CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT

This Chapter 380 Economic Development Agreement (the "Agreement") is entered by and between the CITY OF BRYAN, TEXAS, a home-rule municipal corporation organized under the laws of the State of Texas (hereinafter referred to as "City"), and the Adam Development Properties, L.P., a Texas Limited Partnership (hereinafter referred to as "Developer"). The City and Developer may also be referred to collectively as the "Parties" or individually as a "Party."

WHEREAS, the City is authorized under Chapter 380 of the Texas Local Government Code to offer certain economic development incentives for public purposes, including the promotion of local economic development and the stimulation of business and commercial activity within the City, including fulfilling a critical need for high-quality residential housing within the City; and

WHEREAS, City actively seeks economic development prospects in Bryan through participation in and establishment of an economic development program; and

WHEREAS, City desires to stimulate business, increase the City's tax base and create new jobs for its citizens; and

WHEREAS, Developer owns approximately 409 acres of land within the city limits of the City, more particularly described by metes and bounds and a boundary survey attached hereto as Exhibit "A" (the "Property"); and

WHEREAS, Developer has advised the City that the expansion by the City of University Drive from its current location to the proposed entrance to the Property as shown on Exhibit "B" ("Phase 1 of the University Drive Expansion"), and certain financial incentives from the City would induce the Developer to construct or cause to be constructed on the Property, the Oakmont Development, a mixed-use planned development project which comprises primarily single-family residences and may also include commercial, retail, office and multi-family residential uses (the "Project"); and

WHEREAS, Developer and the City agree it would be mutually beneficial for Developer to develop the Property as articulated in the Oakmont Development Concept Plan, attached hereto as Exhibit "B" and incorporated herein for all purposes; and

WHEREAS, the expansion of University Drive from its current location to the entrance of Phase 1 of the Project would benefit both the Developer and the City; and

WHEREAS, Developer plans to develop the Project and construct the subdivision improvements, including, certain public water, sewer, drainage and streets within the Oakmont Development necessary to develop the Project, at its sole cost, as is required of the Developer by the City of Bryan Subdivision Ordinance, and shall convey the public infrastructure to the City; and

WHEREAS, the City council finds the Project and the construction by Developer of the Real Property Improvements and the Phase 1 University Drive Improvements will provide a valuable catalyst for development in the City and increased tax revenues to the City; and

WHEREAS, in consideration of the execution of the Project in accordance with the performance measures set forth herein, City agrees to use lawfully available revenues calculated based on the increase in ad valorem taxes generated from the Project to grant to Developer cash incentives (the "Chapter 380 Payments") as set out herein; and

WHEREAS, City council finds that even though the University Drive expansion is on the City's future plans to build, construction at this time by the Developer will help promote both the Development and the economic purpose behind the Chapter 380 agreement; and

WHEREAS, City further agrees to use lawfully available revenues to reimburse Developer the actual costs of the design of the University Drive Expansion and the construction of the Phase 1 University Drive Public Improvements paid by Developer in a total not-to-exceed amount of TWO MILLION SIX HUNDRED THOUSAND DOLLARS ($2,600,000.00) under the terms set out herein; and

WHEREAS, in consideration of the design, timely construction, and development of the Project, which will bring additional sales tax and ad valorem tax revenues to the City and additional jobs resulting from the construction of the Project, the City desires to enter into this Agreement pursuant to TEXAS LOCAL GOVERNMENT CODE, Chapter 380 and other laws applicable to the development of municipal infrastructure as an economic incentive for the Developer to develop and construct the Project; and

WHEREAS, the City Council finds given the incentives provided, the developer will realize a distinct benefit from proceeding with the Project based on the Project's value; and

WHEREAS, to ensure that the benefits City provides under this Agreement are utilized in a manner consistent with TEXAS LOCAL GOVERNMENT CODE, Chapter 380 and other law, Developer agrees to comply with certain conditions for receiving those benefits, including conditions relating to property development, procurement, and all city ordinances.

NOW, THEREFORE, for the reasons stated in these Recitals and in consideration of the mutual benefits to and promises of the Parties set forth below, the Parties are entering into this Agreement and agree to the terms and conditions set forth in this Agreement.

ARTICLE I
DEFINITIONS

Wherever used in this Agreement, the following terms shall have the meanings ascribed to them:

"Ad Valorem Tax Revenues" means the amount of Real Property Taxes collected by the City on the Property, a portion of which will be repaid to Developer in the form of Chapter 380 Payments.

"Affiliate" means any person or entity which directly or indirectly controls, is controlled by or is under common control with Developer, during the term of such control. A person or entity will be deemed to be "controlled" by any other person or entity if such other person or entity (a) possesses, directly or indirectly, power to direct or cause the direction of the management of such person or entity whether by contract or otherwise, (b) has direct or indirect ownership of at least fifty percent (50%) of the voting power of all outstanding shares entitled to vote at a general election of directors of the person or entity or (c) has direct or indirect ownership of at least fifty percent (50%) of the equity interests in the entity.

"Bankruptcy or Insolvency" shall mean the dissolution or termination of a Party's existence as a going business, insolvency, appointment of receiver for any portion of the Property owned by Developer or a material part of a Party's property and such appointment is not terminated within ninety (90) days after such appointment is initially made, any general assignment for the benefit of creditors, the filing of a voluntary petition for bankruptcy protection by a Party, or the commencement of an involuntary bankruptcy proceeding against such Party, and such proceeding is not dismissed within ninety (90) days after the filing thereof.

"Base Year Taxable Value" shall mean the Taxable Value of the Property as of January 1, of 2015.

"Chapter 380 Payment(s)" or **"Cash Incentives"** shall mean that amount paid as a grant under Texas Local Government Code, Chapter 380, by City to Developer in an amount equal to 100 percent of Real Property Taxes collected and attributable to the Incremental Taxable Value in the calendar year immediately preceding the year in which a Chapter 380 Payment is requested plus 100 percent of rollback taxes assessed and collected by City on the Property. Such amount shall be calculated based upon the Incremental Taxable Value for each year of the Agreement, unless otherwise provided herein.

"Commencement of Construction" means that: (i) the plans have been prepared and all approvals thereof required by applicable governmental authorities have been obtained for construction of the Project or the applicable phase of the Project; (ii) all necessary permits for the construction of the Project or for the applicable phase of the Project, pursuant to the respective plans therefor have been issued by all applicable governmental authorities; and (ii) grading of the applicable portion of the Property and for construction of the respective phase of the Project.

"Completion of Construction" or "Complete Construction" shall mean that: (i) the construction of the respective infrastructure, the Subdivision Improvements, and/or the Phase 1 University Drive Public Improvements, as the case may be, has been substantially completed; and (ii) the City Engineer has accepted the respective infrastructure, as the case may be.

"Developer" shall mean the Adam Development Properties, LP, a Texas Limited Partnership and its Affiliates.

"Effective Date" shall mean the date that both of the following conditions have been met: (1) this Agreement is fully executed by both the City and Developer and (2) the Developer and Brazos County have entered into an Economic Development Agreement for development of the Property (as defined below) pursuant to Chapter 381 of the Texas Local Government Code.

"End-User" shall mean any person or entity to whom all or a portion of the Property is sold or transferred by Developer.

"Expiration Date" means the earlier to occur of (i) the date the Chapter 380 Payment is received from the City in the year following 12 years after the First Year of Cash Incentives or (ii) 5 years from the Effective Date of this Agreement, if at that time, the Developer has not completed and/or the City Engineer has not accepted the Phase 1 University Drive Public Improvements; or (iii) the 31st day of December in the twentieth year following the Effective date of this Agreement; or (iv) the total amount of Chapter 380 Payments received by Developer has reached the Maximum Payment Amount, as defined herein. In recognition of the fact that the Chapter 380 Payments by necessity are calculated and paid after taxes have been assessed and paid to the City, and therefore always run in arrears, the term of this Agreement shall be deemed to be extended for the time necessary to make any payments otherwise due and payable to Developer which extend beyond the original term of the Agreement.

"Facility" shall mean a building or structure erected on the Property.

"First Year of Cash Incentive(s)" shall mean the first calendar year following the calendar year in which the Incremental Taxable Value of the Property is at least $5,000,000.00.

"Force Majeure" shall mean any contingency or cause beyond the reasonable control of a Party including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, adverse weather, government or de facto governmental action (unless caused by acts or omissions of such Party), fires, explosions or floods, strikes, slowdowns or work stoppages. In no event shall Force Majeure include Developer's financial inability to perform or Developer's inability to perform as a result of changes in market conditions.

"Improvements" shall mean the construction of the Subdivision Improvements, Residential Improvements, and new Facilities on the Property and other ancillary facilities such as required parking and landscaping more fully described in the submittals filed with City, from time to time, in order to obtain a building permit(s). Improvements may include future retail and general commercial and office uses as determined by the City Council through the rezoning process.

"Incremental Taxable Value" means the Taxable Value for the Property as of January 1st of a given year less the Base Year Taxable Value.

"Maximum Payment Amount" means the total, not to exceed amount of cash incentives which may be paid to Developer by City as a Chapter 380 Payment during the term of this Agreement, which amount shall not exceed TEN MILLION DOLLARS ($10,000,000.00).

"Maximum Reimbursement Amount" means an amount equal to the lesser of (i) the Public Improvement Costs or (ii) the sum of TWO MILLION SIX HUNDRED THOUSAND DOLLARS ($2,600,000.00).

"Payment Request" means a written request from Developer to the City for payment of the annual Cash Incentive accompanied by a report of all property ID numbers for each record owner of a lot, parcel or Facility located on the Property.

"Periodic Payment Request" means a verified, written request from Developer to City for a Periodic Construction Payment as provided in Section 5.03 of this Agreement, and accompanied by the construction contractor's verified pay application, signed by the contractor and approved by Developer, and including the required payment receipts or other evidence of payment made by Developer to the contractor for the full amount of the prior month's pay application paid by the City.

"Personal Property" shall have the meaning ascribed to it in Section 1.04 of the Texas Tax Code, as amended.

"Phase 1 of the Project" shall mean the development on the Property of at least sixty (60) single-family residential lots and all associated infrastructure and landscaping. The lots will be a minimum of 5,000 square feet. The main entrance to Phase 1 of the Project will be located off of the University Drive extension, as approximately shown on Exhibit "B".

"Phase 1 University Drive Public Improvements" means the construction of that portion of the roadway extension of University Drive, as a major arterial thoroughfare, from its existing terminus at the intersection of University Drive and FM 158 in Bryan, Texas and extending to the entrance of the Oakmont Development as approximately shown on Exhibit "B", and including, at full build-out four lanes, concrete curb and gutters, medians, landscaping, sidewalks, lights, stormwater improvements, requisite traffic control improvements, markings and other customary roadway improvements required to be constructed in accordance with the City of Bryan ordinances, City of Bryan Engineering standards, specifications, and Infrastructure Design Manual, and the approved plans. It is understood and agreed that the initial build-out contemplated for the Phase 1 University Drive Public Improvements shall only include two lanes (with the requisite roadway improvements listed above), and Developer shall not be responsible for any future expansion to four lanes.

"Project" or "Oakmont Development" is Developer's planned mixed-use development of the Property in phases, consisting primarily of single-family dwellings each located on a single-family lot but which may include retail, general commercial and office uses, and multi-family dwelling units, as depicted on the conceptual land plan attached hereto as Exhibit "B", and to be determined based upon market conditions. The conceptual land plan may be changed from time to time based on market conditions and subject to compliance with City ordinances.

"Project Development Costs" means all actual costs reasonably incurred and expended by Developer for or solely and directly in connection with the development of the Project including, without limitation, the following: construction costs, environmental assessment and permitting costs, application and inspection fees, other government fees, surveying and platting costs, land-planning and master-planning costs, design, engineering, and testing costs, landscaping costs, legal expenses, marketing and sales costs, and in-kind contributions by Developer to the Project (including but not limited to landscaping materials, construction materials, equipment, and labor, but not including the value of the Property itself) at their fair market value. The Project Development Costs shall not include any Public Improvement Costs as defined herein.

"Property" means the real property depicted by a boundary survey and described by metes and bounds in Exhibit "A".

"Public Improvement Costs" shall mean all actual costs reasonably incurred for or solely and directly in connection with the design of the University Drive Expansion Project and/or the construction of the Phase 1 University Drive Public Improvements, and paid by Developer, including (i) all costs of design, engineering, materials, labor, construction, testing and inspection and other services arising in connection with the design of the University Drive Expansion Project and/or the construction of the Phase 1 University Drive Public Improvements; (ii) all payments arising under any contracts entered into for the design of the University Drive Expansion Project or construction of the Phase 1 University Drive Public Improvements; and (iii) all costs incurred for or solely and directly in connection with obtaining construction easements, governmental approvals, certificates and permits required in connection with the construction of the Phase 1 University Drive Public Improvements, including the legal, engineering and other consultant fees and expenses related to the design of the University Drive Expansion Project and the construction of the Phase 1 University Drive Public Improvements.

"Real Property" shall have the meaning ascribed to it in Section 1.04 of the Texas Tax Code, as amended.

"Real Property Taxes" means the City's share of the ad valorem taxes received by the City from the Brazos County Tax Assessor-Collector on the value of the Real Property located on the Property, which shall include land and improvements taxed by the City, and shall exclude ad valorem taxes received by the City on Personal Property located on the Property.

"Reimbursement Amount" means the amount, not-to-exceed the Maximum Reimbursement Amount, to be paid to Developer by City as a reimbursement of the Public Improvement Costs.

"Reimbursement Request" means a verified, written request from Developer to City for the Pre-Construction Payment, or the Final Payment as provided in this Agreement, and accompanied by the construction contractor's verified pay application signed by the contractor and approved by the Developer, the invoices, bills, receipts from the engineers, contractors, or other vendors, as applicable, and such other information as may be reasonably requested by City to document Developer's payment of the Public Improvement Costs.

"Residential Improvements" means the new construction of residential buildings(s), and all the appurtenances thereto, whether single family, duplex or multi-family in purpose.

"Subdivision Improvements" means all improvements to real property required of the Developer by the City of Bryan Subdivision Ordinance, which cost shall be borne solely by Developer, and excluding the Phase 1 University Drive Public Improvements.

"Taxable Value" means the appraised value as certified by the Brazos Central Appraisal District as of January 1st of a given year.

"University Drive Expansion Project" means the construction of the roadway extension of University Drive, as a major arterial thoroughfare, from its existing terminus at the intersection of University Drive and FM 158 in Bryan, Texas to the end of the Property, in Bryan, Texas, as approximately shown on Exhibit "B", and including, at full build-out four lanes, concrete curb and gutters, medians, landscaping, sidewalks, lights, stormwater improvements, requisite traffic control improvements, markings and other customary roadway improvements required to be

constructed in accordance with the City of Bryan ordinances, City of Bryan Engineering standards, specifications, and Infrastructure Design Manual, and approved plans.

ARTICLE II.
TERM

2.01 The term of this Agreement shall begin on the Effective Date and shall continue until the Expiration Date, unless sooner terminated as provided herein.

ARTICLE III.
REPRESENTATIONS AND WARRANTIES OF DEVELOPER AND CITY

3.01 In order to induce City to enter into this Agreement, Developer represents and warrants as follows:

(a) Developer is a duly organized and validly existing limited partnership under the laws of the State of Texas.

(b) Developer has the power and authority to execute, deliver and carry out the terms and provisions of this Agreement and all other instruments to be executed and delivered by the Developer in connection with its obligations hereunder. The execution, delivery, and performance by Developer of this Agreement have been duly authorized by all requisite action by the Developer, and this Agreement is a valid and binding obligation of the Developer enforceable in accordance with its respective terms, except as may be affected by applicable bankruptcy or insolvency laws affecting creditors' rights generally.

(c) The Developer is not in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any material agreement or instrument to which the Developer is a party or by which the Developer or any of its property is bound that would have any material adverse effect on the Developer's ability to perform under this Agreement.

(d) To its best knowledge, Developer is not a party to or otherwise bound by any agreement or instrument or subject to any other restriction or any judgment, order, writ, injunction, decree, award, rule or regulation which could reasonably be expected to materially and adversely affect the Developer's ability to perform its obligations under this Agreement.

(e) The Developer fully intends, subject to the conditions set forth in this Agreement, to commence and complete the Project.

3.02 In order to induce Developer to enter into this Agreement, City represents and warrants as follows:

(a) City is a home rule city operating under the laws of the State of Texas and is

authorized and empowered to enter into this Agreement. By Resolution of the City Council, the Mayor has been duly authorized to execute and deliver this Agreement.

(b) The City has the authority to levy, assess, and collect ad valorem taxes on the Property and to use the taxes collected by it from property within the City, including the Property, as provided in this Agreement.

ARTICLE IV.
THE UNIVERSITY DRIVE EXTENSION PROJECT
DESIGN AND PHASE 1 CONSTRUCTION

4.01 **Design.** Within 30 days of the Effective Date of this Agreement, Developer shall engage a Professional Engineer, licensed in the State of Texas and proficient in Civil Engineering (the "Engineer"), to design the University Drive Expansion Project in accordance with City of Bryan Engineering Standards and Specifications applicable to a major arterial thoroughfare and in an approximate alignment as shown in Exhibit "B" (the "Design Plans"). The Design Plans shall be subject to review and final approval by the City Engineer.

4.02 **Right of Way.** Upon approval by the City Engineer of the Design Plans, it shall be the responsibility of the Developer to acquire temporary construction easement rights in, over and through the adjacent property which, when combined with portions of the Property, totals 120 feet wide as is necessary for the construction of permanent right-of-way and all necessary appurtenances for the Phase 1 University Drive Public Improvements in accordance with the City of Bryan Engineering Standards and Specifications and the approved Design Plans. The temporary construction easement rights to be acquired by Developer shall be by their terms assignable to the City.

4.02.1 The Developer's obligation to acquire the temporary construction easement rights, as set out in Section 4.02 above, shall be conditioned upon the City and the adjacent property owner(s) reaching an agreement, whereby the adjacent property owner(s) agree to convey to the City upon the completion of construction and acceptance by the City Engineer of the Phase I University Drive Public Improvements, the additional necessary right of way for the Phase I University Drive Public Improvements, by warranty deed and at no monetary cost to the City. If the Developer is unable, despite good faith efforts, to acquire the requisite temporary construction easements rights, or if the City and the adjacent property owner(s) fail to enter into the aforementioned agreement, Developer shall notify City and the Parties shall confer within ten (10) business days, and unless they mutually agree to proceed, this Agreement will automatically terminate.

4.02.2 Upon Completion of Construction of the Phase 1 University Drive Public Improvements and the issuance of a letter of acceptance by the City Engineer, Developer agrees to convey to City, free of cost, and free of any liens and encumbrances, and in accordance with the City of Bryan Engineering Standards and Specification and the approved Design Plans, the following:

(i) that portion of the Property required, when combined with portions from the adjacent property, for a 120' wide, permanent right-of-way for the Phase 1 University Drive Public Improvements; and

(ii) that portion of the Property 60 feet in width and sufficient when combined with portions of the adjacent property for a 120' wide permanent right of way along University Drive, commencing at the end point of the permanent right of way for the Phase 1 University Drive Improvements and extending to the end of the Property, in Bryan, Texas, as approximately shown on Exhibit "B".

4.02.3 Developer shall convey to the City in fee simple that portion of the Property required for use as permanent right of way, as described above, by a warranty deed in a form mutually agreeable to the Parties. In the event, the Parties are unable to agree to the form of the warranty deed, the Parties agree to use the form of warranty deed contained in the most recent edition of the State Bar of Texas, Texas Real Estate Forms Manual.

4.02.4 In the event, the City should exercise its rights as an obligee under the performance bond(s) to complete the construction of the Phase 1 University Drive Public Improvements under the terms set forth in Section 4.05 below, or should Developer otherwise default under the terms of this Agreement and does not cure the default within the required cure period, Developer agrees to assign to City its temporary construction easement rights, and to convey to City in fee simple by warranty deed the portions of the Property required for permanent right of way, as described above, at no cost to the City, upon ten (10) days written notice by the City Manager. Nothing herein shall be construed as a limitation on the City's right to exercise any and all legal and equitable remedies available to the City. This provision shall survive the Termination of this Agreement.

4.03 **Construction Plans.** Before commencing construction of the Phase 1 University Drive Public Improvements, Developer shall cause Developer's engaged engineer to prepare the plans and specifications for the construction of the University Drive Public Improvements in accordance with the approved Design Plans, which plans shall be submitted for, and subject to, the review and approval of the City Engineer (the "Construction Plans"). The Developer agrees to comply with all applicable legal requirements of the City and any other agencies having jurisdiction. No material modifications to the Construction Plans may be made without review and approval by the City Engineer, which approval shall not be unreasonably delayed or withheld.

4.04 **Competitive Bidding.** Construction contracts for the Phase 1 University Drive Public Improvements shall be let on a competitive bidding basis as required by law applicable to the City. After preparation of final plans and specifications and their approvals as required by this Agreement, the Developer shall advertise for or solicit bids for construction as described in the final plans and specifications. The City's representatives shall be notified of, and invited to attend when applicable, pre-bid conferences, bid openings, and the award of contracts in accordance with the notice provision of Section 14.07 of this Agreement. The City shall designate from time to time in writing the persons who shall be their designated representatives. Failure of the City's representative to attend any pre-bid conference, bid opening or award of contract meeting shall not be cause to postpone or otherwise delay such meeting. Developer shall construct the Phase 1 University Drive Public Improvements at its expense and the City agrees to pay Developer the

Reimbursement Amount under the Terms of this Agreement. If the bids for the Phase 1 University Drive Public Improvements would, in reasonable likelihood, result in Public Improvement Costs that exceed $2,600,000.00, Developer shall notify City and the Parties shall confer within ten (10) business days, and unless they mutually agree to take action to amend this Agreement, this Agreement will automatically terminate. In the event the Developer proceeds under this Agreement and awards a construction contract(s), Developer shall provide to City copies of the contracts with each contractor constructing the Phase 1 University Drive Public Improvements (the" Construction Contract(s)").

4.05 **Payment and Performance Bonds.** The Developer shall require each contractor constructing the Phase 1 University Drive Public Improvements to furnish a payment and performance bond in an amount equal to the full cost of Developer's construction contract with that contractor, conditioned on the contractor's full and timely performance under the construction contract. The payment and performance bond(s) must be in a form approved by the City Attorney and issued by a corporate surety authorized and admitted to write surety bonds in Texas. If the amount of the bond exceeds $100,000.00, the surety must be listed on the current list of accepted sureties on federal bonds published by the United States Treasury Department or reinsured for any liability in excess of $1,000,000.00 by a reinsurer listed on the U.S. Treasury list. The Developer and City shall be named as dual obligees for each payment and performance bond(s) and copies of certificates of such bond(s) shall be delivered to the City.

4.05.1 In the event, Developer fails or refuses to complete the Phase 1 University Drive Public Improvements by the Completion Date, the City shall be entitled to exercise its rights as an obligee under the performance bond(s) and may complete the construction of the Phase 1 University Drive Public Improvements and charge the performance bond(s) for the costs. Nothing herein shall be construed as a limitation on the City's right to exercise any and all legal and equitable remedies available to the City. The provisions of this subsection 4.05.1 shall survive the termination of this Agreement.

4.06 **Insurance.** Developer shall require each contractor constructing the Phase 1 University Drive Public Improvements to carry the types of insurance and coverage with respect to the Phase 1 University Drive Public Improvements as set forth in attached Exhibit "C". The Construction Contract shall require the contractor to deliver to the City Manager certificates of insurance evidencing such coverage before the Commencement of Construction and shall provide that within ten (10) days before expiration of coverage, or as soon as practicable, renewal policies or certificates of insurance evidencing renewals and payment of premium shall be delivered by each of the Developer's construction contractor(s) to the City Manager.

4.07 **Utilization of Local Contractors and Suppliers**. The Developer agrees to exercise commercially reasonable efforts to utilize local contractors and suppliers in the construction of the University Drive Public Improvements, with a goal of at least 30% of the total dollar amount of all construction contracts and supply agreements being paid to local contractors and suppliers. A contractor or supplier shall be considered as local if it has maintained an office within the City for at least one year.

4.08 **Construction.** The Developer shall Commence Construction of the Phase 1 University Drive Public Improvements not later than six (6) months after the final approval by the City Engineer of the Construction Plans, and subject to events of Force Majeure, shall cause Completion of Construction to occur not later than 12 months after the Commencement of Construction (the "Completion Date"). Prior to commencement of construction of any Phase 1 University Drive Public Improvements, the Developer or its engaged engineer will give written notice by certified mail or hand-delivery to the City Manager stating the date that construction will be commenced. Construction of the Phase 1 University Drive Public Improvements will be in accordance with the approved Construction Plans, and with the applicable City of Bryan Engineer's Standards and Specifications. During the progress of the construction and installation of the Phase 1 University Drive Public Improvements, the City may conduct periodic, on-the-ground inspections.

4.08.1 Developer shall construct the Phase 1 University Drive Public Improvements at its own expense, provided however, City shall reimburse Developer all Public Improvement Costs reasonably incurred for and/or directly in connection with the construction of the Phase 1 University Drive Public Improvements in accordance with the Construction Plans, in a total aggregate amount, not to exceed the Maximum Reimbursement Amount, under the terms and conditions set forth herein. Public Improvement Costs in excess of the Maximum Reimbursement Amount shall be borne solely by the Developer, provided however, City and Developer agree to collaborate in good faith to accommodate necessary changes in the roadway design and construction that may arise during the construction of the Phase 1 University Drive Public Improvements and will negotiate in good faith any amendments of this Agreement to increase the Maximum Reimbursement Amount.

4.09 **Mechanics' Liens**. Developer is expressly prohibited from subjecting the Phase 1 University Drive Public Improvements to any liens of mechanics, artisans, laborers, materialmen, contractors or subcontractors, or to any other liens or charges whatsoever arising out of any construction and development work arising in any other manner in connection with the construction of the Phase 1 University Drive Public Improvements.

4.10 **Final Acceptance of Public Improvements.** The City will not issue a Letter of Acceptance for the Phase 1 University Drive Public Improvements until they are completely constructed (Final Completion) to the satisfaction of the City Engineer. However, upon substantial completion a "punch list" of outstanding items shall be presented to Developer's contractors indicating those outstanding items and deficiencies that need to be addressed for Final Completion of the Development.

4.10.1 When construction of the Phase 1 University Drive Public Improvements is finally completed by the contractor, in accordance with this Agreement, and the following items have been accomplished, the City will accept the project as being complete, as evidenced by the issuance of a letter of acceptance by the City Engineer to the Developer:

a. A final inspection of all improvements has been accomplished and the resulting 'Punch List' corrected; and

b. The contractor has provided the City a Maintenance Bond, equal to one hundred percent (100%) of the approved cost estimates provided by the developer indicating that he will be responsible for defects in the project due to faulty materials and/or workmanship for a period of one (1) year from date of final acceptance; and

c. The developer has submitted an "All Bills Paid Affidavit" from the Contractor and Developer evidencing to the City that final payment to the contractor has been made, and that all subcontractors and persons furnishing labor and materials have been paid in full and all claims settled, and

d. The required "as built" construction plans have been submitted to and accepted by the City, and

e. The certification of the Developer's design engineer as to the completeness of the "as built" drawings has been submitted to the City Engineer.

4.11 **Title vests in the City.** Upon issuance of the Letter of Acceptance and payment to Developer of the Approved Final Payment, as defined below, title to all of the University Drive Public Improvements shall be vested in the City and Developer relinquishes any right, title or interest in and to such improvements or any part thereof. It is understood and agreed that the City shall have no liability or responsibility in connection with such improvements until title vests in the City, as stated herein.

ARTICLE V.
THE UNIVERSITY DRIVE EXTENSION REIMBURSEMENT

5.01 Separate and apart from the Chapter 380 Payments listed below, City agrees to reimburse Developer for the actual costs reasonably incurred and expended by Developer for the design of the University Drive Expansion Project, and the construction of the Phase 1 University Drive Public Improvements (the "Reimbursement Amount", as further defined in Article I) in a total not-to-exceed amount of TWO MILLION SIX HUNDRED THOUSAND DOLLARS ($2,600,000.00) (the "Maximum Reimbursement Amount"), under the terms as set forth herein.

5.02 **Pre-Construction Payment.** Developer shall submit a Reimbursement Request for all Public Improvement Costs reasonably incurred and expended by Developer prior to the Bid Opening, directly in connection with the design of the University Drive Expansion Project, along with the invoices, paid receipts and other supporting documentation from the engineers, contractors, or other vendors. The application for Pre-Construction Payment shall be reviewed and approved by the City, which approval shall not be unreasonably withheld or delayed, and the City shall reimburse Developer for all approved Pre-Construction Public Improvement Costs in a not-to-exceed amount of $ 525,000.00 (the "Pre-Construction Payment"). The City shall make reasonable efforts to make the Pre-Construction Payment within thirty (30) days of the receipt of

the application for reimbursement. Upon payment to Developer of the approved Pre-Construction Payment, the Design Plans, Construction Plans, surveys, testing reports and the Developer's Engineer's cost estimates shall become the property of the City.

5.03 **Periodic Construction Payments.** During the construction of the Phase 1 University Drive Public Improvements, City agrees to pay to Developer not more frequently than monthly the Public Improvement Costs reasonably incurred by Developer for construction of the Phase 1 University Drive Public Improvements based upon the Periodic Payment Request submitted by the Developer and approved by the City Engineer, which approval shall not be unreasonably withheld or delayed (the "Periodic Construction Payments"). Each monthly Periodic Payment Request shall also include receipts or other sufficient documentation, as reasonably determined by the City Engineer, evidencing Developer's payment in full of the prior month's Periodic Construction Payment to the contractors in accordance with the prior month's Periodic Payment Request. The Developer agrees to timely pay all contractors in accordance with the Periodic Payment Request paid by the City. The failure of the Developer to provide sufficient documentation evidencing payment to the contractors as required herein, shall constitute a default of this Agreement. In such event, the City shall provide notice and opportunity to cure in accordance with Section 9.02 of this Agreement. The City may withhold additional Periodic Payments until Developer cures the default.

5.03.1 The City shall make reasonable efforts to make Periodic Construction Payments within thirty (30) days of the receipt of a complete Periodic Payment Request. The City shall make Periodic Payments up to an aggregate amount not to exceed the Maximum Reimbursement Amount minus the dollar amount of the retainage, as may be provided for in the construction contract for the Phase 1 University Drive Expansion Project.

It is expressly understood and agreed that the City's obligation to reimburse the Developer the approved Public Improvement Costs, which have been incurred in compliance with this Agreement, whether in the form of a Pre-Construction Payment, Periodic Construction Payment, or Final Payment, will survive the termination of this Agreement. Provided however, that nothing herein shall be construed to limit the City's available rights and remedies in the event of a breach of this Agreement by Developer.

5.04 **Close Out by Developer.** After completion of construction and prior to acceptance by the City Engineer of the Phase 1 University Drive Public Improvements, Developer must furnish to City (i) the "as-built" drawings, (ii) an affidavit of "all bills paid" from the Construction Contractor, and (iii) a verified Statement of Public Improvement Costs with respect to the completed work; (iv) design engineer's certification of the completeness of the "as-built" drawings.

5.05 **Final Payment.** The City shall make its final payment of the Reimbursement Amount to Developer, which amount shall consist of all remaining Public Improvement Costs reasonably and necessarily incurred and expended by Developer in compliance with this Agreement (the "Final Payment"), upon the occurrence of all of the following events: (i) Completion of construction of the Phase 1 University Drive Public Improvements and the issuance of a Letter of Acceptance by the City Engineer; (ii) Submission to the City by the Developer of

the "as-built" drawings and an "all-bills-paid" affidavit for the construction of the Phase 1 University Drive Public Improvements; (iii); Conveyance to the City by Developer of its portion of the right of way for the Phase 1 University Drive Public Improvements in fee simple by warranty deed; (iv) A certification bearing the signatures of the design engineer as to the completeness of the "as-built" drawings; and (v) submission of a verified application for Final Payment to include with supporting invoices submitted by the engineers, contractors, or other vendors and(vi) submission by Developer of a complete Reimbursement Request; and (vii) the approval of the Final Payment amount by the City Engineer, which approval shall not be unreasonably delayed or withheld. The City shall make reasonable efforts to pay to Developer the approved Final Payment amount (the "Approved Final Payment") within 30 days of the occurrence of all of the foregoing prerequisites to payment.

ARTICLE VI.
THE OAKMONT DEVELOPMENT
CHAPTER 380 PROGRAM

6.01 If the Developer performs the following requirements, pertaining to the Project, City agrees to pay to Developer the Chapter 380 Payments as stated in this Agreement:

(a) As consideration of and part of the Chapter 380 Agreement, Developer shall Commence Construction of the Subdivision Improvements for Phase 1 of the Project within twelve (12) months after the acceptance by the City Engineer of the Phase 1 University Drive Public Improvements.

(b) During the Term of this Agreement, Developer shall expend a minimum of $25,000,000.00 in Project Development Costs by the conclusion of 12 years after the First Year of Cash Incentives (the "Investment Requirement").

(c) As a condition precedent to the City's obligation to make a Chapter 380 payment in any given year during the term of this Agreement, Developer, at a minimum, must: (i) Complete Construction of the Subdivision Improvements for Phase 1 of the Project; and (ii) obtain and/or maintain a minimum Incremental Taxable Value of the Property in any given calendar year of at least $5,000,000.00.

(d) During the Term of this Agreement, Developer shall not allow the ad valorem taxes owed to City on the Property owned by the Developer, or any other property owned by Developer and located within the City of Bryan, to become delinquent beyond the date when due, as such date may be extended to allow for any protest of valuation or appeal. Nor shall Developer fail to render for taxation any property owned by Developer and located within the City of Bryan.

(e) Developer agrees to use commercially reasonable efforts to pursue new commercial and retail tenants and End-Users to add value to the Property and create new jobs.

ARTICLE VII
GENERAL REQUIREMENTS

7.01. Developer agrees as good and valuable consideration for this Agreement that construction of the Improvements by Developer will be in accordance with all applicable federal, state and local laws, city codes, ordinances, rules and regulations.

7.02 This Agreement shall not constitute a waiver by the City of any codes, ordinances, rules and regulations. Further, Developer acknowledges that by executing this Agreement, no entitlement or agreements concerning zoning or land use shall arise, either implied or otherwise.

7.03 Construction plans for the Improvements constructed on the Property by Developer will be filed with City, which shall be deemed to be incorporated by reference herein and made a part hereof for all purposes.

7.04 Developer agrees to maintain the Improvements owned by it during the term of this Agreement in accordance with all applicable federal, state and local laws, city codes, ordinances, rules and regulations.

7.05 City, its agents and employees shall have the right of access to the Property during construction by Developer to inspect the Improvements at reasonable times and with reasonable notice to Developer, and in accordance with visitor access and security policies of Developer and Developer's tenants, in order to insure that the construction of the Improvements are in accordance with this Agreement and all applicable state and local laws and regulations (or valid waiver thereof).

7.06 Developer agrees to include the following paragraph in any land sales contract for the Property:

(i) Buyer agrees that construction of the Improvements will be in accordance with all applicable state and local laws, codes and regulations;

(ii) Construction plans for the Improvements constructed on the Property will be filed with City, which shall be deemed to be incorporated by reference herein and made a part hereof for all purposes;

(iii) Buyer agrees to maintain the Improvements owned by it during the term of this Agreement in accordance with all applicable state and local laws, codes, and regulations; and

(iv) City, its agents and employees shall have the right of access to the Property during construction by Buyer to inspect the Improvements at reasonable times and with reasonable notice to Buyer, and in accordance with visitor access and security policies of Buyer and Buyer's tenants, in order to insure that the construction of the Improvements are in accordance with this Agreement and all applicable state and local laws and regulations (or valid waiver thereof).

ARTICLE VIII.
THE CHAPTER 380 PAYMENTS

8.01 **Condition Precedent.** The City's obligation to make the Chapter 380 Payment to Developer as set forth herein is contingent and conditioned upon: (i) Developer's Completion of Construction of the Subdivision Improvements for Phase 1 of the Project, and (ii) A minimum Incremental Taxable Value of the Property in the then preceding calendar year of at least FIVE MILLION DOLLARS ($5,000,000.00); and (iii) Developer is in compliance with all of the terms and conditions set forth in this Agreement.

8.02 Subject to the Developer's compliance with the conditions precedent set forth in Section 8.01 above, City agrees to pay to Developer annually an amount equal to one hundred percent (100%) of the Ad Valorem Tax Revenues collected by the City on the Incremental Taxable Value of the Property for the preceding calendar year by the Developer and/or any End User in accordance with the terms of this Agreement, provided that the total amount of Chapter 380 Payments paid to Developer under this Agreement shall not exceed TEN MILLION DOLLARS ($10,000,000.00).

8.03 Subject to the Developer's compliance with the conditions precedent set forth in Section 8.01 above, City further agrees to pay to Developer as a Cash Incentive an amount equal to one hundred percent (100%) of the rollback taxes assessed and collected by the City on the Property since the Effective Date of this Agreement (the "Rollback Tax Payment"). The First Year Cash Incentives shall also include the Rollback Tax Payment.

8.04 In no event will the Chapter 380 Payment paid in connection with a tax year exceed the amount of ad valorem taxes actually collected by the City on the Property by July 1 for such tax year, and any rollback taxes previously collected by the City on the Property.

8.05 The City's obligation to make the Chapter 380 Payment(s) hereunder is subject to annual appropriation by the Bryan City Council, which the City agrees to use good faith efforts to appropriate such funds each year during the Term of this Agreement. Under no circumstances shall City's obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. None of the City's obligations under this Agreement shall be pledged or otherwise encumbered in favor of any commercial lender and/or similar financial institution or other party.

8.06 The total amount of Chapter 380 Payments paid by the City under this Agreement shall in no event exceed TEN MILLION DOLLARS ($10,000,000.00), at which time City's obligation to make the Chapter 380 Payments to Developer ends.

8.07 City will remit the first Chapter 380 Payment to Developer no later than sixty (60) days after receipt by the City Manager of a proper Payment Request from the Developer in accordance with the terms of this Agreement. Beginning with the First Year of Cash Incentives, Developer may only submit a Payment Request during the period commencing July 1 and ending on December 31 of any given year. The failure by Developer to timely submit to the City Manager a Payment Request will result in the forfeiture of the Chapter 380 Payment attributable to that tax year.

8.08 During the term of this Agreement, Developer shall be subject to all taxation, including but not limited to, sales tax and ad valorem taxation; provided, this Agreement does not prohibit Developer from claiming any exemptions from tax provided by applicable law.

ARTICLE IX.
DEFAULT

9.01 **Events of Default**. Developer shall be in default of this Agreement upon the occurrence of any of the following during the term of this Agreement:

(a) Developer fails to comply with any of its obligations under this Agreement;

(b) Developer fails to file any required report or statement or to give any required notice pursuant to this Agreement; or

(c) Developer fails to timely pay any sales or property taxes owed to the City and fails to properly follow legal procedures for protest or contest of such taxes.

9.02 If the Developer should default in the performance of any obligation of this Agreement, the City shall provide Developer written notice of the default, and a minimum period of thirty (30) days to cure such default, prior to pursuing any remedy for default.

9.03 If Developer remains in default after notice and opportunity to cure, City shall have the right to (i) suspend the Chapter 380 Payments or (ii) terminate the Agreement and the Chapter 380 Payments which have accrued after the date of default; and (iii) to exercise all available remedies at law and at equity.

9.04 **Recapture**. In the event the Developer defaults by failing to satisfy the Investment Requirement of Section 6.01(b), the City shall have the right to recapture all Cash Incentives paid during the Term of this Agreement by City to Developer in excess of the amount that is determined by multiplying the Maximum Payment Amount by a fraction where the numerator is the actual Project Development Costs and the denominator is the amount of Project Development Costs required under Section 6.01(b). For example, if the actual Project Development Costs totaled $20,000,000, the City shall have the right to recapture all Cash Incentives paid during the Term of this Agreement in excess of $8,000,000 ($10,000,000 Max. Payment Amount x $\frac{\$20,000,000}{\$25,000,000}$). If the City exercises its right to recapture any amount of Cash Incentives, the Developer shall pay to City the total amount subject to recapture within ninety (90) days of the City's written demand therefore. Any amounts not timely paid shall bear interest at the rate of 10% percent annually.

9.05 The provisions regarding termination of the Agreement and the recapturing of previously paid Cash Incentives shall also apply should the Developer fail to pay sales or property taxes owed to the City and fails to properly follow legal procedures for protest or contest of such taxes, but only to the extent of the sales or property taxes owed to the City and which Developer has failed to pay.

9.06 The Developer's obligation to repay any recapture amounts to the City under Section 9.04, and the City's right and authority to pursue any default and to recover all of the

Chapter 380 Payments made to Developer under this Agreement shall survive the termination of this Agreement.

ARTICLE X
EVENTS OF FORCE MAJEURE

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

ARTICLE XI.
TERMINATION

11.01 This Agreement shall terminate upon any one or more of the following:

(a) In the event, after the completion and acceptance by the City Engineer of the Phase 1 University Drive Public Improvements, the Developer elects not to proceed with the Project as contemplated by this Agreement, Developer shall notify the City in writing, and this Agreement and the obligations on the part of both parties, save and except for the City's obligations to reimburse all Public Improvement Costs, shall be deemed terminated and of no further force or effect.

(b) By mutual agreement of the Parties;

(c) Expiration Date;

(d) Developer has been paid the Maximum Payment Amount.

(e) By City, if the Developer suffers an event of Bankruptcy or Insolvency;

(f) By City or Developer in the event the other Party breaches any of the terms or conditions of the Agreement and any such breach is not cured within thirty (30) days after written notice;

(g) If the Developer sells or otherwise conveys the Property or any portion of the Property to a third party, other than an Affiliate as defined herein, prior to the Property obtaining a minimum Incremental Taxable Value of $5,000,000, the City's obligations under this Agreement to make any Chapter 380 Payments to Developer shall terminate as of the conveyance date.

ARTICLE XII.
INDEMNIFICATION

12.01 **Developer does hereby agree to waive all claims, release, indemnify, defend and hold harmless the City, and all of their officials, officers, agents and employees, in both their public and private capacities, from and against any and all liability, claims, losses, damages, suits, demands or causes of action including all expenses of litigation and/or settlement, court costs and attorney fees which may arise by reason of injury to or death of any person or for loss of, damage to, or loss of use of any property occasioned by the error, omission, or negligent act of Developer, its officers, agents, or employees arising out of or in connection with the performance of this Agreement, and Developer will at its own cost and expense defend and protect the City from any and all such claims and demands. The indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Developer or any contractor or subcontractor under workman's compensation or other employee benefit acts.**

ARTICLE XIII
REPORTING AND AUDITING

13.01 **Compliance Certification**. Developer shall, before December 31 of each calendar year that the Agreement is in effect, certify in writing to City that it is in compliance with each term of the Agreement, using the certification form attached hereto as Exhibit "D". The submission of these reports shall be the responsibility of Developer and shall be signed by an officer of the Developer. In addition, by the conclusion of 12 years after the First Year of Cash Incentives or upon the earlier expenditure of $25,000,000.00 in Project Development Costs by the Developer, whichever occurs first, Developer shall provide to City evidence in the form of a sworn cost statement signed by an officer of the Developer that the Developer has complied with the Investment Requirement of Section 6.01(b) or attesting to the actual amount of Project Development Costs.

13.02 **Maintenance of Records.** Developer shall be responsible for maintaining records of all costs incurred and payments made for the Project, the University Drive Expansion Project, and the Phase 1 University Drive Public Improvements, and all records evidencing compliance with all Developer obligations required under this Agreement. Developer shall maintain such records for a period of five (5) years after termination of this Agreement.

13.03 **Access to Records / Right to Audit**. Developer shall allow City reasonable access, during normal business hours, to review and audit its records and books and all other relevant records related to the Agreement upon five (5) business days' prior written notice to the Developer.

ARTICLE XIV.
MISCELLANEOUS

14.01 **Incorporation of Recitals.** The determinations recited and declared in the preambles to this Agreement are true and correct and are hereby incorporated herein as part of this Agreement.

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

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

14.04 **Amendments.** This Agreement may only be amended, altered, or terminated by written instrument signed by all parties.

14.05 **Assignment**. Developer may not assign this Agreement without the prior written consent of the City Manager, except that Developer may assign this Agreement in whole or in part to an Affiliate or in connection with any merger, reorganization, sale of all or substantially all of its assets or any similar transaction; provided that Developer provides the City Manager with written notice promptly after any such assignment. The Agreement will be binding upon, inure to the benefit of, and be enforceable by the Parties and their respective successors and assigns.

14.06 **No Waiver.** Failure of any party, at any time, to enforce a provision of this Agreement, shall in no way constitute a waiver of that provision, nor in any way affect the validity of this Agreement, any part hereof, or the right of either party thereafter to enforce each and every provision hereof. No term of this Agreement shall be deemed waived or breach excused, unless the waiver shall be in writing and signed by the party claimed to have waived. Furthermore, any consent to or waiver of a breach will not constitute consent to or waiver of or excuse of any other different or subsequent breach.

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

CITY:

City of Bryan, Texas
Attn: City Manager
P.O. Box 1000
Bryan, Texas 77805-1000
Telephone: (979) 209-5100
Facsimile: (979) 209-5003

DEVELOPER:

Adam Development Properties, L.P.
Attn: Marcos Rosales
One Momentum Blvd., Suite 1000
College Station, Texas 77845
Telephone: (979) 776-1111
Facsimile: (979) 599-9532

With a copy to:
Allen Boone Humphries Robinson LLP
Attn: Stephen M. Robinson
3200 Southwest Freeway, Suite 2600
Houston, Texas 77027

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

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

14.10 **Third Parties**. The City and Developer intend that this Agreement shall not benefit or create any right or cause of action in or on behalf of any third-party beneficiary, or any individual or entity other than the City and Developer or permitted assignees of the City and Developer, except that the indemnification and hold harmless obligations by Developer provided for in this Agreement shall inure to the benefit of the indemnitees named herein.

14.11 **No Joint Venture**. Nothing contained in this Agreement is intended by the parties to create a partnership or joint venture between the Parties, and any implication to the contrary is hereby expressly disavowed. It is understood and agreed that this Agreement does not create a joint enterprise, nor does it appoint either Party as an agent of the other for any purpose whatsoever. Except as otherwise specifically provided herein, neither Party shall in any way assume any of the liability of the other for acts of the other or obligations of the other.

14.12 **Employment of Undocumented Workers.** During the term of this Agreement, Developer agrees not to knowingly employ any undocumented workers and, if convicted of a violation under 8 U.S.C. Section 1324a (f), Developer shall repay to City all Cash Incentives received under this Agreement as of the date of such violation within 120 days after the date

Developer is notified by City of such violation, plus interest at the rate of 5% simple interest from the date of Developer's receipt of the Cash Incentives until repaid.

14.13 **Agreement for Goods and Services.** To the extent permitted by law, the City and Developer mutually warrant, represent, and agree that this Agreement states the essential terms for the Developer to provide goods or services to the City as contemplated by Texas Local Government Code §271.151(2)(A).

14.14 **No Personal Liability.** No elected official of the City, officer or employee of City shall be personally liable to the Developer or any successor in interest of Developer, in the event of any default or breach by the City, or for any amount which may become due to Developer or to its successor in interest, or for breach of any obligation under the terms of this Agreement.

14.15 **Right of Offset.** The City may deduct from any Chapter 380 payments, as an offset, any delinquent and unpaid utility charges, or other unpaid fees, charges, or taxes assessed and other sums of money owed to, or for the benefit of, the City by Developer; provided that, before offsetting such sums, the City must provide Developer with (a) advance notice of such offset, (b) sixty days to take action to remedy the situation giving rise to the offset, and/or (c) reasonable opportunity, at its own expense, to contest such offset.

14.16 **Independent Contractor**. Developer shall at all times during the Term of this Agreement remain an independent contractor.

14.17 **Counterparts**. This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which constitute one instrument.

[Signature Page Follows]

EXECUTED in duplicate originals to be effective as of the Effective Date.

CITY OF BRYAN, TEXAS:

Jason P. Bienski, Mayor

Date: 11-30-15

ADAM DEVELOPMENT PROPERTIES, L.P.

Stephanie Adam Malechek, President

Date: 11/9/15

ATTEST:

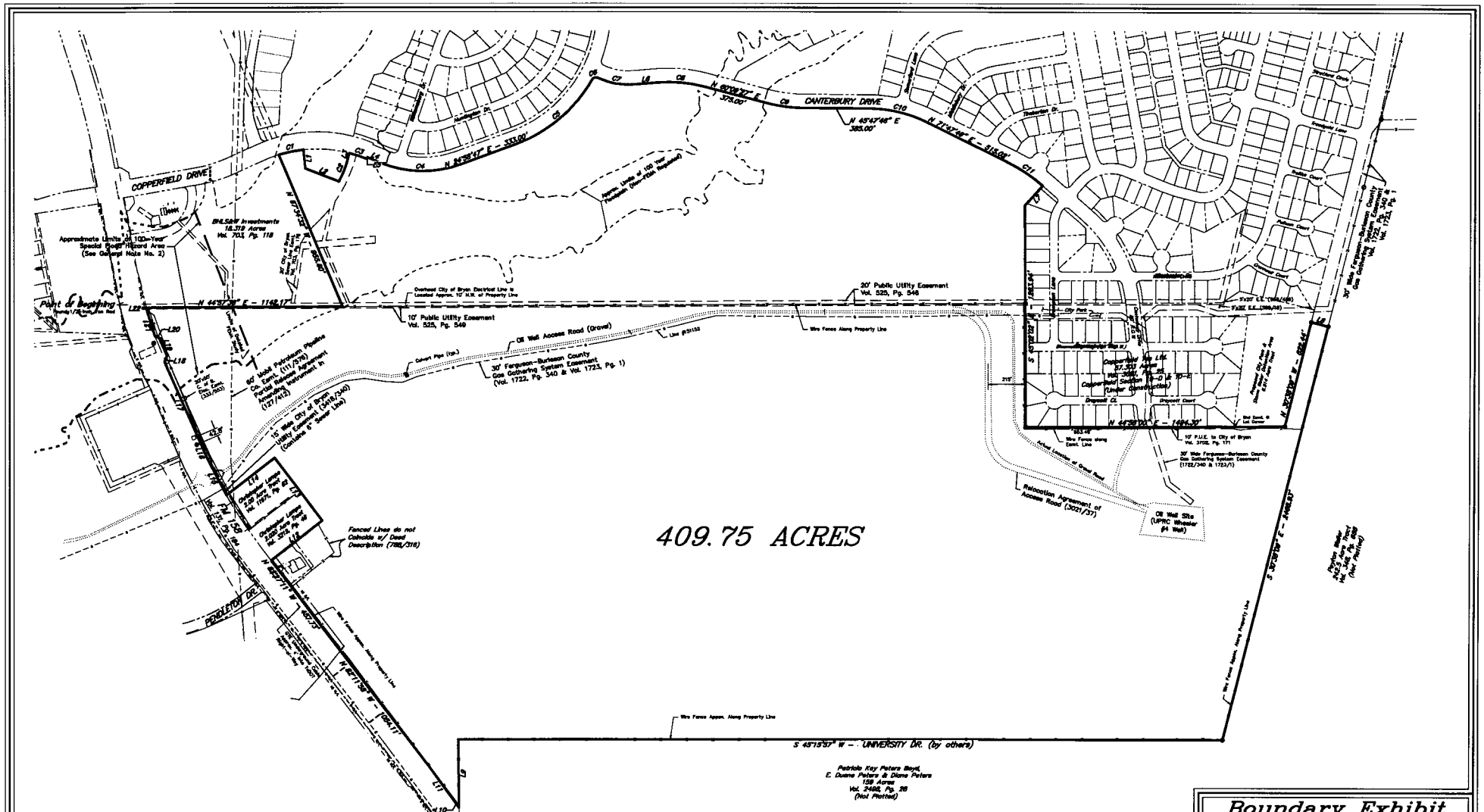
Mary Lynne Stratta, City Secretary

APPROVED AS TO FORM:

Janis K. Hampton, City Attorney

EXHIBIT "A"

Metes & Bounds Survey


409.75 ACRES
CANTERBURY DRIVE
COPPERFIELD DRIVE
PENDLETON DR.
EASTCHESTER DR.
UNIVERSITY DR. (by others)
Point of Beginning
N 45°47'46" E 385.00'
N 71°47'46" E - 815.00'
N 44°39'17" E - 331.00'
N 60°08'37" E 376.00'
N 44°37'22" E - 1146.17'
N 44°39'20" E - 1484.30'
S 45°15'57" W - 1584.17'
S 30°09'06" E - 1486.83'
N 30°09'06" W - 826.44'
N 45°17'59" W - 1584.17'
N 45°27'11" W 463.73'
BHLS&W Investments
16.312 Acres
Vol. 703, Pg. 118
Patricia Kay Peters Boyd,
E. Duane Peters & Diane Peters
159 Acres
Vol. 2485, Pg. 26
(Not Platted)
Fenced Lines do not Coincide w/ Deed Description (788/316)
Reinstitution Agreement of Access Road (3021/37)
Oil Well Site (UPRC Wheeler #4 Well)
Wire Fence Approx. Along Property Line
Overhead City of Bryan Electrical Line is Located Approx. 10' N.W. of Property Line
10' Public Utility Easement Vol. 525, Pg. 549
20' Public Utility Easement Vol. 525, Pg. 546
Oil Well Access Road (Gravel)
30' Ferguson-Burleson County Gas Gathering System Easement (Vol. 1722, Pg. 340 & Vol. 1723, Pg. 1)
Culvert Pipe (typ.)
Wire Fence Along Property Line
Approximate Limits of 100-Year Special Flood Hazard Area (See General Note No. 2)
Approx. Limits of 100 Year Floodplain (Non-FEMA Regulated)
60' Mobil Petroleum Pipeline Co. Easement (111/576) Partial Release Agreement Accepting Instrument in (127/403)
15' Wide CITY of Bryan Utility Easement (3418/240) (Contains 6" Sewer Line)
Actual Location of Gravel Road
Wire Fence along Easmt. Line
10' P.U.E. to City of Bryan Vol. 3702, Pg. 171
30' Wide Ferguson-Burleson County Gas Gathering System Easement (1722/340 & 1723/1)
Copperfield Way Est. Section 37.321 Acres Vol. 2486, Pg. 23 Copperfield Section 1-D & 1-E (Under Construction)
Copperfield Ct.
Bryanwood Ct.
Bryanwood Dr.
Bryanwood Cir.
Bryanwood Court
Wheelwright Dr.
Wheelwright Ct.
Wheelwright Cir.
Wheelwright Lane
Hunting Lane
Hunting Dr.
Hunting Ln.
Hunting Cir.
Hunting Ln.
Hunting Lane
Hunting Ln.
Hunting Lane
Hunting Ln.
Hunting Lane

FIELD NOTES
409.75 ACRE TRACT

Being all that certain tract or parcel of land lying and being situated in the J. W. SCOTT LEAGUE, Abstract No. 49 in Bryan, Brazos County, Texas and being part of the called 314.34 acre tract described in the deed from N.H. Burnap, Trustee to Adam Development Properties, L.P. formerly known as TAC Realty, Inc. recorded in Volume 3883, Page 97 of the Official Records of Brazos County, Texas (O.R.B.C.), all of the called 98.362 acre tract described in the deed from Southwest Federal Savings Association to Adam Development Properties, L.P. formerly known as TAC Realty, Inc. recorded in Volume 1463, Page 27 (O.R.B.C.), all of the 0.8091 acre tract described in the deed from F.W. Bert Wheeler, Trustee, et al to Adam Development Properties, L.P. formerly known as TAC Realty, Inc. recorded in Volume 4218, Page 1 (O.R.B.C.) and being more particularly described by metes and bounds as follows:

BEGINNING: at a point in the northeast right-of-way line of F.M. 158 (width varies), said point also being in the northwest line of the called 314.34 tract, the southeast line of the called 16.27 acre Robert B. Wilcox tract recorded in Volume 3395, Page 152 (O.R.B.C.) and being the most westerly corner of this tract;

THENCE: N 44° 57' 36" E along the northwest line of the called 314.34 acre tract and the southeast line of the called 16.27 acre Wilcox tract for a distance of 1142.17 feet to the south corner of the called 98.362 acre tract and the east corner of the called 16.27 acre tract;

THENCE: N 67° 34' 32" W along the southwest line of the called 98.362 acre tract and the northeast line of the called 16.27 acre Wilcox tract for a distance of 955.60 feet for corner in the southeast right-of-way line of Copperfield Drive (based on a 100-foot width);

THENCE: 146.02 feet in a clockwise direction along a curve in the southeast line of said Copperfield Drive, said curve having a central angle of 11° 09' 18", a radius of 750.00 feet, a tangent of 73.24 feet and a long chord bearing N 33° 44' 10" E at a distance of 145.79 feet to the west corner of Lot 2-R, Block 21 of the Replat of Lot 1, Block 21 of COPPERFIELD SECTION FIVE recorded in Volume 1190, Page 215 (O.R.B.C.);

THENCE: along the perimeter of said replatted COPPERFIELD SECTION FIVE for the following four (4) calls:

1) S 50° 41' 19" E for a distance of 109.97 feet for corner,
2) N 66° 19' 18" E for a distance of 209.54 feet for corner,
3) 152.03 feet in a counter-clockwise direction along the arc of a curve having a central angle of 14° 31' 05", a radius of 600.00 feet, a tangent of 76.42 feet and a long chord bearing N 23° 51' 20" W at a distance of 151.62 feet to the Point of Tangency, and
4) N 31° 06' 57" W for a distance of 23.56 feet in the before-said southeast right-of-way line of Copperfield Drive (based on a 100-foot width);

THENCE: 106.81 feet in a clockwise direction along the arc of a curve in said Copperfield Drive having a central angle of 08° 09' 34", a radius of 750.00 feet, a tangent of 53.49 feet and a long chord bearing N 63° 55' 23" E at a distance of 106.72 feet for corner;

THENCE: N 22° 00' 00" W for a distance of 10.00 feet for corner in the southeast right-of-way line of Copperfield Drive (based on a 80-foot width),

THENCE: continuing along the southeast right-of-way line of said Copperfield Drive for the following five (5) calls:

1) N 68° 00' 00" E for a distance of 78.01 feet to the Point of Curvature of a curve to the left,
2) 480.54 feet along the arc of said curve having a central angle of 43° 01' 13", a radius of 640.00 feet, a tangent of 252.23 feet and a long chord bearing N 46° 29' 23" E at a distance of 469.33 feet to the Point of Tangency,
3) N 24° 58' 47" E for a distance of 333.00 feet to the Point of Curvature of a curve to the left,
4) 593.97 feet along the arc of said curve having a central angle of 40° 30' 50", a radius of 840.00 feet, a tangent of 310.01 feet and a long chord bearing N 04° 43' 22" E at a distance of 581.67 feet to a Point of Reverse Curvature, and

5) 37.64 feet along the arc of said reverse curve having a central angle of 86° 16' 15", a radius of 25.00 feet, a tangent of 23.42 feet and a long chord bearing N 27° 36' 04" E at a distance of 34.19 feet to a Point of Reverse Curvature, said point being in the southeast right-of-way line of Canterbury Drive (based on a 80-foot width);

THENCE: along the southeast line of said Canterbury Drive for the following nine (9) calls:

1) 221.49 feet along the arc of said reverse curve having a central angle of 30° 34' 46", a radius of 415.00 feet, a tangent of 113.45 feet and a long chord bearing N 55° 26' 49" E at a distance of 218.87 feet to the Point of Tangency,
2) N 40° 09' 26" E for a distance of 130.00 feet to the Point of Curvature of a curve to the right,
3) 265.29 feet along the arc of said curve having a central angle of 20° 00' 01", a radius of 760.00 feet, a tangent of 134.01 feet and a long chord bearing N 50° 09' 26" E at a distance of 263.95 feet to the Point of Tangency,
4) N 60° 09' 27" E for a distance of 375.00 feet to the Point of Curvature of a curve to the left,
5) 210.55 feet along the arc of said curve having a central angle of 14° 21' 41", a radius of 840.00 feet, a tangent of 105.83 feet and a long chord bearing N 52° 58' 37" E at a distance of 210.00 feet to the Point of Tangency,
6) N 45° 47' 46" E for a distance of 385.00 feet to the Point of Curvature of a curve to the right,
7) 344.88 feet along the arc of said curve having a central angle of 26° 00' 00", a radius of 760.00 feet, a tangent of 175.46 feet and a long chord bearing N 58° 47' 46" E at a distance of 341.93 feet to the Point of Tangency,
8) N 71° 47' 46" E for a distance of 515.02 feet to the Point of Curvature of a curve to the right, and
9) 247.91 feet along the arc of said curve having a central angle of 14° 47' 45", a radius of 960.00 feet, a tangent of 124.65 feet and a long chord bearing N 79° 11' 39" E at a distance of 247.22 feet to the northwest corner of COPPERFIELD SECTION 10-D as recorded in Volume 3785, Page 147 (O.R.B.C.);

THENCE: along the southwesterly line of said COPPERFIELD SECTION 10-D for the following two (2) calls:

1) S 03° 24' 26" E for a distance of 154.25 feet for corner, and
2) S 45° 02' 02" E for a distance of 973.94 feet to the south corner of said COPPERFIELD SECTION 10-D and the west corner of COPPERFIELD SECTION 10-E as recorded in Volume 3785, Page 145 (O.R.B.C.);

THENCE: S 45° 02' 02" E for a distance of 310.00 feet to the south corner of said COPPERFIELD SECTION 10-E;

THENCE: N 44° 58' 00" E along the southeast lines of said COPPERFIELD SECTION 10-E and 10-D for a distance of 1494.30 feet for corner;

THENCE: N 30° 38' 09" W along the northeast line of said COPPERFIELD SECTION 10-D for a distance of 622.44 feet to the southwest corner of the 100-foot wide City of Bryan right-of-way tract recorded in Volume 2141, Page 47 (O.R.B.C.);

THENCE: N 59° 21' 51" E along the southeast line of said 100-foot right-of-way tract for a distance of 100.00 feet to the most northerly corner of this tract, the southeast corner of the said right-of-way tract and being in the southwest line of the called 242.5 acre Peyton Waller tract recorded in Volume 348, Page 688 of the Brazos County Deed Records (B.C.D.R.);

THENCE: S 30° 38' 09" E along the northeast line of the called 314.34 acre tract and the southwest line of the called 242.5 acre Waller tract for a distance of 2468.93 feet to the east corner of this tract, the south corner of the said 242.5 acre tract and being in the northwest line of the called 159 acre Patricia Kay Peters, et al tract recorded in Volume 2498, Page 28 (O.R.B.C.);

THENCE: S 45° 15' 57" W along the southeast line of the called 314.34 acre tract and the northwest line of the called 159 acre Peters tract for a distance of 4407.76 feet for corner,

THENCE: S 45° 27' 32" E for a distance of 397.55 feet to a point in the said northeast right-of-way line of F.M. 158 (width varies);

THENCE: along the northeast line of said F.M. 158 for the following four (4) calls:

1) N 79° 54' 18" W for a distance of 57.29 feet for corner,
2) N 81° 03' 08" W for a distance of 232.80 feet for corner,
3) N 82° 11' 58" W for a distance of 1054.11 feet for corner, and
4) N 82° 27' 11" W for a distance of 457.73 feet to a point in the southwest line of the called 0.8091 acre tract (4218/1) and the southeast line of the called 2.020 acre Christopher Lampo tract recorded in Volume 3212, Page 48 (O.R.B.C.);

THENCE: along the perimeter of the called 2.020 acre Lampo tract and the 2.000 acre Christopher Lampo tract recorded in Volume 11971, Page 62 (O.R.B.C.) for the following three (3) calls:

1) N 07° 44' 16" E for a distance of 377.50 feet for corner,
2) N 82° 15' 44" W for a distance of 458.52 feet for corner, and
3) S 07° 44' 16" W for a distance of 353.44 feet for corner in the said northeast right-of-way line of F.M. 158 (width varies);

THENCE: along the northeast line of said F.M. 158 for the following eight (8) calls:

1) N 72° 26' 19" W for a distance of 242.67 feet for corner,
2) N 68° 59' 07" W for a distance of 81.24 feet for corner,
3) N 68° 45' 39" W for a distance of 526.62 feet for corner,
4) N 23° 45' 39" W for a distance of 45.19 feet for corner,
5) N 67° 16' 05" W for a distance of 100.00 feet for corner,
6) S 72° 13' 28" W for a distance of 37.98 feet for corner,
7) N 62° 46' 32" W for a distance of 137.80 feet for corner,
8) N 57° 53' 22" W for a distance of 32.53 feet to the POINT OF BEGINNING and containing 409.75 acres of land, more or less.

EXHIBIT "B"

Concept Plan

OAKMONT / **CONCEPT PLAN**

0 150' 300' 600'

Bryan, TX Adam Development 27 October 2015

This is a conceptual rendering only and is subject to change.

EXHIBIT "C"

Insurance Requirements

CITY OF BRYAN - BTU

CONTRACT INSURANCE REQUIREMENTS

Revised 09/01/2015

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I. INTRODUCTION

Whenever the City/BTU contracts with an outside party (contractor, consultant, etc.) for goods or services, it is standard for the contract to include an "indemnification and hold-harmless" provision. This provision requires the contractor to indemnify (payback) and hold the City/BTU harmless (guarantee the City/BTU shall not suffer a financial loss) from any claims for loss, damage, lawsuits or defense cost which may arise out of a contractor's acts or omissions in carrying out the terms of the contract. This provision makes the contractor financially liable to the City/BTU for any such claims. Because the contractor may or may not have the financial resources to handle the risks that are transferred in the contract, the City/BTU requires that insurance be purchased and maintained by the contractor for financial security. However, liability is not restricted to the limits of insurance required.

The purpose of this manual is to serve as guide in developing insurance requirements for contracts, bids and requests for proposals (RFPs). This manual will walk you through the steps you will use to select the appropriate insurance provisions. These steps are:

1. Analyze the services or supplies being acquired to determine what risk they might expose the City/BTU to.
2. Given the risks identified, determine the insurance provisions that will protect both the contractor and the City/BTU in the event of loss.
3. Incorporate the insurance provisions in all appropriate procurement documents (for example, in the bid/RFP as well as the contract).
4. Be sure you obtain proof of insurance (a certificate documenting that all required kinds and amounts of insurance coverage have been obtained) <u>and</u> a signed contract before you allow work to begin under the contract.

This manual attempts to define what insurance provisions are needed in most circumstances, but its primary purpose is to serve as a reference for you to determine what's needed for your specific situation. This manual should provide guidance in 90% of the contracts, but there will also be exceptions to the rules. If you encounter situations that fall outside of the recommendations, call Risk Management.

II. EVALUATE THE RISK

Before determining the types of insurance to be required, you must have some idea of the types of harms that could arise from the activities performed under the contract. What could go wrong and who could be harmed if it did? You, as the contract administrator, are most knowledgeable about the services being obtained by the contract, and you can best analyze what's needed.

It is important to remember that the requirements for insurance will provide protection for both the City/BTU and the contractor. At times, contractors (especially small companies and sole proprietors) may not understand the insurance they have and the coverage it does and does not provide. Without the right types of insurance and adequate limits, the contractor might find itself with no coverage for a loss. In such a situation, the contractor may have no resources and the City/BTU could be responsible for the claim.

You should determine such issues as:

- What product or service is being provided? What could go wrong? What are the potential losses that could occur? How large are the risks?
- Will the contractor be performing work on City/BTU property or right-of-way? Will the contractor's work premises or operations possibly harm City/BTU employees, the public, or property?
- Does the contractor have employees?
- Will the contractor be providing services that require professional expertise or advanced training?
- Will people be driving as they provide services under this contract? Will anyone or anything be transported under this contract?
- Are there special risks (for example, construction, possible pollution risks, handling of City/BTU cash, etc.)?

As you work with this manual, you will become familiar with the kinds of risk and the appropriate insurance provisions needed. Sections IV and V contain detailed explanations of insurance provisions and the actual language you will need to insert in your contracts for insurance requirements. If you are using the contractor's boilerplate, you will want to compare it to the City/BTU's requirements to be sure that your contract will provide the City/BTU with appropriate protection.

Appendix A provides descriptions of types of work to be performed in contracts that will help guide you in defining insurance requirements and inserting the right insurance-related language in your contract. Appendix B and C are templates for the majority of City/BTU's contracts.

Exceptions to normally required insurance can be made under the following circumstances:

- The nature of service falls under one of the exception categories discussed in Section IV and Section V.
- After discussing unique circumstances with Risk Management or Legal and review of the risk versus benefits, Risk Management/Legal and the Department together may reduce or waive all or a portion of the requirements because of an overriding business concern.
- Higher liability limits or special insurance should be required because of the unusually hazardous circumstance or unique nature of the services to be provided.

If you have questions, please contact Risk Management for assistance: Cindy Kirk, 209-5054, ckirk@bryantx.gov or Maria Quiroga, 209-5052,mquiroga@bryantx.gov.

III. ADMINISTERING INSURANCE REQUIREMENTS IN CONTRACTS

This section describes the basic steps in administering insurance provisions where the contractor is required to provide insurance.

Step 1: Develop Correct Insurance Specifications
The first step is to develop a clear set of specifications describing the insurance to be provided. **Specific requirements are determined by the type of contract.** The intent is that inappropriate insurance requirements are not written into the contract with a subsequent need to revise or waive such requirements. These specifications should be included in the contract. Section IV explains the fundamentals of drafting insurance specifications. Sections IV and V explain the insurance provisions for specific exposures. For any unusual contracts, or ones for which you are having trouble determining what insurances best apply, please contact Risk Management for assistance.

Appendix A allows you to quickly scan what minimum insurance requirements you need based on the services being obtained through the contract. The Glossary (Section VII) contains insurance terms that you may encounter in administering insurance requirements in contracts. Templates of insurance specifications for the most common contracts are included in Section IV.

Step 2: Inform Contractors of the Insurance Requirements Early
Insurance specifications should be communicated early in the in the bid situation or in the negotiation process. This gives the bidder the opportunity to forward the requirements to their insurer or agent and avoid a delay after the bid is awarded. The most recent standard certificate form, the ACORD form, is shown in Appendix D.

Step 3: Review the Completed Certificates Promptly
Review the certificates to be sure they are completed fully and that they have been signed by an appropriate party, and that no items have been crossed out or altered. Note the expiration dates of the policies. You can use a one-page checklist (Appendix E) to compare your specific requirements to the actual insurance and endorsements provided. Notify the contractor immediately if certificates do not meet requirements.

If any policies will expire during the term of the contract, you should set up a suspense file for 30 days before the expiration of the insurance. At that time, if you have not received proof of renewal or replacement of coverage, you should notify the contractor that the City/BTU requires a new certificate before expiration of the existing coverage.

Step 4. Save the Signed Certificates
Save the signed certificates with the contract. If there is a claim, the certificate may be the City/BTU's only proof of coverage.

Step 5: Inform the Contractor's Insurer Immediately, In Writing, Of Any Incidents Or Claims Arising Out Of The Work
Report incidents or claims to the contractor's insurer immediately. Most insurance policies require reporting of incidents or claims to the insurer. While it is customary with most insurance buyers to report such events to the insurance agent and to allow the agent to pass the information along to the insurer, this practice does not fulfill the insured's contractual responsibility to report events to the insurer. The safest practice is to report the event to the insurer, with secondary notification to the agent. If you report by telephone, make a note of it, including the date and person spoken to. Follow up in writing as soon as possible.

IV. STANDARD/MINIMUM INSURANCE REQUIREMENTS

The types of insurance generally relevant to most City/BTU services and professional contracts are workers' compensation insurance, commercial general liability insurance, business auto liability insurance, and professional liability insurance.

Templates for standard contracts and professional services contracts are included as Appendix B and Appendix C.

S1. Workers' Compensation Insurance & Employers Liability Insurance

Most contractors will need to show proof of this coverage, which provides four basic types of benefits (medical care, death, disability, rehabilitation) for employee work-related injuries or disease without regard to fault. Insurers providing this must pay claims in accordance with the State Law until they are completely discharged. Accordingly, Workers' Compensation does not have a limit of coverage but provides "statutory limits".

State law requires any contractor involved in a building or construction project with a political subdivision of the state to have workers' compensation coverage for their employees employed on the project.

In a very limited number of cases, workers' compensation laws do not apply or are not the sole remedy for the injured employee. Employers Liability insurance, normally built into a Workers' Compensation policy, is the coverage an employer should have to protect against these types of claims.

Required when:
Contractor's employees performing work on City/BTU premises or public-right-of-way.

Exceptions:
This requirement may be waived with satisfactory evidence that the contractor is a sole proprietor or partnership and/or has no employees. Exceptions may also be made in some situations for non-profits using volunteers. It is recommended that the contract be amended by including the completed Workers' Compensation Exemption Certificate (Appendix G).

Contract Requirement:
Contractor shall maintain Workers' Compensation insurance for statutory limits and Employers' Liability insurance with limits not less than $500,000 each accident for bodily injury by accident or $500,000 each employee for bodily injury by disease. Contractor shall provide Waiver of Subrogation in favor of the City/BTU and its agents, officers, officials, and employees.

Notes & Tips:

- The waiver of subrogation prevents the contractor's insurance from subrogating against the City/BTU for claims from injuries sustained by contractor employees.

- If a borrowed servant situation will arise from the services being performed, require this: *The policy shall be endorsed with an Alternate Employer Endorsement showing the City/BTU as the alternate employer.*

S2. Commercial General Liability Insurance

This coverage protects against liability claims for bodily injury and property damage arising out of

premises, operations, products and completed operations, and advertising and personal injury liability. Uses include:

Required when:
1) Work premises or operations could expose the public or City/BTU employees to bodily injury or property damage, such as work on City/BTU or public property or right-of-way.
2) When the City could be partially blamed for damage or bodily injury caused by contractor.
3) Use or lease of City/BTU property.
4)

Exceptions:
There may be an occasion where the risks of injury or damage in contractor's activities do not create the probability of injury or damage to the public. This should be rare and Risk Management should be contacted. If it is agreed, the contract must be amended with a statement such as the following: "In consideration of deletion of the requirement for Commercial General Liability insurance, Contractor warrants that Contractor will not engage in activities likely to create the risk of bodily injury or property damage to the public."

Contract Requirement:
Contractor shall maintain Commercial General Liability (CGL) with a limit of not less than $1,000,000 per occurrence and an annual aggregate of at least $2,000,000. CGL shall be written on a standard ISO "occurrence" form (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury, and liability assumed under an insured contract including the tort liability of another assumed in a business contract. No coverage shall be deleted from the standard policy without notification of individual exclusions and acceptance by the City/BTU. The City/BTU and its agents, officers, officials, and employees shall be listed as an additional insured with respect to Contractor's services to be provided under this contract.

Notes & Tips:
- If the contract involves the use of explosives, excavating, demolition, digging, or similar activities, add this language: *The CGL shall not exclude Explosion, Collapse, Underground (XCU) Hazard Coverage.*

- Garage Liability insurance may be accepted in lieu of CGL insurance for contractors providing "care, custody or control" of automobiles, such as a wrecker service or auto storage facility.

S3. Business Auto Liability Insurance

If the contractor will be driving as part of performing the services in the contract, the contractor must be required to carry automobile liability insurance. This insurance is not necessary when the contractor's use of automobiles is incidental to his/her performance under the contract, such as driving to and from meetings, etc.

Required when:
1) Contract performance requires the driving or use of motor vehicles on the City/BTU's behalf
2) Motor vehicle operation will actually take place on City/BTU property where large number of people are gathered (excluding City/BTU-owned streets or parking lots)
3) Motor vehicle use is a major part of an installation, dismantling, or delivery project

4) Transporting valuable City/BTU property for repair, rebuild, modification or other purposes

Exceptions:
This requirement may be waived with satisfactory evidence that the contractor does not operate any motor vehicle to perform the services. It is recommended that the contract be amended with a statement such as the following: "In consideration of deletion of the requirement for Business Auto Liability insurance, Contractor warrants that Contractor will not operate or cause to be operated any motor vehicle in performance of services under this contract."

Contract Requirement:
Contractor shall maintain Business Automobile Liability insurance with a limit of not less than $1,000,000 each accident. Business Auto Liability shall be written on a standard ISO version Business Automobile Liability, or its equivalent, providing coverage for all owned, non-owned and hired automobiles. Contractor shall provide Waiver of Subrogation in favor of the City/BTU and its agents, officers, officials, and employees.

Notes & Tips:
- If the contractor does not own the automobiles to be used to perform services **and** furnishes satisfactory evidence of this, then this requirement may allow the contractor to agree to maintain only Hired and Non-Owned Auto Liability.

- Require Pollution Liability coverage when there will be a special exposure, such as when hazardous waste will be hauled: *Pollution liability coverage equivalent to that provided under the ISO pollution liability-broadened coverage for covered autos endorsement shall be provided, and the Motor Carrier Act endorsement shall be attached.*

S4. Professional Liability Insurance

If the contractor is providing services for which professional malpractice or liability insurance is available, you must require this coverage. This type of insurance is also known as "Errors and Omissions" insurance. Such insurance is available for most providers with advanced training and certification. It covers professional errors made by such practitioners. This type of insurance is usually arranged on a "claims-made" basis, requiring Extended Reporting coverage.

Required when:
Contract provides unique skills of professionals whose advice or services upon which others have reason to rely, and who may be subject to legal action if the advice/services proves to be faulty. Examples: accountants, attorneys, auditors, architects, engineers, designers, insurance/real estate brokers and agents, physicians, nurses, medical clinics, medical and x-ray laboratories, and most consultants.

Contract Requirement:
Contractor shall maintain professional liability (errors & omissions) insurance with a limit of not less than $1,000,000. If written on a "Claims-Made" form, Contractor agrees to maintain a retroactive date equivalent to the inception date of the contract (or earlier) and maintain continuous coverage or a supplemental extended reporting period for a minimum of 2 years after the completion of this contract. Contractor will be responsible for furnishing certification of coverage for 2 years following contract completion.

V. ADDITIONAL INSURANCE REQUIREMENTS

A1. Garagekeeper's Legal Liability Insurance

Required when:
Automobiles are in the "care, custody or control" of the contractor, such as wrecker service or auto storage facilities.

Contract Requirement:
Contractor agrees to maintain Garagekeeper's Legal Liability against Comprehensive and Collision/Upset causes of loss of not less than $100,000 per occurrence. When a per vehicle sublimit applies, the minimum sublimit shall be $50,000 per vehicle providing physical damage legal liability for the same causes of loss on any vehicle while in tow. The City/BTU and its agents, officers, officials, and employees shall be listed as an additional insured with respect to Contractors' services to be provided under this Contract.

Notes & Tips:
- As an alternative, Garage Liability insurance extended to include Garagekeepers coverage may be accepted.

A2. Hangerkeeper's Insurance

Required when:
Aircraft is in the "care, custody or control" of the contractor, such as lease of hanger facilities.

Contract Requirement:
Contractor agrees to maintain Hangerkeeper's Legal Liability providing property damage to aircraft which are the property of others and in the care, custody, or control of the contractor, but only while such aircraft are not in flight, of not less than [amount]. The City/BTU and its agents, officers, officials, and employees shall be listed as an additional insured with respect to Contractor's services to be provided under this Contract.

Notes & Tips:
- "Amount" is to be determined by the value of all aircraft in "care, custody, and control".

A3. Liquor Liability

Required when:
1) Liquor is served, with or without charge, to the general public
2) Liquor is served as a means of generating revenue for a fund raising event
3) Liquor is served by another party contracted for any of these reasons
4) Liquor is offered for the purpose of financial gain

Contract Requirement:
Contractor shall maintain liquor liability insurance covering operations contracted for with a limit of not less than $1,000,000. Liquor includes beer and wine. The City/BTU and its agents, officers, officials, and employees shall be listed as an additional insured with respect to Contractor's services to be provided under this Contract.

A4. Commercial Crime/Fidelity Bond

Required when:
Contractor and/or contractor's employees have access to medium or large amounts of City/BTU cash receipts, negotiable securities, or especially valuable property. Examples: banking, fund raising, and similar.

Contract Requirement:
Contractor agrees to furnish a Commercial Crime/Fidelity Bond for Employee Dishonesty on a blanket basis to cover all employees, including new hires, in an amount not less than [amount]. The bond shall be endorsed to cover "Third-Party" liability including a clause in favor of the City/BTU. The City/BTU is to be listed as a joint obligee.

Notes & Tips:
- "Amount" is to be determined by the value of the funds or properties handled during period from contractor control until delivered to City/BTU.

- Require a larger limit if the Contractor and/or Contractor's employees have multiple opportunities to steal before the City/BTU's loss would be discovered.

- Require a smaller limit if the Contractor and/or Contractor's employees will have limited access to cash, negotiable securities, or valuable property, or if the contact they have with cash, negotiable securities or valuable property is supervised by the City/BTU at all times.

A5. Pollution Liability

Required when:
1) Contract involves known or potential pollution hazards
2) Asbestos removal
3) Lead paint cleanup
4) PCBs and similar materials.

Contract Requirement:
Contractor shall maintain in force for full period of this contract Pollution Liability, or similar Environmental Impairment Liability, providing coverage for damages against, but not limited to, third-party liability, clean up, corrective action including assessment, remediation and defense costs in an amount of at least $1,000,000 per loss, with an annual aggregate of at least $2,000,000. If written on a "Claims-Made" form, Contractor agrees to maintain a retroactive date equivalent to the inception date of the contract (or earlier) and maintain continuous coverage or a supplemental extended reporting period for a minimum of two years after the completion of this contract. Contractor will be responsible for furnishing certification of coverage for 2 years following contract completion. The policy shall be endorsed to include the City/BTU and its agents, officers, officials, and employees as an additional insured with respect to Contractor's services to be provided under this Contract.

Notes & Tips:
A. For Herbicide/Pesticide applicators, this requirement may be satisfied with the inclusion of Pesticide or Herbicide Applicator Coverage Endorsement to the Commercial General Liability policy.

A6. Builders' Risk

This provision addresses the loss of or damage to a City/BTU building, construction supplies, or construction equipment during new construction.

Required when:

1) Construction of a building or other facility
2) Substantial renovation or remodeling of existing facilities

Contract Requirement:

Contractor agrees to maintain Builder's Risk insurance providing coverage to protect the interests of the City/BTU, contractor, sub-contractors which shall become a part of the building or project. Coverage shall be written on an All-Risk, Replacement Cost, and Completed Value Form basis in an amount not less than 100% of the total projected construction value at completion of the project. The policy must provide transit and off-premises coverage if the builder makes the City/BTU responsible for materials. City/BTU is to be listed as Loss Payee.

Notes & Tips:

B. By being named as a Loss Payee, you have the right under the policy to be reimbursed for a loss to your property directly by the insurance carrier.

A7. Aircraft Liability

Required when:

Contractor using owned or non-owned aircraft for City/BTU contracts

Contract Requirement:

Contractor shall maintain Aircraft Liability Insurance not less than $1,000,000 per occurrence and not less than $1,000,000 per seat for passenger liability.

A8. Aircraft/Aerial Application Liability

Required when:

Aircraft used in pesticide or chemical application, must also include Pollution Liability Insurance.

Contract Requirement:

Contractor shall maintain Aircraft/Aerial Application Liability Insurance covering the operations of each aircraft and including claims arising from spraying operations not less than $1,000,000 per occurrence.

VI. CERTIFICATES OF INSURANCE

A certificate of insurance is commonly used to represent the existence of insurance coverage. However, a certificate is not a legally binding document. It cannot alter coverage terms, add additional insureds to a policy, or otherwise modify insurance policy terms and conditions.

A sample "Certificate of Insurance" form is included (Appendix D).

A sample letter to assist you in requesting a Certificate of Insurance from your contractor is included (Appendix F). This letter clarifies for the contractor what insurance policies and insurance limits must be in force prior to beginning any work associated with the contract.

Certificates are usually issued by insurance brokers and agents. Any error in these certificates does not bind the insurance carrier to modify their insurance contract, which is a contract between the insurance carrier and the named insured.

When reviewing a certificate of insurance, a checklist approach is suggested. The checklist should be tailored to the individual contract for which the certificate is submitted. A sample checklist format is included (Appendix E).

The City/BTU requires that insurance be placed with companies that have a minimum AM Best rating of A-:VI. In some cases, AM Best does not assign a rating for various reasons. Although AM Best does not rate very small companies or recently formed companies, these insurers may be otherwise satisfactory if no other good alternatives are available. Acceptable AM Best categories for insurers for which no rating is assigned are: NA-1 through NA-8. AM Best ratings can be accessed over the Internet at no cost at www.ambest.com.

On rare occasions, the contractor may indicate that their company is self-insured for some or all of the insurance coverage you are requesting. In this case, you should contact Risk Management to assist in review of the contractor's self-insurance program and determining if it is acceptable. These self-insured employers are generally large employers which can provide guarantees of their ability to fund claims.

Certificates of insurance are a commonly used tool in the industry. They are generally accepted without question. Agents and brokers will generally not issue a certificate without coverage and endorsements in place since a claim could be made against their Errors & Omissions policy. Just be aware of the limitations of certificates.

You can ask to review the contractor's insurance policy(ies) at any time. Risk Management can assist you with this review process.

VII. GLOSSARY

Additional Insured: This coverage endorsement is required to gain protection for the City/BTU on another party's policy. An additional insured is not a "named insured" or an "additional named insured," both of which denote specific policy definitions and imply specific rights and duties (such as payment of premium).

Aggregate Limit: An aggregate limit is a cumulative limit that applies to all claims within a given period of time, usually within the policy term. For example, if a policy has an occurrence limit of $1,000,000 and an aggregate limit of $1,000,000, the policy could be exhausted by a sequence of losses totaling $1,000,000 or by one big loss of that amount.

Bailee: An individual or company who has temporary possession of property belonging to another. Bailees may be liable to the owners of the property (bailors) for damage or loss of the property while it is in their possession.

Boilerplate: Used to identify standard terms and conditions incorporated in solicitations, contracts, or purchase orders.

Builder's Risk: This coverage is provided to protect against fire and other related peril damage, typically to new buildings or other structures under construction. Coverage can also apply to temporary or permanent buildings, sheds, fences, tool houses, machinery, tools, and supplies used in conjunction with a construction project.

Certificate of Insurance: Evidence that an insurance policy has been issued, showing the amount and type of insurance provided. The effective date and expiration date of the policy are also shown.

Claims Made Coverage: This liability coverage responds to claims made during the policy term, regardless of when the triggering accident or event happened. This coverage is typically seen in Professional Liability, Pollution Liability, Errors and Omissions, and lines of insurance that are difficult to insure.

Commercial General Liability (CGL) Coverage: Broad insurance coverage for losses for which the insured is legally liable. The following are usually insured by a CGL policy: false arrest, damage to the property of others, defamation of character, invasion of privacy, assault, malicious prosecution, and bodily injury. All professional liability is excluded from a CGL policy.

Cross Liability Clause: Allows the City/BTU to litigate against the named insured, if necessary.

Defend: The contractor will pay the cost of defense against any claim (for example, legal costs) made against the City/BTU as a result of the contractor's activities related to the contract.

Employee Dishonesty: Coverage is provided to an employer for loss arising from the dishonest acts of his or her employees. Dishonest acts include theft, fraud, and misappropriation of employer's property, including cash and other negotiable instruments.

Endorsements: Additional documents that modify the agreements in the policy to which they are attached.

Errors & Omissions Coverage: See definition for "Professional Liability."

Extended Reporting Coverage: This coverage (also known as "Tail Coverage") is written in conjunction with claims-made insurance policies and extends the window within which claims can be made. This coverage can be provided by either keeping a claims-made policy in force, or it can be purchased separately by policy endorsement. Extended Reporting Coverage is required to ensure that coverage will be in place in future time periods to protect against today's wrongful professional acts, errors, or omissions.

Fidelity Bond: The City/BTU is protected from acts of dishonesty by the contractor and/or their employees if they are covered by this type of bond. The fidelity bond will reimburse the City/BTU for any loss incurred due to this kind of performance.

Garagekeeper's Legal Liability: This coverage form is meant to insure vehicles in someone's care, custody, or control. Examples would include parking lot operators wrecker services. Garages should also carry "Garage Liability" for the completed operations exposure arising out of vehicle repair.

Hold Harmless: The contractor is agreeing not to seek recourse against the City/BTU for any damages, including judgements, settlement of claims, etc. that may arise out of the contractor's activities associated with the contract.

Indemnify: The contractor will be responsible to pay for any loss or damage caused by the contractor or anyone acting on the contractor's behalf, while performing activities pursuant to the contract.

Loss Payee: A person or entity that is entitled to all or part of the insurance proceeds in connection with the covered property in which it has an interest.

Named Insured: Any person, or organization, or any of its members, specifically designated by name as insured(s) in a policy.

Obligee: A person or organization to whom the "obligor" owes an obligation.

Occurrence Limit Coverage: Occurrence liability coverage insures accidents or events that happen during the policy term, even if the plaintiff does not make a claim until months or years later. Occurrence limits are available for each accident or event, subject to the aggregate limit. Most liability policies are written on an occurrence basis.

Personal Injury Liability: This coverage insures liability for certain injuries of a non-physical nature, such as false arrest, detention, libel, slander, defamation, wrongful entry, and eviction. This coverage is also included in "Commercial General Liability" coverage, and is provided whenever CGL coverage is in force.

Pollution Liability: Any vendor handling, disposing, or transporting hazardous materials should have this protection to protect themselves and the City/BTU.

Products/Completed Operations: This coverage insures liability for bodily injury or property damage resulting from products sold, handled or distributed by a supplier, or faulty work completed by a contractor. This coverage is included in "Commercial General Liability" coverage.

Professional Liability: Separate insurance for professional activities is necessary because all professional liability is excluded from the Commercial General Liability policy. This typical

claims-made coverage needs to be required from all professionals including but not limited to medical practitioners, physicians, engineers, attorneys, accountants, and architects. It is also sometimes referred to as "Errors and Omissions" coverage.

Tail Coverage: See definition for "Extended Reporting Coverage."

Umbrella Liability Coverage: Umbrella coverage means higher limits over and above "primary" or "underlying" policies. This coverage extends limits over Commercial General Liability, Commercial Automobile and Employers Liability policies. Umbrellas do not normally extend limits over Professional Liability (Errors and Omissions) or Pollution Liability contracts.

Waiver of Subrogation: Waiver of subrogation means the relinquishment of a right to seek reimbursement for a loss from the responsible party.

ANTIQUATED TERMINOLOGY

When drafting insurance requirements for contracts, please avoid using outdated terminology. The following lists some terms of these types along with current alternatives:

Antiquated Terminology	Current Terminology
Workmen's compensation insurance	Workers' compensation and employers liability insurance
Borrowed servant endorsement	Alternate employer endorsement
Comprehensive general liability insurance	Commercial general liability insurance
Public liability insurance	Commercial general liability insurance
Independent contractors (protective) insurance	Commercial general liability insurance
Contractual liability insurance (or "broad form" contractual	Commercial general liability insurance
Cross-liability endorsement	Commercial general liability insurance (Standard CGL provides. Any concerns about availability should specify that CGL policy not contain an exclusion.)
Broad form comprehensive general liability endorsement	Commercial general liability insurance
Broad form property damage endorsement	Commercial general liability insurance
Blanket "X, C, U" endorsement	Commercial general liability insurance (Standard CGL provides. Any concerns about availability should specify that CGL policy not contain an exclusion.)
Comprehensive auto liability insurance	Business auto coverage
Combined single limit (CSL)	Per-occurrence limit or each accident limit and general aggregate limit

APPENDIX A

CONTRACT INSURANCE REQUIREMENTS
Refer to Sections IV & V for contract language, etc.

QUICK SECTION REF.	TYPE OF WORK	TYPE OF INSURANCE REQUIRED	AMOUNT OF INSURANCE REQUIRED
IV, S1	Work involves the contractor's employees performing work on City/BTU property or public right-of-way	Workers' Compensation -plus- Employer's Liability *Waiver of subrogation required*	Statutory Limits $500,000
IV, S2	Work premises or operations expose the public to bodily injury or property damage (performed for City/BTU on City/BTU or public property or right-of-way)	Commercial General Liability *Additional Insured required*	$1,000,000 per occurrence $2,000,000 aggregate
IV, S2	Use or lease of City/BTU property	Commercial General Liability *Additional Insured required*	$1,000,000 per occurrence
IV, S3	Operation constitutes a large portion of the project	Business Auto Liability *Waiver of subrogation required*	$1,000,000 each accident
IV, S3	Operation will take place on City/BTU property (excluding City/BTU-owned streets or parking lots)	Business Auto Liability *Waiver of subrogation required*	$1,000,000 each accident
IV, S3	Installation, dismantling, or delivery where use is a major part of the project	Business Auto Liability *Waiver of subrogation required*	$1,000,000 each accident
IV, S3	Transporting valuable City/BTU property for repair, rebuild, modification or other purposes	Business Auto Liability *Waiver of subrogation required*	$1,000,000 each accident
IV, S4	Contract for professional services such as architectural, engineering, medical or consulting services	Professional liability coverage for profession involved	$1,000,000
V, A1	Contract for wrecker service or auto storage facilities	Garage Keeper's Legal Liability *Additional Insured required*	$100,000
V, A2	Lease of hanger facilities	HangerKeeper's Liability *Additional Insured required*	Value of aircraft
V, A3	Liquor is served	Liquor Liability *Additional Insured required*	$1,000,000
V, A4	Work involving handling or accounting of City/BTU or public fund or City/BTU properties	Commercial Crime Coverage *City/BTU listed as Joint Obligee*	Value of funds or properties
V, A5	Contract involves known or potential pollution hazards	Pollution Liability *Additional Insured required*	$1,000,000 per loss / $2,000,000 annual aggregate
V, A6	Construction of a building or facility or substantial renovation or remodeling of existing facilities	Builder's Risk Insurance *City/BTU listed as Loss Payee*	Value of completed improvements

APPENDIX B

Template - INSURANCE REQUIREMENTS FOR STANDARD CONTRACTS

The Contractor agrees to maintain the minimum insurance coverage and comply with each condition set forth below during the duration of this contract with the City/BTU. All parties to this contract hereby agree that the Contractor's coverage will be primary in the event of a loss, regardless of the application of any other insurance or self-insurance.

Contractor must deliver to City/BTU a certificate(s) of insurance evidencing such policies are in full force and effect within 10 business days of notification of the City/BTU's intent to award a Contract. No contract shall be effective until the required certificate(s) have been received and approved by the City/BTU. Failure to meet the insurance requirements and provide the required certificate(s) and any necessary endorsements within 10 business days **may cause the contract to be rejected**.

The City/BTU reserves the right to review these requirements and to modify insurance coverage and their limits when deemed necessary and prudent.

A. **Workers' Compensation Insurance & Employers Liability Insurance -** Contractor shall maintain Workers' Compensation insurance for statutory limits and Employers Liability insurance with limits not less than $500,000 each accident for bodily injury by accident or $500,000 each employee for bodily injury by disease. Contractor shall provide Waiver of Subrogation in favor of the City/BTU and its agents, officers, officials, and employees.

B. **Commercial General Liability Insurance -** Contractor shall maintain Commercial General Liability (CGL) with a limit of not less than $1,000,000 per occurrence and an annual aggregate of at least $2,000,000. CGL shall be written on a standard ISO "occurrence" form (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury, and liability assumed under an insured contract including the tort liability of another assumed in a business contract. No coverage shall be deleted from the standard policy without notification of individual exclusions and acceptance by the City/BTU. The City/BTU and its agents, officers, officials, and employee shall be listed as an additional insured.

C. **Business Automobile Liability Insurance -** Contractor shall maintain Business Automobile Liability insurance with a limit of not less than $1,000,000 each accident. Business Auto Liability shall be written on a standard ISO version Business Automobile Liability, or its equivalent, providing coverage for all owned, non-owned and hired automobiles. Contractor shall provide Waiver of Subrogation in favor of the City/BTU and its agents, officers, officials, and employees.

D. **Policy Limits -** Required limits may be satisfied by a combination of primary and umbrella or excess liability policies. Contractor agrees to endorse City/BTU and its agents, officers, officials, and employees as an additional insured, unless the Certificate states the Umbrella or Excess Liability provides coverage on a pure "True Follow Form" basis.

E. **Deductibles, Coinsurance Penalties & Self-Insured Retention -** Contractor may maintain reasonable and customary deductibles, subject to approval by the City/BTU. Contractor shall agree to be fully and solely responsible for any costs or expenses as a result of a

coverage deductible, coinsurance penalty, or self-insured retention.

F. **Subcontractors -** If the Contractor's insurance does not afford coverage on behalf of any Subcontractor(s) hired by the Contractor, the Subcontractor(s) shall maintain insurance coverage equal to that required of the Contractor. It is the responsibility of the Contractor to assure compliance with this provision. The City/BTU accepts no responsibility arising from the conduct, or lack of conduct, of the Subcontractor.

G. **Acceptability of Insurers -** Insurance coverage shall be provided by companies admitted to do business in Texas and rated A-:VI or better by AM Best Insurance Rating.

H. **Evidence of Insurance –** A valid certificate of insurance verifying each of the coverages required shall be issued directly to the City/BTU within 10 business days by the successful Contractor's insurance agent or insurance company after contract award. Endorsements must be submitted with the certificate. No contract shall be effective until the required certificates have been received and approved by the City/BTU.

Renewal certificates shall be sent a minimum of 10 days prior to coverage expiration.

Upon request, Contractor shall furnish the City/BTU with certified copies of all insurance policies.

The certificate of insurance and all notices shall be sent to:
City/BTU of Bryan
Contract Administrator name and title
PO Box _____
Bryan, TX 77805
Emailed to: _____
Faxed to: _____

Failure of the City/BTU to demand evidence of full compliance with these insurance requirements or failure of the City/BTU to identify a deficiency shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

I. **Notice of Cancellation, Non-renewal, Material Change, Exhaustion of limits –** Contractor must provide minimum 30 days prior written notice to the City/BTU of policy cancellation, material change, exhaustion of aggregate limits, or intent not to renew insurance coverage. If City/BTU is notified a required insurance coverage will cancel or non-renew during the contract period, the Contractor shall agree to furnish prior to the expiration of such insurance, a new or revised certificate(s) as proof that equal and like coverage is in effect. The City/BTU reserves the right to withhold payment to Contractor until coverage is reinstated.

J. **Contractor's Failure to Maintain Insurance –** If the Contractor fails to maintain the required insurance, the City/BTU shall have the right, but not the obligation, to withhold payment to Contractor until coverage is reinstated or to terminate the Contract.

K. **No Represenation of Coverage Adequacy -** The requirements as to types and limits, as well as the City/BTU's review or acceptance of insurance coverage to be maintained by Contractor, is not intended to nor shall in any manner limit or qualify the liabilities and obligations assumed by the Contractor under the Contract.

APPENDIX C

Template - INSURANCE REQUIREMENTS FOR PROFESSIONALSERVICES CONTRACTS

The Contractor agrees to maintain the minimum insurance coverage and comply with each condition set forth below during the duration of this contract with the City/BTU. All parties to this contract hereby agree that the Contractor's coverage will be primary in the event of a loss, regardless of the application of any other insurance or self-insurance.

Contractor must deliver to City/BTU a certificate(s) of insurance evidencing such policies are in full force and effect within 10 business days of notification of the City/BTU's intent to award a Contract. No contract shall be effective until the required certificate(s) have been received and approved by the City/BTU. Failure to meet the insurance requirements and provide the required certificate(s) and any necessary endorsements within 10 business days **may cause the contract to be rejected**.

The City/BTU reserves the right to review these requirements and to modify insurance coverage and their limits when deemed necessary and prudent.

C. **Workers' Compensation Insurance & Employers' Liability Insurance -** Contractor shall maintain Workers' Compensation insurance for statutory limits and Employers' Liability insurance with limits not less than $500,000 each accident for bodily injury by accident or $500,000 each employee for bodily injury by disease. Contractor shall provide Waiver of Subrogation in favor of the City/BTU and its agents, officers, officials, and employees.

D. **Commercial General Liability Insurance -** Contractor shall maintain Commercial General Liability (CGL) with a limit of not less than $1,000,000 per occurrence and an annual aggregate of at least $2,000,000. CGL shall be written on a standard ISO "occurrence" form (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury, and liability assumed under an insured contract including the tort liability of another assumed in a business contract. No coverage shall be deleted from the standard policy without notification of individual exclusions and acceptance by the City/BTU. The City/BTU and its agents, officers, officials, and employee shall be listed as an additional insured.

E. **Business Automobile Liability Insurance -** Contractor shall maintain Business Automobile Liability insurance with a limit of not less than $1,000,000 each accident. Business Auto Liability shall be written on a standard ISO version Business Automobile Liability, or its equivalent, providing coverage for all owned, non-owned and hired automobiles. Contractor shall provide Waiver of Subrogation in favor of the City/BTU and its agents, officers, officials, and employees.

F. **Professional Liability Insurance -** Contractor shall maintain Professional Liability (errors & omissions) insurance with a limit of not less than $1,000,000. If written on a "Claims-Made" form, Contractor agrees to maintain a retroactive date equivalent to the inception date of the contract (or earlier) and maintain continuous coverage or a supplemental extended reporting period for a minimum of two years after the completion of this contract. Contractor will be responsible for furnishing certification of coverage for 2 years following contract completion.

G. **Policy Limits -** Required limits may be satisfied by a combination of primary and umbrella

or excess liability policies. Contractor agrees to endorse City/BTU and its agents, officers, officials, and employees as an additional insured, unless the Certificate states the Umbrella or Excess Liability provides coverage on a pure "True Follow Form" basis.

H. **Deductibles, Coinsurance Penalties & Self-Insured Retention -** Contractor may maintain reasonable and customary deductibles, subject to approval by the City/BTU. Contractor shall agree to be fully and solely responsible for any costs or expenses as a result of a coverage deductible, coinsurance penalty, or self-insured retention.

I. **Subcontractors -** If the Contractor's insurance does not afford coverage on behalf of any Subcontractor(s) hired by the Contractor, the Subcontractor(s) shall maintain insurance coverage equal to that required of the Contractor. It is the responsibility of the Contractor to assure compliance with this provision. The City/BTU accepts no responsibility arising from the conduct, or lack of conduct, of the Subcontractor.

J. **Acceptability of Insurers -** Insurance coverage shall be provided by companies admitted to do business in Texas and rated A-:VI or better by AM Best Insurance Rating.

K. **Evidence of Insurance –** A valid certificate of insurance verifying each of the coverages required shall be issued directly to the City/BTU within 10 business days by the successful Contractor's insurance agent or insurance company after contract award. Endorsements must be submitted with the certificate. No contract shall be effective until the required certificates have been received and approved by the City/BTU.

Renewal certificates shall be sent a minimum of 10 days prior to coverage expiration.

Upon request, Contractor shall furnish the City/BTU with certified copies of all insurance policies.

The certificate of insurance and all notices shall be sent to:
City/BTU of Bryan
Contract Administrator name and title
PO Box _____
Bryan, TX 77805
Emailed to: _____
Faxed to: _____

Failure of the City/BTU to demand evidence of full compliance with these insurance requirements or failure of the City/BTU to identify a deficiency shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

L. **Notice of Cancellation, Non-renewal, Material Change, Exhaustion of limits –** Contractor must provide minimum 30 days prior written notice to the City/BTU of policy cancellation, material change, exhaustion of aggregate limits, or intent not to renew insurance coverage. If City/BTU is notified a required insurance coverage will cancel or non-renew during the contract period, the Contractor shall agree to furnish prior to the expiration of such insurance, a new or revised certificate(s) as proof that equal and like coverage is in effect. The City/BTU reserves the right to withhold payment to Contractor until coverage is reinstated.

M. **Contractor's Failure to Maintain Insurance –** If the Contractor fails to maintain the

required insurance, the City/BTU shall have the right, but not the obligation, to withhold payment to Contractor until coverage is reinstated or to terminate the Contract.

N. **No Represenation of Coverage Adequacy -** The requirements as to types and limits, as well as the City/BTU's review or acceptance of insurance coverage to be maintained by Contractor, is not intended to nor shall in any manner limit or qualify the liabilities and obligations assumed by the Contractor under the Contract.

APPENDIX D

ACORD

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	CONTACT NAME:
	PHONE (AC, No, Ext): / FAX (AC, No):
	E-MAIL ADDRESS:
	INSURER(S) AFFORDING COVERAGE / NAIC #
INSURED	INSURER A :
	INSURER B :
	INSURER C :
	INSURER D :
	INSURER E :
	INSURER F :

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
	GENERAL LIABILITY						EACH OCCURRENCE	$
	☐ COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence)	$
	☐ CLAIMS-MADE ☐ OCCUR						MED EXP (Any one person)	$
							PERSONAL & ADV INJURY	$
							GENERAL AGGREGATE	$
	GEN'L AGGREGATE LIMIT APPLIES PER:						PRODUCTS - COMP/OP AGG	$
	☐ POLICY ☐ PRO-JECT ☐ LOC							$
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)	$
	ANY AUTO						BODILY INJURY (Per person)	$
	ALL OWNED AUTOS / SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	HIRED AUTOS / NON-OWNED AUTOS						PROPERTY DAMAGE (Per accident)	$
								$
	☐ UMBRELLA LIAB ☐ OCCUR						EACH OCCURRENCE	$
	☐ EXCESS LIAB ☐ CLAIMS-MADE						AGGREGATE	$
	☐ DED ☐ RETENTION $							$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						☐ WC STATU-TORY LIMITS ☐ OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y / N ☐	N / A					E.L. EACH ACCIDENT	$
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	$
							E.L. DISEASE - POLICY LIMIT	$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

CERTIFICATE HOLDER	CANCELLATION
	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE

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APPENDIX E

Checklist for Certificate of Insurance

- ❑ Names correct on policy/endorsement/certificate
- ❑ General Liability is on an "occurrence" basis, not "claims-made."
- ❑ Policies are current and will be suspended (tickler filed) for renewal follow-up if the contract period runs beyond the policy expiration date.
- ❑ Limits are at least as high as the minimum required in the contract.
- ❑ The insurer's Best rating meets or exceeds the City/BTU's minimum requirements.
- ❑ Primary and excess liability policies have concurrent coverage periods.
- ❑ The City/BTU has received certificate for each type of insurance required.
- ❑ The City/BTU has been added to the appropriate policies as an additional insured.
- ❑ Liability insurance layers have concurrent policy dates.
- ❑ Auto liability covers "any auto" (or non-owned if the contractor has no autos).
- ❑ Required waivers of subrogation provided.
- ❑ Documents include proper signatures.
- ❑ Descriptions of operations, locations, etc. are correct

APPENDIX F

REQUEST FOR CERTIFICATE OF INSURANCE
(Include only those policies required by contract)

Date

Dear Contractor:

Prior to beginning the work you will be performing for City of Bryan/BTU, the following insurance policies must be in force (as outlined in your contract):

	Limits
Workers' Compensation and Employers' Liability (or proof of exemption)	*Statutory* *$500,000/$500,000*
Commercial General Liability	*$1,000,000/Occurrence; $2,000,000 Aggregate*
Business Auto Liability	*$1,000,000/Accident*
Professional Liability	*$1,000,000*
Other: _____	*_____ /Occurrence; _____ Aggregate*

Work may not commence nor can payment be made until evidence of the insurance coverage required by this contract is submitted by fax or email to the contact below. This can be obtained from your insurance agent/broker and either you or the broker can email them to this address. The certificate needs to specify and document all provisions required within this contract. Copies of all endorsements shall be attached to the certificates of insurance required by this contract. A renewal Insurance Certificate must be emailed to the City/BTU 10 days prior to coverage expiration.

Contractor must provide 30 days prior written notice by email or fax to the contact below if there is going to be a cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage.

If you have any questions, please contact: _____ at _____
(City/BTU contact) (Phone No.)

_____ _____
(Fax No.) (Email address)

APPENDIX G

CITY/BTU OF BRYAN SERVICES CONTRACT
WORKERS' COMPENSATION EXEMPTION CERTIFICATE

(To be used only when Contractor is claiming exemption from Workers' compensation coverage requirements)

Contractor is exempt from the requirement to obtain workers' compensation insurance for the following reason (check the appropriate box).

☐ **SOLE PROPRIETOR**

- Contractor is a sole proprietor, and
- Contractor has no employees, as defined by the Texas Labor Code, and
- Contractor will not hire employees or subcontractors to perform this contract.

☐ **CORPORATION - NONPROFIT**

- Contractor's business is incorporated as a nonprofit corporation, and
- Contractor has no employees, as defined by the Texas Labor Code; all work is performed by volunteers, and
- Contractor will not hire employees or subcontractors to perform this contract.

☐ **PARTNERSHIP**

- Contractor is a partnership, and
- Contractor has no employees, as defined by the Texas Labor Code , and
- All work will be performed by the partners; Contractor will not hire employees or subcontractors to perform this contract; and
- Contractor is not engaged in work performed in direct connection with the construction, alteration, repair, improvement, moving or demolition of an improvement to real property or appurtenances thereto.

Contractor Printed Name	Contractor Signature
Contractor Title	Date

EXHIBIT "D"

STATE OF TEXAS §
CITY OF BRAZOS §

ECONOMIC DEVELOPMENT AGREEMENT
ANNUAL CERTIFICATION FORM

REPORTING YEAR 20__

I, the authorized representative and officer of the Adams Development Properties, LP do hereby certify to the City Council of the City of Bryan, Texas ("City") that Adam Development Properties, LP is in full compliance with the terms of the Chapter 380 Economic Development Agreement with the City, entered into on the __ day of _____, 2015.

Signed this _____ day of _____, 20__.

_____	_____	_____
Print Name	**Signature**	**Title**

ACKNOWLEDGMENT

This instrument was acknowledged before me on the _____ day _____, 20__, by _____, as the _____ of Adam Development Properties, LP on behalf of said company.

_____
Notary Public, State of Texas