

**SUPPLEMENTAL AGREEMENT NO. 2
TO
AGREEMENT BETWEEN OWNER AND CONTRACTOR**

STATE OF TEXAS	§
	§
OWNER OF WILLIAMSON	§

This Supplemental Agreement No. 2 to Agreement Between Owner and Contractor is executed by and between Williamson County, Texas, a political subdivision of the State of Texas, (the "Owner") and Restek, Inc. (the "Contractor").

WHEREAS, on or about October 17, 2013, Owner and Contractor executed an Agreement Between Owner and Contractor for the construction of structural repairs for the Williamson County Parking Garage (the "Agreement");

WHEREAS, following Contractor's commencement of construction, the parties found that each jumper plate weld that was uncovered was defective;

WHEREAS, it was known that construction defects existed and that repair work to the Williamson County Parking Garage was necessary; however, it was not known until which time the jumper plate welds were uncovered during construction that such unforeseen damage to the Williamson County Parking Garage existed, to wit, all uncovered jumper plate welds were defective;

WHEREAS, it became necessary to amend and supplement the Agreement with Supplemental Agreement No. 1 dated effective January 29, 2014 in order to repair the unforeseen damage to the Williamson County Parking Garage by removing the concrete topping slab, replacing the jumper plate welds and replacing the topping slab at 210 locations within the Williamson County Parking Garage;

WHEREAS, it has now become necessary to further amend and supplement the Agreement with this Supplemental Agreement No. 2 in order to repair additional unforeseen damage to the Williamson County Parking Garage as further described by change order bid forms No. 2 and No. 3 attached as Exhibit 1;

WHEREAS, the Williamson County Commissioners Court, by order, has exempted this portion of the purchase and procurement of the above described additional unforeseen repairs from the competitive bid/proposal requirements of the County Purchasing Act pursuant to the discretionary exemptions (1) for items necessary to preserve and protect the public health or safety of the residents of the community, as set forth under Section 262.024(a)(2) of the Texas Local Government Code; and (2) for items necessary because of unforeseen damage to public property, as set forth under Section 262.024(a)(3) of the Texas Local Government Code.

NOW, THEREFORE, premises considered, Owner and Contractor agree that the Agreement is supplemented and amended as follows:

AGREEMENT

I. SERVICES AND OBLIGATIONS OF CONTRACTOR.

Contractor shall, in addition to removing the concrete topping slab, replacing each defective jumper plate weld and replacing the topping slab, make other repairs as further described in change order bid forms No. 2 and No. 3 attached as Exhibit 1 to the Williamson County Parking Garage.

II. UNIT PRICES AND OVERHEAD COSTS.

Contractor will provide the above described work at the prices shown in Exhibit 1, the total not-to-exceed amount for the work described in Supplemental Agreement No. 2 being \$88,026.98.¹

III. TIME FOR COMPLETION OF CONSTRUCTION WORK.

A. Time for Substantial Completion. The Agreement's original Contract Time for Substantial Completion of all construction work was 126 calendar days from the date of commencement. The Contract Time for Substantial Completion is increased to 180 calendars from the date of commencement to allow Contractor to perform the Work described in the Agreement as well as the repair work described herein. Under no circumstances will the time for Substantial Completion exceed this date without a written amendment to the Agreement.

B. Time for Final Completion. Final Completion will remain unchanged and will be as set forth in the Agreement. Under no circumstances will the time for Final Completion be exceeded without a written amendment to the Agreement.

IV. Exemption from Bidding Requirements. The Williamson County Commissioners Court, by order, has exempted the additional unforeseen necessary repairs and this portion of the purchase² and procurement of the above described repairs from the competitive bid/proposal requirements of the County Purchasing Act pursuant to the discretionary exemptions (1) for items necessary to preserve and protect the public health or safety of the residents of the community, as set forth under Section 262.024(a)(2) of

¹ Previous procurement under this agreement has complied with all bidding requirements; however, the amount of change orders has now reached twenty-five percent (25%) of the original contract. Thus, based on unforeseen circumstances, health and safety reasons, and the duty to mitigate damages, it is necessary to exempt a portion of the additional work from bidding requirements. The overage above the twenty-five percent (25%) in change orders that is being exempted is estimated at \$53,395.73, depending on whether or not the not-to-exceed amount is reached.

² See FN1.

the Texas Local Government Code; and (2) for items necessary because of unforeseen damage to public property, as set forth under Section 262.024(a)(3) of the Texas Local Government Code. Due to such exemptions, the consideration paid to Contractor hereunder shall not be taken into consideration for purposes of the maximum percentage allowed for contract price increases under Section 262.031(b) of the Texas Local Government Code.

V. Extent of Supplemental Agreement. All other terms of the Agreement and any prior amendments, work authorizations and supplemental agreements thereto which have not been specifically amended herein shall remain the same and shall continue in full force and effect. To the extent applicable, all terms used in this Supplemental Agreement No. 2 shall have the meanings attributed to them in the Agreement.

VI. Authority. Each party represents and warrants that it has due power and lawful authority to execute and deliver this Supplemental Agreement No. 2 and to perform its obligations under the Agreement and this Supplemental Agreement No. 2 and that obligations and undertakings hereunder are valid, binding and enforceable obligations of such party.

IN WITNESS WHEREOF, Owner and Contractor have executed this Supplemental Agreement No. 2, in triplicate, to be effective as of the date of the last party's execution hereof.

CONTRACTOR:

OWNER:

Restek, Inc.

Williamson County, Texas

Signature

Signature

Printed Name

Printed Name

Title

Title

_____, 20____
Date

_____, 20____
Date