LEASE AND DEVELOPMENT AGREEMENT

between

THE CITY OF AUSTIN

and

FREMONT HOLDINGS, LLC

LEASE AND DEVELOPMENT AGREEMENT

THIS LEASE AND DEVELOPMENT AGREEMENT (this "***Agreement***") is made and entered into as of the 10th day of July, 2016 (the "***Effective Date***"), by and between the **CITY OF AUSTIN, TEXAS**, a municipal corporation and home-rule city principally situated in Travis, Williamson, and Hays Counties (the "***City***"), and **FREMONT HOLDINGS, LLC**, a Texas limited liability company ("***Developer***").

RECITALS:

WHEREAS, the City is the owner of that certain tract or parcel of land containing in the aggregate approximately 0.38 acres, which land is known as Lot A Rainey River Addition and further described in **Exhibit "A-1"** attached hereto and made a part hereof for all purposes (the "***Land***"); and

WHEREAS, the City desires to enter into a contract with Developer to lease the Land to Developer as a temporary construction staging area and for Developer to design and construct right-of-way improvements across the northern portion of the Land described on **Exhibit "A-2"** attached hereto and made a part hereof for all purposes; and

WHEREAS, at its August 25, 2015 meeting, the City Council for the City authorized the lease of the Land to the Developer.

NOW, THEREFORE, for and in consideration of the premises, benefits, covenants and agreements contained herein, and in consideration of the rentals to be paid to the City as provided for herein, the City and Developer do hereby agree as follows:

ARTICLE I. DEFINITIONS

1.1 Defined Terms. Capitalized terms used herein are intended to have the meanings ascribed to them as set forth in this Agreement.

ARTICLE II. DEMISE OF THE LAND

2.1 Granting Clause. Upon and subject to the terms and provisions of this Agreement, the City hereby leases to Developer, and Developer hereby leases from the City, the Land.

2.2 Permitted Use. The City grants Developer permission to use the Land solely (i) as a temporary construction staging area for the purpose of locating construction job trailers, parking employee and subcontractor employee vehicles, and storage as provided in this Agreement, (ii) a temporary groundbreaking event area, and (iii) to install and construct the improvements described in **Exhibit "B"** attached hereto and made a part hereof (the "***Facilities***") (collectively, the "***Permitted Use***"). Any other use will not be permitted and will result in the termination of this Agreement.

ARTICLE III. TERM

3.1 Term. The initial term (the "***Initial Term***", and, together with any and all extensions, the "***Term***") of this Agreement shall commence on the Effective Date of this Agreement and shall expire at 11:59 p.m., Central Standard (or, if then applicable, Daylight) Time, on July 10, 2018 (the "***Expiration Date***").

3.2 Renewal Option. Developer shall have the right to renew the Term of this Lease for up to nine (9) additional months, provided (a) an event of default does not exist beyond the expiration of applicable notice and cure periods at the time Developer attempts to exercise a renewal period, and (b) Developer gives City written notice of Developer's intent to exercise of the option no more than three hundred sixty-five (365) days and no less than seventy-five (75) days prior to the expiration of the Initial Term. The renewal term will be upon the same terms and conditions set forth in the Agreement, except that (a) Developer will have no further right of renewal after the renewal term prescribed above, (b) the Ground Rent will be adjusted as of the first day of such renewal period to a monthly amount equal to the Fair Market Rate (as hereinafter defined), due and payable on the first day of each calendar month during the extended Term, and (c) Developer will be able to terminate this Lease effective at the end of any calendar month during its nine month renewal term provided Developer has provided at least thirty (30) days prior written notice of such termination to City. Following any such termination, Developer will not be obligated to pay any additional rental.

The Fair Market Rate shall be determined by the City as provided herein. As used herein, "***Fair Market Rate***" shall mean the then-current market rental rate for the Premises. After receipt of Developer's renewal notice, the City shall engage an independent, third-party appraiser to make a determination of the Fair Market Rate and shall deliver the determination to Developer. After receipt of the Fair Market Rate determination, Developer shall have thirty (30) days to notify the City if it agrees to proceed with the renewal of the Lease for the additional nine-month period. Failure of Developer to provide confirmation notice or notice that the Developer will not proceed with the renewal of the Lease will result in the Lease expiring as of the original Expiration Date. Any and all appraisal costs shall be shared equally between the parties with Developer's portion being due and payable within thirty (30) days after receipt of an invoice from the City.

3.3 Right of Reverter. Upon the Expiration Date or, as the case may be, any earlier termination of this Agreement for any reason whatsoever, all Facilities constructed or installed on the Land or any applicable portion thereof will thereupon revert to, and become the sole property of, the City, free and clear of any mortgage, lien or other encumbrance, and without payment from the City or any other remuneration to Developer of any kind.

3.4 Substitute Staging Area. Provided Developer has timely complied with its obligations under this Agreement, Developer may coordinate with the City's Transportation Department for an alternate construction staging area following the expiration of the Term (as extended by the renewal option), subject to the City's standard terms, conditions and fees, to the extent necessary for Developer to complete construction of Developer's project at 70 Rainey.

ARTICLE IV. RENT

4.1 Ground Rent. Developer, for and in consideration of the rights and privileges granted herein, shall (i) pay the City on or before the Effective Date, without demand, the sum of Four Hundred Thousand and No/100 Dollars ($400,000.00) and (ii) construct the Facilities prior to the end of the Construction Period, which constitutes the entire rent for the Initial Term ("***Initial Ground Rent***").

ARTICLE V. DESIGN AND CONSTRUCTION OF THE FACILITIES

5.1 Design Criteria and Development Values. Subject to the terms and conditions set forth in this Agreement, Developer shall plan and design the Facilities to be developed and constructed on the Land, and shall develop, construct, complete and make operational those Facilities, in accordance with the following development values and design criteria:

5.1.1 Developer shall construct the Facilities pursuant to the requirements set forth on **Exhibit "B"** attached hereto.

5.1.2 Developer must secure City approval of all plans, drawings and specifications and applicable City permits for final design of the Facilities. Design criteria for the Facilities is more particularly described on **Exhibit "B"** attached hereto. Developer shall not be required to submit further geotech, environmental or other studies, assessments or investigations pertaining to the Land or Facilities.

5.1.3 Developer shall design each Facility consistent with applicable Legal Requirements.

5.2 Development and Construction of the Facilities. Subject to the terms and conditions set forth in this Agreement, Developer, at its sole cost and expense, shall develop, construct, complete and make operational the Facilities in accordance with the following:

5.2.1 The Facilities shall be constructed in a good and workmanlike manner, utilizing good industry practices for the type of work in question, and in compliance with all applicable Legal Requirements.

5.2.2 Developer shall ensure that all plans, drawings and specifications, preliminary and final, shall be prepared by qualified, registered architects or engineers licensed to practice in the State of Texas (collectively, "***Design Consultants***"). Developer shall disclose to the City the identity and contact information for all of Developer's Design Consultants.

5.2.3 Developer shall be responsible for the planning, design, engineering, development and construction of the Facilities, with planning, design, and engineering to be completed by Developer on or before the Expiration Date, and with construction of the Facilities to be completed by the Expiration Date.

5.2.4 After commencement, the construction, including the required infrastructure construction, shall be prosecuted with due diligence and completed by the expiration of the Term, as may be extended pursuant to the terms hereof (the "***Construction Period***"). Construction of all Facilities shall be performed and prosecuted in accordance with the approved plans for such Facilities.

5.3 Architect and Engineers

5.3.1 Developer shall have all authority, control and rights in selecting (including the procedures or methods of procurement and selection), terminating and replacing such design professionals as are reasonably required for the design of the Facilities, including an architect, or multiple architects (whether one or more than one, the "***Architect***"), who shall have the primary responsibilities for the architectural design of the Facilities.

5.3.2 Developer shall require in its contracts with the Architect or structural engineer (if Developer contracts directly with such structural engineer) that the structural elements of the Facilities be engineered in accordance with all applicable Legal Requirements.

5.3.3 Each Architect and structural engineer with whom Developer contracts shall: (i) indemnify the City, which shall include commitments to defend and hold harmless, and shall be consistent with the indemnification provisions customarily provided by architectural and engineering consultants for City operated construction projects with a scope similar to that of the project; and (ii) maintain professional liability insurance with coverages and coverage limits reasonably acceptable to the City.

5.4 General Contractor

5.4.1 Developer shall have exclusive authority, control and rights in selecting (including the procedures or methods of procurement and selection), terminating and replacing the general contractor(s) (whether one or more than one, the "***General Contractor***").

5.4.2 Developer, at its sole cost and expense, shall contractually obligate the General Contractor to:

5.4.2.1 Provide performance and payment bonds each in the amount of One Hundred Eighty Thousand and No/100 Dollars ($180,000.00) in the forms of those attached hereto respectively as **Exhibit "C"** and **Exhibit "D"** and incorporated herein (or other forms acceptable to the City) naming Developer and the City as dual obligees on or before the date that is ten (10) business days after the issuance of the building permit for the construction of the Facilities, but in no event later than July 10, 2017. Said bonds shall be maintained and kept in full force and effect for one (1) year after Substantial Completion. The bonds shall be issued by a surety licensed to transact business in the State of Texas acceptable to the City. The bonds shall be in a penal amount equal to the full amount of all contract(s) required for the construction of the Facilities. The performance bond shall be for the protection of the City, and must ensure the full faithful and timely performance by the General Contractor of its obligations to construct the Facilities in accordance with the plans and specifications therefor, and all applicable contract documents. The payment bond shall guarantee the prompt payment by Developer and General Contractor to all persons and firms supplying labor, materials (including specially-fabricated materials), provisions, supplies and equipment used directly or indirectly by any Subcontractor, materialman and/or supplier in the construction of the Facilities, and shall protect the City from any and all liability, losses, costs, expenses or damages arising therefrom.

5.4.2.2 Indemnify the City, which shall include commitments to defend and hold harmless, and shall be consistent with indemnification provisions customarily provided by prime contractors for City operated construction projects with a scope similar to that of the project; and

5.4.2.3 Maintain adequate insurance, including commercial liability, all-risks builders risk, workers compensation, auto liability and excess umbrella coverage, each in form and substance as required in this Agreement. Each such indemnity and insurance policy shall name both the City and Developer as joint indemnitees and as additional insureds, as the case may be. The City shall receive 30 days' advance written notice of the cancellation of any of the General Contractor's policies. The Officer of the Office of Real Estate Services for the City (the "***Director***") may from time to time reasonably request in writing that Developer furnish to the City evidence of the insurance provided by the General Contractor.

5.5 Construction Contracts. Developer shall have the sole right and responsibility to negotiate and enter into all contracts necessary for the design, engineering, development, construction and completion of the Facilities containing such terms and provisions as agreed by Developer, subject to such requirements as provided in this Agreement and prior written approval of each contract by the Director. The City shall be named a third party beneficiary of each construction contract to which Developer is a party.

5.6 Construction Management. Developer shall appoint a project manager responsible for the construction and communication with the City and the Director and their authorized representatives. The project manager will not be required to maintain a presence on the Land during construction, but such project manager shall be readily available to the City and the Director, and their respective authorized

representatives, seven days a week while construction is progressing, immediately contactable by mobile phone and email at a phone number and email address to at all times be maintained current with the City and the Director.

5.7 Legal Requirements. Developer shall be responsible for complying with, or requiring to be complied with through its contracts with its Design Consultants, General Contractor and Subcontractors, all local, state, and federal laws, regulations, and ordinances (including, without limitation, all Environmental Laws) and requirements of law applicable to the construction of improvements on privately owned real property in the State of Texas, including, without limitation, if applicable, (i) United States Occupational Safety and Health Administration requirements, (ii) Americans with Disabilities Act requirements, (iii) requirements under Title VI of the Civil Rights Act of 1964, as amended, (iv) Age Discrimination in Employment Act requirements, (v) building codes and zoning requirements, and (vi) storm water, street, utility and related requirements (the "***Legal Requirements***").

5.8 Permits and Licenses

5.8.1 Developer shall obtain, or cause to be obtained through contracts with the Architect or General Contractor, all federal, state and local permits, authorizations, licenses and approvals (collectively, "***Approvals***"), for the development of the Facilities on the Land.

5.8.2 Developer shall be responsible for the costs and expenses incurred in obtaining all such Approvals, including, without limitation, all application or permit fees. Developer acknowledges that there are no City incentives available for the development and/or the construction of the Facilities.

5.9 Title to the Facilities. All improvements of any kind or character whatsoever constructed or placed on the Land by Developer and all alterations, modifications and enlargements thereof, shall become part of the Facilities and unencumbered title to all such Facilities shall vest in the City immediately upon the expiration or early termination of this Agreement.

ARTICLE VI. SERVICES AND OPERATIONS

6.1 Prohibited Uses and Services. Developer shall not permit any uses other than the Permitted Use to be conducted on the Land, nor will Developer allow any portion of the Land to be used for any purpose which conflicts with Legal Requirements (collectively, the "***Prohibited Uses***").

6.2 Security, Adequate Exterior Lighting. Developer, at its sole cost and expense, is responsible for providing security that will provide for the safety of Developer and its employees, licensees and invitees. Developer shall install and operate privacy fencing at least eight (8) feet in height along the perimeter of the Land and adequate exterior lighting to illuminate certain exterior parts of the Land between sundown and sunrise.

6.3 Operational Costs and Expenses. Developer shall be solely responsible for all costs, expenses and fees of any kind or character associated with, or arising from, the design, development, construction, operation and management of the Land. The City shall have no responsibility for any costs, expenses or fees relating to the operation of the Land.

6.4 Demolition or Removal of Improvements. Developer shall not, without Director's prior written consent, remove or demolish the improvements comprising any of the Facilities situated on the Land during the Term of this Agreement. Developer may remove or demolish improvements not specifically included within the definition of Facilities.

6.5 Access. Developer shall access the Premises only through ingress and egress gates located on the Premises, which gate shall be closed and locked at any time when the Premises are not in use by Developer.

ARTICLE VII. RIGHTS AND DUTIES OF CITY

7.1 Right to Inspect and Maintain. Following reasonable prior written notice to Developer, except in the case of an emergency, the City shall have the right at all reasonable times to enter upon and inspect the Land and Facilities to observe the performance by Developer of its obligations hereunder and to do any act which City may be obligated or have the right to do under this Agreement or the City Code. Except in an emergency, the City shall use reasonable efforts to minimize disruption to Developer arising out of such inspections. If upon entry it is determined that Developer's obligations pursuant to the terms of this Agreement are not being performed adequately, the City shall so notify Developer in writing. If Developer does not commence maintenance or repair as specified in such notice within thirty (30) days after receipt of such notice, the City, or its agents, contractors or employees, shall have the right to enter upon the particular area and perform the maintenance or repair. Notwithstanding the foregoing, in the event of the occurrence of an emergency condition (meaning that personal injury, property damage, or both, or the violation of a Legal Requirement, is imminent), the City may immediately, and without advance notice to Developer, enter upon the particular area and perform immediate maintenance or repair. The City's cost for the performance of such maintenance or repair plus an amount equal to fifteen percent (15%) of cost to cover administrative costs, shall be charged to and paid by Developer as additional fees.

7.2 Alley Vacation. Within ninety (90) days following the Effective Date, City shall commence action to cause the vacation of the portion of the alley more particularly described in **Exhibit "E"**, attached hereto (the "***Alley Vacation***"). In the event the City Council does not provide final approval of such Alley Vacation by June 30, 2017, Developer shall be excused from further obligations with respect to such Alley Vacation.

ARTICLE VIII. MAINTENANCE AND REPAIR

8.1 Developer's Maintenance and Repair Obligations. Developer, at its sole cost and expense, shall keep, maintain and repair the Land and Facilities and every part thereof in good order and repair and in a safe condition at all times during the Term of this Agreement. Developer, at its sole cost and expense, shall keep the Land and Facilities reasonably free from rubbish, filth and refuse. Developer, at its sole cost and expense, shall provide a necessary number of covered trash and recycling receptacles located throughout the Land and Facilities and arrange and pay for regular trash pickup.

ARTICLE IX. RELEASE AND INDEMNIFICATION

9.1 RELEASE. EXCEPT FOR THE CITY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, DEVELOPER AGREES TO AND SHALL RELEASE THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY, THE "CITY PARTIES"), FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT.

9.2 INDEMNIFICATION. DEVELOPER SHALL INDEMNIFY AND HOLD HARMLESS THE CITY PARTIES FROM ALL LIABILITY, LOSS, CLAIMS, SUITS, ACTIONS, AND PROCEEDINGS WHATSOEVER ("CLAIMS") THAT MAY BE BROUGHT OR INSTITUTED ON ACCOUNT OF OR GROWING OUT OF ANY AND ALL INJURIES OR DAMAGES, INCLUDING DEATH, TO PERSONS OR PROPERTY RELATING TO THE USE OR

OCCUPANCY OF THE LAND DURING THE TERM INCLUDING CLAIMS THAT ARISE OUT OF OR RESULT FROM THE ACTIVE OR PASSIVE NEGLIGENCE, OR SOLE, JOINT, CONCURRENT, OR COMPARATIVE NEGLIGENCE OF ANY OF THE CITY PARTIES AND REGARDLESS OF WHETHER LIABILITY WITHOUT FAULT OR STRICT LIABILITY IS IMPOSED OR ALLEGED AGAINST SUCH CITY PARTIES, AND ALL LOSSES, LIABILITIES, JUDGMENTS, SETTLEMENTS, COSTS, PENALTIES, DAMAGES, AND EXPENSES RELATING THERETO, INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES AND OTHER ACTUAL OUT OF POCKET COSTS OF DEFENDING AGAINST, INVESTIGATING, AND SETTLING THE CLAIMS.

9.3 Defense of Claims. Developer shall assume on behalf of the City Parties and conduct with due diligence and in good faith the defense of all Claims against any of the City Parties. The City Parties shall have the right (but not the obligation) to participate in the defense of any claim or litigation with attorneys of their own selection without relieving Developer of any obligations in this Agreement. In no event may Developer admit liability on the part of an Indemnified Party without the written consent of the City Attorney.

9.4 Effect of Insurance. Maintenance of the insurance referred to in this Agreement does not affect Developer's obligations under this Section. Developer shall be relieved of its obligation of indemnity to the extent of the amount actually recovered from one or more of the insurance carriers of Developer and either (a) paid to City or (b) paid for City's benefit in reduction of any liability, penalty, damage, expense, or charge actually imposed upon, or incurred by, City in connection with the Claims. Developer may contest the validity of any Claims, in the name of the City, as the City may in good faith deem appropriate, provided that the expenses thereof are paid by Developer, or Developer shall cause the same to be paid by its insurer, and provided further Developer maintains adequate insurance to cover any loss(es) that might be incurred if such contest is ultimately unsuccessful.

9.5 **"As-Is". Developer accepts the Land "AS IS," and its duty to indemnify extends to injuries caused by defective conditions present on the Land, INCLUDING DEFECTS ALLOWED TO EXIST BY THE CITY'S OWN NEGLIGENCE.**

ARTICLE X. TAXES

10.1 Taxes and Assessments. Developer shall pay or cause to be paid prior to delinquency all taxes of whatever character that may be levied or charged upon the Land and Facilities and/or the operations of Developer, including, without limitation, ad valorem taxes and assessments on the Land and Facilities, all sales and/or use taxes, and any and all other taxes and/or assessments relating to the use of the Land and Facilities (or any application portion thereof) by Developer. Developer shall be responsible for the payment of all personal property taxes on their respective personal property from time to time placed in or upon the Land and Facilities.

10.2 Right to Contest Taxes. Developer shall have the right to contest in good faith and by all appropriate proceedings the amount, applicability or validity of any tax or assessment pertaining to the Land and Facilities set forth in at its own cost or expense.

ARTICLE XI. INSURANCE AND PERFORMANCE SECURITY

11.1 Insurance Coverages and Coverage Limits. With no intent to limit Developer's liability or the indemnification provisions set forth herein, or other insurance requirements as provided for in this Agreement, Developer shall obtain, at a minimum, on or before the Effective Date of this Agreement and thereafter maintain in full force and effect, at all times during the Term of this Agreement, the insurance

set forth on Schedule 11.1 attached hereto and made a part hereof; provided, however, that the Director may by written notice to Developer reestablish the minimum limits of liability and types of coverages set forth on Schedule 11.1 as reasonably necessary from time to time.

11.2 Form of Policies. The insurance coverages required hereunder may be in one or more policies of insurance, the form(s) of which shall be approved by the Director in his or her reasonable discretion. It is agreed, however, that nothing the Director does or fails to do shall relieve Developer from its duties to provide the required coverages hereunder, and Director's actions or inactions will never be construed as waiving City's rights hereunder.

11.3 Issuers of Policies. The issuer of any policy shall have a Certificate of Authority to transact insurance business in the State of Texas and have a Best's rating of at least A- and a Best's Financial Size Category of Class VII or better, according to the most current edition Best's Key Rating Guide, Property-Casualty United States.

11.4 Insured Parties. Each policy, except those for Workers Compensation and Employer's Liability, must name the City as an additional insured party on the original policy and all renewals or replacements.

11.5 Premiums and Deductibles. Developer shall be solely responsible for payment of all insurance premium requirements hereunder, and the City shall not be obligated to pay any premiums. Developer shall be responsible for and pay any claims or losses to the extent of any deductible amounts and waives any claim it may ever have for the same against the City, its officers, agents or employees.

11.6 Cancellation. Developer shall give thirty (30) days' advance written notice to the Director if any insurance policies are to be cancelled, materially changed or non-renewed. Within such thirty (30) day period, Developer shall attain other suitable policies in lieu of those about to be cancelled, materially changed or non-renewed so as to maintain in effect the required coverage. If Developer does not comply with this requirement, the Director, at his or her sole discretion, may immediately suspend Developer from any further performance under this Agreement and begin procedures to terminate for default.

11.7 Notice of Impaired Coverage. Developer shall give written notice to the Director within five (5) days of the date upon which total claims by any party against Developer reduce the aggregate amount of coverage below the amounts required by this Agreement.

11.8 Subrogation. Each policy must contain an endorsement to the effect that the issuer waives any claim or right in the nature of subrogation to recover against the City, its officers, agents or employees.

11.9 Endorsement of Primary Insurance. Each policy hereunder, except Worker's Compensation, shall be primary insurance to any other insurance available to the additional insured with respect to claims arising hereunder.

11.10 Contractors. Developer shall require all Contractors to carry insurance naming the City as an additional insured and meeting all of the above requirements except amount. The amount shall be commensurate with the amount of the applicable contract, subcontract or sublease, but in no case shall it be less than $2,000,000 per occurrence. All Contractors selling alcoholic beverages shall carry liquor liability insurance coverage of at least $1,000,000 per occurrence and a $3,000,000 aggregate. Developer shall provide copies of such insurance certificates to the Director.

11.11 City Right to Review and Adjust Coverage Limits. The Director reserves the right at reasonable intervals during the Term of this Agreement to cause the insurance requirements of this Article to be reviewed by the City's Risk Manager, taking into consideration changes in statutory law, court decisions,

or the claims history of Developer, and, based on the written recommendations of Risk Manager, to reasonably adjust the insurance coverage and limits required herein.

11.12 Proof of Insurance. Prior to commencing any performance hereunder and at any time during the Term, Developer shall furnish Director with certificates of insurance, along with an affidavit from the Contractors, as applicable, confirming that the certificate accurately reflects the insurance coverage required herein. If requested in writing by the Director, Developer shall furnish the City with certified copies of Developer's actual insurance policies. Failure of Developer to provide certified copies, as requested, within ten (10) days after receipt of written notice from Director, may be deemed, in the Director's and/or City Attorney's discretion, to constitute a breach of this Agreement. Notwithstanding the proof of insurance requirements set forth above, it is the intention of the parties hereto that Developer, continuously and without interruption, maintain in force the required insurance coverages set forth above. Failure of Developer to comply with this requirement shall constitute a default of Developer allowing the City, at its option, to terminate this Agreement if the default is not cured within two (2) business days of notice by the City to Developer. Developer agrees that the City shall never be argued to have waived or be estopped to assert its right to terminate this Agreement hereunder because of any acts or omissions by the City regarding its review of insurance documents provided by Developer, its assigns, or their respective agents or employees.

ARTICLE XII. CONDEMNATION

12.1 Condemnation

12.1.1 The City and Developer agree that should all of the Land or Developer's leasehold estate be condemned, which term shall include any condemnation, or conveyance in avoidance or settlement of condemnation or eminent domain proceedings, then this Agreement shall terminate as of the date the condemning authority takes possession, and the award will be distributed and payable to the City and the City shall receive the full amount awarded for the value of the Land, if condemned, excluding the value of any improvements to the Land.

12.1.2 Should a part of the Land be condemned, then in such event, this Agreement shall nevertheless continue in effect as to the remainder of the Land unless in Developer's reasonable judgment so much of the Land is condemned as to make it economically unsound to attempt to use the remainder for the uses and purposes contemplated herein, in which latter event this Agreement shall terminate upon notice of termination by Developer to the City, with such termination to be effective as of the date of taking of possession by the condemning authority in the same manner as if the whole of the Land had been thus taken or condemned.

12.1.3 If the whole or any part of the Land or Developer's interest in this Agreement are taken in condemnation proceedings or by any right of eminent domain for a temporary use or occupancy, the Term of this Agreement shall not be reduced or affected in any way. In the event of any such taking, whether such award is paid by way of damages, rents or otherwise, Developer shall receive the total award unless such period of temporary use of occupancy shall extend beyond the Expiration Date of the Term of this Agreement. If the period of temporary use or occupancy extends beyond the Term of this Agreement, then after payment to the City therefrom of the estimated cost of restoration of the Land to the extent that any such award is intended to compensate for damage to the Land, the balance of the award shall be divided between Developer and the City in the same ratio that the part of the entire period for such compensation is made falling before the date of expiration, and that part falling after, bear to such entire period, respectively.

ARTICLE XIII. ENVIRONMENTAL COMPLIANCE

13.1 Definitions

13.1.1 "***City Environmental Party***" shall mean the City and its elected and non-elected officials, officers, agents, employees, contractors, subcontractors, successors and assigns.

13.1.2 "***Developer Environmental Party***" shall mean Developer and its members, directors, officers, agents, employees, joint venture partners, Contractors, customers, invitees, successors and assigns.

13.1.3 "***Environmental Claims***" shall refer to, and include, all claims, demands, suits, actions, judgments and liabilities for: (i) removal, remediation, assessment, transportation, testing and disposal of Hazardous Materials as directed by any governmental authority, court order or Environmental Law; (ii) bodily injury or death; (iii) damage to or loss of use of property of any person; (iv) injury to natural resources; (v) fines, costs, fees, assessments, taxes, demand orders, directives or any other requirements imposed in any manner by any governmental authority under applicable Environmental Laws; and/or (vi) costs and expenses of cleanup, remediation, assessment, testing, investigation, transportation and disposal of a Hazardous Materials spill, release or discharge.

13.1.4 "***Environmental Condition***" shall mean any condition with respect to the soil, subsurface waters, ground waters, surface or subsurface strata, ambient air or other environmental medium on or off the Land, whether or not yet discovered, which could or does result in any Environmental Claim to or against the City or Developer by any third party, including, without limitation, any governmental authority.

13.1.5 "***Environmental Laws***" shall refer to and include all applicable laws related to pollution or protection of the environment, including, without limitation, those regulating emissions, discharges, releases or threatened releases of, or the use, handling, treatment, storage, discharge, disposal or transportation of, Hazardous Materials. Environmental Laws, specifically include, but are not limited to, NEPA, the Superfund Amendments and Reauthorization Act of 1986, the Federal Insecticide, Fungicide, and Rodenticide Act, the Safe Drinking Water Act, the Oil Pollution Control Act of 1990, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Toxic Substances Control Act, the Clean Air Act, the Clean Water Act, the Hazardous Materials Transportation Act, the Resource Conservation and Recovery Act, the Occupational Safety and Health Administration Hazard Communication Standards, the Environmental Protection Agency Oil Pollution Prevention Act, the Texas Hazardous Substances Act, and the Texas Water Quality Control Act, as all such acts may be amended.

13.1.6 "***Hazardous Materials***" shall mean and refer to and include all substances whose use, handling, treatment, storage, disposal, discharge or transportation is governed, controlled, restricted or regulated by Environmental Laws, that have been defined, designated or listed by any responsible governmental authority as being hazardous, toxic, radioactive, or that present an actual or potential hazard to human health or the environment if improperly used, handled, treated, stored, disposed, discharged, generated or released. Hazardous Materials specifically include, but are not limited to, asbestos and asbestos containing materials, petroleum products, including, without limitation, crude oil or any fraction thereof, gasoline, aviation fuel, jet fuel, diesel fuel, lubricating oils and solvents, urea formaldehyde, flammable explosives, PCBs, radioactive materials or waste and pesticides.

13.2 Compliance. In its operations on the Land, a Developer Environmental Party shall strictly comply with all applicable Environmental Laws, which is incorporated herein by reference. Without limiting the generality of the foregoing provision, a Developer Environmental Party shall not use or store

Hazardous Materials on or at the Land except as reasonably necessary in the ordinary course of its permitted activities on the Land, and then only if such Hazardous Materials are properly labeled and contained, and notice of and a copy of the current material safety data sheet is provided to the City for each such Hazardous Material. A Developer Environmental Party shall not discharge, release or dispose of any Hazardous Materials on the Land or surrounding air, lands or waters, except as allowed under applicable Environmental Laws, and then strictly in accordance with those Environmental Laws. Developer shall promptly notify the City of any Hazardous Materials spills, releases or other discharges by a Developer Environmental Party on the Land and promptly abate, remediate and remove any of the same in accordance with applicable Environmental Laws. Developer shall provide the City with copies of all reports, complaints, claims, citations, demands, inquiries or other notices relating to the environmental condition of the Land, or any alleged material noncompliance with Environmental laws by a Developer Environmental Party on the Land, within ten (10) days after such documents are generated by or received by Developer. If a Developer Environmental Party uses, handles, treats or stores Hazardous Materials on the Land, it shall have a contract in place with an EPA or TCEQ approved waste transport or disposal company, and shall identify and retain spill response contractors to assist with spill response and facilitate waste characterization, transport and disposal. Complete records of all disposal manifests, receipts and other documentation shall be retained by the Developer as required under applicable Environmental Laws and made available to the City for review upon request. The City shall have the right at any time, upon reasonable written notice to Developer, to enter the Land and inspect, take samples for testing, and otherwise investigate the Land for the presence of Hazardous Materials. In the exercise of its rights under this paragraph, the City shall employ its commercially reasonable efforts not to unreasonably interfere with Developer's use and occupancy of the Land pursuant to the provisions of this Agreement.

13.3 Responsibility. Hazardous Materials that are generated, used, handled, treated, stored, disposed, released, discharged or transported by a Developer Environmental Party are the responsibility of the Developer Environmental Party and the Developer, and in no event shall they be (or be deemed to be) the responsibility of the City. Developer shall be liable for and responsible to pay all Environmental Claims that arise out of or are caused in whole or in part from a Developer Environmental Party's use, handling, treatment, storage, disposal, discharge or transportation of Hazardous Materials on, to or from the Land, the violation of any Environmental Law by a Developer Environmental Party, or the failure of a Developer Environmental Party to comply with the terms, provisions, covenants and conditions of this Agreement. To the extent the City incurs any costs or expenses, including attorney, consultant and expert witness fees, arising from a Developer Environmental Party's use, handling, treatment, storage, disposal, discharge or transportation of Hazardous Materials on, to or from the Land, Developer shall promptly reimburse the City for such reasonable costs upon demand. Developer shall comply with all applicable reporting requirements under Environmental Laws with respect to spills, releases or discharges of Hazardous Materials by a Developer Environmental Party on, to or from the Land. Developer shall not be responsible for Hazardous Materials (i) that exist on the Land prior to the Effective Date, or (ii) to the extent Hazardous Materials are generated, used, handled, treated, stored, disposed, released, discharged or transported on the Land by a City Environmental Party.

13.4 Removal. Prior to the end of the Term or earlier termination of this Agreement, Developer shall remove or remediate in accordance with applicable Environmental Laws all of Developer's Hazardous Materials from the Land. Unless instructed otherwise by the City, Developer shall also, prior to vacating the Land, remove all tanks, piping and other equipment which stored Hazardous Materials, or which are contaminated by Hazardous Materials. Developer's responsibilities under this paragraph shall not extend to any Environmental Conditions existing on, in or arising from the Land, or property adjacent or contiguous to the Land, prior to Developer's occupancy of the Land.

13.5 Survival. The covenants, conditions and indemnities of this Article, and the City's remedies with regard to this Article, shall survive termination of this Agreement.

ARTICLE XIV. ASSIGNMENT AND SUBLEASING

14.1 Assignment and Subcontracting. Developer shall not assign, sublet, or in any other manner transfer, in whole or in part, any of its rights in and under this Agreement, except to a development lender for Developer's project at 70 Rainey Street. Notwithstanding the foregoing, upon the termination or cancellation of this Agreement for any reason and upon the request of the City, and subject to the rights of any development lender for 70 Rainey Street, Developer covenants and agrees to promptly assign all of its rights, title and interest to its contracts with its Contractors to the City upon written request, but only to the extent that such contracts are consistent with the terms and conditions of this Agreement. The City shall not be liable nor in any way responsible for the debts, obligations or liabilities of Developer that accrued prior to the date of assignment.

ARTICLE XV. DEFAULT, TERMINATION, HOLDING OVER, SURRENDER

15.1 Developer Default. The following events shall be deemed to be events of default by Developer under this Agreement:

15.1.1 Developer shall fail to pay when due any installment of rent or any other obligation under this Agreement involving the payment of money and such failure shall continue for a period of thirty (30) days following written notice thereof to Developer.

15.1.2 Developer shall fail to comply with any provision of this Agreement, other than as described in Paragraph 15.1.1 above, and either (i) shall not cure such failure within ten (10) days after written notice thereof to Developer, or, in the event such cure cannot reasonably be completed within such 10-day period, Developer shall not have commenced such cure and continued to reasonably prosecute such cure to completion, or (ii) shall cure that particular failure but again fail to comply with the same provision of this Agreement within three (3) months following the City's written notice to Developer of the prior violation.

15.1.3 Developer shall become insolvent, or shall make a transfer in fraud of creditors, or shall make an assignment for the benefit of creditors.

15.1.4 Developer or any guarantor of Developer's obligations under this Agreement shall file a petition under any section or chapter of the federal Bankruptcy Code, as amended, or under any similar law or statute of the United States or any state thereof; or, Developer shall be adjudged bankrupt or insolvent in proceedings filed against Developer.

15.1.5 A receiver or trustee shall be appointed for the Land or for all or substantially all of the assets of Developer.

15.1.6 Developer shall attempt to assign or in any manner transfer this Agreement or any of its rights hereunder in violation this Agreement.

15.2 Termination by City. Upon the occurrence of any event of default on the part of Developer, the City may, at any time while such event of default continues, and in addition to any other rights or remedies the City may have at law or in equity, terminate this Agreement effective immediately upon written notice thereof to the Developer.

15.3 Liquidated Damages. In addition to the termination right provided for in Section 15.2 above and any other remedy to which the City is entitled at law or in equity, City shall have the right at any time

following the occurrence of an event of default related to either (i) Developer's obligation to complete the construction of the Facilities or (ii) Developer's obligations to surrender and restore the Premises to the extent set forth in Section 15.7 hereof, and for so long as the same shall continue to assess liquidated damages in an amount not to exceed $1,000.00 per such occurrence (measured on a daily basis for each day the event of default continues uncured). The Developer and City stipulate that any such liquidated damages assessment shall not be construed as a penalty; rather, the Developer and City stipulate that the damages resulting from any such violation will be extremely difficult to measure and ascertain, but agree and stipulate that $1,000.00 per such occurrence (measured on a daily basis as aforesaid) is a reasonable estimation of the damages suffered by the City. Any assessment of liquidated damages by the Director shall be paid to City by the Developer within ten (10) days of receipt of an invoice for such damages.

15.4 No Waiver of Default. A party's election to waive a default shall not constitute a waiver of a subsequent default of the same or similar nature. A party's failure to insist on strict performance or failure to exercise a right upon default (i) shall not constitute a waiver of the right to insist on and to enforce strict compliance of other obligations or of future performance, and (ii) shall not constitute a waiver of the right to exercise any right or remedy arising out of any future default or failure to perform.

15.5 Remedies Cumulative. The rights and remedies contained in this Agreement shall not be exclusive, but shall be cumulative of all rights and remedies now or hereafter existing, whether by statute, at law, or in equity; provided, however, that neither party may terminate its duties under this Agreement except in accordance with the express provisions of this Agreement.

15.6 Holding Over. In the event Developer continues to occupy the Land after the Expiration Date, or any earlier termination date of this Agreement, and the City elects to accept rentals thereafter, a tenancy from month-to-month shall be created, and not for any longer period, at a monthly Ground Rental rate equal to 150% of the fair market value monthly rental rate at the time. The City's acceptance of rentals during any such period of holdover shall not constitute a waiver of the City's rights under applicable law or this Agreement.

15.7 Surrender. Developer shall, upon the Expiration Date, surrender and yield to the City the Land and Facilities, with the Land not covered by the Facilities graded to street level with grass planted (other than Bermuda grass).

ARTICLE XVI. LIENS AND ENCUMBRANCES

16.1 Liens and Encumbrances

16.1.1 If any mechanics' or materialmen's liens or claims thereof, or other liens or orders for the payment of money, shall be filed against the Land, or any portion thereof, by reason of or arising out of any labor or material furnished or alleged to have been furnished or to be furnished to or for Developer, or for or by reason of any change, alteration or addition to any part of the Land, or the cost or expense thereof, or any contract relating thereto, or against the City as owner thereof, Developer shall within thirty (30) days cause the same to be canceled and discharged of record, by bond or otherwise at the election and expense of Developer, and shall also defend on behalf of the City, at Developer's sole cost and expense, any action, suit or proceeding which may be brought thereon or for the enforcement of such lien, liens, claims or orders.

16.1.2 Developer further covenants and agrees that it will not make any contract or agreement, either oral or written, for the construction, alteration or repair of the Facilities without providing in such contract or agreement that no lien or claim shall thereby be created or arise or be filed or maintained by anyone thereunder upon or against the Land and Facilities or any of the appurtenances, equipment,

machinery or fixtures thereon or therein, and without procuring from the architect, engineer, contractor or contractors, materialmen, mechanics, persons, firms or corporations named in any such contract or agreement, a written waiver of all right of lien which said architect, engineer, contractors, materialmen, mechanics, persons, firms or corporations might otherwise have or claim upon the estate or interest of the City in the Land and Facilities or the items furnished by Developer, and Developer hereby agrees that before any work shall begin or material be furnished it will exhibit and cause to be delivered to the Director said original waiver or waivers of lien, and Developer shall, upon written demand from the Director, stop any and all work and delivery of materials therefor if such waivers of lien are not delivered as herein provided, and it is expressly understood and agreed, and notice is hereby given, that no persons, firms or corporations furnishing labor, material or service for the construction, repairing, reconstruction or the making of the alterations or additions to the Land and Facilities shall have any lien upon the Land and Facilities or any part or portion thereof.

16.2 No Authority to Bind City. It is further agreed that no authority is given by this Agreement to Developer, expressly or impliedly, to bind the City for the payment of any money in connection with the planning, development, design, construction, repairs, alterations, additions or operations relating to the Land and Facilities, nor is there any authority given Developer hereby directly or indirectly to permit any mechanics', materialmen's or contractors' liens to arise against the Land and Facilities, and Developer expressly agrees that it will keep and save the Land and Facilities and the City harmless from all costs and damages resulting from any such liens or lien of any character created through any act or thing done by Developer.

ARTICLE XVII. LAWS, AGREEMENTS AND GRANT CONDITIONS

17.1 Nondiscrimination and Affirmative Action. Developer, for itself, and its successors and assigns, including, without limitation, all of its Contractors, as a part of the consideration for this Agreement, does hereby covenant and agree that: (1) no person on the grounds of race, color, religion, sex, national origin or ancestry, or age, shall be excluded from participation in, denied benefits of, or otherwise subjected to discrimination in the use of the Land and Facilities; and (2) that in construction of any improvements on, over or under the Land and Facilities and the furnishing of services thereon, no person on the grounds of race, color, religion, sex, national origin or ancestry, or age, shall be excluded from participation in, denied benefits of, or otherwise subjected to unlawful discrimination. Developer shall post, or shall cause its Contractors to post, in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

17.2 Public Accommodation Laws. Developer covenants that it shall comply fully with all Legal Requirements governing nondiscrimination in public accommodations and commercial facilities, including, without limitation, the requirements of the Americans with Disabilities Act and all regulations hereunder, and that the Land and Facilities shall remain in compliance with those Legal Requirements throughout the term of this Agreement.

17.3 Compliance with Laws. In its use and occupancy of the Land and Facilities, Developer shall strictly comply with applicable law. Developer shall not do, or permit anything to be done, in or on the Land and Facilities that would constitute a public or private nuisance.

ARTICLE XVIII. MISCELLANEOUS

18.1 Applicable Laws and Venue. This Agreement is subject to all laws of the State of Texas, the City Code, the laws of the federal government of the United States of America, and all rules and regulations of any regulatory body or officer having jurisdiction, including, without limitation, the City's Charter and Code. Venue for any litigation relating to this Agreement shall be Travis County, Texas.

18.2 Attorneys' Fees. Each party will be required to pay its own attorneys' fees incurred in connection with the negotiation of this Agreement or any action or proceeding arising between the City and Developer regarding this Agreement.

18.3 Payments, Notices and Consents. All payments, notices and consents shall be sent to the following addresses:

If to the City:

City of Austin
Office of Real Estate Services
505 Barton Springs Road
Austin, Texas 78704
Attention: Officer

City of Austin Law Department
P.O. Box 1088
Austin, TX 78767-1088
Attention: City Attorney

If to Developer:

Fremont Holdings LLC
c/o CJ Sackman
84 Rainey Street
Austin, Texas 78701

Sackman Enterprises, Inc.
c/o Carter Sackman
165 West 73rd Street
New York, NY 10023; and

DuBois Bryant & Campbell, LLP
c/o William C. Bryant
303 Colorado Street, Suite 2300
Austin, Texas 78701

All notices required or permitted hereunder shall be in writing and shall be deemed delivered when actually received or, if earlier, on the third (3rd) day following deposit in a United States Postal Service post office or receptacle with proper postage affixed (certified mail, return receipt requested) addressed to the respective other party at the address prescribed above or at such other address as the receiving party may have theretofore prescribed by notice to the sending party delivered in accordance with this paragraph.

18.4 No Third Party Beneficiary. This Agreement is made for the benefit of the parties hereto, and nothing herein shall be construed to create any right or benefit enforceable by any third party.

18.5 Entire Agreement. This Agreement contains the entire, integrated, full and final agreement between the parties relating to the subject matter hereof, and there are no other enforceable agreements

between the parties, whether written or oral, relating to the subject matter. This Agreement supersedes all prior agreements and understandings of the parties, whether written or oral.

18.6 Survival of Certain Provisions. Developer shall remain obligated to the City under all clauses of this Agreement that expressly or by their nature extend beyond and service the expiration or termination of this Agreement, including, but not limited to, the indemnity provisions hereof.

18.7 Captions and Headings. Captions contained in this Agreement are for reference purposes only, and therefore will be given no effect in construing this Agreement and or not restrictive of the subject matter of any article or paragraph of this Agreement. Any reference to gender shall include the masculine, feminine and neutral.

18.8 Relationship of the Parties. The City and Developer agree that no partnership relationship between the parties hereto or joint venture between City and Developer is created by this Agreement, and Developer is not made the agent or representative of the City for any purpose or in any manner whatsoever.

18.9 No Waiver of Governmental Authority. Nothing in this Agreement shall be construed to abrogate or impair any governmental power and authority to regulate the prices, terms of service and other operations of Developer to the full extent allowed by law, regardless of whether such regulation is imposed by the City or by other governmental authority. Developer understands that such governmental power and authority may not lawfully be bartered for or contracted away, anything in this Agreement to the contrary or which seemingly could be construed to the contrary notwithstanding.

18.10 No Waiver Implied. The failure of either party to insist, in any one or more instances, upon performance of any of the terms, provisions, covenants or conditions of this Agreement shall not be construed as a waiver or relinquishment of the future performance of any such term, provision, covenant or condition by the other party, but the obligation of such party with respect to the future performance of such term, provision, covenant or condition shall continue in full force and effect.

18.11 Severability. In the event any term, provision, covenant or condition herein contained shall be held to be invalid by any court of competent jurisdiction, such invalidity shall not affect any other term, provision, covenant or condition herein contained, provided that such invalidity does not materially prejudice either Developer or the City and their respective rights and obligations contained in the valid terms, provisions, covenants or conditions hereof.

18.12 Written Amendment. Unless otherwise provided herein, this Agreement may be amended only by written instrument duly executed on behalf of the City (and upon approval by the City Council, if required) and Developer.

18.13 Acceptance and Approval. An approval by the Director, or by any other instrumentality of the City, of any part of Developer's performance shall not be construed to waive compliance with applicable law or to establish a standard of performance other than required by applicable law.

18.14 Ambiguities. In the event of any ambiguity in any of the terms of this Agreement, it shall not be construed for or against any party hereto on the basis that such party did or did not author the same.

18.15 No City Expenditure. Nothing in this Agreement shall be construed to require that the City make any expenditure of its funds by, through or under this Agreement. All statements or representations found anywhere in this Agreement that imply or expressly state the City has an obligation(s) to expend City funds shall be interpreted by City and Developer to mean that such obligation(s): (i) is subject to an

appropriation being made by City Council; (ii) shall be met under a separate contract(s) between City and a third party(s); (iii) shall not be construed in any manner to be a third party beneficiary contract(s) benefiting Developer; and (iv) shall not give any enforcement rights, in law or equity, vested in Developer or any other person or entity, either under separate contract(s) or this Agreement.

18.16 Successors. This Agreement shall bind and benefit the parties and their legal successors and permitted assigns. This Agreement does not create any personal liability on the part of any officer, agent or employee of the City.

18.17 Force Majeure. Timely performance by both parties is essential to this Agreement. However, neither party is liable to the other for damages resulting from delays or other failures to perform its obligations under this Agreement to the extent the delay or failure is directly caused by Force Majeure. "Force Majeure" means fires, floods, explosions, acts of God, war, terrorist acts, riots, and court orders. However, Developer is not relieved from performing its obligations under this Agreement due to a strike or work slowdown of its employees or employees of its joint venture partners or Contractors. Developer shall employ only fully trained and qualified personnel during a strike. Force Majeure shall also apply to delays in excess of sixty (60) days caused by the City in its capacity as a regulatory body, provided that, such delays are not due to the inaction of Developer, Developer's failure to timely resolve development review comments, or Developer's failure to otherwise perform its obligations hereunder.

18.18 Time Periods. Unless otherwise expressly provided herein, all time periods provided for in this Agreement shall be determined on the basis of and utilizing "calendar" days. If any date for performance or the conclusion of any time period provided for herein falls on a day which is not a business day, the date for performance or the conclusion of such time period, as the case may be, shall be deemed to be extended until the next business day. A "business day" is any day which is not a Saturday, a Sunday, or any holiday observed by the City, federally-chartered national banks, or Texas state-chartered banks.

18.19 Construction. As used in this Agreement, the words "hereof," "herein," "hereunder" and words of similar import shall mean and refer to this entire Agreement, and not to any particular article, section or paragraph hereof, unless the context clearly indicates otherwise.

18.20 Independent Covenants. The covenants of Developer to pay rent are entirely independent of any covenants made by the City hereunder; no default, alleged default or failure in whole or in part of the City to perform any of its covenants hereunder shall relieve Developer from its covenants to pay rent.

18.21 AS-IS, WHERE-IS. DEVELOPER AGREES TO ACCEPT THE LAND ON AN "AS-IS, WHERE-IS AND WITH ALL FAULTS" BASIS. THE CITY HEREBY SPECIFICALLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY, GUARANTY OR REPRESENTATION, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, OR, CONCERNING (i) THE NATURE AND CONDITION OF THE LAND AND THE SUITABILITY THEREOF FOR ANY AND ALL ACTIVITIES AND USES WHICH DEVELOPER MAY ELECT TO CONDUCT THEREON, (ii) THE NATURE AND EXTENT OF ANY RIGHT-OF-WAY, LEASE, POSSESSION, UTILITIES, LIEN, ENCUMBRANCE, LICENSE, RESERVATION, CONDITION OR ANY OTHER MATTER RELATING IN ANY WAY TO THE LAND, (iii) THE COMPLIANCE OF THE LAND OR ITS OPERATION WITH ANY LAWS, ORDINANCES OR REGULATIONS OF ANY GOVERNMENT OR OTHER AUTHORITY OR BODY, OR (iv) THE EXISTENCE OF ANY TOXIC OR HAZARDOUS SUBSTANCE OR WASTE IN, ON, UNDER THE SURFACE OF OR ABOUT THE LAND. DEVELOPER ACKNOWLEDGES THAT HAVING BEEN GIVEN THE OPPORTUNITY TO INSPECT THE LAND AND THE LAND INFORMATION, DEVELOPER WILL RELY SOLELY ON ITS OWN INVESTIGATION OF THE LAND AND THE LAND INFORMATION AND NOT ON ANY INFORMATION

PROVIDED OR TO BE PROVIDED BY THE CITY. DEVELOPER FURTHER ACKNOWLEDGES THAT ANY INFORMATION PROVIDED OR TO BE PROVIDED WITH RESPECT TO THE LAND WAS OBTAINED FROM A VARIETY OF SOURCES AND THE CITY (A) HAS NOT MADE ANY INDEPENDENT INVESTIGATION OR VERIFICATION OF SUCH INFORMATION AND (B) HAS NOT MADE ANY EXPRESS OR IMPLIED, ORAL OR WRITTEN, REPRESENTATIONS AS TO THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION, EXCEPT AS SPECIFICALLY SET FORTH HEREIN. DEVELOPER EXPRESSLY ACKNOWLEDGES THAT, IN CONSIDERATION OF THE AGREEMENTS OF THE CITY HEREIN, EXCEPT AS OTHERWISE SPECIFIED HEREIN, THE CITY HAS NOT MADE AND DOES NOT HEREBY MAKE ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, ARISING BY OPERATION OF LAW OR OTHERWISE, WHATSOEVER WITH RESPECT TO THE CONDITION OF THE LAND, INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATION OR WARRANTY REGARDING CONDITION, HABITABILITY, SUITABILITY, QUALITY OF CONSTRUCTION, WORKMANSHIP, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, AND DEVELOPER ACKNOWLEDGES THAT IT IS ENTERING INTO THIS AGREEMENT WITHOUT RELYING UPON ANY ORAL STATEMENT OR REPRESENTATION MADE BY THE CITY.

[The Remainder of this Page Intentionally Left Blank.]

IN WITNESS HEREOF, the City and Developer have made and executed this Agreement in multiple copies, each of which shall be deemed an equal, effective as of the Effective Date.

DEVELOPER:

FREMONT HOLDINGS, LLC,
a Texas limited liability company

By: _____
Name: Carter Sackman Jr.
Title: Managing Member

Tax ID Number: 37-1746073

CITY:

CITY OF AUSTIN, TEXAS

By: Lauraine Rizer
Name: Lauraine Rizer
Title: Officer of the Office of Real Estate Services

APPROVED AS TO FORM:

_____
Assistant City Attorney

APPROVED AS TO CONTENT:

_____
Director, Parks and Recreation Department

APPROVED AS TO CONTENT:

_____
Director, Public Works Department

EXHIBITS AND SCHEDULES:

Exhibit "A-1" – Description of Premises
Exhibit "A-2" – Description of Northern Portion of the Land
Exhibit "B" – Description of Facilities
Exhibit "C" – Form of Performance Bond
Exhibit "D" – Form of Payment Bond
Exhibit "E" – Alley Vacation Location
Schedule 11.1 – Insurance Coverage and Limits

EXHIBIT "A-1"

DESCRIPTION OF PREMISES

Lot A, Rainey River Addition, according to the map or plat thereof, recorded in Volume 68, Page 72, Plat Records, Travis County, Texas.

EXHIBIT "A-2"

DESCRIPTION OF NORTHERN PORTION OF THE LAND

(Attached)

Chaparral

Professional Land Surveying, Inc.
Surveying and Mapping

Office: 512-443-1724
Fax: 512-389-0943

3500 McCall Lane
Austin, Texas 78744

EXHIBIT "A-2"

PORTION OF LOT A
RAINEY RIVER ADDITION
(RIGHT-OF-WAY DEDICATION)

0.105 ACRES
CITY OF AUSTIN
TRAVIS COUNTY, TEXAS

A DESCRIPTION OF 0.105 ACRES (APPROXIMATELY 4563 SQ. FT.), BEING A PORTION LOT A, RAINEY RIVER ADDITION, AN ADDITION TO THE CITY OF AUSTIN, TRAVIS COUNTY, TEXAS, A SUBDIVISION OF RECORD IN BOOK 68, PAGE 72 OF THE PLAT RECORDS OF TRAVIS COUNTY, TEXAS, CONVEYED TO THE CITY OF AUSTIN BY DEED RECORDED IN DOCUMENT NO. 2003272230 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS; SAID 0.105 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a 1" iron pipe found in the west right-of-way line of Rainey Street (60' right-of-way) for the northeast corner of said Lot A, same being the southeast corner of a 0.570 acre tract described in a deed to Fremont Holdings, LLC, recorded in Document No. 2014073017 of the Official Public Records of Travis County, Texas, said 0.570 acre tract further being a portion of Block 6, Driskills and Raineys Subdivision of Part of Outlots No. 72 and 73 Division "E" Austin, Texas, a subdivision of record in Volume 1, Page 22 of the Plat Records of Travis County, Texas;

THENCE South 16°21'33" West, with the west right-of-way line of Rainey Street, same being the east line of Lot A, a distance of 41.00 feet to a Mag nail with "Chaparral" washer set, from which a calculated point for the southeast corner of said Lot A, same being the intersection of the north right-of-way line of River Street (right-of-way width varies) and the west right-of-way line of Rainey Street, bears South 16°21'33" West, a distance of 57.00 feet;

THENCE crossing Lot A, the following two (2) courses and distances:

1. North 46°55'45" West, a distance of 6.72 feet to a calculated point;

2. North 73°27'27" West, a distance of 113.85 feet to a 1/2" rebar with "Chaparral" cap set in the west line of Lot A, same being the east right-of-way line of a twenty (20) foot wide alley, from which a 1/2" rebar with "Chaparral" cap set for the southwest corner of Lot A, same being the intersection of the east right-of-way line of the alley and the north right-of-way line of River Street, bears South

16°21'33" West, a distance of 60.00 feet;

THENCE North 16°21'33" East, with the common line of Lot A and the alley, a distance of 38.00 feet to a Mag nail with "Chaparral" washer found for the northwest corner of Lot A, same being the southwest corner of said 0.570 acre tract;

THENCE South 73°27'27" East, with the common line of Lot A and the 0.570 acre tract, a distance of 119.85 feet to the **POINT OF BEGINNING**, containing 0.105 acres of land, more or less.

Surveyed on the ground March 3, 2016. Bearing Basis: The Texas Coordinate System of 1983 (NAD83), Central Zone, based on GPS solutions from the National Geodetic Survey (NGS) On-line Positioning User Service (OPUS).

Attachments: Drawing 229-017-ROW2

3/7/16

Eric J. Dannheim Date
Registered Professional Land Surveyor
State of Texas No. 6075
TBPLS Firm No. 10124500

REFERENCES
TCAD Property ID# 190788
Austin Grid map J-21

FIELD NOTES REVIEWED
By: Date 07.08.2016

Engineering Support Section
Department of Public Works
and Transportation

SKETCH TO ACCOMPANY A DESCRIPTION OF 0.105 ACRES (APPROXIMATELY 4563 SQ. FT.), BEING A PORTION LOT A, RAINEY RIVER ADDITION, AN ADDITION TO THE CITY OF AUSTIN, TRAVIS COUNTY, TEXAS, A SUBDIVISION OF RECORD IN BOOK 68, PAGE 72 OF THE PLAT RECORDS OF TRAVIS COUNTY, TEXAS, CONVEYED TO THE CITY OF AUSTIN BY DEED RECORDED IN DOCUMENT NO. 2003272230 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS.

LINE TABLE		
LINE	BEARING	DISTANCE
L1	S16°21'33"W	41.00'
L2	N46°55'45"W	6.72'
L3	N73°27'27"W	113.85'
L4	N16°21'33"E	38.00'
L5	S73°27'27"E	119.85'
L6	S16°21'33"W	57.00'
L7	S16°21'33"W	60.00'

LEGEND

○	1/2" REBAR WITH "CHAPARRAL" CAP SET
△	MAG NAIL WITH "CHAPARRAL" WASHER SET
⊙	1" IRON PIPE FOUND
▲CH	MAG NAIL WITH "CHAPARRAL" WASHER FOUND
△	CALCULATED POINT
( )	RECORD INFORMATION

STATE OF TEXAS
REGISTERED
ERIC J. DANNHEIM
6075
PROFESSIONAL
LAND SURVEYOR

3/7/16

DATE OF SURVEY: 3/3/16
PLOT DATE: 3/7/16
DRAWING NO.: 229-017-ROW2
PROJECT NO.: 229-017
T.B.P.L.S. FIRM NO. 10124500
DRAWN BY: EJD/JPA
SHEET 1 OF 2

Chaparral

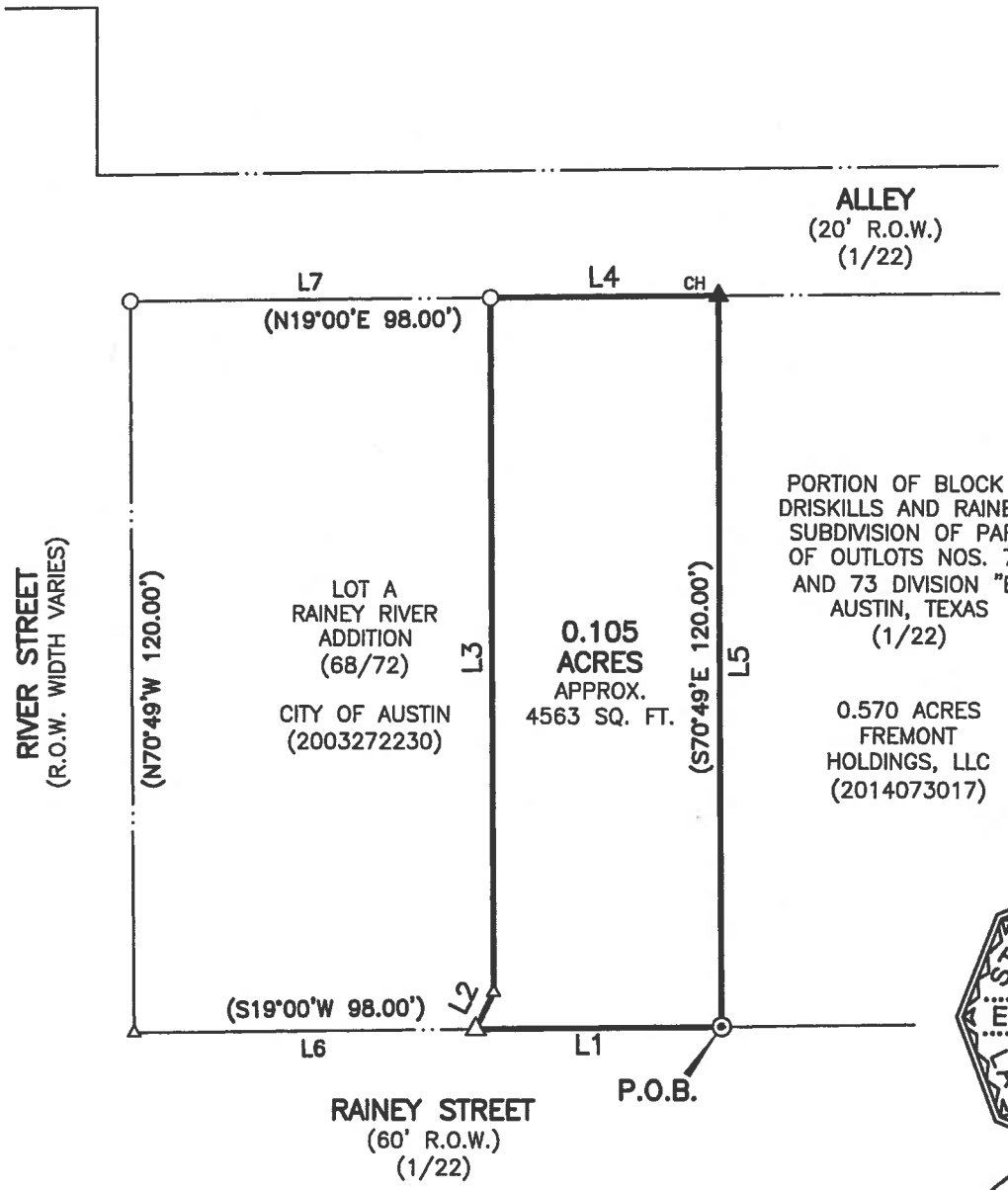
BEARING BASIS: GRID AZIMUTH FOR TEXAS CENTRAL ZONE STATE PLANE COORDINATES, 1983/93 HARN, BASED ON GPS SOLUTIONS FROM THE NATIONAL GEODETIC SURVEY (NGS) ON-LINE POSITIONING USER SERVICE (OPUS).

ATTACHMENTS: METES AND BOUNDS DESCRIPTION 229-017-ROW2

WILLIAM PORTER SURVEY
ABSTRACT NO. 7

1" = 30'

5.119 ACRES
PORTION OF OUTLOTS 72
& 73, DIVISION "E"
CITY OF AUSTIN
(CIP No. 8101-867-1036)



STATE OF TEXAS
REGISTERED
ERIC J. DANNHEIM
6075
PROFESSIONAL
LAND SURVEYOR

3/7/16

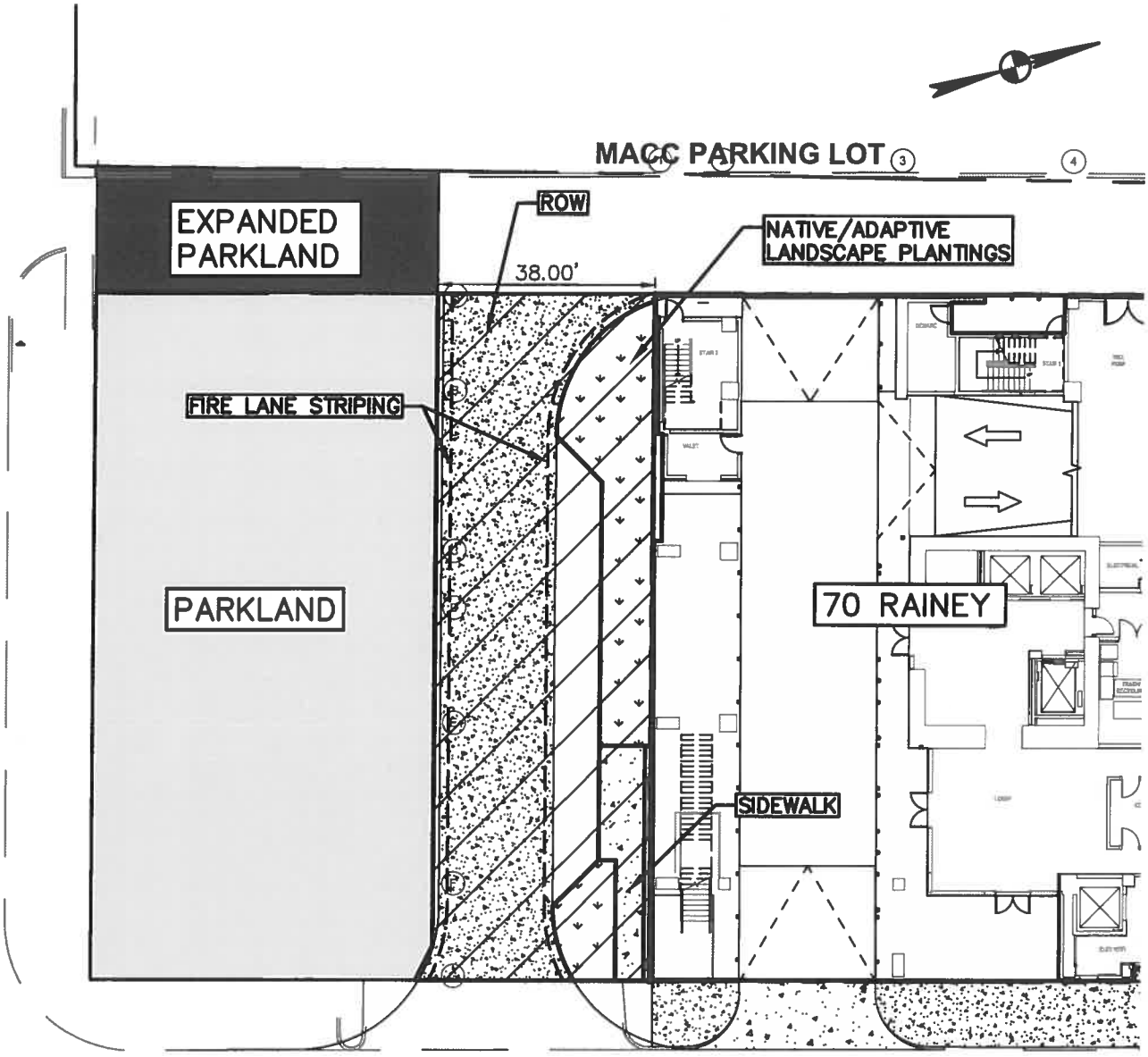
SHEET 2 OF 2

Chaparral

EXHIBIT "B"

DESCRIPTION OF FACILITIES

(Attached)



CITY RESPONSIBILITIES:

1. PARKLAND LANDSCAPING
2. IRRIGATION
3. HARDSCAPE*
4. WATER QUALITY/DETENTION/GREEN INFRASTRUCTURE, IF REQUIRED
5. UTILITY EXTENSIONS FOR PARKLAND, IF REQUIRED

DEVELOPER RESPONSIBILITIES:

1. ALLEY PAVING & DRIVEWAY CONNECTION WITH RAINEY STREET
2. REMOVAL OF ASPHALT OF VACATED ALLEY
3. REVEGETATE VACATED RIGHT-OF-WAY
4. FIRE LANE STRIPING
5. NATIVE & ADAPTIVE LANDSCAPE PLANTINGS WITHIN RIGHT-OF-WAY
6. SIDEWALK TO ACCESSIBLE SPACE

*NONLIVING COMPONENTS OF A STREETSCAPE OR LANDSCAPE DESIGN, SUCH AS PAVED WALKWAYS, WALLS, SCULPTURE, PATIOS, STONE AND GRAVEL AREAS, BENCHES, FOUNTAINS, AND SIMILAR HARD-SURFACE AREAS AND OBJECTS.

BURY
221 West Sixth Street, Suite 600
Austin, Texas 78701
Tel (512) 328-0011 Fax (512) 328-0325
TBPE # F-1048 TBPLS # F-10107500
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64 RAINEY STREET

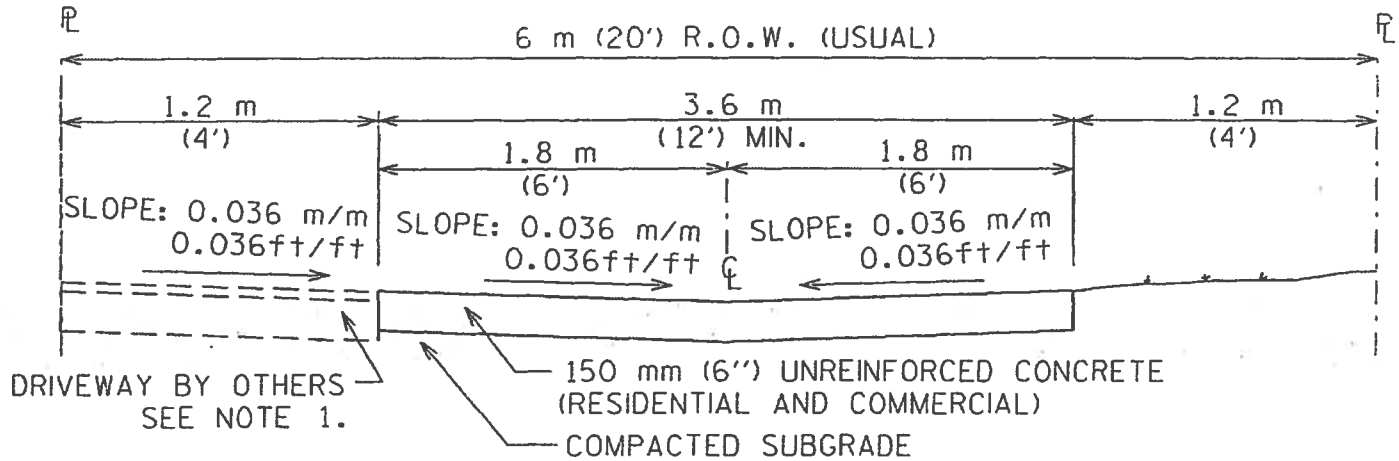
FREMONT HOLDINGS, LLC

EXHIBIT B
DESCRIPTION OF FACILITIES

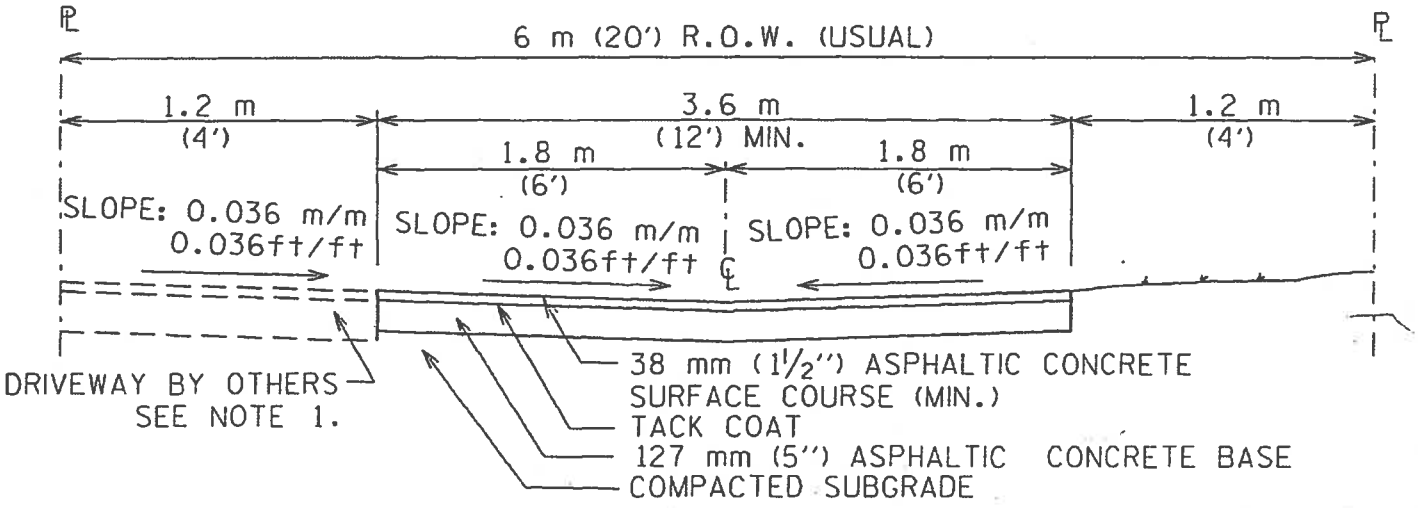
DATE:	SCALE:	DRAWN BY:	FILE:	PROJECT No.

G:\102746\10005\CD Exhibits\ALLEY REROUTE EXHIBIT\2016-04-20 RESPONSIBILITIES EXHIBIT.dwg modified by rmuns on Jun 29, 16 12:28 PM

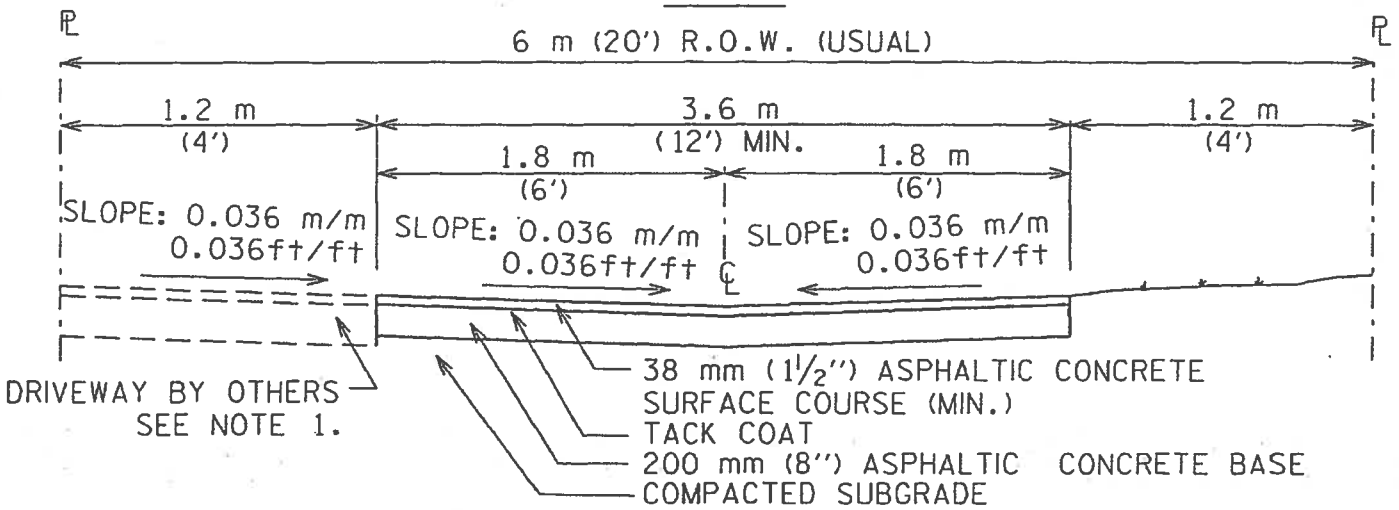
CS 7/5/16



TYPE A



TYPE B



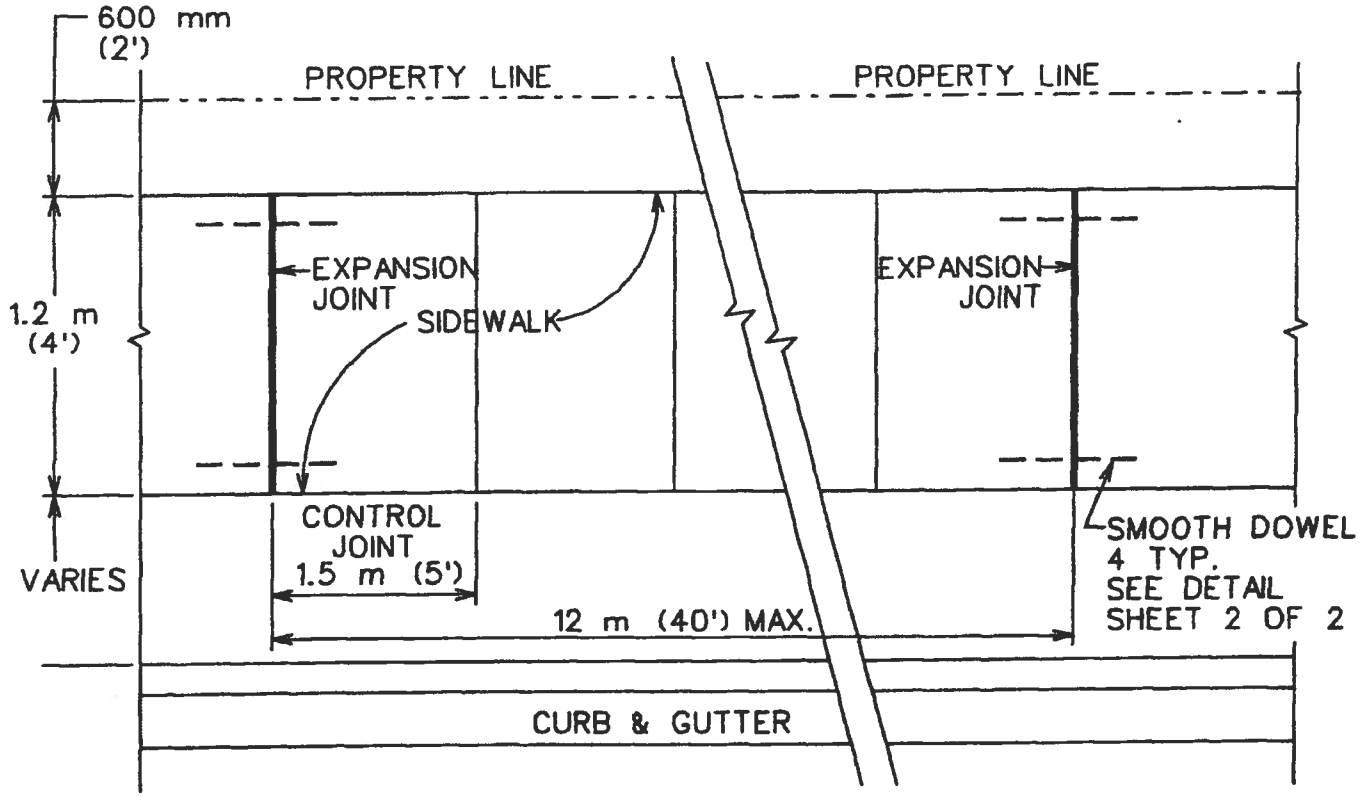
TYPE C

GENERAL NOTES:

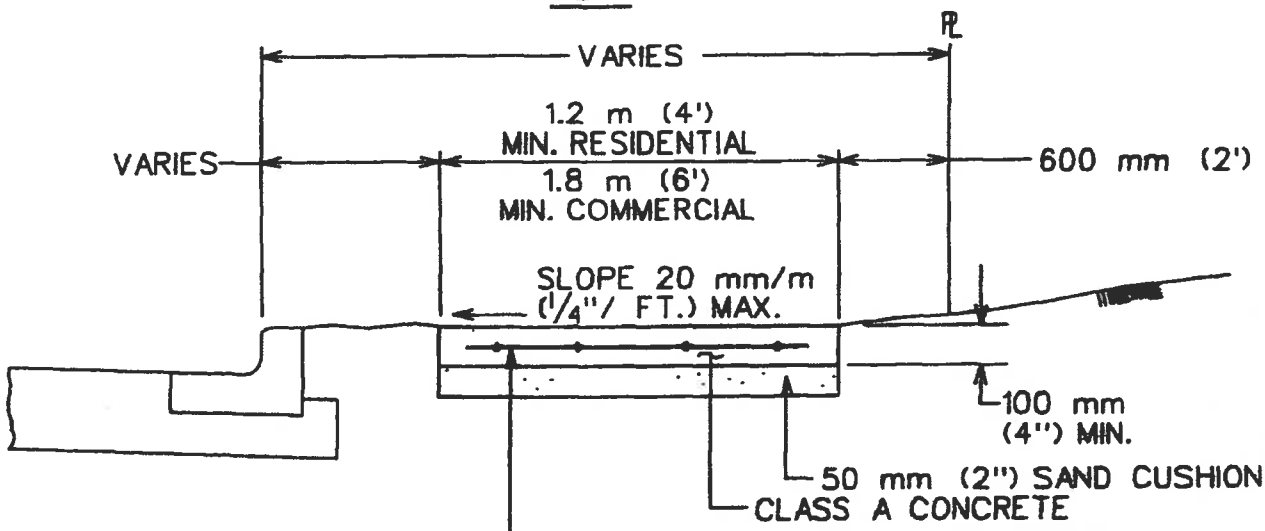
1. ALLEY DRIVEWAY TO BE CONSTRUCTED BY ABUTTING PROPERTY OWNER WITH PAVEMENT TYPE A, B, OR C.
2. COMMERCIAL ALLEYS SHALL BE CONST. WITH PAVEMENT TYPE A ONLY AND SHALL BE PAVED THE FULL WIDTH OF THE R.O.W.
3. PAVEMENT TYPES B AND C WILL NOT BE PERMITTED ON GRADES LESS THAN 1.5%.

CITY OF AUSTIN DEPARTMENT OF PUBLIC WORKS AND TRANSPORTATION	TYPICAL SECTIONS ALLEY PAVEMENT	
Lewis Lucia 9/29/99 ADOPTED	THE ARCHITECT/ENGINEER ASSUMES RESPONSIBILITY FOR APPROPRIATE USE OF THIS STANDARD.	STANDARD NO. 1000S-4

CS 7/5/16



PLAN

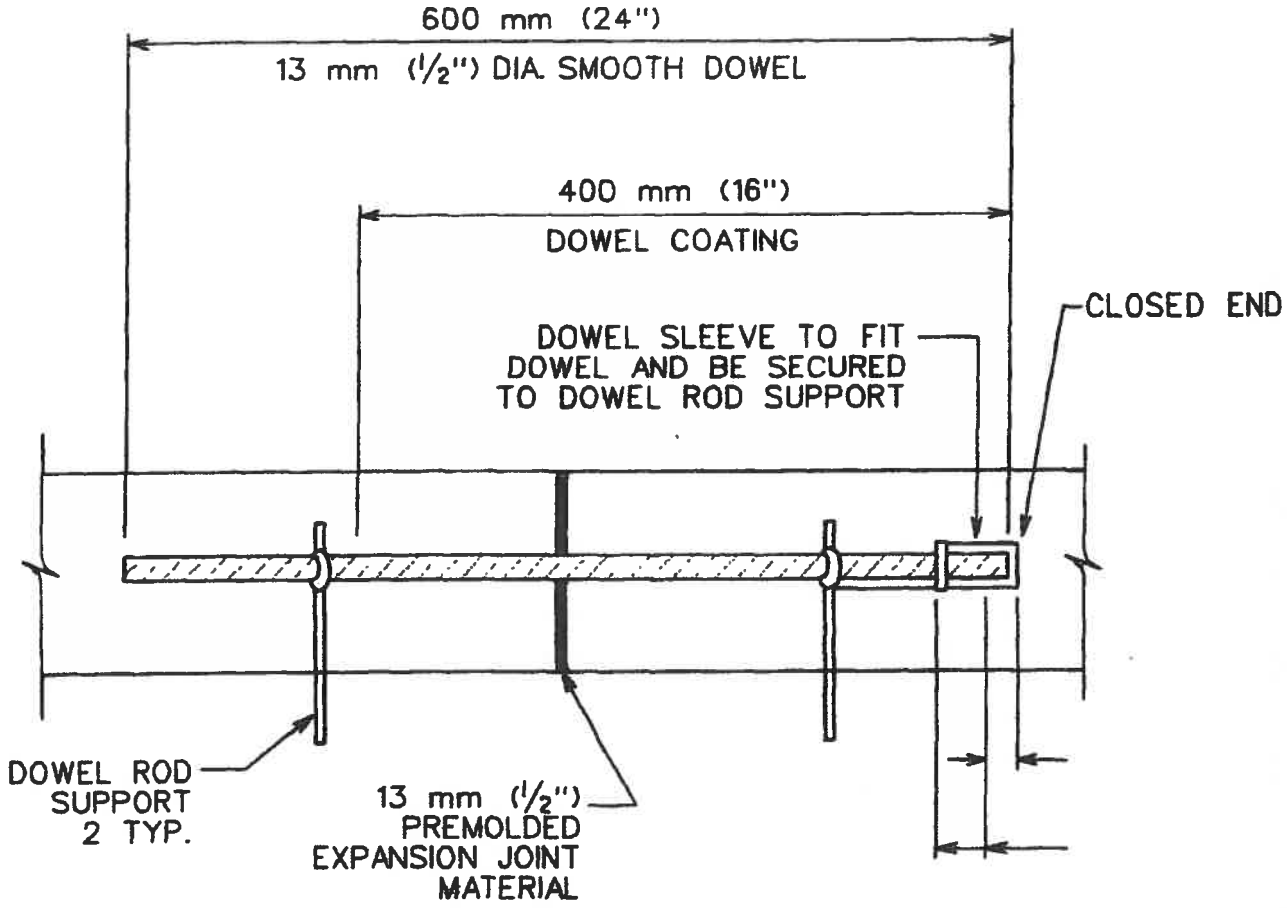


POLYPROPYLENE FIBRILLATED FIBERS, OR
150 mm X 150 mm X MW9 X MW9
(6" X 6" X W1.4 X W1.4) WELDED WIRE FABRIC
OR ONE LAYER 10M (#3) BARS PLACED NOT
MORE THAN 450 mm (18") C.C. BOTH
DIRECTIONS.
REINFORCEMENT SHALL ACCURATELY PLACED AT
SLAB MID-DEPTH AND HELD FIRMLY IN PLACE BY
MEANS OF BAR SUPPORTS OF ADEQUATE
STRENGTH AND NUMBER THAT WILL PREVENT
DISPLACEMENT AND KEEP THE STEEL AT ITS
PROPER POSITION DURING THE PLACEMENT OF
THE P.C. CONCRETE. IN NO INSTANCE SHALL THE
STEEL BE PLACED DIRECTLY ON THE SUBGRADE
OR SAND CUSHION LAYER.

SECTION

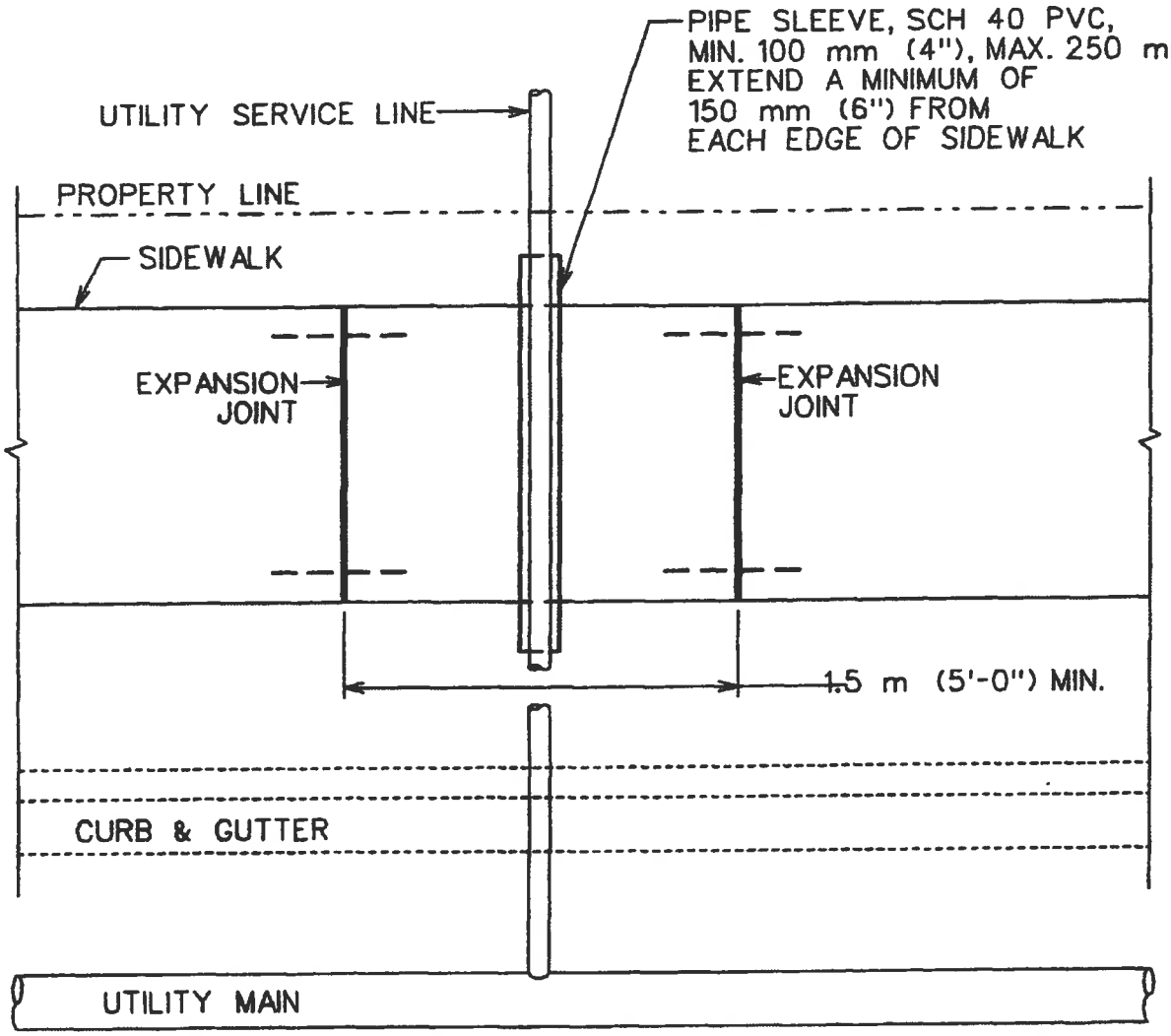
CITY OF AUSTIN DEPARTMENT OF PUBLIC WORKS	SIDEWALK	
Bill Gordon 3/26/08 ADOPTED	THE ARCHITECT/ENGINEER ASSUMES RESPONSIBILITY FOR APPROPRIATE USE OF THIS STANDARD.	STANDARD NO. 432S-1 1 OF 3

7/1/16

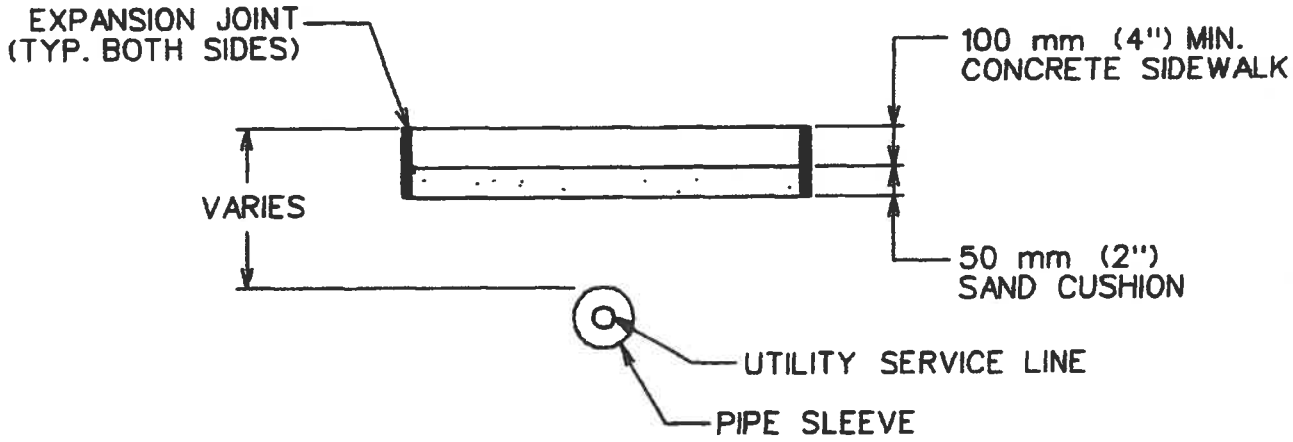


DOWEL DETAIL

CITY OF AUSTIN DEPARTMENT OF PUBLIC WORKS	SIDEWALK	
Bill Gardner 3/26/08 ADOPTED	THE ARCHITECT/ENGINEER ASSUMES RESPONSIBILITY FOR APPROPRIATE USE OF THIS STANDARD.	STANDARD NO. 432S-1 2 OF 3 7/5/16



SIDEWALK OVER UTILITY SERVICE LINE PLAN



SECTION OF SIDEWALK OVER
UTILITY SERVICE LINES

NOTES:
1. THIS STANDARD APPLIES TO THE INSTALLATION OF NEW UTILITIES OR UTILITIES BEING REPLACED BY A NEW LINE.
2. NO JOINTS IN UTILITY SERVICE PIPE TO BE LOCATED INSIDE PVC PIPE SLEEVE.

CITY OF AUSTIN DEPARTMENT OF PUBLIC WORKS	SIDEWALK	
Bill Gardner 3/26/05 ADOPTED	THE ARCHITECT/ENGINEER ASSUMES RESPONSIBILITY FOR APPROPRIATE USE OF THIS STANDARD.	STANDARD NO. 432S-1 3 OF 3

EXHIBIT "C"

FORM OF PERFORMANCE BOND

Bidding Requirements, Contract Forms and Conditions of the Contract
PERFORMANCE BOND
Section 00610

STATE OF TEXAS Bond No. _____

COUNTY OF _____ C.I.P. ID No. _____

Project Name _____

Know All Men By These Presents: That _____

of the City of _____, County of _____ __, and

State of _____, as Principal, and _____, a solvent company authorized under laws of the State of Texas to act as surety on bonds for principals, are held and firmly bound unto _____

_____

(OWNER), in the penal sum of_____

_____ U.S. Dollars ($ _____U.S.) for payment whereof, well and truly to be made, said Principal and Surety bind themselves and their heirs, administrators, executors, successors and assigns, jointly and severally, by these presents:

Conditions of this Bond are such that, whereas, Principal has entered into a certain written contract with OWNER, dated the _____ day of _____, _____, which Agreement is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

Now, therefore, the condition of this obligation is such, that if said Principal shall faithfully perform said Agreement and shall in all respects duly and faithfully observe and perform all and singular covenants, conditions and agreements in and by said contract agreed and covenanted by Principal to be observed and performed, and according to true intent and meaning of said Agreement hereto annexed, then this obligation shall be void; otherwise to remain in full force and effect. If OWNER notifies Principal and Surety the OWNER is considering declaring Principal in default, Surety agrees to meet with OWNER and Principal no later than fifteen days after receipt of such notice to discuss methods of performing the Work of the Contract.

Provided, however, that this bond is executed pursuant to provisions of Chapter 2253, Texas Government Code as amended and all liabilities on this bond shall be determined in accordance with provisions of said Article to same extent as if it were copied at length herein.

Surety, for value received, stipulates and agrees that no change in Contract Time or Contract Amount shall in anywise affect its obligation on this bond, and it does hereby waive notice of any such change in Contract Time or Contract Amount.

In witness whereof, said Principal and Surety have signed and sealed this instrument this _____ day of _____, _____.

Principal	Surety
By_____	By_____
(Signature)	(Signature)
Title_____	Title_____
Address_____	Address_____
_____	_____
_____	_____

Telephone_____Fax_____
E-Mail Address _____

Name and address of Resident Agent of Surety:

_____

_____

Note: Bond shall be issued by a solvent Surety company authorized to do business in Texas, and shall meet any other requirements established by law or by OWNER pursuant to applicable law. A copy of surety agent's "Power of Attorney" must be attached hereto.

END

EXHIBIT "D"

FORM OF PAYMENT BOND

Bidding Requirements, Contract Forms and Conditions of the Contract
Payment BOND
Section 00620

STATE OF TEXAS Bond No. _____

COUNTY OF _____ C.I.P. ID No. _____

Project Name _____

Know All Men By These Presents: That _____
of the City of _____, County of _____ _____, and
State of _____, as Principal, and _____, a solvent company authorized under laws of the State of Texas to act as surety on bonds for principals, are held and firmly bound unto _____ _____
(OWNER), and all Subcontractors, workers, laborers, mechanics and suppliers as their interests may appear, all of whom shall have right to sue upon this bond in the penal sum of _____ U.S. Dollars ($ _____U.S.) for payment whereof, well and truly to be made, said Principal and Surety bind themselves and their heirs, administrators, executors, successors and assigns, jointly and severally, by these presents:

Conditions of this Bond are such that, whereas, Principal has entered into a certain written contract with OWNER, dated the _____ day of _____, _____, which Agreement is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

Now, therefore, condition of this obligation is such, that if the said Principal shall well and truly pay all Subcontractors, workers, laborers, mechanics, and suppliers, all monies to them owing by said Principals for subcontracts, work, labor, equipment, supplies and materials done and furnished for the construction of improvement of said Agreement, then this obligation shall be and become null and void; otherwise to remain in full force and effect.

Provided, however, that this bond is executed pursuant to provisions of Chapter 2253, Texas Government Code as amended and all liabilities on this bond shall be determined in accordance with provisions of said Article to same extent as if it were copied at length herein.
Surety, for value received, stipulates and agrees that no change in Contract Time or Contract Amount shall in anywise affect its obligation on this bond, and it does hereby waive notice of any such change in Contract Time or Contract Amount.

In witness whereof, said Principal and Surety have signed and sealed this instrument this _____day of _____, _____.

_____

_____

Principal Surety

By_____

By_____

(Signature) (Signature)

Title_____

Title_____

Address_____

Address_____

_____

_____

_____

_____

Telephone_____Fax_____

E-Mail Address _____

Name and address of Resident Agent of Surety:

_____

_____

Note: Bond shall be issued by a solvent Surety company authorized to do business in Texas, and shall meet any other requirements established by law or by OWNER pursuant to applicable law. A copy of surety agent's "Power of Attorney" must be attached hereto.

END

EXHIBIT "E"

ALLEY VACATION LOCATION

Chaparral

Professional Land Surveying, Inc.
Surveying and Mapping

Office: 512-443-1724
Fax: 512-389-0943

3500 McCall Lane
Austin, Texas 78744

EXHIBIT "E"

PROPOSED FOR FUTURE VACATION
PORTION OF 20' ALLEY
(RIGHT-OF-WAY VACATION)

0.029 ACRES
CITY OF AUSTIN
TRAVIS COUNTY, TEXAS

A DESCRIPTION OF 0.029 ACRES (APPROXIMATELY 1245 SQ. FT.), BEING A PORTION OF AN ALLEY (20' RIGHT-OF-WAY WIDTH), DEDICATED BY DRISKILLS AND RAINEYS SUBDIVISION OF PART OF OUTLOTS NO. 72 AND 73 DIVISION "E" AUSTIN, TEXAS, A SUBDIVISION OF RECORD IN VOLUME 1, PAGE 22 OF THE PLAT RECORDS OF TRAVIS COUNTY, TEXAS; SAID 0.029 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a 1/2" rebar with "Chaparral" cap set for the southwest corner of Lot A, Rainey River Addition, a subdivision of record in Volume 68, Page 72 of the Plat Records of Travis County, Texas, same being the intersection of the east right-of-way line of said alley and the north right-of-way line of River Street (right-of-way width varies), from which a calculated point for the southeast corner of said Lot A, same being the intersection of the north right-of-way line of River Street and the west right-of-way line of Rainey Street (60' right-of-way width), bears South 73°27'27" East, a distance of 119.85 feet;

THENCE North 73°27'27" West, with the prolongation of the common line of Lot A and River Street, a distance of 20.71 feet to a Mag nail with "Chaparral" washer set in the west right-of-way line of the alley, same being the east line of a 5.119 acre tract described on the consolidated site plans for the Mexican American Cultural Center, CIP No. 8101-867-1036, on file at the City of Austin, Travis County, Texas, said 5.119 acre tract being further described as a portion of Outlots 72 and 73, Division "E", of the City of Austin, Travis County, Texas, according to the map or plat thereof, on file at the General Land Office of the State of Texas, from which a calculated angle point in the west line of the 5.119 acre tract, being angle point in the north right-of-way line of River Street at the south terminus of the alley, bears South 16°18'04" West, a distance of 5.35 feet;

THENCE North 16°18'04" East, with the west right-of-way line of the alley, same being the east line of the 5.119 acre tract, a distance of 60.00 feet to a Mag nail with "Chaparral" washer set, from which a cotton spindle found in the west right-of-way line of the alley, for the northeast corner of the 5.119 acre tract, same being the southeast corner of Lot 1, Red River Addition, a subdivision of record in Volume 78, Page 94 of the

Plat Records of Travis County, Texas, bears North 16°18'04" East, a distance of 242.32 feet, and from said cotton spindle found, a 1/2" rebar found for an angle point in the common line of said Lot 1 and the 5.119 acre tract bears North 41°11'56" West, a distance of 114.10 feet;

THENCE South 73°27'27" East, crossing the alley, a distance of 20.77 feet to a 1/2" rebar with "Chaparral" cap set in the east right-of-way line of the alley, same being the west line of Lot A, from which a Mag nail with "Chaparral" washer found in the east right-of-way line of the alley, for the northwest corner of Lot A, same being the southwest corner of a 0.570 acre tract described in a deed to Fremont Holdings, LLC, recorded in Document No. 2014073017 of the Official Public Records of Travis County, Texas, said 0.570 acre tract further being a portion of Block 6 of said Driskills and Raineys Subdivision, bears North 16°21'33" East, a distance of 38.00 feet, and from said Mag nail with "Chaparral" washer found a 1" iron pipe found in the west right-of-way line of Rainey Street, for the common east corner of Lot A and said 0.570 acre tract, bears South 16°21'33" West, a distance of 98.00 feet;

THENCE South 16°21'33" West, with the common line of Lot A and the alley, a distance of 60.00 feet to the **POINT OF BEGINNING**, containing 0.029 acres of land, more or less.

Surveyed on the ground January 27, 2016. Bearing Basis: The Texas Coordinate System of 1983 (NAD83), Central Zone, based on GPS solutions from the National Geodetic Survey (NGS) On-line Positioning User Service (OPUS).

Attachments: Drawing 229-017-ROW1

7/8/16

Eric J. Dannheim Date
Registered Professional Land Surveyor
State of Texas No. 6075
TBPLS Firm No. 10124500

REFERENCES
TCAD Map# 02-0303
Austin Grid map J-21

FIELD NOTES REVIEWED
By: Date 07.08.2016

Engineering Support Section
Department of Public Works
and Transportation

SKETCH TO ACCOMPANY A DESCRIPTION OF 0.029 ACRES (APPROXIMATELY 1245 SQ. FT.), BEING A PORTION OF AN ALLEY (20' RIGHT-OF-WAY WIDTH), DEDICATED BY DRISKILLS AND RAINEYS SUBDIVISION OF PART OF OUTLOTS NO. 72 AND 73 DIVISION "E" AUSTIN, TEXAS, A SUBDIVISION OF RECORD IN VOLUME 1, PAGE 22 OF THE PLAT RECORDS OF TRAVIS COUNTY, TEXAS.

LINE TABLE		
LINE	BEARING	DISTANCE
L1	N73°27'27"W	20.71'
L2	N16°18'04"E	60.00'
L3	S73°27'27"E	20.77'
L4	S16°21'33"W	60.00'
L5	S16°18'04"W	5.35'
L6	N16°18'04"E	242.32'
L7	N41°11'56"W	114.10'
L8	N16°21'33"E	38.00'
L9	S73°27'27"E	119.85'
L10	S73°27'27"E	119.85'
L11	S16°21'33"W	98.00'

LEGEND

●	1/2" REBAR FOUND (OR AS NOTED)
○	1/2" REBAR WITH "CHAPARRAL" CAP SET
△	MAG NAIL WITH "CHAPARRAL" WASHER SET
⊙	1" IRON PIPE FOUND
▲CH	MAG NAIL WITH "CHAPARRAL" WASHER FOUND
✱	COTTON SPINDLE FOUND
△	CALCULATED POINT
( )	RECORD INFORMATION

STATE OF TEXAS
REGISTERED
ERIC J. DANNHEIM
6075
PROFESSIONAL
LAND SURVEYOR

7/8/16

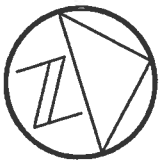
DATE OF SURVEY: 1/27/16
PLOT DATE: 7/8/16
DRAWING NO.: 229-017-ROW1
PROJECT NO.: 229-017
T.B.P.L.S. FIRM NO. 10124500
DRAWN BY: EJD
SHEET 1 OF 2

Chaparral

BEARING BASIS: GRID AZIMUTH FOR TEXAS CENTRAL ZONE STATE PLANE COORDINATES, 1983/93 HARN, BASED ON GPS SOLUTIONS FROM THE NATIONAL GEODETIC SURVEY (NGS) ON-LINE POSITIONING USER SERVICE (OPUS).

ATTACHMENTS: METES AND BOUNDS DESCRIPTION 229-017-ROW1

WILLIAM PORTER SURVEY
ABSTRACT NO. 7



1" = 30'

5.119 ACRES
PORTION OF OUTLOTS 72
& 73, DIVISION "E"
CITY OF AUSTIN
(CIP No. 8101-867-1036)

(N38°49'38"W)
(114.01')
L7

LOT 1
RED RIVER
ADDITION
(78/94)

L5
L2
L6
(N18°38'00"E 307.67')
ALLEY
(20' R.O.W.)
(1/22)

L1
0.029 ACRES
APPROX. 1245 SQ. FT.
L3

L4
L8
CH
(S19°00'W 98.00')

P.O.B.

RIVER STREET
(R.O.W. WIDTH VARIES)

L10
(N70°49'W 120.00')

LOT A
RAINEY RIVER
ADDITION
(68/72)

CITY OF AUSTIN
(2003272230)

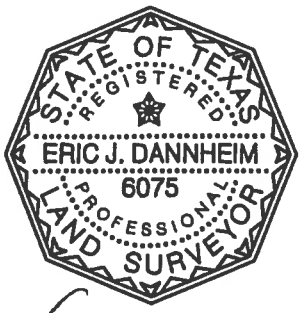
(S70°49'E 120.00')
L9

PORTION OF BLOCK 6
DRISKILLS AND RAINEYS
SUBDIVISION OF PART
OF OUTLOTS NOS. 72
AND 73 DIVISION "E"
AUSTIN, TEXAS
(1/22)

0.570 ACRES
FREMONT
HOLDINGS, LLC
(2014073017)

(S19°00'W 98.00')
L11

RAINEY STREET
(60' R.O.W.)
(1/22)



7/8/16

SHEET 2 OF 2

Chaparral

SCHEDULE 11.1

INSURANCE COVERAGE AND LIMITS

Pursuant to Section 11.1, Developer shall obtain, on or before the Effective Date of this Agreement, and thereafter maintain the following insurance to the extent set forth in the attached certificate of insurance:

Commercial General Liability Insurance. The Policy shall contain the following provisions: Provide coverages A&B with minimum limits of $1,000,000 per occurrence.

a) Contractual liability coverage for liability assumed under the Lease and all contracts relative to this Project.

d) Independent Contractors coverage (Contractors / Subcontractors work).

f) CITY listed as an additional insured, endorsement CG 2010.

g) 30 day notice of cancellation in favor of CITY, endorsement CG 0205.

h) Waiver of Transfer of Recovery Against Others in favor of CITY, endorsement CG 2404.

Developer Shall Provide or Require General Contractor to Provide:

1. **Commercial General Liability Insurance.** The Policy shall contain the following provisions: Provide coverages A&B with minimum limits of $1,000,000 per occurrence.

   a) Contractual liability coverage for liability assumed under the Agreement and all contracts relative to this Project.

   b) Completed Operations/Products Liability for the duration of the warranty period.

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

   d) Independent Contractors coverage (Contractors / Subcontractors work).

   e) Aggregate limits of insurance per project, endorsement CG 2503.

   f) CITY listed as an additional insured, endorsement CG 2010.

   g) 30 day notice of cancellation in favor of CITY, endorsement CG 0205.

   h) Waiver of Transfer of Recovery Against Others in favor of CITY, endorsement CG 2404.

2. **Business Automobile Liability Insurance.** Provide coverage for all owned, non-owned and hired vehicles. The policy shall contain the following endorsements in favor of CITY:

   A minimum combined single limit of $500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are $250,000 bodily injury per person, $500,000 bodily injury per occurrence and at least $100,000 property damage liability each accident.

   a) Waiver of Subrogation endorsement CA 0444;

   b) 30 day Notice of Cancellation endorsement CA 0244; and

   c) Additional Insured endorsement CA 2048.

3. **Workers' Compensation And Employers' Liability Insurance**. Coverage shall be consistent with statutory benefits outlined in the Texas Workers' Compensation Act (Section 401). DEVELOPER's policy shall apply to the State of Texas and include these endorsements in favor of CITY:

   The minimum policy limits for Employers' Liability Insurance coverage shall be as follows:

   $1,000,000 bodily injury per accident, $1,000,000 bodily injury by disease policy limit and $1,000,000 bodily injury by disease each employee.

   a) Waiver of Subrogation, form WC 420304; and

   b) 30 day Notice of Cancellation, form WC 420601.

General Requirements:

1. DEVELOPER shall carry insurance in the types and amounts indicated below for the duration of the Contract, which shall include items owned by CITY in the care, custody and control of DEVELOPER prior to and during construction and warranty period.
2. DEVELOPER must complete and forward the Certificate of Insurance, Section 00650, to CITY before the Agreement is executed as verification of coverage required below. DEVELOPER shall not commence Work until the required insurance is obtained and until such insurance has been reviewed by CITY. Approval of insurance by CITY shall not relieve or decrease the liability of DEVELOPER hereunder and shall not be construed to be a limitation of liability on the part of DEVELOPER. DEVELOPER must also complete and forward the Certificate of Insurance, Section 00650, to CITY whenever a previously identified policy period has expired as verification of continuing coverage.
3. DEVELOPER'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 CITY as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall indicate: City of Austin, Office of Real Estate, P.O. Box 1088, Austin, Texas 78767.
5. The "other" insurance clause shall not apply to the CITY where the CITY is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both CITY and DEVELOPER, shall be considered primary coverage as applicable.
6. If insurance policies are not written for amounts specified below, DEVELOPER 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. CITY reserves the right to review the insurance requirements set forth during the effective period of this Agreement and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by CITY based upon changes in statutory law
8. DEVELOPER shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Agreement or as required in the Agreement.
9. DEVELOPER 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.
10. The insurance coverages required under this Agreement are required minimums and are not intended to limit the responsibility or liability of DEVELOPER.

11. Defense costs are excluded from the face amount of the policy. Aggregate limits are 12-month per policy period unless otherwise indicated.