

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

TEMPORARY CONSTRUCTION EASEMENT AGREEMENT

(Non-Creek Areas of Construction)

Effective Date: _____, 2019

Grantor: **Brushy Creek Municipal Utility District**, a conservation and reclamation district of the State of Texas

Grantor's Mailing Address (including county):

16318 Great Oaks Drive
Round Rock, Texas 78681

Grantee: **Williamson County**, a political subdivision of the State of Texas

Grantee's Mailing Address (including county):

c/o Sheets & Crossfield, P.C.
309 E. Main St.
Round Rock, Texas 78664

Easement Area:

The area depicted on **Exhibit "A"** attached hereto ("Easement Area")

Easement Purpose:

A temporary easement for the construction of road and bridge improvements within the rights of way of Great Oaks Drive and Hairy Man Road, and improvements in aid thereof (the "Project"), including but not limited to vehicular access, equipment staging, and temporary spoil storage ("Easement").

Consideration:

Ten and no/100 Dollars (\$10.00) and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged.

Reservations from and Exceptions to Conveyance and Warranty:

All restrictions, covenants, conditions, easements and other matters affecting the Easement Area to the extent the same remain in force and effect and are recorded in the Official Public Records of Williamson County, Texas

Grant and Conveyance:

Grantor, for the consideration and subject to the Reservations from and Exceptions to Conveyance and Warranty, grants, sells and conveys to Grantee the Easement over, under, upon and across the Easement Area for the Easement Purpose, together with all and singular the rights and appurtenances thereto, to have and hold it unto Grantee, for the Easement Duration (as defined below). Grantor and Grantee and their successor and assigns are sometimes referred herein as the "Parties."

The following terms and conditions shall apply to the Easement:

1. Duration of Easement. The Easement shall commence on the date hereof and shall terminate on the earlier to occur of the following (the "Easement Termination Date"): (i) December 31, 2022; or (ii) date upon that the Project has been constructed by Grantee, approved and accepted for maintenance, at which time neither party shall have any further obligations or liability regarding the Easement or under this Agreement with the exception of any obligations hereunder which expressly survive termination.
2. Exclusiveness of Easement. The Easement is nonexclusive, and Grantor reserves for Grantor and Grantor's successors and assigns the right to convey the same or other rights and/or easements to others, so long as such further conveyance is subject to this grant.
3. Restrictions: No roads, utilities or other improvements of any kind shall be constructed or installed within the Easement Area. All improvements relating to the Project shall be constructed only within the rights of way of Great Oaks Drive and Hairy Man Road, except as otherwise specifically authorized by Grantor in writing.
4. Construction Obligations. Grantee shall comply with the following obligations, :
 - a. Prior to construction, Grantee shall submit to Grantor plans and specifications for the Project to Grantor for Grantor's approval, which approval shall not be unreasonably withheld if the plans and specifications are consistent with the terms of this Agreement;
 - b. Complete construction and installation of the Project in the Easement Area as depicted on the plans and specifications approved by Grantor;
 - c. Grantee shall, upon the completion of construction, remove and dispose all debris, trash, surplus excavation, and litter within the Easement Area resulting from the exercise of Grantee's easement rights hereunder. Grantee shall restore the surface of said property, after completion of construction of the road improvements, as nearly as possible, to the condition in which said property was found immediately before the work was undertaken.
 - d. If the construction of the Project results in the removal of an interior or perimeter fence on any real property, then Grantee will reconstruct all such fencing. Grantee's obligations hereunder shall survive the Easement Termination Date;
 - e. During construction and until final completion of the Project, Grantee shall comply with all laws and governmental permitting obligations and maintain the Easement Area in a safe, sightly, good and functional condition;
 - f. Prior to commencement of any construction activities within the Easement Area, Grantee agrees to comply with the following requirements for purposes of protecting trees within

the Easement Area: (i) prior to commencement of construction activities, Grantee shall identify and submit to Grantor for its written approval all trees to be protected in connection with subsequent construction activities (the “Protected Trees”); (ii) Grantee shall mark all Protected Trees prior to initiation of any construction activities in the Easement Area; (iii) Grantee shall provide written notice to Grantor after all tree protection is in place, and secure Grantor’s concurrence that such measures are in place, prior to commencement of construction activities by Grantee’s contractors within the Property; (iv) Grantee shall obligate its contractors to comply with all tree protection standards set forth in the City of Round Rock Tree Technical Manual: Standards and Specifications (January 13, 2005), as amended from time to time, in connection with all construction activities undertaken on the Property in order to preserve and protect the Protected Trees to the maximum extent practicable; (iv) Grantee shall obligate its contractors to comply with all tree protection measures set forth in Section 8-22 of the City of Round Rock Land Development Code in connection with all construction activities undertaken on the Property in order to preserve and protect the Protected Trees to the maximum extent practicable; and (v) in the event Grantee fails to provide the required prior notice and secure Grantor’s concurrence that tree protection is in place in accordance with these provisions and subsequent construction activities by Grantee’s contractors result in the removal or loss of any Protected Tree, Grantee shall provide payment to Grantor based on the diameter of such Protected Tree(s) in an amount equal to the Tree Replacement Fee (per inch) set forth in Section 8-20 of the City of Round Rock Land Development Code. Payment shall be made in full within 30 days of the removal or loss of each Protected Tree. UNDER NO CIRCUMSTANCES MAY GRANTEE OR ITS CONTRACTORS REMOVE ANY TREE LOCATED OUTSIDE THE EASEMENT AREA ON ANY REAL PROPERTY RETAINED BY GRANTOR EXCEPT AS OTHERWISE AUTHORIZED BY GRANTOR.

- g. Grantee shall take no actions that interfere with or impair proper stormwater drainage on Grantor’s lands at all times; and
 - h. During construction and until final completion of the Erosion Control Improvements, Grantee shall cause its contractor to secure and continuously maintain of the types and amounts set forth in Exhibit “B” attached hereto. Grantor shall be named as an additional insured on all such insurance coverages. Prior to commencement of construction activities, Grantee shall furnish Grantor with satisfactory proof that the contractor has secured adequate insurance coverage naming Grantor as an additional insured.
 - i. To the extent any of the Easement Area overlaps any driveways providing ingress and egress to and from lands owned by Grantor, Grantee shall ensure that pedestrian and vehicular access is maintained at all times, and shall take no actions that interfere with or impair with access by Grantor, its agents, employees and contractors.
5. Grantee’s Construction Obligation. The Project to be undertaken by Grantee shall be performed at Grantee’s sole cost and expense, and Grantor shall not be responsible for payment of any costs or expenses related to the Project except as otherwise agreed by Grantor.
 6. Rights Reserved. Grantor reserves for Grantor and Grantor’s successors and assigns the right to continue to use and enjoy the surface of the Easement Area for all purposes which do not materially interfere with or interrupt the use or enjoyment of the Easement (except that no new building of any kind will be placed on the Easement Area during the Easement Term).

7. Attorney's Fees. Any party to this Agreement who is the prevailing party in any legal proceeding against any other party brought under or in connection with this Agreement or the subject matter hereof, shall be additionally entitled to recover court costs and reasonable attorney fees, and all other litigation expenses, including deposition costs, travel and expert witnesses fees from the non-prevailing party.
8. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns. This Agreement may not be assigned by either party without the prior written consent of the other party.
9. Choice of Law. This Agreement shall be subject to and governed by the laws of the State of Texas, excluding any conflicts-of-law rule or principle that might refer the construction or interpretation of this Agreement to the laws of another state. Each party hereby submits to the jurisdiction of the state and federal courts in the State of Texas and to venue in Williamson County, Texas.
10. Indemnity. To the maximum extent authorized by Texas law, Each party (the "Indemnifying Party") hereby agrees to protect, indemnify and hold harmless the other party from and against any and all losses, costs (including, without limitation, the costs of litigation and attorneys' fees), claims, causes of action, damages and liabilities that are attributable to the breach by the Indemnifying Party of any of the provisions of this Agreement. Further, Indemnifying Party shall hold the other party harmless and indemnify the other party from and against any and all claims, damages, liability and related expenses arising out of personal injury or death or damage to the other party's property caused by the Indemnifying Party or the Indemnifying Party's employees, contractors or subcontractors. The provisions of this Section 11 shall survive termination.
11. Counterparts. This Agreement may be executed and delivered in counterparts.
12. Further Assurances. In connection with this Agreement as well as all transactions contemplated by this Agreement, each signatory party hereto agrees to execute and deliver such additional documents and instruments and to perform such additional acts as may be necessary or appropriate to effectuate, carry out and perform all of the terms, provisions and conditions of this Agreement and all such transactions.
13. Integration. This Agreement contains the complete agreement between the Parties and cannot be varied except by the written agreement of the Parties. The Parties agree that this Agreement shall not modify or replace other agreements entered into by the Parties relating to the Project.
14. Legal Construction. In case any one or more of the provisions contained in this Agreement shall for any reason be invalid, illegal or unenforceable in any respect, to the extent such invalidity or unenforceability does not destroy the basis of the bargain among the Parties, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. Whenever required by the context as used in this Agreement, the singular number shall include the plural and neuter shall include the masculine or feminine gender, and vice versa. Article and Section headings appearing in this Agreement are for convenient reference only and are not intended, to any extent or for any purpose, to restrict or define the text of any Article or Section.
15. Notices. Any notice or communication required or permitted hereunder shall be deemed to be delivered, whether actually received or not, when deposited in the United States mail, postage fully

prepaid, registered or certified mail and addressed to the intended recipient at the address shown herein, and if such address is not known, then at the last known address according to the records of the party delivering the notice. Notice given in any other manner shall be effective if and when received by the addressee. Any address for notice may be changed by written notice delivered as provided herein.

16. Remedies. Each party shall have and be entitled to enforce all rights and remedies at law or in equity including the following:
 - a. If either party defaults in the performance of its obligations hereunder and the default is not cured within thirty (30) days following delivery of written notice, then the non-defaulting party shall have the right to perform such obligation on behalf of the defaulting party, in which event the defaulting party shall immediately pay to the non-defaulting party all reasonable amounts expended, together with interest thereon at the maximum amount permitted by law from the date the amounts are expended until the date repaid.
 - b. In the event of a breach by any party hereto of any obligation of such party under this Agreement, the non-defaulting party shall be entitled to injunctive relief mandating compliance herewith, and shall be entitled to obtain a decree hereunder. The undersigned hereby acknowledge and stipulate the inadequacy of legal remedies and irreparable harm which would be caused by the breach of this Agreement, and such non-defaulting party shall be entitled to relief by any and all other available legal and equitable remedies from the consequences of such breach. Any costs and expenses of any such proceeding, including reasonable attorney's fees, shall be paid by the defaulting party.
17. Waiver. No delay or omission of any party hereto in the exercise of any rights created hereunder shall impair such right, or be construed to be a waiver thereof, and every such right may be exercised at any time during the continuance of and event of default hereunder. A waiver by any party hereto of a breach of, or default in, any of the terms and conditions of this Agreement by the other party shall not be construed to be a waiver of any subsequent breach thereof or of any other provision of this Agreement. Except as otherwise specifically provided in this Agreement, no remedy provided in this Agreement shall be exclusive, but shall be cumulative with all other remedies provided for in this Agreement, and all other remedies at law or inequity which are available to the Parties hereto.
18. No Liens. Grantee shall not permit and will discharge within ten (10) days following written notice thereof any lien of mechanics, laborers, and artisans or materialmen for work or materials alleged to be done or furnished in connection with the Easement Area. Provided however, that Grantee may contest such lien and Grantee shall bond around such lien in accordance with Texas Property Code § 53.171, *et. seq.*
19. Relationship of Parties. Nothing contained herein shall be construed to make the Parties hereto partners or joint venturers, or render any of such Parties liable for the debts or obligations of the other party hereto.
20. Time of Essence. Time is of the essence with respect to the performance of all obligations set out herein and the consummation of all transactions contemplated hereby.
21. Disclaimers. Grantor has executed and delivered this Agreement, and Grantee has received and accepted this Agreement and the Easement Area, AS IS, WHERE IS, AND WITH ALL FAULTS,

and without any representations or warranties whatsoever, express or implied, written or oral, except solely (i) the special warranty of title, or (ii) other representations and obligations of Grantor expressly set forth herein; it being the intention of Grantor and Grantee to expressly revoke, release, negate and exclude all representations and warranties, including, but not limited to, any and all express or implied representations and warranties as to (a) the condition of the Easement Area or any aspect thereof, including, without limitation, any and all express or implied representations and warranties related to merchantability, or fitness for a particular use or purpose; (b) the soil conditions, drainage, topographical features, or other conditions of the Easement Area or which affect the Easement Area; (c) any features or conditions at or which affect the Easement Area with respect to any particular purpose, use, development potential, or otherwise; (d) all express or implied representations or warranties created by any affirmation of fact or promise or by any description of the Easement Area; (e) any environmental, geological, or other condition or hazard or the absence thereof heretofore, now, or hereafter affecting in any manner any of the Easement Area; and (f) all other express or implied warranties and representations by Grantor whatsoever. If Grantee discovers an environmental, geological, or other condition or hazard affecting in any material manner the construction of the improvements in the Easement Area then Grantor will reconfigure the Easement Area to avoid such problem as reasonably necessary.

GRANTOR:

BRUSHY CREEK MUNICIPAL UTILITY DISTRICT, a Texas conservation and reclamation district

By: Donna Parker

Name: Donna Parker

Title: Vice-President, Board of Directors

STATE OF TEXAS

COUNTY OF WILLIAMSON

§
§
§

This instrument was acknowledged before me on the 14th day of November, 2019, by Donna Parker, Vice-President, Board of Directors of Brushy Creek Municipal Utility District, a conservation and reclamation district of the State of Texas, on behalf of said district.

Margie Anthes
Notary Public, State of Texas

(SEAL)



GRANTEE:

WILLIAMSON COUNTY

By: _____

Name: _____

Title: _____

THE STATE OF TEXAS §

COUNTY OF WILLIAMSON §

This instrument was acknowledged before me on this ____ day of _____, 2019,
_____, as _____ of Williamson County, Texas, on behalf of said
county.

Notary Public, State of Texas

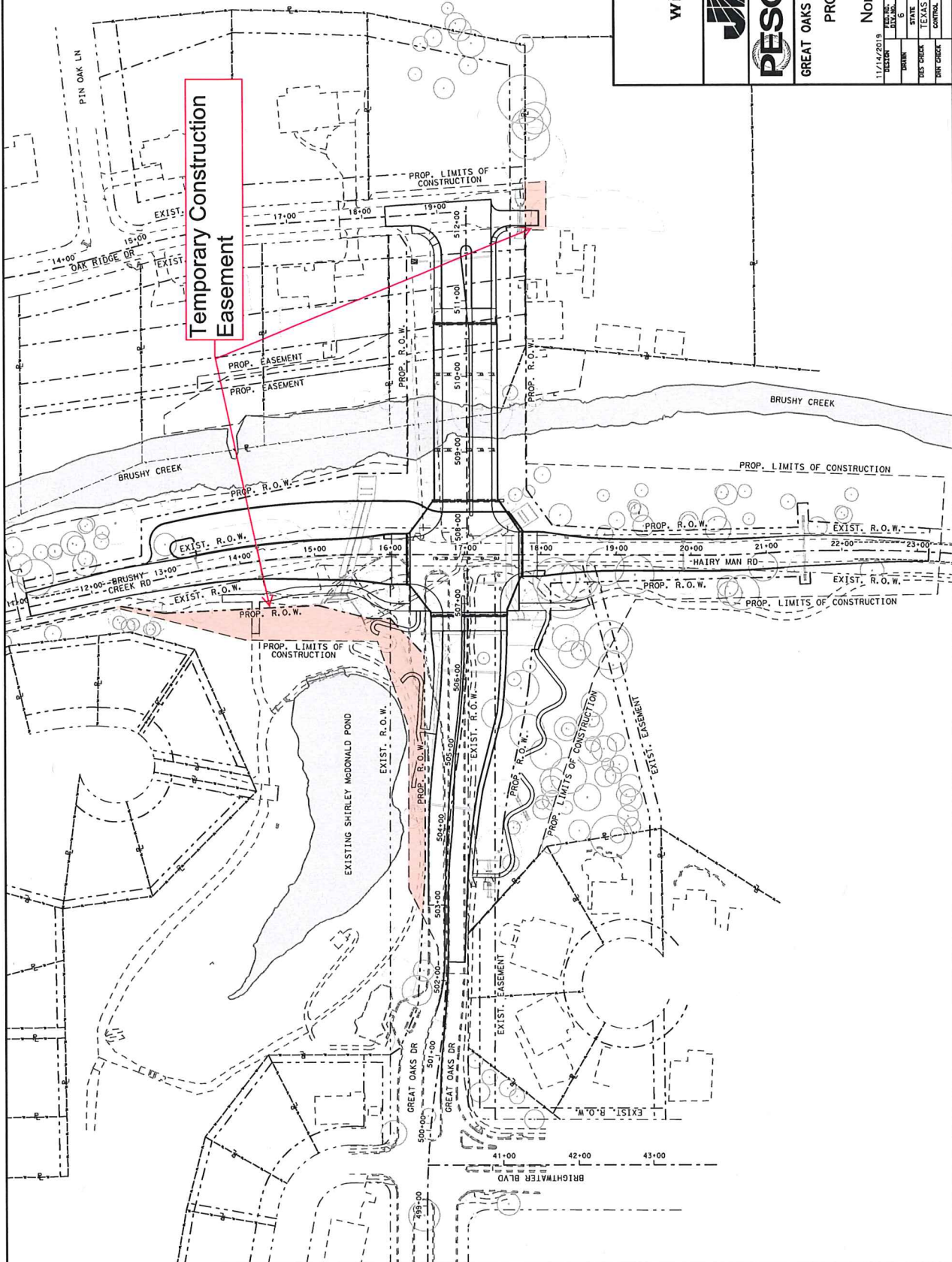
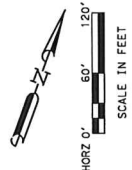
Printed Name: _____


My Commission Expires: _____

[SEAL]


Exhibit “A”

Description of Easement Area





WILLIAMSON COUNTY
TEXAS



PESC
TYPE REGISTRATION
100% PROFESSIONAL

P.E. Structural Consultants, Inc.
www.pescstructural.com
T&PE Firm No. F-1475

GREAT OAKS DR AT BRUSHY CREEK RD
PROJECT LAYOUT
Exhibit A
Non Creek Area

11/14/2019 SHEET 1 OF 1

DATE	PROJECT NO.	PROJECT NAME	DISTRICT	COUNTY	SHEET NO.
11/14/2019	16031	GREAT OAKS DR AT BRUSHY CREEK RD	1	WILLIAMSON	1

Exhibit "B"

Required Insurance

The Contractor and each subcontractor, at their own expense, shall purchase and maintain the herein stipulated minimum insurance with companies duly approved to do business in the State of Texas. Certificates of each policy shall be delivered to the Grantor before any work is started, along with a written statement from the issuing company stating that said policy shall not be canceled, non-renewed or materially changed without 30 days advance written notice being given to the Grantor. Prior to the effective date of cancellation, Contractor must deliver to the Grantor a replacement certificate of insurance or proof of reinstatement.

Coverage shall be of the following types and not less than the specified amounts:

(a) workers' compensation as required by Texas law, with the policy endorsed to provide a waiver of subrogation as to the Grantor; employer's liability insurance of not less than \$500,000 for each accident, \$500,000 disease--each employee, \$500,000 disease-policy limit.

(b) commercial general liability insurance, including independent contractor's liability, completed operations and contractual liability covering, but not limited to, the liability assumed under the indemnification provisions of the Contract Documents, fully insuring Contractor's (or subcontractor's) liability for injury to or death of Grantor's employees and third parties, extended to include personal injury liability coverage with damage to property of third parties, with minimum limits as set forth below:

General Aggregate \$1,000,000
Operations Aggregate \$1,000,000
Personal and Advertising Injury \$600,000
Each Occurrence \$600,000
Fire Damage (any one fire) \$50,000
Medical Expense (any one person) \$5,000

The policy shall include coverage extended to apply to completed operations, asbestos hazards (if this project involves work with asbestos) and XCU (explosion, collapse and underground) hazards. The completed operations coverage must be maintained for a minimum of one year after Final Completion and acceptance of the Work, with evidence of same filed with Grantor.

(c) comprehensive automobile and truck liability insurance, covering owned, hired and non-owned vehicles, with a combined bodily injury and property damage minimum limit of \$600,000 per occurrence; or separate limits of \$250,000 for bodily injury (per person), \$500,000 bodily injury (per accident) and \$100,000 for property damage. Such insurance shall include coverage for loading and unloading hazards.

"Umbrella" Liability Insurance: The Contractor shall obtain, pay for and maintain umbrella liability insurance during the contract term, insuring Contractor for an amount of not less than \$1,000,000 per occurrence combined limit for bodily injury and property damage that follows form and applies in excess of the primary liability coverages required herein above.

The policy shall provide "drop down" coverage where underlying primary insurance coverage limits are insufficient or exhausted. Grantor shall be named as additional insured.

Policy Endorsements and Special Conditions

(a) Each insurance policy to be furnished by Contractor shall include the following conditions by endorsement to the policy:

- (1) name the Grantor as an additional insured as to all applicable coverage;
- (2) each policy shall require that 30 days prior to the cancellation, non-renewal or any material change in coverage, a notice thereof shall be given to Grantor by certified mail; and
- (3) the policy phrase "other insurance" shall not apply to the Grantor where the Grantor is an additional insured on the policy.

(b) Insurance furnished by the Contractor shall also be in accordance with the following requirements:

- (1) any policy submitted shall not be subject to limitations, conditions or restrictions deemed inconsistent with the intent of the insurance requirements to be fulfilled by Contractor;
- (2) all policies are to be written through companies duly licensed to transact that class of insurance in the State of Texas; and
- (3) all liability policies required herein shall be written with an "occurrence" basis coverage trigger.

(c) Contractor's insurance must all meet the following additional requirements:

- (1) Contractor must waive subrogation rights for loss or damage to the extent same are covered by insurance. Insurers shall have no right of recovery or subrogation against the Grantor, it being the intention that the insurance policies shall be primary coverage for all losses covered by the policies; and
- (2) companies issuing the insurance policies and Contractor shall have no recourse against the Grantor for payment of any premiums or assessments for any deductibles, as all such premiums and deductibles are the sole responsibility and risk of the Contra