non-refundable.

- Separate power and water supply agreements would need to be agreed to by both parties.
- The City would maintain a right to repurchase the property at the sales price should the development not commence within 365 days after closing.
- Priority Power will complete a sound study to ensure the development complies with City ordinances.

In conclusion, before any specific project details can be determined, a power supply study must be completed to assess the available power to the site. Once this is established, the scope of the project can be designed. Overall, the City stands to gain numerous benefits, including significant land sales revenue, ongoing tax and other revenue, and infrastructure cost savings. However, it is crucial to address concerns related to potential noise, power, and water. Through the preservation of a large vegetative buffer area, along with subsequent studies and agreements, many of these concerns can be mitigated.

In addition to the attached real estate contract, a subject site map is included that illustrates the site boundaries along with measured distances to adjacent residential properties. A conceptual site plan is also provided, depicting a potential full build-out of a 600MW facility. This concept includes two, two-story buildings. If only a portion of the electrical capacity can be secured, the scale of the buildings would be reduced accordingly. The actual amount of electrical capacity available will not be known until the completion of the study.

Budget & Financial Summary: Real Estate Contract

- **Purchase Price:** Priority Power would pay \$150,000 per acre, totaling approximately \$30 million if all of the acreage is purchased.
- **Feasibility Fee:** The feasibility period would be 180 days with a \$1,000 non-refundable fee and \$15,000 earnest money. A first extension could be exercised for another 180 days for an additional \$10,000. A second extension could then be exercised for an additional 360 days for \$200,000, of which \$50,000 would be non-refundable.

Project

- **Ongoing Tax and Other Revenue:** The development of a data center project with a capital expenditure of \$1-\$4 billion, depending on the size of the development, resulting in \$10 to \$22 million in annual revenue to the city's general fund through property tax, sales tax, and electric fund transfer.
- **Infrastructure Cost Savings:** As this would be a single development with limited traffic, there would be no need to extend Corporate Parkway through the property, along with the associated utilities, creating a savings of nearly \$25-\$30 million.

Attachments:

1. PPM Real Estate Contract-City of College Station 09-05-2025
2. Midtown Business Park Subject Property Map
3. Conceptual Site Plan

REAL ESTATE CONTRACT

THIS CONTRACT OF SALE ("Real Estate Contract") is made by and between the **CITY OF COLLEGE STATION, TEXAS**, a Texas Home Rule Municipal Corporation, situated in Brazos County, Texas ("Seller"), and **PRIORITY POWER MANAGEMENT, LLC**, a Texas limited liability company ("Buyer"), upon the terms and conditions set forth herein.

RECITALS

A. Seller is the owner of a fee simple interest in and to all those certain lots, tracts or parcels of land, lying and being situated in Brazos County, Texas and being approximately 200 acres within A000901, Thomas Carruthers, Tracts 3.10 and 4.4 & A005401 R Stevenson, as described in **EXHIBIT A** (the "Total Land"), which is intended to be separated into one or more parcels of land pursuant to the Plat (defined below).

ARTICLE I PURCHASE AND SALE

1.1 Seller agrees to sell and convey by Special Warranty Deed and Buyer agrees to purchase and pay for, for the consideration and subject to the terms, provisions, and conditions set forth herein:

All that certain tract of land being a portion of the Total Land to be determined by the New Survey as described below (the "Land" or "Property") located in College Station, Brazos County, Texas, together with all and singular the rights and appurtenances pertaining to the Land, including all right, title and interest of Seller in and to strips, gaps, gores, adjacent roads, streets, alleys or rights-of-way (the "Property").

1.2 Purchase Price. The purchase price for said Property shall be in the amount of **ONE HUNDRED AND FIFTY THOUSAND AND NO/100DOLLARS (\$150,000.00) PER ACRE** (the "Purchase Price"). The final acreage of the Land shall be identified on the approved New Survey before closing. The Purchase Price, less the Earnest Money (defined below) and, if deposited, the **First Extension Fee** and the **Second Extension Fee**, and plus or minus the prorations provided for herein, shall be payable in full at Closing.

1.3 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 Seller's representatives to this Real Estate Contract.

1.4 Title Commitment. The Seller will provide a Commitment for Title Insurance (the "Title Commitment") to insure title to the Buyer at Buyer's option pursuant to the terms of this Real Estate Contract; said Title Commitment will then be attach hereto as **EXHIBIT B** and made a part hereof for all intents and purposes. Buyer may at its cost order a new or updated Commitment for Title Insurance from the Title Company (together with copies of the exception documents referenced therein, the "New Title Commitment").

1.5 Existing Survey. The Seller has provided a copy of the existing survey of the Property as shown in **EXHIBIT A** (the "Existing Survey").

1.6 Buyer may at its cost order a Phase 1 Environmental Site Assessment.

1.7 New Survey. Buyer will at its cost order and obtain a new or updated survey of the Total Land (the "New Survey"), which will show the proposed boundaries of, state the proposed number of gross acres in, and provide the proposed metes and bound legal description of the Land and any portion of the Land not to be purchased by Buyer ("Retained Land"). Buyer shall deliver a copy of the New Survey to Seller, and Buyer and Seller shall reasonably cooperate in good faith to determine the metes and bounds legal descriptions of the Land and any Retained Land at least thirty (30) days before the expiration of the Feasibility Period. If any Retained Land exists, a portion of the Retained Land shall be located along the frontage of Midtown Drive, which shall both allow Seller to market and sell the Retained Land for additional development and allow Buyer access to the Land from the frontage of Midtown Drive. The New Survey shall be considered the "Survey" for all purposes under this Real Estate Contract upon Buyer's and Seller's approval, and, upon completion of the New Survey the metes and bounds description of the Land prepared in connection with the New Survey will be used to describe the Land in all closing documents used to consummate the transaction contemplated by this Real Estate Contract.

1.8 Taxes. The parties agree that general real estate taxes on the Property for the then current year shall be prorated as of the Closing Date and shall be adjusted in cash at the closing. If the current tax bill is not available at Closing, then the proration shall be made on the basis of the most recent ascertainable tax bill and will be adjusted by Buyer and Seller once the final tax amounts are available. Seller is a tax-exempt entity. Buyer agrees and understands that Seller assumes no responsibility for rollback taxes, if any. The terms of this Section 1.8 shall survive Closing.

1.9 Feasibility.

(a) Feasibility Period. Buyer requires adequate time to complete due diligence. Buyer shall have a **feasibility period of one hundred and eighty (180) days from Opening of Escrow** as set forth below (the "Feasibility Period") to conduct pre-marketing studies, engineering, environmental, feasibility, zoning, land plan or land use studies or reviews, inspections, investigations, and reviews of the Property. Buyer and its employees, agents and/or independent contractors may come upon said Property at any time during the Feasibility Period in connection with the Buyer's review of the Property **(provided that Buyer shall indemnify and hold harmless Seller from and against any and all liability, responsibility or damages incurred or sustained by Seller as a result of the actions of Buyer, its employees, agents or independent contractors in connection therewith, but not the mere discovery of an existing condition on the Property or to the extent caused by Seller's gross negligence or willful misconduct)**. Buyer shall, at its expense, promptly repair and restore any damage to the Property caused by Buyer and/or its agents in connection with such inspections, studies, or tests. **Buyer hereby agrees to indemnify, defend, and hold Seller harmless from and against all loss, cost, damage, claims or cause of action actually incurred by Seller or asserted against Seller arising from personal injury or**

Property damage caused by actions taken at the Property by Buyer or its agents, engineers or consultants, but not the mere discovery of an existing condition on the Property or to the extent caused by Seller's gross negligence or willful misconduct. Seller acknowledges that Buyer intends to conduct an investigation of the Property, which may include examination of any and all documentation with respect to the Property, examination of the title to the Property, conduct tests to determine the presence or absence of hazardous waste, asbestos, radon and other similar materials and substances, and determine the compliance of the Property with all applicable laws, rules, codes and regulations. Notwithstanding anything contained herein to the contrary, Buyer's repair and indemnification obligations pursuant to this Section shall survive closing hereunder or termination of this Real Estate Contract (regardless of the reason for termination), as the case may be. Within ten (10) business days after the Opening of Escrow, Seller shall provide to Buyer copies of any previous environmental assessments, geotechnical reports, studies, or analyses made on or relating to the Property, any plats of the Property, copies of current utility capacity letters for the Property, and any other items reasonably requested by Buyer (collectively, the "Due Diligence Items").

(b) Feasibility Period Extensions.

- i. **First Extension.** Before the end of the Feasibility Period, Buyer may elect in writing to extend the Feasibility Period for an additional one hundred and eighty (180) days (the "First Extension"). If Buyer elects such First Extension, Buyer will deposit an additional **TEN THOUSAND AND NO/100 DOLLARS (\$10,000.00)** ("First Extension Fee") with Title Company on or before the expiration of the Feasibility Period. The First Extension Fee shall be non-refundable to Buyer (except in the event of a default by Seller under this Real Estate Contract) and shall be applied to the Purchase Price at Closing.
- ii. **Second Extension.** Before the end of the Feasibility Period as extended by the First Extension, Buyer may elect in writing to extend the Feasibility Period for an additional three hundred and sixty (360) days (the "Second Extension"). If Buyer elects such Second Extension, Buyer will deposit an additional **TWO HUNDRED THOUSAND AND NO/100 DOLLARS (\$200,000.00)** with Title Company on or before the expiration of the Feasibility Period (as extended by the First Extension), and is in two parts as an extension fee and additional earnest money as described below:

(a) Second Extension Fee. FIFTY THOUSAND AND NO/100 DOLLARS (\$50,000.00) is the "Second Extension Fee," of which shall be non-refundable to Buyer (except in the event of a default by Seller under this Real Estate Contract) and shall be applied to the Purchase Price at Closing; and

(b) Additional Earnest Money. ONE HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$150,000.00) is the "Additional Earnest Money"; and together with the Initial Earnest Money, the "Earnest Money" of which shall be refundable to Buyer upon termination or expiration of this Agreement. Following the Second Extension, 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.

iii. **Feasibility Period Extension Agreements.** The City Manager has the authority to agree to and execute any additional Feasibility Period extension agreements. From and after the date on which Buyer elects to extend the Feasibility Period pursuant to this Section, if ever, the term "Feasibility Period" shall mean the Feasibility Period, as extended.

(c) Buyer's Notice to Accept Property or Not or Extend. On or before the expiration of the Feasibility Period, Buyer shall provide the Seller and the Title Company with written notice that either **(i) Acceptable:** the Property is acceptable, and Buyer desires to consummate the transaction contemplated herein and Buyer's election to proceed to close the transaction contemplated with respect to the Property shall constitute Buyer's election that the Property is acceptable, subject to the terms and conditions of this Real Estate Contract, **(ii) Extension:** Buyer intends to proceed with the Feasibility Period Extension and deposit an Extension Fee or Additional Earnest Money as defined and described in this Agreement, or **(iii) Not Acceptable:** the Property is not acceptable and Buyer desires to terminate this Real Estate Contract. This Real Estate Contract shall be deemed terminated upon Buyer's notification in writing that the Property is not acceptable and Buyer desires to terminate this Real Estate Contract.

(d) Failure to Notify. Buyer's failure to notify Seller during the Feasibility Period, in writing, that the Property is not acceptable or that Buyer intends to proceed with the Feasibility Period Extension, shall mean the Property is not acceptable and this Real Estate Contract is deemed terminated.

1.10 Government Approvals.

(a) Buyer acknowledges that Seller is a Texas Home Rule Municipal Corporation with regulatory authority over land use and building applications, including subdivision, zoning, development, and construction on real property within College Station city limits.

(b) THE BUYER RECOGNIZES AND EXPRESSLY AGREES THAT THE SELLER IS NOT OBLIGATED BY VIRTUE OF THIS REAL ESTATE CONTRACT TO APPROVE ANY APPLICATION OR REQUEST FOR GOVERNMENTAL APPROVALS WHICH SELLER OR BUYER MAY

SUBMIT TO A GOVERNMENTAL BODY AND CERTIFIES AND ACKNOWLEDGES THAT SELLER HAS NOT MADE ANY REPRESENTATIONS TO OR AGREEMENTS WITH BUYER THAT SELLER WILL GRANT ANY GOVERNMENTAL APPROVALS SUBMITTED BY BUYER OR SELLER.

1.11 Plat. Buyer, at Buyer's expense, shall cause a plat with respect to the Total Land (the "Plat") to be prepared so that the Land and any Retained Land (as shown on the New Survey) are separate, distinct tax parcels that satisfy all applicable governmental regulations and shall depict the location of the Land and the Retained Land within the Total Land, the boundary and layout of the Land and the Retained Land to be determined by Buyer with Seller's written approval, such approval not to be unreasonably withheld, conditioned or delayed. The approval of the Plat shall be completed and recorded against the Property before Closing so that the Land and the Retained Land constitute legally subdivided parcels and separately assessed tax parcels from and after Closing. Buyer agrees to (i) keep Seller reasonably informed on the status of the Plat, and (ii) provide to Seller copies of any preliminary or final plat before submitting the same so Seller can review and approve of the plat and encumbrances thereon, such approvals not to be unreasonably withheld, conditioned or delayed. Once approved, Seller shall promptly execute, file and/or record the Plat before or at Closing (and in no event later than Closing). Buyer hereby consents to Seller recording the approved Plat against the Property before or at Closing, and the Plat shall be a Permitted Exception. The timely filing of the Plat shall be a condition to Buyer's obligation to proceed to Closing. The parties agree that Seller shall be permitted to reserve a public utility easement for the benefit of the City of College Station within the Total Land for uses consistent with a public utility easement across the Total Land in a location to be mutually determined before Plat approval. The City Manager has the authority to agree to and execute any extension agreements under this section.

1.12 Special Warranty Deed. The sale of the Property shall be made by a Special Warranty Deed in the form prepared by Seller attached hereto as **EXHIBIT C**.

1.13 Title and Survey Review.

(a) Review of Title and Survey. Buyer shall have a period of time ("Title Review Period") commencing on the Effective Date of this Agreement and ending ten (10) business days after the first date on which Buyer shall have received both the Title Commitment (or subsequent New Title Commitment) and the Survey (or subsequent New Survey), in which to notify Seller in writing of any objections Buyer has to any matters shown on the Title Commitment or the Survey. All objections raised by Buyer in the manner herein provided are hereafter called "Objections." Seller shall have the option, but not the obligation, to remedy or remove all Objections (or agree irrevocably in writing to remedy or remove all such Objections at or before Closing) during the period of time ("Cure Period") ending on the ten (10) business days after Seller's receipt of Buyer's notice of such Objections, and, if Seller elects to cure or remove any such Objections, it shall be a condition precedent to Buyer's obligation to acquire the Property that Seller cures such Objections (including any Mandatory Cure Items) prior to Closing to Buyer's reasonable satisfaction. Except to the extent that Seller cures, or agrees in

writing to cure, such Objections during the Cure Period, Seller shall be deemed to have elected not to cure such matters (other than any Mandatory Cure Items, which shall be cured by Seller). In the event Seller is, or is deemed to be unable or unwilling to remedy or cause the removal of any Objections (or agree irrevocably to do so at or before Closing) within the Cure Period, then either (i) this Agreement may be terminated in its entirety by Buyer by giving Seller written notice to such effect during the period of time ("Termination Period") ending five (5) business days following the end of the Cure Period, whereupon the Title Company shall return the Earnest Money to Buyer, except as herein otherwise provided, and thereafter the parties hereto shall be released of further obligations hereunder; or (ii) any such Objections may be waived by or on behalf of Buyer, with Buyer deemed to have waived such Objections if notice of termination is not given within the Termination Period. Any title encumbrances or exceptions which are set forth in the Title Commitment or the Survey and to which Buyer does not object within Title Review Period (or which are thereafter waived or deemed to be waived by Buyer) shall be deemed to be permitted exceptions ("Permitted Exceptions") to the status of Seller's title to the Property. Nothing in the foregoing shall be deemed a waiver of Seller's obligation to cure all Mandatory Cure Items if Buyer does not terminate this Real Estate Contract as a result of Seller's failure to timely cure the same.

- (b) Mandatory Cure Items.** Any other provision herein to the contrary notwithstanding, (i) any lien or encumbrance affecting the Property that constitutes, secures or evidences an outstanding obligation of Seller under any mortgage or deed of trust or any other monetary lien encumbering title to the Property; (ii) any mechanic's or materialman's lien arising by, through or under Seller; (iii) any unpaid ad valorem taxes and assessments for any years prior to the year of Closing; (iv) any exceptions or encumbrances created by, through or under Seller after the effective date of the New Title Commitment without Buyer's consent and (v) all matters set forth in Schedule C of the New Title Commitment (collectively, the "Mandatory Cure Items"), shall be satisfied, cured, or removed by Seller at or before the Closing.

1.14 Power Supply and Water.

- (a) CCN.** Buyer and Seller acknowledge the Land is within the Seller's water and electric utility service area or Certificate of Convenience and Necessity (CCN). Buyer and Seller acknowledge that the Seller has the exclusive right to serve customers in its CCN. These terms below apply to any utility the Seller provides, specifically the electric utility and water utility.
- (b) Power Supply.** Buyer and Seller acknowledge Buyer's intended use consumes considerable amounts of power that the Seller does not supply now in the intended quantities and cannot be liable to purchase without firm agreements from the Buyer to assume its share of risk and liability of the intended power purchase and related infrastructure, including but not limited to its share of risk and liability associated with power contracted for in the wholesale market for the Property with specific risks Buyer

may agree to fully be responsible for as negotiated and agreed to in separate agreement(s) by the parties.

(c) Separate Agreements. Buyer and Seller, during the Feasibility Period and before Closing, will in good faith negotiate and execute an agreement or multiple agreements for water utility service, electric utility service, power supply, and agreements for payment to the City for water utility service, electric utility service and power supply to the Land and its intended improvements.

(d) Termination. If Buyer and Seller cannot negotiate and execute agreements with terms, at minimum, that include all the following items listed in the subparts below, then this Agreement may be terminated by either party in writing any time before Closing. Any termination under this section, for the avoidance of doubt is not a breach of the Agreement, and neither party shall have any rights to pursue any type of claim or action for specific performance. If the Seller terminates under this section any Feasibility Fee, First Extension Fee or Second Extension Fee is refunded to the Buyer. Any agreement must include the following terms and conditions:

- i. The Buyer to purchase electric power and water from the Seller.
- ii. The Seller establishes the applicable fees, charges, taxes, rate classes and tariffs for the purchased electric power and water.
- iii. The Seller's status as a non-deregulated municipal owned utility is not at risk, put in jeopardy, challenged, or its credit rating or status adversely affected.
- iv. That all the risk, expense, responsibility and burden for payment and security obligations to any power generator or any power supplier for payment of the power shall be placed with the Buyer.
 - i. The parties will negotiate in good faith the terms of deposit or security in benefit of Seller, and any agreed-to mechanism for return of any deposits or securities. Specifically, the parties will negotiate a mechanism to return any deposits or securities upon power reaching the required level of operation and issuing new security in benefit of Seller, such as an irrevocable letter of credit, to protect Seller from the risk of wholesale market exposure in the event of Buyer failing to pay for power, ceasing to exist or to operate at the required level of power consumption, which will also have a mechanism to scale down the letter of credit based on operation.
- v. Details of the terms of payment of all fees, taxes, rate classes and tariffs to the Seller for all power and water and the related infrastructure.
- vi. Any agreement contains adequate language that will fully and completely assign the agreement and subsequent agreements to subsequent purchasers or users. The Seller retains full authority to not consent to the assignment if said assignment, in the Seller's sole reasonable discretion, may increase the Seller's risk exposure, put into jeopardy or negatively affect the Seller's current credit rating or financial position, or otherwise adversely affect the Seller's status as a utility.

- vii. Minimum setbacks for buildings, maximum heights of buildings, and non-residential architectural standards.
- viii. Details of the terms of RT energy imbalance.
- ix. Buyer will be permitted to maintain emergency back-up generation to maintain continuity of service during an outage at the Property and for the project. The back-up generation shall only be used for regular maintenance purposes, unscheduled emergency purposes, grid failure, or similar outage situations related to maintaining continuity of service during an outage.

ARTICLE II EARNEST MONEY

2.1 Initial Earnest Money. Within three (3) business days after the full execution of this Real Estate Contract by Buyer and Seller, 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 **FIFTEEN THOUSAND AND NO/100 DOLLARS (\$15,000.00)** in cash (the "Initial Earnest Money"). The date on which such Initial Earnest Money is deposited with the Title Company is referred to herein as "**Opening of Escrow**".

2.2 Feasibility Fee. The sum of **ONE THOUSAND AND NO/100 DOLLARS (\$1,000.00)** of the Initial Earnest Money ("Feasibility Fee") shall be non-refundable as the required fee for the one hundred and eighty (180) day Feasibility Period as defined herein above. This Feasibility Fee is non-refundable, but will be credited to the Purchase Price at Closing.

2.4 Buyer Termination During Feasibility Period. If Buyer terminates this Real Estate Contract for any reason in Buyer's sole discretion by written notice to Seller on or before the end of the Feasibility Period, as it may be extended, the Earnest Money, less the Feasibility Fee, shall be returned to Buyer and Seller will retain any Extension Fees. Should Buyer determine not to go forward with purchasing the Property, Buyer's sole recourse shall be to terminate this Real Estate Contract before the expiration of the Feasibility Period, as it may be extended (or later if such election to terminate is in connection with the failure of a condition precedent), and receive the return of the Earnest Money as provided above. Upon Buyer's 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.

ARTICLE III REPRESENTATIONS, WARRANTIES AND COVENANTS OF SELLER

3.1 Seller hereby represents and warrants to Buyer as follows as of the effective date and, except with respect to the Retained Land and as otherwise disclosed in written notice from Seller to Buyer at or before the expiration of the Feasibility Period, as of the Closing Date:

- (a) **Authority.** Seller has the full right, power, and authority to enter into and perform its obligations under this Real Estate Contract.

- (b) Status; Binding Obligation. Seller is a duly formed and validly existing Texas Home Rule Municipal Corporation. This Real Estate Contract is a legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its terms, subject to the effect of applicable sovereign or governmental immunity, bankruptcy, insolvency, reorganization, arrangement, moratorium or other similar laws affecting the rights of creditors generally.
- (c) Non-Foreign Person. Seller is not a "foreign person" within the meaning of Section 1445(f) of the Internal Revenue Code of 1986, as amended (the "Code").
- (d) Non-Contravention. The execution and delivery of this Real Estate Contract by Seller and the consummation by Seller of the transactions contemplated hereby will not (i) to Seller's knowledge, violate any judgment, order, injunction, decree, regulation or ruling of any court or governmental entity, (ii) conflict with, result in a breach of, or constitute a default under the organizational documents of Seller or (iii) conflict with, result in a breach of, or constitute a default under any note or other evidence of indebtedness, any mortgage, deed of trust or indenture, or any lease or other material agreement or instrument to which Seller is a party or by which Seller may be bound.
- (e) Suits and Proceedings. There are no legal actions, suits or similar proceedings pending and served or, to Seller's knowledge, threatened against Seller or the Total Land which involve or affect the Property or the validity or enforceability of this Real Estate Contract or Seller's closing documents.
- (f) Personal and Intangible Property. There are no equipment, machinery, furniture, furnishings, supplies and other tangible personal property and fixtures located on, or intangible personal property (including, without limitation, all plans and specifications and all other architectural and engineering drawings; all warranties, guaranties, indemnities and claims; all surveys, engineering reports and other technical information; all governmental permits, approvals, licenses or similar documents; all utility deposits) or any other property owned or held by Seller which is used exclusively in connection with the operation, ownership, use, or management of the Property.
- (g) Consents. No consent, waiver, approval or authorization is required from any person or entity (that has not already been obtained) in connection with the execution and delivery of this Real Estate Contract by Seller or the performance by Seller of the transactions contemplated hereby.
- (h) No Violations. Seller has not received any written notification from any governmental entity, owner's association or other party under a recorded restrictive covenant affecting the Total Land, insurance company or any other parties (i) that the Total Land is in violation of applicable fire, health, building, use, occupancy or zoning laws or (ii) that any work is required to be done upon or in connection with the Total Land where such work remains outstanding.

- (i) Condemnation. Seller has not received any written condemnation notice with respect to all or any portion of the Total Land and, to Seller's knowledge, Seller is not aware of any pending condemnation concerning the Total Land.
- (j) Leases; Contracts. Except as otherwise disclosed in the Title Commitment (or subsequent commitment), there are no existing leases or licenses whether oral or written, affecting the Total Land.
- (k) No Other Options. Except as otherwise disclosed in the Title Commitment (or subsequent commitment) or this Real Estate Contract, the Total Land is not subject to any outstanding agreement(s) of sale or options, rights of first refusal (including such rights under Seller's organizational documents) or other rights of purchase to which Seller is a party.
- (l) Environmental. Seller has not received written notice of any violation of any environmental laws and, to Seller's knowledge, no hazardous materials exist at the Property.
- (m) Due Diligence Items. To Seller's knowledge, copies of the Due Diligence Items which have been delivered to Buyer are true, correct and complete copies of all such Due Diligence Items in Seller's possession or control, and Seller is not aware of any material inaccuracy or omission in such Due Diligence Items.
- (n) OFAC; Patriot Act; Anti-Money Laundering. Seller is not, and will not become a person identified on U.S. Treasury's Office of Foreign Asset Control listing of Specially Designated Nationals and Blocked Persons (a "Prohibited Person"). Seller (i) is not and will not become owned or controlled by a Prohibited Person, (ii) is not acting hereunder and will not act hereunder for or on behalf of a Prohibited Person, and (iii) is not providing and will not provide material, financial or technological support or other services to or in support of acts of terrorism of a Prohibited Person. Seller will not enter into or undertake any activities related to this Real Estate Contract in violation of any anti-money laundering laws.

If Seller becomes aware that (a) any of Seller's representations and warranties set forth herein are untrue, or (b) at any time at or before Closing, there is any change with respect to the matters represented and warranted by Seller herein, then Seller shall give Buyer reasonable written notice thereof.

When reference is made in this Article III to Seller's "knowledge", such term shall include only the current actual knowledge of Seller's Council members (none of which shall have any personal liability with respect to any such matters) and current actual knowledge, after reasonable inquiry, of Seller's other officials, officers, agents, and employees (none of which shall have any personal liability with respect to any such matters).

EXCEPT AS EXPRESSLY PROVIDED IN THIS REAL ESTATE CONTRACT, THE DEED AND THE OTHER DOCUMENTS TO BE EXECUTED AND DELIVERED BY SELLER AT CLOSING (THE "CLOSING DOCUMENTS"), THERE ARE NO OTHER WARRANTIES OR REPRESENTATIONS.

BUYER ACKNOWLEDGES THAT SELLER HAS NOT MADE AND DOES NOT MAKE ANY REPRESENTATIONS AS TO THE PHYSICAL CONDITION OF THE PROPERTY, OR ANY OTHER MATTER AFFECTING OR RELATED TO THE PROPERTY (OTHER THAN AS EXPRESSLY PROVIDED IN THIS REAL ESTATE CONTRACT, THE DEED AND THE CLOSING DOCUMENTS). EXCEPT AS EXPRESSLY PROVIDED IN THIS REAL ESTATE CONTRACT, THE DEED AND THE CLOSING DOCUMENTS, BUYER EXPRESSLY AGREES THAT TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE PROPERTY IS CONVEYED "AS IS" AND "WITH ALL FAULTS", AND SELLER EXPRESSLY DISCLAIMS, AND BUYER ACKNOWLEDGES AND ACCEPTS THAT SELLER HAS DISCLAIMED, ANY AND ALL REPRESENTATIONS, WARRANTIES OR GUARANTIES OF ANY KIND, ORAL OR WRITTEN EXPRESS OR IMPLIED (EXCEPT AS EXPRESSLY PROVIDED IN THIS REAL ESTATE CONTRACT, THE DEED AND THE CLOSING DOCUMENTS) CONCERNING THE PROPERTY, INCLUDING WITHOUT LIMITATION, (I) THE VALUE, CONDITION, MERCHANTABILITY, HABITABILITY, MARKETABILITY, PROFITABILITY, SUITABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE, OF THE PROPERTY, (II) THE MANNER OR QUALITY OF THE CONSTRUCTION OR MATERIALS, IF ANY, INCORPORATED INTO ANY IMPROVEMENTS ON THE PROPERTY HEREIN CONVEYED, AND (III) THE MANNER OF REPAIR, QUALITY OF REPAIR, STATE OF REPAIR OR LACK OF REPAIR OF ANY SUCH IMPROVEMENTS.

3.2 From the Effective Date until Closing or any earlier termination of this Real Estate Contract:

- (a)** Seller shall operate and manage the Property in the normal course of Seller's business and maintain the Property in the same condition as of the Effective Date, ordinary wear and tear excepted.
- (b)** Seller will not, without the prior written consent of Buyer, which consent, if requested before the expiration of the Feasibility Period, will not be unreasonably withheld or delayed, and, if requested after the expiration of the Feasibility Period, shall be in Buyer's sole discretion, execute any (i) lease, license or other occupancy agreement with respect to the Property, (ii) agreement granting a lien, easement, restrictive covenant, right-of-way or other encumbrance, or (iii) any amendment, supplement or other modification to any of the foregoing.

- (c) Neither Seller nor any party acting for or on behalf of Seller shall (a) directly or indirectly solicit, initiate or participate in any way in discussions or negotiations with, provide any information or assistance to, or enter into any agreement with, any person or group of persons (other than Buyer or its representatives) concerning the purchase or sale of the Property, or (b) assist or participate in, facilitate or encourage any effort or attempt by any person (other than Buyer or its representatives) to do or seek to do any of the foregoing. Notwithstanding the foregoing, Seller may solicit, market the sale of, and/or enter into agreement for the sale of the Retained Land after completion of the New Survey.

3.3 In the event that the Property or any portion thereof becomes subject to any condemnation or eminent domain proceeding, or any Seller-initiated re-zoning prior to the Closing that is reasonably expected to materially and adversely affect the intended use or development of the Property, including, without limitation, the Intended Use, then Buyer may elect to terminate this Real Estate Contract, in which case the Initial Earnest Money and, if deposited, the entire Additional Earnest Money shall be returned to Buyer and neither party shall have any further obligation to the other, except for obligations expressly stated to survive.

ARTICLE IV 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) Authority. 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 on or before closing will have been taken.
- (b) Status; Binding Obligation. Buyer is a duly formed and validly existing Texas limited liability company. This Real Estate Contract is a legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms, subject to the effect of applicable bankruptcy, insolvency, reorganization, arrangement, moratorium or other similar laws affecting the rights of creditors generally.
- (c) Non-Contravention. The execution and delivery of this Real Estate Contract by Buyer and the consummation by Buyer of the transactions contemplated hereby will not (i) to Buyer's knowledge, violate any judgment, order, injunction, decree, regulation or ruling of any court or governmental entity, (ii) conflict with, result in a breach of, or constitute a default under the organizational documents of Buyer or (iii) conflict with, result in a breach of, or constitute a default under any note or other evidence of indebtedness, any mortgage, deed of trust or indenture, or any lease or other material agreement or instrument to which Buyer is a party or by which Buyer may be bound.

- (d) OFAC; Patriot Act; Anti-Money Laundering. Buyer is not, and will not become a Prohibited Person. Buyer (i) is not and will not become owned or controlled by a Prohibited Person, (ii) is not acting hereunder and will not act hereunder for or on behalf of a Prohibited Person, and (iii) is not providing and will not provide material, financial or technological support or other services to or in support of acts of terrorism of a Prohibited Person. Buyer will not enter into or undertake any activities related to this Real Estate Contract in violation of any anti-money laundering laws.
- (e) No Plan Assets. Buyer is not and is not acting on behalf of (iv) an “employee benefit plan” as defined in Section 3(3) of ERISA, that is subject to Title I of ERISA, (v) a “plan” as defined in and subject to Section 4975 of the Code, or (vi) an entity deemed to hold the “plan assets” (within the meaning of 29 C.F.R. Section 2510.3-101, as modified by Section 3(42) of ERISA) of any of the foregoing.

ARTICLE V CLOSING

5.1 The closing (the “Closing”) shall be held at Title Company, within sixty (60) days after the expiration of the Feasibility Period (the “Closing Date”). Notwithstanding the previous sentence or anything in this Real Estate Contract to the contrary, Buyer shall have the right to accelerate the Closing Date at any time by providing at least thirty days’ written notice to Seller and the Title Company, in which event the Closing Date shall be the date set forth in such written notice. 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 Seller.

5.2 At the closing, Seller shall (through escrow with the Title Company as applicable):

- (a) Prepare, at Seller’s cost, and deliver to Buyer:
- i. the duly executed and acknowledged Special Warranty Deed in the form attached hereto as **EXHIBIT C** (the “Deed”) conveying the Property, free and clear of any and all liens and encumbrances, except for Permitted Exceptions.
 - ii. a duly executed and acknowledged Foreign Investment in Real Property Tax Act, in customary form reasonably acceptable to Seller, Buyer and Title Company;
 - iii. evidence of the existence, organization and authority of Seller and of the authority of the persons executing documents on behalf of Seller reasonably satisfactory to the underwriter for the Title Policy; and
 - iv. any additional documents that the Title Company may reasonably require for the proper consummation of the transaction contemplated by this Real Estate Contract (provided, however, no such additional document shall expand any

obligation, covenant, representation or warranty of Seller or result in any new or additional obligation, covenant, representation or warranty of Seller under this Real Estate Contract beyond those expressly set forth in this Real Estate Contract).

- (b) Deliver possession of the Property to Buyer.
- (c) Deliver to Buyer, or cause the Title Company to deliver to Buyer, at Buyer's expense, a TLTA Owner's Policy of Title Insurance, insuring indefeasible title issued by Title Company, in Buyer's favor in the full amount of the Purchase Price, insuring Buyer's fee simple interest in the Property subject only to the Permitted Exceptions (the "Title Policy").
- (d) Pay Seller's Broker and/or Real Estate Commission fees, if any.
- (e) Pay the Seller's expenses or attorney fees.
- (f) Receive the Purchase Price, less the Earnest Money (together with any accrued interest thereon), the Feasibility Fee and, if deposited, the First Extension Fee and the Second Extension Fee, plus or minus the prorations set forth in this Real Estate Contract.
- (g) Deliver executed power supply agreement(s) for electric utility service, power supply, and agreements for payment to the City for electric utility service and power supply to the Land and its intended improvements.

5.3 Upon such performance by Seller at closing, Buyer shall (through escrow with the Title Company as applicable):

- (a) Pay the Purchase Price, less the Earnest Money (together with any accrued interest thereon), the Feasibility Fee and, if deposited, the First Extension Fee and the Second Extension Fee, plus or minus the prorations set forth in this Real Estate Contract.
- (b) Pay the cost of the New Survey of the Property, and pay any additional premium for the survey/boundary deletion in the Title Policy or any other endorsements to the Title Policy, if the deletion or such other endorsements are requested by Buyer.
- (c) Pay the cost of the title policy premium for a Title Policy insuring indefeasible title issued by Title Company, in Buyer's favor in the full amount of the purchase price, insuring Buyer's fee simple interest in the Property subject only to such exceptions as shown on the Title Commitment attached as **EXHIBIT B** and those additional easements, reservations and other matters set forth in the Special Warranty Deed attached hereto as **EXHIBIT C**. Pay the cost of any extended coverage premium for the Title Policy.

- (d) Pay the escrow fees.
- (e) Pay the cost for tax certificates.
- (f) Pay Buyer's Broker and/or Real Estate Commission fees, if any.
- (g) Pay the sole costs to obtain, deliver and record all documents to be recorded at closing relative to any lien Buyer may obtain for the purchasing of the Property.
- (h) Pay the costs to record all documents recorded at closing for the purchase of the Property, including but not limited to the Deed.
- (i) Pay the Buyer's expenses and attorney fees (unless Buyer elects to pay such expenses or fees outside of Closing).
- (j) Pay any and all other closing costs customarily borne by buyers of commercial property in the jurisdiction where the Property is located.
- (k) Deliver executed power supply agreement(s) for electric utility service, power supply, and agreements for payment and deposits to the City for electric utility service and power supply to the Land and its intended improvements.

5.4 In addition to any other conditions precedent set forth in this Real Estate Contract, the obligations of Buyer pursuant to this Real Estate Contract shall, at the option of Buyer, be subject to the following conditions precedent:

- (a) All of the representations, warranties and agreements of Seller set forth in this Real Estate Contract shall be true and correct in all material respects as of the Effective Date and, except with respect to the Retained Land, on the Closing Date.
- (b) Seller shall not have on or before Closing, failed to meet, comply with or perform in any material respect any conditions or agreements on Seller's part as required by the terms of this Real Estate Contract.
- (c) Seller shall have executed and delivered to the Title Company all of the documents required to be delivered by Seller at Closing.
- (d) The Title Company shall be irrevocably committed to issue the Title Policy to Buyer, subject only to payment of the applicable title premium by Buyer.
- (e) There shall have been no material and adverse change with respect to the Property since the expiration of the Feasibility Period.
- (f) The Approvals shall continue to be in full force and effect as of the Closing Date.

- (g) Seller and Buyer have executed power supply agreement(s) for electric utility service, power supply, and agreements for payment and deposits to the City for electric utility service and power supply to the Land and its intended improvements.

If any condition precedent to Buyer's obligation to close set forth in this Real Estate Contract is not satisfied on or before the applicable time period stated in this Real Estate Contract, then Buyer may, at its election, (1) waive any or more of the foregoing conditions and proceed to Closing, or (2) terminate this Real Estate Contract and recover the Earnest Money by delivering written notice thereof to Seller, in which case, neither Seller nor Buyer shall have any obligations hereunder except those that expressly survive the termination of this Real Estate Contract; provided that if the failure of such condition is due to the default of Seller, Buyer shall be entitled to the rights and remedies provided in Article VIII below.

ARTICLE VI SPECIAL CONDITIONS

6.1 The Special Warranty Deed will contain the following reservations and information, and the conveyance effected thereby will be subject to the following **AS IS** language:

GRANTOR hereby reserves for itself, its successors and assigns, all of the Reserved Groundwater Rights. As used in this Special Warranty Deed, the following terms shall have the following meanings: Groundwater – All of the underground water, percolating water, artesian water, and any other water from any and all reservoirs, formations, depths and horizons beneath the surface of the earth, excluding underflow or flow in a defined subterranean channel; Reserved Groundwater - All of the Groundwater now or in the future located in, on or under the Property. Reserved Groundwater Rights - All of the Reserved Groundwater, together with the right to explore for, drill for, pump, develop, withdraw, produce and transport the Reserved Groundwater and Groundwater produced from other properties, from surface locations other than on the Property, including, without limitation, all personal Property rights and entitlements relating to or applicable to the Reserved Groundwater, including, without limitation, permits, licenses, historical use entitlements, wells, pumps, and infrastructure; 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 Groundwater, it being expressly contemplated by the parties to this instrument that any production of such Groundwater shall be from the surface of other Property; provided, further that Grantee's prior approval is required, but not to be unreasonably withheld, in any event of GRANTOR's exploration, development, production or transportation of Reserved Groundwater or exercise of the Reserved Groundwater Rights in which engineering studies performed by GRANTOR or GRANTOR's agents regarding the exercise of the Reserved Groundwater Rights call into question the structural integrity of Grantee's completed structures located on the surface of the Property. **GRANTOR hereby reserves unto itself, its successors and assigns,** any and all oil, gas and other minerals in, on or under the premises described 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 Property 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 property other than the 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.

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.

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

ARTICLE VII BREACH BY BUYER

7.1 In the event Buyer fails to close by reason of default or breach of Buyer at any time or fails to fully and timely perform any of Buyer's obligations under this Real Estate Contract for any reason except Seller's default, Seller may, as its sole and exclusive remedy, collect the full Earnest Money, including the Initial Earnest Money, any Additional Earnest Money and any Feasibility Fees, if applicable, as liquidated damages and terminate this Real Estate Contract.

ARTICLE VIII BREACH BY SELLER

8.1 In the event Seller fails to consummate the conveyance of the Property (Seller being in default and Buyer not being in default hereunder), or fails to fully and timely perform any of Seller's obligations under this Real Estate Contract without curing after written notice for any reason except Buyer's default, the following options shall be available to be exercised by Buyer, as Buyer's sole and exclusive remedies:

- (a) Collect the Earnest Money, including the Initial Earnest Money and, if deposited, the entire Additional Earnest Money, and, if deposited, the First Extension Fee and the Second Extension Fee on deposit with the Title Company, and terminate this Real Estate Contract;
- (b) Waive, before or at the Closing, the applicable objection or condition and proceed to close the transaction contemplated hereby in accordance with the remaining terms hereof; or
- (c) Pursue a claim for specific performance of Seller's obligations hereunder; provided that, the equitable remedy of specific performance must be instituted, if at all, within sixty (60) days after the breach by Seller, and if such action is not so instituted within such period of time, then Buyer shall be deemed conclusively to have waived the right to institute such action and to have elected to pursue the other remedies provided hereinabove. In addition, for the avoidance of doubt, no action for specific performance may be instituted by Buyer against Seller with respect to any breach of or any other claim arising from: (1) any matters, concepts, terms, or conditions contained in Section 1.14 (Power Supply and Water) of this Real Estate Contract, or (2) the parties inability to reach complete and final future agreements regarding all of the matters, concepts, terms, and conditions contained in Section 1.14 (Power Supply and Water) of this Real Estate Contract, or (3) a representation or warranty or failure of any condition due to any case not reasonably within the control of Seller, Buyer's remedies in any such event being limited to termination or waiver.

After Closing, Seller and Buyer shall, subject to the terms and conditions of this Real Estate Contract, have such rights and remedies as are available at law or in equity, except that neither Seller nor Buyer shall be entitled to recover from the other consequential or special damages.

ARTICLE IX INTENDED USE & RIGHT TO REPURCHASE

9.1 The parties acknowledge and agree that the Property is being acquired by the Buyer with the intent of designing, building and operating a high performance computing center(s) (including crypto mining facilities) or similar facility on the Property, including for the purposes of housing computer systems, servers, storage devices, networking equipment, and other essential infrastructure required to store, manage, process, and distribute data (herein called the “Intended Use”).

9.2 If Buyer does not commence site development of a high performance computing center(s) (including crypto mining facilities) or similar facility related to the Intended Use within three-hundred and sixty-five (365) days after Closing, Seller has and may exercise a right to repurchase the Property from Buyer by paying to Buyer the purchase price paid by Buyer under this Real Estate Contract, less any customary and reasonable real estate transaction expenses incurred by Seller related to the repurchase. When Buyer commences significant site development or construction, Seller’s repurchase right under this paragraph shall terminate. Commencement of significant site development shall be defined as any procurement of long lead time items used for development of the site more than \$2,500,000 and commencement of construction is deemed to have occurred upon Buyer obtaining a valid building or site permit.

9.3 Buyer agrees to begin to conduct a sound study promptly following delivery by the City of the expected power available. Buyer agrees not to violate the City’s noise ordinance before or after operation of its project at the Property.

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 shall survive the closing and shall not be merged by deed or otherwise be extinguished. Seller’s representations and warranties set forth in Section 3.1 shall survive the Closing for a period of 18 months following the Closing Date 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 (a) United States mail, postage prepaid, certified mail, return receipt requested, (b) nationally recognized overnight courier (e.g., FedEx), or (c) by electronic mail, addressed to Seller or Buyer, as the case may be, at the addresses set forth below:

Buyer: Priority Power Management, LLC
777 Post Oak Boulevard, Suite 430
Houston, Texas 77056
Attn: Legal Department
Email: legalnotices@prioritypower.com

Seller: City of College Station
Attention: Adam C. Falco, City Attorney
City Attorney's Office
P. O. Box 9960
College Station, Texas 77842
Telephone: 979-764-3507
Email: afalco@cstx.gov

Notices given by counsel to Buyer shall be deemed given by Buyer, and notices given by counsel to Seller shall be deemed given by Seller. Any party may change its notice address by delivering a notice of such change to the other party in accordance with this Section 10.2.

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. 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 permitted 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. Buyer may assign this Real Estate Contract without the consent of Seller if such assignment is to an affiliate of Buyer or a wholly owned entity of Buyer or Buyer's owner. Except as provided above, any other assignment of this Real Estate Contract by Buyer shall require the consent of Seller. Seller shall not be permitted to assign or otherwise transfer this Real Estate Contract or any of its rights or obligations hereunder.

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 of Essence. Time is of the essence to this Real Estate Contract.

10.9 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.

10.10 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.

10.11 Real Estate Contract Execution. This Real Estate Contract by Seller to sell the Property is approved by vote of the City Council of the City of College Station, Texas; such approval reflected by the signature of Seller's representative to this Real Estate Contract. Once this Real Estate Contract is executed by the Buyer and Seller, the FULLY EXECUTED date shall be the date this Real Estate Contract is approved by vote of the City Council.

10.12 Memorandum of Real Estate Contract. Upon request of either party, both parties shall promptly execute a memorandum of this Real Estate Contract suitable for filing of record.

LIST OF EXHIBITS:

EXHIBIT A Survey will be provided when completed.

EXHIBIT B Title Commitment will be provided within 45 days of Contract execution.

EXHIBIT C Special Warranty Deed

EXECUTED on this the _____ day of _____, 2025.

Seller:

Buyer:

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

PRIORITY POWER MANAGEMENT, LLC
a Texas limited liability company

By: _____

Mayor

Date: _____

By: _____


Trent Stout

Chief Commercial Officer

Date: 09-05-2025

ATTEST:

City Secretary

Date: _____

APPROVED:

City Manager

Date: _____

Assistant City Manager/CFO

Date: _____

City Attorney

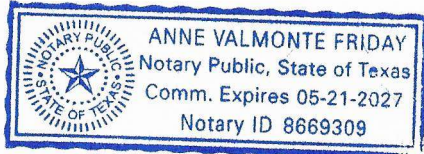
Date: _____

THE STATE OF TEXAS §

COUNTY OF HARRIS §

ACKNOWLEDGMENT

This instrument was acknowledged before me on the 5TH day of SEPTEMBER, 2025,
by Trent Stout, Chief Commercial Officer of Priority Power Management, LLC, a Texas limited
liability company, on behalf of said company.



A handwritten signature in blue ink, appearing to read "Anne Valmonte Friday", written over a horizontal line.

NOTARY PUBLIC in and for the State of Texas

THE STATE OF TEXAS §

COUNTY OF BRAZOS §

ACKNOWLEDGMENT

This instrument was acknowledged before me on the _____ day of _____, 2025,
by JOHN P. NICHOLS, as 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
Survey

Survey will be provided when completed.

The general area shall include Block 2, Lots 1 through 9, and Block 3, Lot 2 and Lots 4 through 8, as shown on the Preliminary Plan below, including the right-of-way traversing the property between these lots.

Block	Lot	Acres
2	1	13.67
2	2	15.73
2	3	20.18
2	4	5.00
2	5	8.41
2	6	17.43
2	7	12.32
2	8	10.12
2	9	9.00
3	2	18.59
3	4	10.53
3	5	14.12
3	6	13.58
3	7	8.29
3	8	7.11
Right-of-Way		9.80
Approximate TOTAL		193.87



Contract No. 25300729
Real Estate Contract
9-3-25

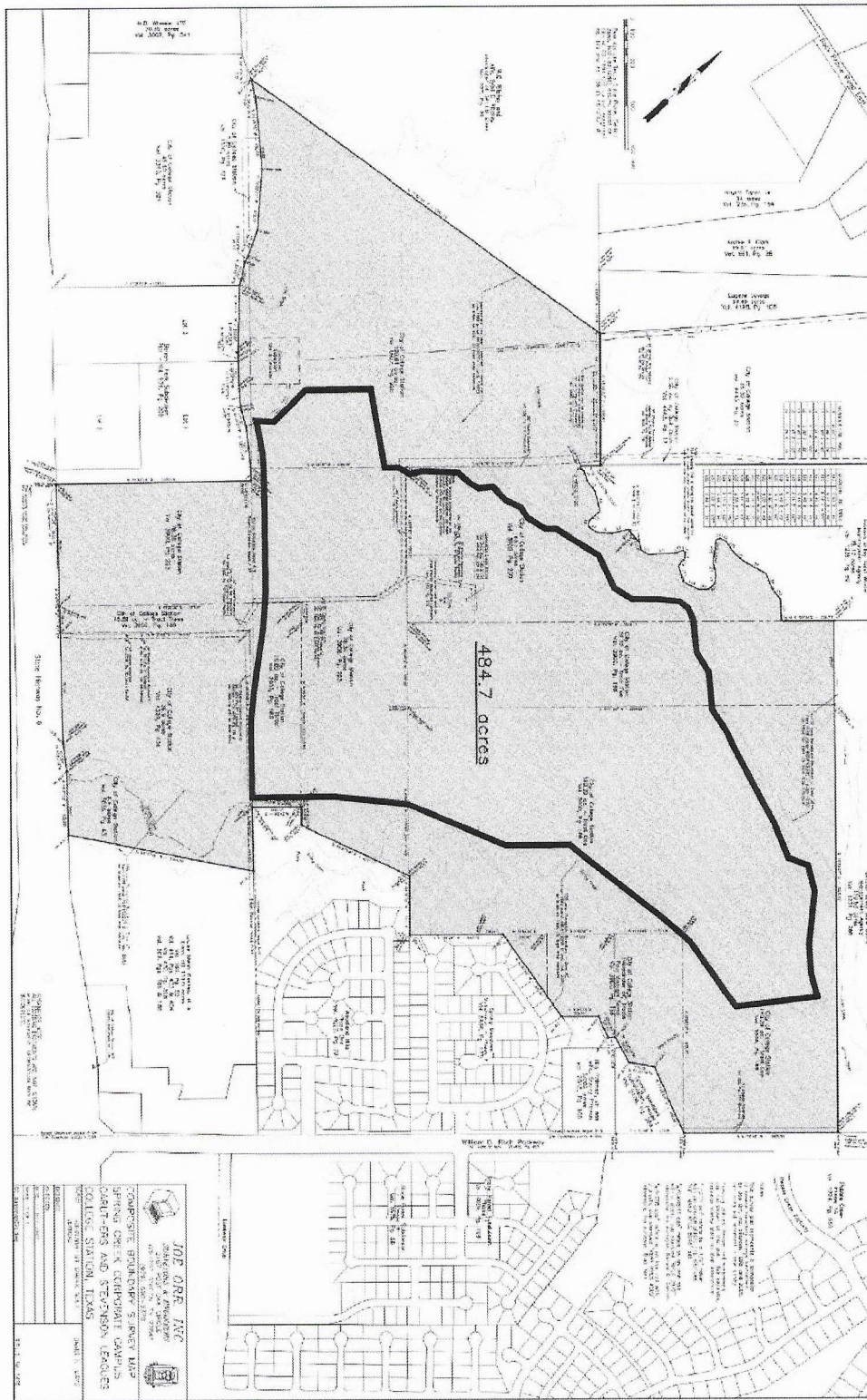


EXHIBIT B

Title Commitment will be provided within 45 days of Contract execution.

EXHIBIT C

Special Warranty Deed

Special Warranty Deed

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

SPECIAL WARRANTY DEED

DATE: _____, 202__

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

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

GRANTEE: Priority Power Management, LLC, a Texas limited liability company

GRANTEE'S MAILING ADDRESS: _____
(including county) _____

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

PROPERTY:

[To be added from New Survey]

RESERVATIONS FROM AND EXCEPTIONS TO CONVEYANCE AND WARRANTY:

1. [To be added from Buyer-approved proforma Title Policy]

GRANTOR hereby reserves for itself, its successors and assigns, all of the Reserved Groundwater Rights. As used in this Special Warranty Deed, the following terms shall have the following meanings: Groundwater – All of the underground water, percolating water, artesian water, and any other water from any and all reservoirs, formations, depths and horizons beneath the surface of the earth, excluding underflow or flow in a defined subterranean channel; Reserved Groundwater - All of the Groundwater now or in the future located in, on or under the Property. Reserved Groundwater Rights - All of the Reserved Groundwater, together with the right to explore for, drill for, pump, develop, withdraw, produce and transport the Reserved Groundwater and Groundwater produced from other properties, on, under and over the Property, including, without limitation, all personal property rights and entitlements relating to or applicable to the Reserved Groundwater, including, without limitation, permits, licenses, historical use entitlements, wells, pumps, and infrastructure; 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 Groundwater, it being expressly contemplated by the parties to this instrument that any production of such Groundwater shall be from the surface of other property; provided, further that Grantee's prior approval is required, but not to be unreasonably withheld, in any event of GRANTOR's exploration, development, production or transportation of Reserved Groundwater or exercise of the Reserved Groundwater Rights in which engineering studies performed by GRANTOR or GRANTOR's agents regarding the exercise of the Reserved Groundwater Rights call into question the structural integrity of Grantee's completed structures located on the surface of the Property.. **GRANTOR hereby reserves unto itself, its successors and assigns,** any and all oil, gas and other minerals in, on or under the Property; provided that there shall never in any event be any ingress or egress on or across the surface of the above described Property for the purposes of exploration, development, production or transportation of such oil, gas or other minerals, except as may have been reserved by predecessors in title, it being expressly contemplated by the parties to this instrument that any production of such minerals shall be from the surface of property other than the Property and that there shall be no development of any minerals that would require mining, shaft mining, pit mining or any other kind of mining that would require utilization of the surface, or through the pooling of such mineral interests for the development with adjacent parcels.

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.

GRANTEE ACKNOWLEDGES THAT GRANTOR HAS NOT MADE AND DOES NOT MAKE ANY REPRESENTATIONS AS TO THE PHYSICAL CONDITION OF THE PROPERTY, OR ANY OTHER MATTER AFFECTING OR RELATED TO THE PROPERTY (OTHER THAN AS EXPRESSLY PROVIDED IN THE REAL ESTATE CONTRACT, THIS DEED AND THE CLOSING DOCUMENTS). EXCEPT AS EXPRESSLY PROVIDED IN THE REAL ESTATE CONTRACT, THIS DEED AND THE CLOSING DOCUMENTS, GRANTEE EXPRESSLY AGREES THAT TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE PROPERTY IS CONVEYED "AS IS" AND "WITH ALL FAULTS", AND GRANTOR EXPRESSLY DISCLAIMS, AND GRANTEE ACKNOWLEDGES AND ACCEPTS THAT GRANTOR HAS DISCLAIMED,

ANY AND ALL REPRESENTATIONS, WARRANTIES OR GUARANTIES OF ANY KIND, ORAL OR WRITTEN, EXPRESS OR IMPLIED (OTHER THAN AS EXPRESSLY PROVIDED IN THE REAL ESTATE CONTRACT, THIS DEED AND THE CLOSING DOCUMENTS) CONCERNING THE PROPERTY, INCLUDING WITHOUT LIMITATION (I) THE VALUE, CONDITION, MERCHANTABILITY, HABITABILITY, MARKETABILITY, PROFITABILITY, SUITABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE, OF THE PROPERTY (II) THE MANNER OR QUALITY OF THE CONSTRUCTION, OR THE MATERIALS, IF ANY, INCORPORATED INTO THE CONSTRUCTION, OF ANY IMPROVEMENTS TO THE PROPERTY AND (III) THE MANNER OF REPAIR, QUALITY OF REPAIR, STATE OF REPAIR OR LACK OF REPAIR OF ANY SUCH IMPROVEMENTS. BY GRANTEE'S ACCEPTANCE OF THIS DEED, GRANTEE REPRESENTS THAT GRANTEE HAS MADE (I) ALL INSPECTIONS OF THE PROPERTY TO DETERMINE ITS VALUE AND CONDITION DEEMED NECESSARY OR APPROPRIATE BY GRANTEE, INCLUDING, WITHOUT LIMITATION, INSPECTIONS FOR THE PRESENCE OF ASBESTOS, PESTICIDE RESIDUES, HAZARDOUS WASTE AND OTHER HAZARDOUS MATERIALS AND (II) INVESTIGATIONS TO DETERMINE WHETHER ANY PORTION OF THE PROPERTY LIES WITHIN ANY FLOOD HAZARD AREA AS DETERMINED BY THE U.S. ARMY CORPS OF ENGINEERS OR OTHER APPLICABLE AUTHORITY.

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

Grantor has the right to repurchase the Property if Grantee does not commence significant site development or construction of a high performance computing center (including crypto mining facilities) or similar facility within three-hundred and sixty-five (365) days after Closing by paying to Grantee the purchase price paid by Grantee under the Real Estate Contract, less any customary and reasonable real estate transaction expenses incurred by Grantor related to the repurchase; provided, however, when Grantee commences significant site development or construction, Grantor's repurchase right under this paragraph shall terminate (without waiver of any rights under this Deed or Real Estate Contract).

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

**CITY OF COLLEGE STATION, TEXAS,
Texas Home Rule Municipal Corporation.**

By: _____
JOHN P. NICHOLS, Mayor

ATTEST:

City Secretary

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

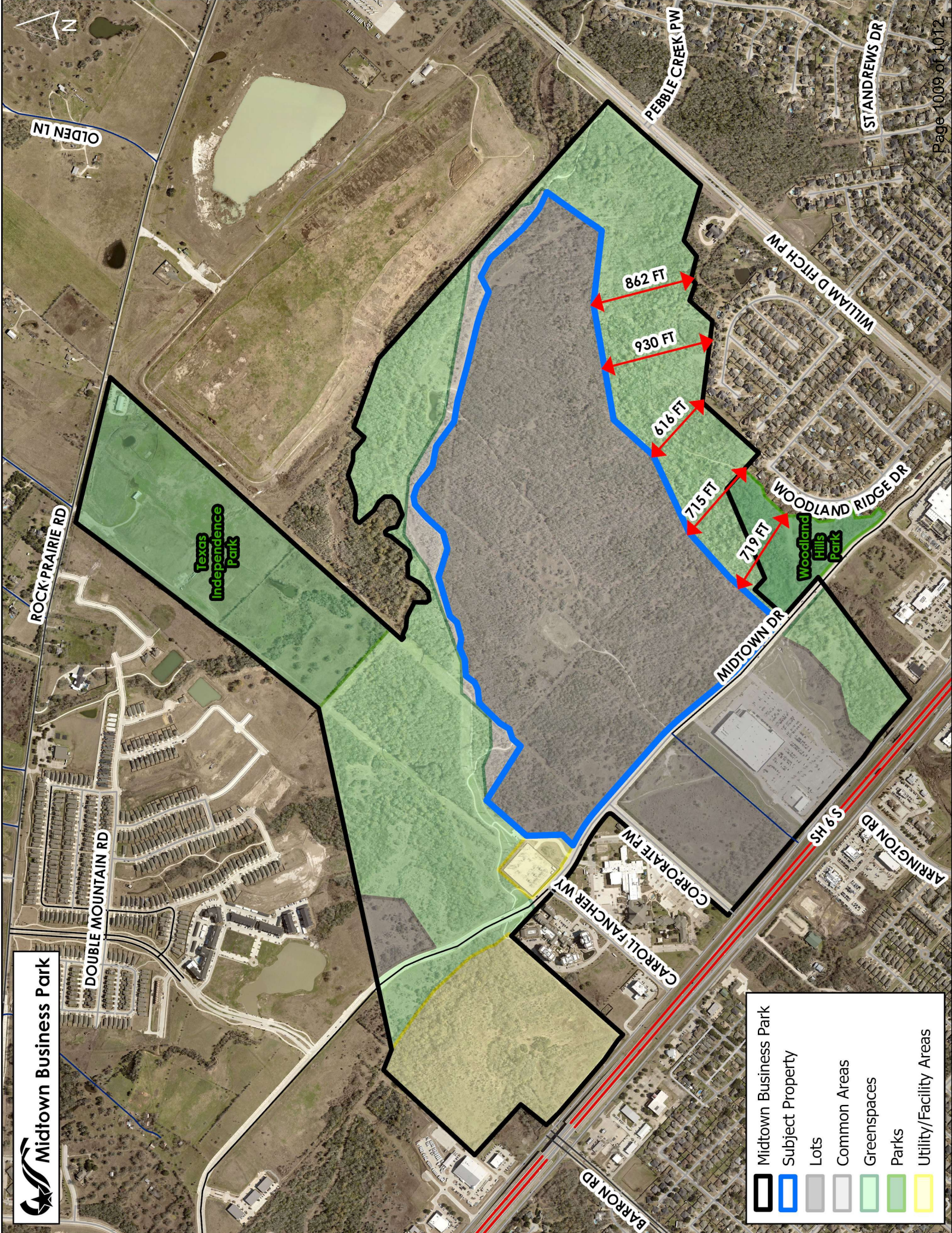
ACKNOWLEDGMENT








This instrument was acknowledged before me on the _____ day of _____, 202__, by **JOHN P. NICHOLS**, as Mayor of the City of College Station, a municipal home rule corporation, on behalf of said municipality.

NOTARY PUBLIC in and for the State of Texas

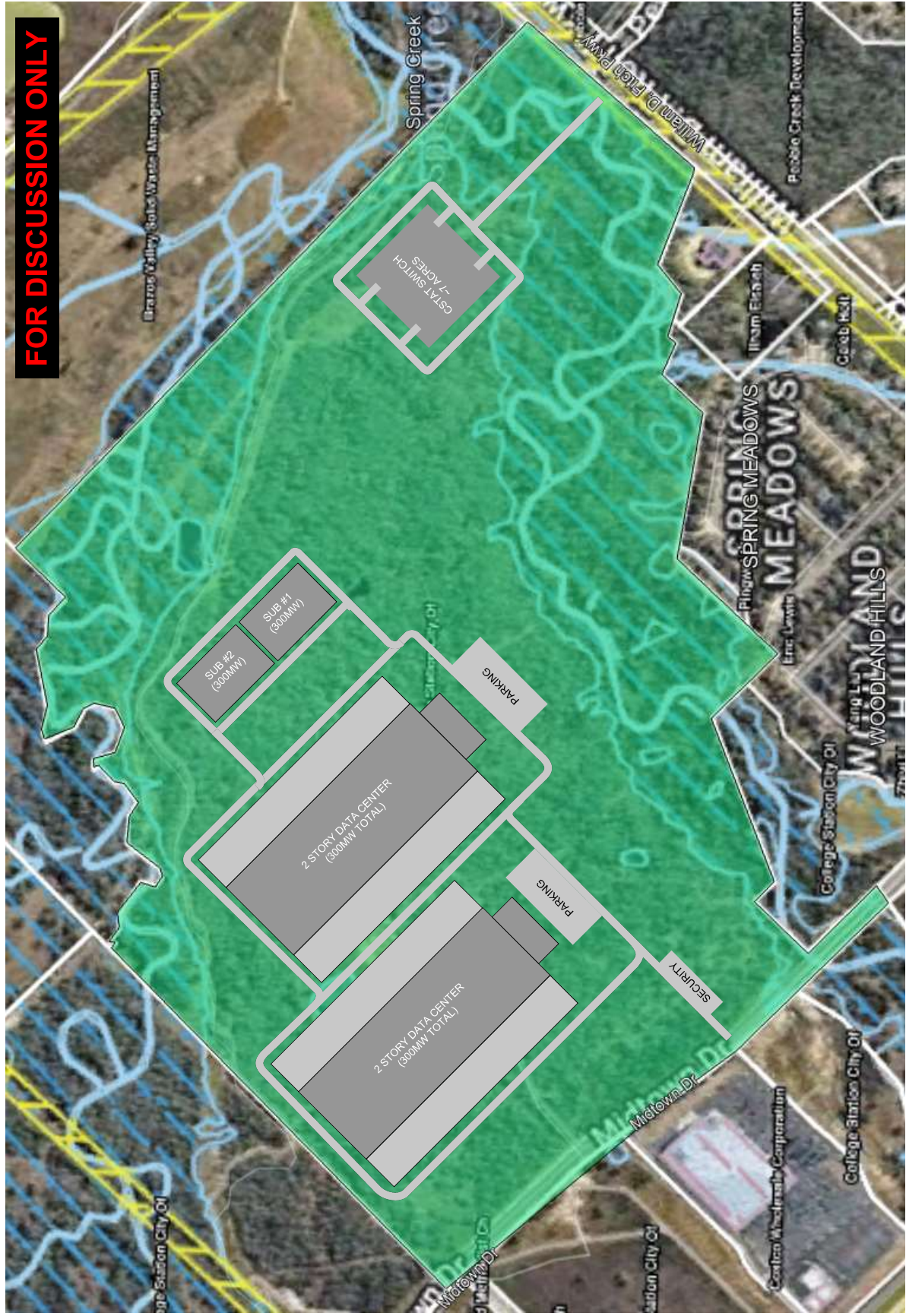
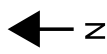
PREPARED IN THE OFFICE OF:
City of College Station
City Attorney's Office
P. O. Box 9960
College Station, Texas 77842-9960

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



	Midtown Business Park
	Subject Property
	Lots
	Common Areas
	Greenspaces
	Parks
	Utility/Facility Areas

FOR DISCUSSION ONLY



PPM DATA, LLC		REV	NOTE	BY	CK
PROJECT AGGIE					
CONCEPTUAL SITE PLAN					
432-620-9100					
WWW.PRIORITYPOWER.COM					
DRAWINGS ARE INTENDED TO CONCEPTUAL AND INFORMATIONAL PURPOSES ONLY. THE DETAIL AND DIMENSIONS ARE NOT TO BE USED FOR CONSTRUCTION. THE DRAWINGS ARE SUBJECT TO FURTHER VERIFICATION AND SHOULD NOT BE CONSIDERED FINAL OR BINDING.					
PRIORITYPower					
PRELIMINARY ONLY					
DATE: 10/10/2012					
DRAWING NO: 1012					