

INTERLOCAL LEASE AGREEMENT

THIS INTERLOCAL LEASE AGREEMENT (this "Lease Agreement") is made and entered into effective as of the date of the last party's execution herein below (the "Lease Agreement Date"), by and between WILLIAMSON COUNTY, a Texas political entity ("Williamson County" or "Landlord") and CITY OF GEORGETOWN, a Texas home-rule municipal corporation ("Georgetown" or "Tenant"), related to the lease by Georgetown of certain real property owned by Williamson County, for the purposes of the development and use of such property as a public parking area. Williamson County and Georgetown are referred to collectively herein as the "Parties," or individually as a "Party."

WITNESSETH:

WHEREAS, V.T.C.A., Government Code, Chapter 791, the Texas Interlocal Cooperation Act, provides that any one or more local governments may contract with each other for governmental functions and services in areas such as streets, roads, and drainage, public health and welfare; and relating to other governmental functions in which the contracting parties are mutually interested in order to provide a governmental function or service that each party to the contract is authorized to perform individually; and

WHEREAS, Section 791.001 of the Government Code further provides that the Parties are authorized to contract or agree to perform governmental functions and services to increase the efficiency and effectiveness of their respective local governments; and

WHEREAS, Section 272.005 of the Local Government Code provides that a political subdivision, such as Williamson County, may lease property to any other local government, such as Georgetown, without any competitive procedures or any published notice; and

WHEREAS, Georgetown wishes to lease from Williamson County and Williamson County is agreeable to lease to Georgetown, that certain real property owned by Williamson County located at Martin Luther King and 8th Streets in Georgetown, Texas, being more particularly described on Exhibit A attached hereto and made a part hereof for all purposes (the "Premises"), which lease shall be on the terms and conditions herein set forth and for the public purposes herein specified.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the undersigned Parties hereby agree as follows:

AGREEMENT:

Section 1 LEASE GRANT.

Landlord hereby leases, demises and lets unto Tenant, and Tenant hereby leases from Landlord, the Premises for the Term of the Lease Agreement, beginning on the Commencement Date

(defined below) and ending on the Expiration Date (defined below), unless sooner terminated or as further renewed and extended, as herein provided.

Section 2 LEASE TERM AND TERMINATION.

a. Initial Term. The Initial Term of this Lease Agreement (the "Initial Term") shall be the period commencing on September 1, 2014 (the "Commencement Date") and ending on August 31, 2024 (the "Expiration Date").

b. Renewals. After the Initial Term and provided this Lease Agreement has not been terminated prior to the Expiration Date as herein provided, this Lease Agreement may be renewed on an annual basis upon the mutual consent of the governing bodies of the Landlord and the Tenant. Any renewal of this Lease Agreement along with any amendments to the terms of hereof shall be set forth in a written agreement and executed by both parties.

c. Early Termination During Initial Term. Upon one (1) year's written notice prior to each anniversary date during the Initial Term, Landlord may terminate this Lease Agreement provided the Landlord reimburses Tenant for the costs of the improvements placed on the Premises by Tenant pursuant to the following reimbursement schedule:

<u>Effective Date of Termination</u>	<u>Percentage of Reimbursement of Tenant's Improvement Costs</u>
August 31, 2015	90%
August 31, 2016	80%
August 31, 2017	70%
August 31, 2018	60%
August 31, 2019	50%
August 31, 2020	40%
August 31, 2021	30%
August 31, 2022	20%
August 31, 2023	10%

Within sixty (60) days of completion of any improvements made by Lessee at any time during the Initial Term, Tenant must provide, to Landlord's satisfaction, documentation setting forth the actual costs of Tenant's improvements and Landlord shall either request additional documentation from Lessee or approve Lessee's documentation within sixty (60) days of Landlord's receipt of the documentation. In the event additional documentation is requested, Landlord shall have sixty (60) days from the date of Landlord's receipt of the additional documentation to approve same.

Prior to the Landlord being obligated to pay any amount of reimbursement for Landlord's termination of this Lease Agreement during the Initial Term, Lessee must have provided the above described documentation, to Landlord's satisfaction, within the time period provided above.

Any termination of this Lease Agreement by Landlord during the Initial Term will not be effective until Lessee receives payment of the above described reimbursement from Landlord, which in no event shall be paid by Landlord later than the effective date of any such termination.

Section 3 RENT, OTHER CONSIDERATION FOR LEASE.

Tenant agrees to pay to Landlord in annual installments, in advance, Base Rent in the amount of Ten and No/100 Dollars per annum (the "Base Rent"), without deduction or setoff, for each twelve (12) month period of the Initial Term. Tenant shall pay the first installment of Base Rent to Landlord contemporaneously with the execution of this Lease Agreement. Each subsequent installment of Base Rent shall be due and payable, without demand, beginning on each subsequent October 1, during the Initial Term. Provided, however, Tenant may, at its election, prepay all or a portion of the Base Rent. In the event this Lease Agreement is renewed following the Initial Term, the rent for any renewal term(s) shall be negotiated by the parties and set forth in a written agreement that is executed by both parties.

Section 4 LEASEHOLD IMPROVEMENTS AND USE OF THE PREMISES.

As further consideration for the Lease Agreement, Tenant shall improve the Premises for sole use as a free public parking facility so the public at large may utilize the Premises for parking on a first come, first serve basis. Tenant must not use the Premises for overflow or storage parking of its vehicles and/or equipment, nor may Tenant designate any areas of the Premises for Tenant's employee parking.

Tenant must, at its own expense, remove the two existing metal structures on the Premises, which are addressed as 401 W 8th and 402 W 7th, and any associated appurtenances, as well as install asphalt, concrete, other paving materials, irrigation, landscaping, signage and lighting on the Premises. The Premises may, at the discretion of Tenant, also be used for special events and activities one weekend each month from 5:00 p.m. on Friday until 8:00 a.m. Monday. The Premises may be used for special events and activities at other additional times with the Landlord's prior written consent.

Landlord and Tenant acknowledge and agree that upon expiration of the Initial Term or any renewal term, or upon earlier termination of this Lease Agreement, all improvements made to the Premises by or on behalf of Tenant shall remain a part of the Premises, and shall become the property of Landlord, without the payment of compensation to Tenant.

Tenant shall improve and maintain the Premises in compliance with all applicable laws, ordinances, orders, rules and regulations (state, federal, municipal and other agencies or bodies having any jurisdiction thereof) with reference to the use, condition or occupancy of the Premises (collectively, the "Laws"), including but not limited to the Code of Ordinances of the City of Georgetown and the Unified Development Code of the City of Georgetown.

Tenant hereby acknowledges the Landlord has future plans to construct Landlord owned facilities and improvements on the Premises. Tenant acknowledges that it should plan for alternative solutions relating to future parking needs at other locations at the end of the Initial

Term or any renewal term since Landlord intends to use the Premises for other purposes in the future.

Tenant hereby further agrees and acknowledges that any landscaping and/or any constructed improvements placed on the Premises by Tenant during the Initial Term or any renewal term of this Lease Agreement may be removed, without fee, following the expiration or termination of the Lease Agreement as long as removal is in compliance with all laws, ordinances, orders, rules and regulations (state, federal, municipal and other agencies or bodies having any jurisdiction thereof) applicable to the Premises (collectively, the "Laws"), including but not limited to the Code of Ordinances of the City of Georgetown and the Unified Development Code of the City of Georgetown. Tenant agrees and acknowledges that it only place landscaping and constructed improvements on the Premises that may be removed, without fee, following the expiration or termination of the Lease Agreement.

Section 5 VEHICULAR ACCESS TO AREAS ADJACENT TO PREMISES.

Tenant shall construct the improvements on the Premises so that adequate vehicular access is maintained and not impeded between the Premises and the parking lot on both the South and North sides of the buildings located at 321 and 323 West 8th Street. Furthermore, Tenant shall construct the improvements on the Premises so that adequate vehicular access is maintained and not impeded between Premises and the parking lot on South side of 308 West 7th Street and the West parking area adjacent to 310 West 7th.

Section 6 MAINTENANCE AND UTILITIES.

Tenant, at its sole cost and expense, shall throughout the Initial Term and any renewal term, keep and maintain the Premises and all improvements thereon in a good, clean condition of repair and maintenance and in compliance with all applicable Laws, including but not limited to landscape maintenance. Tenant shall be responsible for payment of all utility costs associated with lighting, landscaping and Tenant's use of the Premises.

Section 7 INSURANCE.

Tenant, at Tenant's sole expense, shall maintain during the Initial Term and any renewal term the same insurance coverage on the Premises as other similar parking lots owned by Georgetown. In the event Tenant's coverage on the Premises is cancelled or terminated, Tenant must immediately obtain new coverage so that coverage is in place at all times during the Initial Term and any renewal term. Landlord, at Landlord's sole expense, may self insure or maintain during the Initial Term and any renewal term the same insurance coverage on the Premises as other similar Williamson County parking lots located in the City of Georgetown. Tenant shall not commence any field work under this Lease Agreement or occupy the Premises until it has obtained all required insurance and such insurance has been approved by Landlord.

Tenant shall not allow any of its contractors or subcontractor(s) to commence work to be performed on the Premises until such contractors and subcontractors have obtained the insurance as required by **Exhibit B.**

Williamson County shall be named as an additional insured on contractor and subcontractor insurance, and Tenant shall furnish Landlord with a certification of coverage issued by the insurer(s).

Section 8 PROPERTY TAXES AND CITY FEES.

Tenant is a public entity exempt from the payment of real or personal property taxes. Should Tenant's tax exempt status change during the Initial Term or any renewal term, Tenant shall be responsible for the payment prior to delinquency and to the extent applicable of the following (collectively, Taxes"):

- a. All taxes, if any, levied or assessed against all personal property, furniture, fixtures or equipment placed by Tenant upon the Premises; and
- b. All real property taxes, general and special assessments, license fees and other charges of every description, if any, which during the Initial Term or any renewal term may be levied upon or assessed against the Premises and all interests therein and all improvements and other property thereon, whether belonging to Landlord or Tenant, or to which either of them may become liable.

Landlord shall not be obligated to pay any drainage fees or other City of Georgetown fees in relation to the Premises during the Initial Term or any renewal term.

Section 9 DEFAULT AND REMEDIES.

It shall be an event of default by Tenant under the Lease Agreement if: (i) Tenant shall fail to pay when due any sums payable by Tenant hereunder and such failure shall continue for thirty (30) days after written notice by Landlord to Tenant; or (ii) Tenant shall fail to comply with or observe any other provision of this Lease Agreement within thirty (30) days after written notice by Landlord to Tenant specifying wherein Tenant has failed to comply with or observe such provision; provided, however, that if the nature of Tenant's obligation is such that more than thirty (30) days are required for its performance, then Tenant shall not be deemed to be in default if Tenant shall commence such performance within such thirty-day period and thereafter diligently prosecute same to completion. Upon the occurrence of any event of default by Tenant, Landlord shall have the option to pursue any and all remedies which Landlord then may have hereunder or at law or in equity.

Section 10 BROKERS.

Landlord and Tenant each warrant to the other that they have had no dealings with any broker or agent in connection with the negotiations or execution of this Lease Agreement.

Section 11 RIGHT OF FIRST OFFER TO PURCHASE.

- a. As additional consideration for Tenant's improvement of the Premises, in the event Landlord shall elect to sell the Premises after the expiration or termination of this Lease Agreement, and for ten (10) years thereafter, Landlord shall first give written notice (the "Landlord Sale Notice") to Tenant. Tenant shall have a period of thirty (30) days (the "Acceptance Period") to elect, by written notice to Landlord (the "Tenant Purchase Notice"), that

Tenant shall purchase the Premises for the Premises' then current market value as determined by an independent state licensed appraiser that is mutually agreed upon by both Landlord and Tenant less the amount of Tenant's cost and expense for improvement of the Premises during the Initial Term or any renewal term (the "Purchase Price"). Within five (5) days after delivery of the Tenant Purchase Notice, Tenant shall deposit into escrow with GEORGETOWN TITLE COMPANY, Georgetown, Williamson County, Texas ("Georgetown Title Company") an earnest money deposit (the "Earnest Money"), in the amount of Five Thousand Dollars (\$5,000). Landlord shall make available to Tenant a complete package of due diligence materials for the Premises, to the extent in Landlord's possession or control, and relating to the ownership, use, condition or operation of the Premises. Tenant shall have thirty (30) days after delivery of the Tenant Purchase Notice (the "Inspection Period") to inspect the Premises to Tenant's satisfaction. If Tenant is not satisfied with the Premises for any reason (or for no reason), Tenant may by written notice to Landlord prior to expiration of the Inspection Period, revoke Tenant's Purchase Notice in which event the Earnest Money shall be promptly reimbursed to Tenant, less \$10.00 which shall be remitted to Landlord as consideration for Tenant's right to revoke the Tenant Purchase Notice within the Inspection Period. If Tenant fails to provide to Landlord written notice of revocation of the Tenant Purchase Notice within the Inspection Period, then Tenant shall be deemed to be satisfied with the Premises, the Earnest Money shall be considered to be non-refundable in all instances other than a Landlord default, and the parties agree to close the sale of the Premises no later than thirty (30) days after expiration of the Inspection Period. At the closing, Tenant shall purchase the Premises by paying to Landlord in cash the entire Purchase Price. The Earnest Money shall be credited to the Purchase Price at the closing and consummation of Tenant's purchase of the Premises. Simultaneously with Tenant's payment to Landlord of the entire Purchase Price in immediately available funds, Landlord shall sell, transfer, assign and convey the Premises to Tenant pursuant to a special warranty deed, subject to the Lease Agreement and those permitted exceptions approved by Tenant during the Inspection Period.

b. If Tenant does not, prior to the expiration of the Acceptance Period, give Landlord the Tenant Purchase Notice, then Landlord may freely sell the Premises to any third party, subject however to the Lease Agreement.

c. The provisions of this Section 10 shall survive the expiration or termination of the Lease Agreement. Tenant may record a Memorandum of this Right of First Offer in the Official Public Records of Williamson County, Texas.

Section 12 ENTIRE AGREEMENT.

This Lease Agreement contains all of the agreements of the parties with respect to any matter covered or mentioned in this Lease Agreement and no prior or contemporaneous agreements or understandings pertaining to any such matters shall be effective for any purpose.

Section 13 SEVERABILITY.

If any section, subsection, sentence, clause, phrase, or portion of this Lease Agreement is for any reason held invalid or unconstitutional by any court or administrative agency of competent

jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof.

Section 14 NOTICE.

All notices and demands shall be in writing, and are effective when mailed, hand-delivered, or transmitted by facsimile as follows:

To Williamson County:

Williamson County
Attn: County Judge
710 Main Street, Suite 101
Georgetown, TX 78626
Fax: (512) 943-1550

To Georgetown:

City of Georgetown
Attn: City Manager
113 E. 8th Street
Georgetown, Texas 78627
Fax: (512)930-3622

Section 15 NO WAIVER OF IMMUNITIES.

Nothing in this Lease Agreement shall be deemed to waive, modify or amend any legal defense available at law or in equity to the Parties or their past or present officers, employees, or agents, or to create any legal rights or claims on behalf of any third party. Neither Party waives, modifies, or alters to any extent whatsoever the availability of the defense of governmental immunity under the laws of the State of Texas and of the United States.

Section 16 COURT OPERATIONS, OFFICIAL DUTIES OF OFFICE, HEALTH AND SAFETY POWERS.

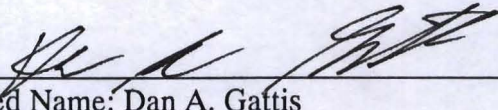
Tenant agrees that Landlord and its elected officials retain control and supervision of their respective elected offices, and Tenant understands and agrees that this Lease Agreement is not intended, nor shall it be construed, to interfere with the operations of the Williamson County Commissioners Court, official duties of office, and/or the health and safety powers of county government. Any rights granted to Tenant are subject to the lawful exercise of elected officials' duties of office and the Landlord's health and safety powers in order for this Lease Agreement to comply with the Texas Constitution.

Section 17 APPROVAL BY GOVERNING BODIES.

This Lease Agreement has been approved by the Governing Body of Williamson County and by the Governing Body of the City of Georgetown at meetings held in compliance with the Texas Open Meetings Act.

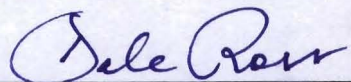
ACCEPTED AND AGREED TO:

Williamson County

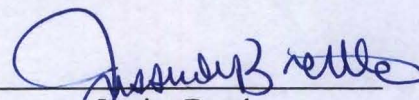
By: 
Printed Name: Dan A. Gattis
Title: County Judge
Date: 08-06-2014

ACCEPTED AND AGREED TO:

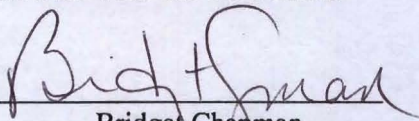
City of Georgetown

By: 
Printed Name: Dale Ross
Title: Mayor
Date: 08/12/14

ATTEST:


Jessica Brettle
City Secretary

APPROVED AS TO FORM:


Bridget Chapman
City Attorney

STATE OF TEXAS

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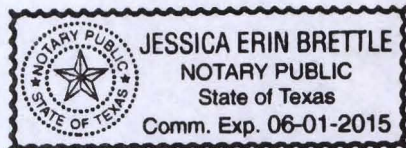
ACKNOWLEDGMENT

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COUNTY OF WILLIAMSON

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This instrument was acknowledged before me on this the 12 day of AUGUST, 2014, by DAVE TROSS, a person known to me, in his/her capacity as Mayor of the City of Georgetown, a Texas Home Rule Municipal Corporation, on behalf of the City of Georgetown.



Jessica Erin Brettle
Notary Public in and for the State of Texas

STATE OF TEXAS

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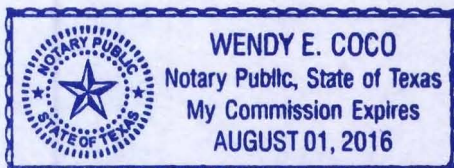
ACKNOWLEDGMENT

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COUNTY OF WILLIAMSON

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This instrument was acknowledged before me on this the 10th day of Aug., 2014, by DAN A. GATTIS, a person known to me, in his capacity as County Judge of Williamson County, on behalf of the County.



Wendy E. Coco
Notary Public in and for the State of Texas

Exhibit A

Description of Premises

Legal Description for the City of Georgetown, Texas

BEING Block 43 in the City of Georgetown, Williamson County, Texas, being that certain tract of land as conveyed to Williamson County by deed recorded as Document No. 2004055767 of the Official Public Records of Williamson County, Texas, and a portion of that certain Tract I, called 1.235 acres, as conveyed to Williamson County by deed recorded as Document No. 2005057567 of the Official Public Records of Williamson County, Texas. Surveyed on the ground in the month of March, 2014, under the supervision of Brian F. Peterson, Registered Professional Land Surveyor, and being more particularly described as follows;

BEGINNING at an iron pin set at the intersection of the east line of Martin Luther King, Jr. (Timber) Street and the south line of 7th (San Gabriel) Street for the Northwest corner of Lot 8 of the above-referenced Block 43, for the Northwest corner of the above-referenced Williamson County tract, (2004055767) for the Northwest corner hereof;

THENCE, along the said south line of 7th Street, N 87°45'15" E, at 120 feet pass the Northeast corner of the said Lot 8, being the Northwest corner of Lot 1 of the said Block 43, being the Northeast corner of the said Williamson County tract (2004055767) and the Northwest corner of the above-referenced 1.235 acre Williamson County Tract I, continuing along the north line of the said 1.235 acre Williamson County Tract I for a total distance of 240.00 feet, in all, to an iron pin set for the Northeast corner of the said Lot 1, being the intersection of the said south line of 7th Street and the west line of Forest Street (Abandoned by Ordinance of the City Council of the City of Georgetown, Texas, as recorded in Volume 564, Page 344, of the Deed Records of Williamson County, Texas), for the Northeast corner hereof;

THENCE, S 2°14'45" E, 240.00 feet to a mag nail set in asphalt at the intersection of the north line of 8th (Oak) Street, and the west line of Forest Street, being the south line of the said 1.235 acre Williamson County Tract I, being the Southeast corner of Lot 4 of the said Block 43, for the Southeast corner hereof;

THENCE, along the said north line of Oak Street, S 87°45'15" W, at 120.00 feet pass the Southwest corner of the said Lot 4, being the Southeast corner of Lot 5, of the said Block 43, being the Southwest corner of the said 1.235 acre Williamson County Tract I, and the Southeast corner of the said Williamson County tract, (2004055767) for a total distance of 240.00 feet, in all, to a PK nail set in a sidewalk at the intersection of the said north line of 8th Street and the said east line of Martin Luther King, Jr. Street for the Southwest corner of the said Lot 5, being the Southwest corner of the said Williamson County tract (2004055767) for the Southwest corner hereof;

THENCE, along the said east line of Martin Luther King, Jr. Street, N 2°14'45" W, 240.00 feet to the Place of BEGINNING and containing 1.322 acres of land.

Note: Basis of Bearing GPS Observation Texas Central State Plane

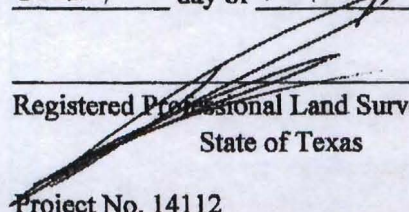
STATE OF TEXAS

KNOW ALL MEN BY THESE PRESENTS

COUNTY OF WILLIAMSON

I, Brian F. Peterson, Registered Professional Land Surveyor, do hereby certify that this survey was made on the ground of the property legally described herein and is correct, to the best of my knowledge and belief.

To certify which, witness my hand and seal at Georgetown, Williamson County, Texas, this the 27th day of May, 2014, A.D.

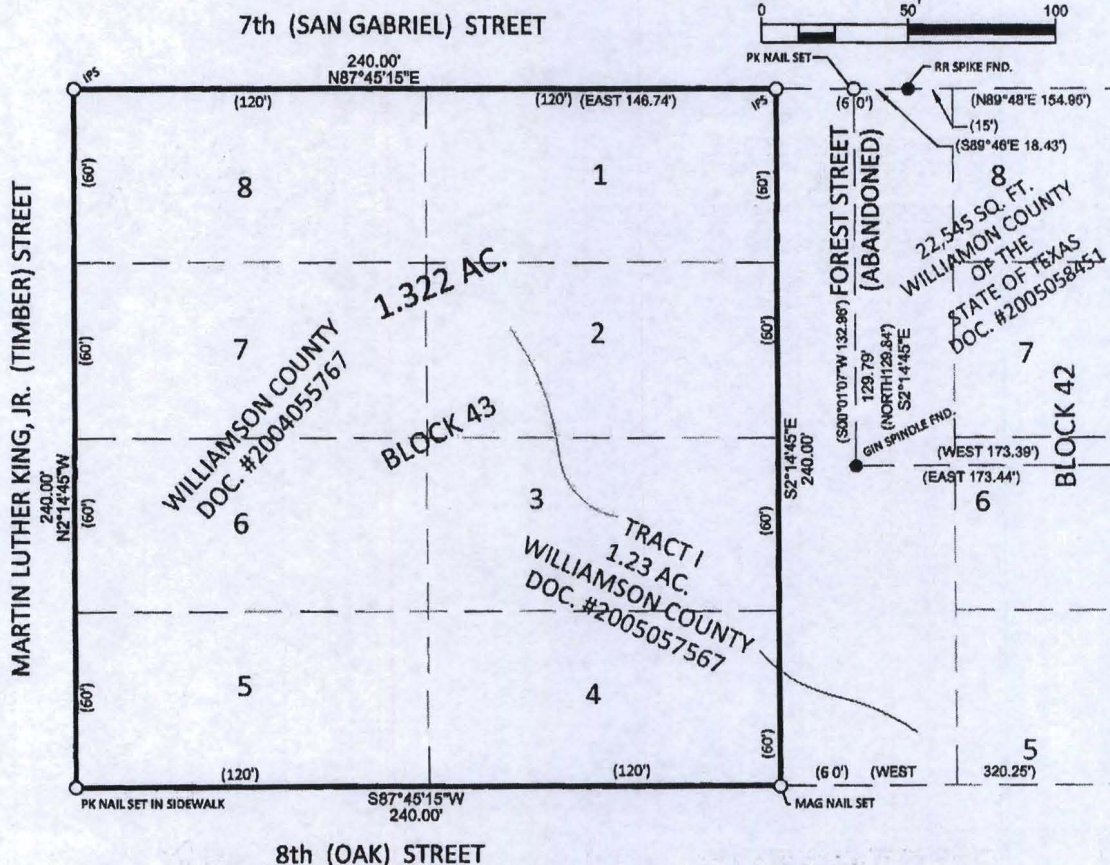

Brian F. Peterson
Registered Professional Land Surveyor, No. 3967
State of Texas



STEGE BIZZELL
1978 S. Austin Ave
Georgetown, TX 78626
(512) 930-9412

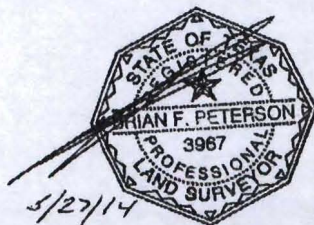
Project No. 14112

BASIS OF BEARING
GPS OBSERVATION
TEXAS CENTRAL STATE PLANE



NOTE:
FOREST STREET ABANDONED BY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GEORGETOWN, TEXAS, OF RECORD IN VOLUME 564, PAGE 344, OF THE DEED RECORDS OF WILLIAMSON COUNTY, TEXAS RESERVING "THE RIGHT TO MAINTAIN REPAIR AND REPLACE ANY WATER, SEWER OR OTHER UTILITY LINE PRESENTLY LOCATED IN, UPON OR OVER SAID BLOCK".

I, BRIAN F. PETERSON, REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT THE ABOVE PLAT CORRECTLY REPRESENTS THE PROPERTY AS DETERMINED BY AN ON-THE-GROUND SURVEY PERFORMED UNDER MY SUPERVISION AND DIRECTION ON THE 27TH DAY OF MARCH, 2014 THE PROPERTY PLATTED HEREON IS CORRECT AND THERE ARE NO APPARENT DISCREPANCIES, CONFLICTS, SHORTAGES IN AREA, BOUNDARY LINE CONFLICTS, ENCROACHMENTS, OVERLAPPING OF IMPROVEMENTS, VISIBLE UTILITY LINES OR ROADS IN PLACE, EXCEPT AS SHOWN HEREON.



SURVEY FOR
THE CITY OF GEORGETOWN, TEXAS
BLOCK 43
CITY OF GEORGETOWN
WILLIAMSON COUNTY, TEXAS

STEGER BIZZELL	
ADDRESS 1678 S AUSTIN AVENUE	GEORGETOWN, TX 78626
PHONE 512.930.0412	WEB STEGERBIZZELL.COM
SERVICES	>>ENGINEERS >>>PLANNERS >>>SURVEYORS

JOB NO. 14112-SURVEY

Exhibit B

Contractor and Subcontractor Insurance Requirements

SECTION 00800

CITY OF GEORGETOWN SUPPLEMENTARY CONDITIONS

Section 18 GENERAL

These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract and other provisions of the Contract Documents as indicated below. All provisions which are not so amended or supplemented remain in full force and effect.

The terms used in these Supplementary Conditions will have the meanings indicated in the General Conditions. Additional terms used in these Supplementary Conditions have the meanings indicated below, which are applicable to both the singular and plural thereof.

Section 19

SC-1.01 DEFINED TERMS

Add the following defined terms to Section 1.01:

- 53** *Calendar Day*: "Calendar Day" is any day of the week or month, no days being excepted.
- 54** *Working Day*: A "Working Day" is defined as any day not including Saturdays, Sundays or any legal holidays, in which weather or other conditions, not under the control of the CONTRACTOR, will permit construction of the principal units of the work for a period of not less than seven (7) hours between 7:00 a.m. and 6:00 p.m.
- 55** *Working Times*: Times of day(s) during which work may be performed. Unless authorized by the City of Georgetown, all Work shall be performed between 7:00am and 6:00pm on weekdays and, if previously authorized by as provided for in Section 6.02 herein, as applicable, between 9:00 am and 6:00 pm on Saturdays, Sundays, or Legal Holidays. When the CONTRACTOR has been authorized to perform Work during hours outside Working Times, such hours shall be considered time worked on Working days. Notwithstanding the preceding, emergency work may be done without prior permission only as provided in paragraph 6.16 herein.
- 56** *Proposal*: Proposal of Offeror, under Local Government Code section 271.113 providing for alternative project delivery methods, on prescribed forms setting forth prices for performing the Work described in the Contract Documents.

- 57 *Proposal Documents*: The advertisement or invitation for Proposals, Instruction to Offerors, the Proposal form, the Contract Documents and Addenda (NOTE: this definition only applies where proposals, rather than bids have been solicited and where allowed under the Local Government Code).

Section 20

SC-4.01 AVAILABILITY OF LANDS

Add the following defined terms to Section 4.01:

- D. The Site for this project shall include the temporary and permanent easements as indicated on the Drawings.

Section 21

Section 22 SC-4.02 SUBSURFACE AND PHYSICAL CONDITIONS

Add the following paragraph immediately after paragraph 4.02.B:

- C. In the preparation of the Contract Documents ENGINEER relied upon the following reports of explorations and tests of subsurface conditions at the Site:

Section 23

SC-5.02 LICENSED SURETIES AND INSURERS

Add the following to Section 5.02 A:

Surety and insurance companies from which the bonds and insurance for this Project are purchased shall have a Best's rating of no less than A:VII, in addition to other requirements specified herein.

Section 24

SC-5.04 CONTRACTOR'S LIABILITY INSURANCE

Add the following to Section 5.04.B.1:

Include the following parties or entities as additional insured:

Enter Engineering Firm's name and address here.

- SC-5.04 Contractor's Liability Insurance**
Replace Paragraph 5.04 with the following SC-5.04

5.04 Other Requirements: Bond and Insurance.

A. General Requirements:

1. *CONTRACTOR shall purchase and maintain insurance in the types and amounts indicated below for the duration of the Contract (unless a longer duration is specified), which shall include items owned by OWNER in the care, custody and control of CONTRACTOR prior to and during the term of the Contract and all warranty periods. Failure to purchase and maintain the required insurance shall be grounds for Termination of the Contract or Suspension of the Work by OWNER. Except for the Worker's Compensation policy, the other insurance policies required by the Contract to be obtained by CONTRACTOR must state that OWNER, its officials, directors, employees, representatives, and volunteers are added as additional insureds with regard to operations and activities by or on behalf of the named insureds performed under contract with OWNER. The additional insured status must cover completed operations as well, and the policy covering completed work must remain in effect until the expiration of the statute of repose.*
2. *CONTRACTOR must complete and forward the required Certificates of Insurance to OWNER before the Contract is executed as verification of coverage required below. CONTRACTOR shall not commence Work until the required insurance is obtained and until such insurance has been reviewed by OWNER. Approval of insurance by OWNER shall not relieve or decrease the liability of CONTRACTOR hereunder and shall not be construed to be a limitation of liability on the part of CONTRACTOR. CONTRACTOR must also complete and forward the required Certificates of Insurance to OWNER whenever a previously identified policy period has expired as verification of continuing coverage.*
3. *Contractor's insurance coverage is to be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better, except for hazardous material insurance which shall be written by companies with A.M. Best ratings of A- or better.*
4. *All endorsements naming the OWNER as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall indicate: City of Georgetown, 113 E. 8th Street, Georgetown, Texas 78626, ATTN: Contract Manager.*
5. *The "other" insurance clause shall not apply to the OWNER where the OWNER is an additional insured shown on any policy. It is agreed that the CONTRACTOR's insurance shall be considered primary with respect to any insurance or self insurance carried by OWNER. The CONTRACTOR'S insurance shall apply separately to each insured against whom a claim is made and/or lawsuits brought, except with respect to the limits of insurer's liability.*
6. *If insurance policies are not written for amounts specified below, CONTRACTOR shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.*

7. *OWNER shall be entitled, upon request and without expense, to receive certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.*
8. *OWNER reserves the right to review the insurance requirements set forth during the effective period of this Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by OWNER based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as CONTRACTOR.*
9. *CONTRACTOR shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.*
10. *CONTRACTOR shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance.*
11. *The policies must contain the following language: "This policy shall not be cancelled, materially changed, or not renewed until after thirty (30) days prior written notice has been given to OWNER." In addition, CONTRACTOR shall provide OWNER thirty (30) days written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicted within the Contract.*
12. *If OWNER-owned property is being transported or stored off-Site by CONTRACTOR, then the appropriate property policy will be endorsed for transit and storage in an amount sufficient to protect OWNER's property.*
13. *The insurance coverages required under this contract are required minimums and are not intended to limit the responsibility or liability of CONTRACTOR.*
14. *Without limiting any of the other obligations or liabilities of the CONTRACTOR, the CONTRACTOR shall require each Subcontractor performing work under the Contract, at the Subcontractor's own expense, to maintain during the term of the Contract, the same stipulated minimum insurance including the required provisions and additional policy conditions as shown above. As an alternative, the CONTRACTOR may include its Subcontractors as additional insureds on its own coverage as prescribed under these requirements. The CONTRACTOR's certificate of insurance shall note in such event that the Subcontractors are included as additional insureds and that CONTRACTOR agrees to provide Workers' Compensation for the Subcontractors and their employees. The CONTRACTOR shall obtain and monitor the certificates of insurance from each Subcontractor in order to assure compliance with the insurance requirements. The CONTRACTOR must retain the certificates of insurance for the duration of the Contract plus 5 years and shall have the responsibility of enforcing these insurance requirements*

among its subcontractors. The OWNER shall be entitled, upon request and without expense, to receive copies of these certificates.

- B. Business Automobile Liability Insurance. Provide coverage for all owned, non-owned and hired vehicles in an amount not less than \$1,000,000 combined single limit per accident for bodily injury and property damage. The policy shall contain the following endorsements in favor of OWNER:

Waiver of Subrogation endorsement TE 2046A;

30 day Notice of Cancellation endorsement TE 0202A; and

Additional Insured endorsement TE 9901 B.

Provide coverage in the following types and amounts:

A minimum combined bodily injury and property damage limit of \$1,000,000 per occurrence. No aggregate shall be permitted for this type of coverage.

Such insurance shall include coverage for loading and unloading hazards.

- C. Workers' Compensation and Employers' Liability Insurance. Coverage shall be consistent with statutory benefits outlined in the Texas Workers' Compensation Act (Section 401). CONTRACTOR shall assure compliance with this Statute by submitting two (2) copies of a standard certificate of coverage (e.g. ACCORD form) to Owner's Representative for every person providing services on the Project as acceptable proof of coverage. The required Certificate of Insurance must be presented as evidence of coverage for CONTRACTOR. Workers' Compensation Insurance coverage written by the Texas Workers Compensation Fund is acceptable to OWNER. CONTRACTOR's policy shall apply to the State of Texas and include these endorsements in favor of OWNER:

Waiver of Subrogation, form WC 420304; and

30 day Notice of Cancellation, form WC 420601.

The minimum policy limits for Employers' Liability Insurance coverage shall be the minimum amounts required to meet the statutory requirements of Texas Labor Code, Section 401.011(44), or the following, whichever is greater:

\$1,000,000 bodily injury per accident, and

\$1,000,000 bodily injury by disease policy limit; and

\$1,000,000 bodily injury by disease each employee; and

\$1,000,000 Employer's Liability.

- D. Commercial General Liability Insurance. The Policy shall contain the following provisions:

Blanket contractual liability coverage for liability and indemnifications assumed under the Contract and all contracts relative to this Project.

Completed Operations/Products Liability until the end the statute of repose period.

Explosion, Collapse and Underground (X, C & U) coverage.

Independent Contractor's coverage.

Aggregate limits of insurance per project, endorsement CG 2503.

OWNER listed as an additional insured, endorsement CG 2010.

30 day notice of cancellation in favor of OWNER, endorsement CG 0205.

Waiver of Transfer of Recovery Against Others in favor of OWNER, endorsement CG 2404

fully insuring CONTRACTOR'S or Subcontractor's liability for bodily injury and property damages with a combined bodily injury (including death) and property damage minimum limit of:

\$1,000,000 per occurrence

\$2,000,000 general aggregate

\$2,000,000 products and completed operations aggregate

Coverage shall be on an "occurrence" basis.

E. Property Floater. Contractor shall obtain and maintain Property Floater in an amount sufficient to cover the replacement value of materials on site.

F. *Umbrella Liability Insurance. The CONTRACTOR shall obtain, pay for, and maintain umbrella liability insurance during the contract term, insuring the CONTRACTOR (or subcontractor) for an amount not less than \$2,000,000 that provides coverage at least as broad and applies in excess of and follows the form of the primary liability coverages required in Article 5. The policy shall provide "drop down" coverage where underlying primary insurance coverages limits are insufficient or exhausted.*

G. Asbestos Abatement Liability Insurance. If the Work or the Project involves asbestos containing materials, the CONTRACTOR shall obtain Asbestos Abatement Liability Insurance for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos containing materials. The combined single limit for bodily injury

and property damage shall be a minimum of \$1,000,000 per occurrence. If claims made, the claims-made, the claims made form shall provide that the period of coverage shall be: Continuous coverage for the term of the Contract plus the warranty period of at least one (1) year, and an extended discovery period for a minimum of five (5) years, which shall begin at the end of the warranty period.

H. Completed Work Insurance.

SC-5.045 *Bonds.*

A. *General.*

1. Bonds, when required by the Contract or by Chapter 2253 of the Texas Government Code, shall be executed on forms furnished by or acceptable to OWNER. All bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act.
2. If the surety on any bond furnished by CONTRACTOR is declared bankrupt or becomes insolvent or its right to do business is terminated in the State of Texas or it ceases to meet the requirements of the preceding paragraph, CONTRACTOR shall within ten (10) days thereafter substitute another bond and surety, both of which must be acceptable to OWNER.
3. When Performance Bonds and/or Payment Bonds are required, each shall be issued in an amount of one hundred percent (100%) of the Contract Amount as security for the faithful performance and/or payment of all CONTRACTOR's obligations under the Contract Documents. Performance Bonds and Payment Bonds shall be issued by a solvent surety company authorized to do business in the State of Texas, and shall meet any other requirements established by law or by OWNER pursuant to applicable law. Any surety duly authorized to do business in Texas may write Performance and Payment Bonds on a project without reinsurance to the limit of 10 percent of its capital and surplus. Such a surety must reinsure any obligations over 10 percent.

B. *Performance Bond.*

1. If the Contract Amount exceeds \$100,000, CONTRACTOR shall furnish OWNER with a Performance Bond in the form set out by OWNER. The Performance Bond shall be effective for the Contract Time and through all warranty period(s).
2. If the Contract Amount exceeds \$25,000 but is less than or equal to \$100,000, CONTRACTOR shall furnish OWNER with a Performance Bond in the form set out by OWNER, unless the original Contract Time is 60 Calendar Days or less, in which case CONTRACTOR can agree to the following terms and conditions for payment in lieu of providing a Performance Bond: no money will be paid to CONTRACTOR until completion and acceptance of the Work by OWNER; CONTRACTOR shall be entitled to receive 95% of the Contract Amount following Final

Completion, and the remaining 5% of the Contract Amount following the one year warranty period.

3. If the Contract Amount is less than or equal to \$25,000, CONTRACTOR will not be required to furnish a Performance Bond.
4. If a Performance Bond is required to be furnished, it shall extend for the one year warranty period, or longer if the warranty periods are longer.

C. *Payment Bond.*

1. If the Contract Amount exceeds \$25,000, CONTRACTOR shall furnish OWNER with a Payment Bond in the form set out by OWNER.
2. If the Contract Amount is less than or equal to \$25,000, CONTRACTOR will not be required to furnish a Payment Bond; provided that no money will be paid to CONTRACTOR until completion and acceptance of the Work by OWNER.

- D. Power of Attorney.** Each bond shall be accompanied by a valid Power of Attorney (issued by the surety company and attached, signed and sealed with the corporate embossed seal, to the bond) authorizing the attorney in fact who signs the bond to commit the company to the terms of the bond, and stating any limit in the amount for which the attorney can issue a single bond.

- E. Bond Indemnification.** The process of requiring and accepting bonds and making claims thereunder shall be conducted in compliance with Tex. Gov't Code, Chapter 2253. **IF FOR ANY REASON A STATUTORY PAYMENT OR PERFORMANCE BOND IS NOT HONORED BY THE SURETY, THE CONTRACTOR SHALL FULLY INDEMNIFY AND HOLD THE OWNER HARMLESS OF AND FROM ANY COSTS, LOSSES, OBLIGATIONS OR LIABILITIES IT INCURS AS A RESULT.**

- F. Furnishing Bond Information.** OWNER shall furnish certified copies of the payment bond and the related Contract to any qualified person seeking copies who complies with Tex. Gov't Code, §2253.026.

- G. Claims on Payment Bonds.** Claims on payment bonds must be sent directly to the CONTRACTOR and his surety in accordance with Tex. Gov't Code § 2253.041. All Payment Bond claimants are cautioned that no lien exists on the funds unpaid to the CONTRACTOR on such Contract, and that reliance on notices sent to the OWNER may result in loss of their rights against the CONTRACTOR and/or his surety. The OWNER is not responsible in any manner to a claimant for collection of unpaid bills, and accepts no such responsibility because of any representation by any agent or employee.

- H. Payment Claims when Payment Bond not Required.** The rights of Subcontractors regarding payment are governed by Tex. Prop. Code, §§53.231 – 53.239 when the value of the Contract between the OWNER and the CONTRACTOR is less than \$25,000.00. These provisions set out the requirements for filing a valid lien on funds unpaid to the CONTRACTOR

as of the time of filing the claim, actions necessary to release the lien and satisfaction of such claim.

- I. **Minimum Standards for Sureties.** Sureties shall be listed on the US Department of the Treasury's Listing Approved Sureties stating companies holding Certificates of Authority as acceptable sureties on Federal Bonds and acceptable reinsuring companies (Department Circular 570).

SC-6.02 LABOR; WORKING HOURS

Add the following defined terms to Paragraph 6.02:

- C. Regular Working Hours shall be between 7 am and until 30 minutes prior to sunset or 6 pm whichever is earlier, and, if previously authorized in writing by the City of Georgetown, between 9:00 am and 6:00 pm on Saturdays, Sundays, or Legal Holidays.
- D. The Contractor shall work Regular Working Hours on normal Working Days as defined in Section 1.01.

Add the following provision on prevailing wages to Paragraph 6.02:

E. PREVAILING WAGE RATES: This Contract is subject to Government Code Chapter 2258 concerning payment of Prevailing Wage Rates. The OWNER will determine the general prevailing rates in accordance with Government Code Chapter 2258. The applicable provisions include, but are not limited to the following:

§ 2258.021. Right to be Paid Prevailing Wage Rates

(a) A worker employed on a public work by or on behalf of the state or a political subdivision of the state shall be paid:

- (1) not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the work is performed; and
- (2) not less than the general prevailing rate of per diem wages for legal holiday and overtime work.

(b) Subsection (a) does not apply to maintenance work.

(c) A worker is employed on a public work for the purposes of this section if the worker is employed by a contractor or subcontractor in the execution of a contract for the public work with the state, a political subdivision of the state, or any officer or public body of the state or a political subdivision of the state.

§ 2258.023. Prevailing Wage Rates to be Paid by Contractor and Subcontractor; Penalty

(a) The contractor who is awarded a contract by a public body or a subcontractor of the contractor shall pay not less than the rates determined under Section 2258.022 to a worker employed by it in the execution of the contract.

(b) A contractor or subcontractor who violates this section shall pay to the state or a political subdivision of the state on whose behalf the contract is made, \$60 for each worker employed for each calendar day or part of the day that the worker is paid less than the wage rates stipulated in the contract. A public body awarding a contract shall specify this penalty in the contract.

(c) A contractor or subcontractor does not violate this section if a public body awarding a contract does not determine the prevailing wage rates and specify the rates in the contract as provided by Section 2258.022.

(d) The public body shall use any money collected under this section to offset the costs incurred in the administration of this chapter.

(e) A municipality is entitled to collect a penalty under this section only if the municipality has a population of more than 10,000.

§ 2258.024. Records

(a) A contractor and subcontractor shall keep a record showing:

(1) the name and occupation of each worker employed by the contractor or subcontractor in the construction of the public work; and

(2) the actual per diem wages paid to each worker.

(b) The record shall be open at all reasonable hours to inspection by the officers and agents of the public body.

§ 2258.025. Payment Greater Than Prevailing Rate Not Prohibited

This chapter does not prohibit the payment to a worker employed on a public work an amount greater than the general prevailing rate of per diem wages.

Section 25 SC-6.13.B Trench and Shoring Safety

Add the following Paragraph 6.13.B.1.

As required by the Texas Health & Safety Code, Title 9, Subtitle A, Chapter 756, Subchapter C, Contractor is required to comply with the trench safety standards of the Occupational Safety and Health Administration, 29 C.F.R. 1926, Subpart P, Excavations, in effect during the period of construction of the Project. Contractor agrees to comply with, and Owner agrees to include in the Bid Documents, a copy of any special shoring requirements, if any, required for the Project. Owner agrees to furnish to Contractor a copy of any geotechnical information that was obtained by the Owner for use by the Contractor in the design of the trench safety system, if any.

SC-14.02 Article 14 - Payments To Contractor And Completion

Change the 1st sentence in Paragraph 14.02.C.1 from "Ten days after presentation of the Application for Payment to OWNER..." to "Thirty (30) days after presentation of the Application for Payment to OWNER..."

Section 26

SC-17.02 Delete the second sentence of Paragraph 17.02.

SC-17.07 Independent Contractor

Add the following Paragraph 17.07:

The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the Owner.

SC-17.08 Prohibition of Gratuities

Add the following Paragraph 17.08:

The Owner may, by Written Notice to the Contractor, terminate the Contract without liability if it is determined by the Owner that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the Owner with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such Contract. In the event the Contract is terminated by the Owner pursuant to this provision, the Owner shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.

SC-17.09 Prohibition Against Personal Interest in Contracts

Add the following Paragraph 17.09

No officer, employee, independent consultant, or elected official of the Owner who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the Owner.

SC-18. Article 18 – Right to Audit

Add the following Article 18.

18.01 Whenever the Owner enters into any type of contractual arrangement with the Contractor, then the Contractor's "records" shall upon reasonable notice be open to inspection and subject to audit and/or reproduction during normal business working hours. The Owner's representative, or an outside representative engaged by the Owner, may perform such audits. The Contractor shall maintain all records relating to this Contract for four (4) years from the date of final payment under this Contract, or until pending litigation has been completely and fully resolved, whichever occurs later.

18.02 The Owner shall have the exclusive right to examine the records of the Contractor. The term "records" as referred to herein shall include any and all information, materials and data of every kind and character, including without limitation records, books, papers, documents, contracts, schedules, commitments, arrangements, notes, daily diaries, reports, drawings, receipts, vouchers and memoranda, and any and all other agreements, sources of information and matters that may, in the Owner's judgment, have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any contract document. Such records shall include (hard copy, as well as electronic data), written policies and procedures, time sheets, payroll registers, cancelled checks, personnel file data, correspondence, e-mail, general ledger entries, and any other record in the Contractor's possession which may have a bearing on matters of interest to the Owner in connection with the Contractor's dealings with the Owner (all of the foregoing are hereinafter referred to as "records"). In addition, the Contractor shall permit interviews of employees as well as agents, representatives, vendors, Subcontractors and other third parties paid by the Contractor to the extent necessary to adequately permit evaluation and verification of the following:

- A. The Contractor's compliance with Contract Documents;
- B. The Contractor's compliance with the Owner's business ethics policies; and
- C. If necessary, the extent of the Work performed by the Contractor at the time of Contract termination.

18.03 The Contractor shall require all payees (examples of payees include Subcontractors, insurance agents, material suppliers, etc.) to comply with the provisions of this Article 17 by securing the requirements hereof in a written agreement between the Contractor and payee. Such requirements include a flow-down right of audit provision in contracts with payees that also apply to Subcontractors and Sub-subcontractors, material suppliers, etc. The Contractor shall cooperate fully and shall require Payees and all of the Contractor's Subcontractors to cooperate fully in furnishing or in making available to the Owner from time to time whenever requested, in an expeditious manner, any and all such information, materials, and data.

18.04 The Owner's authorized representative or designee shall have reasonable access to the Contractor's facilities, shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this Contract, and shall be provided adequate and appropriate work space in order to conduct audits in compliance with this Article 17.

18.05 If an audit inspection or examination in accordance with this Article 17 discloses overpricing or overcharges of any nature by the Contractor to the Owner in excess of one-half of one percent (0.5%) of the total contract billings, then the reasonable actual cost of the Owner's audit shall be reimbursed to the Owner by the Contractor. Any adjustments and/or payments, which must be made as a result of any such audit or inspection of the Contractor's invoices and/or records, shall be made within a reasonable amount of time (not to exceed 90 days) from presentation of the Owner's findings to the Contractor.

18.06 The Contractor shall take reasonable actions to prevent any actions or conditions which could result in a conflict with the Owner's best interests. These obligations shall apply to the activities of the Contractor's employees, agents, Subcontractors, etc. in their dealings and relations with the Owner's current and former employees and their relatives. For example, the Contractor's employees, agents or Subcontractors should not make or provide to be made any employment, gifts, extravagant entertainment, payments, loans or other considerations to the Owner's representatives, employees or their relatives.

18.07 It is also understood and agreed by the Contractor that any solicitation of gifts or any other item of value by anyone representing the Owner is to be reported within two (2) business working days to the

Owner at the following telephone number: 512-930-3723. Failure to report any such solicitations or offers shall be deemed a material breach of contract entitling the Owner to pursue damages resulting from the failure to comply with this provision.

END OF SECTION