

## INTERLOCAL AGREEMENT

### IN THE FORM OF A MULTIPLE USE AGREEMENT

STATE OF TEXAS     §

COUNTY OF TRAVIS   §

**THIS AGREEMENT** made by the State of Texas by and between the Texas Department of Transportation, hereinafter referred to as "State", party of the first part, and City of Austin, hereinafter called City, party of the second part, is to become effective when fully executed by both parties.

### WITNESSETH

**WHEREAS**, on the 18 day of June, 2019, Austin City Council, the governing body for the City, passed Resolution No. 20180524-035 hereinafter identified by reference, which directed the City Manager to establish interim fire stations in certain areas within the jurisdiction of the City; and

**WHEREAS**, the City has requested the State to permit the construction, maintenance and operation of a temporary public fire station in the mainlane tollbooth facility on the highway right of way, State Highway 130 (specific location), shown graphically by the preliminary conceptual site plan in Exhibit "A", which are attached and made a part hereof; and

**WHEREAS**, the State has indicated its willingness to approve the temporary establishment of such facilities and other uses conditioned that the City will enter into agreements with the State for the purpose of determining the respective responsibilities of the City and the State with reference thereto, and conditioned that such uses are in the public interest and will not damage the highway facilities, affect the continued use of the facility by the State to store and maintain the tolling server system housed in the facility, impair safety, impede maintenance or in any way restrict the operation of the highway facility, all as determined from engineering and traffic investigations conducted by the State.

## **AGREEMENT**

**NOW, THEREFORE,** in consideration of the premises and of the mutual covenants and agreements of the parties hereto to be by them respectively kept and performed as hereinafter set forth, it is agreed as follows:

### **1. DESIGN AND CONSTRUCTION**

City will prepare or provide for the construction plans needed to alter the facility for use as a temporary fire station, and will provide for the construction work as required by said plans at no cost to the State. Said plans shall include the design of the access control, necessary horizontal and vertical clearances for highway structures, adequate landscape treatment, and adequate detail to ensure compliance with applicable structural design standards, sufficient traffic control provisions, and general layout. They shall also delineate and define the construction responsibilities of both parties hereto. Completed plans will be submitted to State for review and approval and when approved shall be attached to the agreement and made a part thereof in all respects. Construction shall not commence until plans have been approved by the State. Any future revisions or additions shall be made after prior written approval of the State. Any sidewalks, curb ramps and other pedestrian elements to be constructed, either on site or off site, by the City shall be in accordance with the requirements of Title II of the Americans With Disabilities Act (ADA) and with the Texas Accessibility Standards (TAS). Elements constructed by the City and found not to comply with ADA or TAS shall be corrected at the entire expense of the City.

### **2. INSPECTION**

Ingress and egress shall be allowed at all times to such facility for Federal Highway Administration personnel and State Forces and equipment when highway maintenance operations or maintenance of the tolling system servers maintained at the facility are necessary, and for inspection purposes; and upon request, all parking or other activities for periods required for such operations will be prohibited.

### **3. PARKING REGULATIONS**

Parking regulations shall be established limiting parking of non-City owned vehicles to single unit motor vehicles of size and capacity no greater than prescribed for 1<sup>1</sup>/<sub>2</sub> ton trucks, such vehicles to conform in size and use to governing laws. Parking shall be permitted only in marked spaces.

Parking shall be prohibited when a security threat, as determined by TxDOT, exists.

City is authorized to park vehicles owned or controlled by City that are necessary for the operation of a fire station at this location at the facility. City owned or controlled vehicles not necessary for the operation of the fire station at this location cannot be parked or stored at the facility.

#### **4. PROHIBITION/SIGNS**

Regulations shall be established prohibiting the parking of vehicles transporting flammable or explosive loads and prohibiting use of the area in any manner for peddling, advertising or other purposes not in keeping with the objective of a public facility. The erection of signs other than those required for proper use of the area will be prohibited. All signs shall be approved by the State prior to the actual erection.

#### **5. RESPONSIBILITIES**

Timely maintenance, repair and operation of the portion of the facility being used as a fire station shall be entirely the responsibility of the City outside of normal maintenance and repair required prior to this agreement for the facility. Such responsibility shall not be transferred, assigned or conveyed to a third party without the advanced written approval of the State. These responsibilities expressly include the timely maintenance and repair of any portion of the facility necessary to comply with the Americans with Disabilities Act. Further, such responsibility shall include picking up trash, mowing and otherwise keeping the facility in a clean and sanitary condition, and surveillance by police patrol to eliminate the possible creation of a nuisance or hazard to the public. Hazardous or unreasonably objectionable smoke, fumes, vapor or odors shall not be permitted to rise above the grade line of the highway, nor shall the facility subject the highway to hazardous or unreasonably objectionable dripping, droppings or discharge of any kind from any source over which the City has control,. City will be responsible for the water used at the facility and a portion of the electrical usage attributed to the City fire station.

If after 30 day written notice to the City, the State determines that City has failed to comply with any of these responsibilities, it will perform the necessary work and charge City the actual cost of the work.

The State shall be responsible for the maintenance of the area storing the system servers. City will have no access to this area. The State is also responsible for the portion of the electrical use attributed to the system servers maintained at the facility by the State.

## **6. TERM AND TERMINATION UPON NOTICE**

The initial term of this agreement shall begin on September 19, 2019, and shall terminate on September 18, 2020. The agreement shall automatically renew on September 19th for two successive additional one year terms unless sooner terminated by either party as described below.

This provision is expressly made subject to the rights herein granted to both parties to terminate this agreement upon 90 days written notice, and upon the exercise of any such right by either party, all obligations herein to make improvements to said facility shall immediately cease and terminate and City shall be responsible for the facility's timely removal at no cost to the State. If the State determines that City has failed to timely remove the facility, it will perform the necessary work and charge City the actual cost of the work.

## **7. MODIFICATION/TERMINATION OF AGREEMENT**

If in the sole judgment of the State it is found at any future time that traffic conditions have so changed, the State needs the use of the facility for a state function, the need of the toll server system has increased, that the existence or use of the facility is impeding maintenance, damaging the highway facility, impairing safety or that the facility is not being properly operated, that it constitutes a nuisance, is abandoned, or if for any other reason it is the State's judgment that such facility is not in the public interest, this agreement under which the facility was constructed may be: (1) modified if corrective measures acceptable to both parties can be applied to eliminate the objectionable features of the facility; or (2) terminated upon 90 days written notice and the use of the area as proposed herein discontinued.

## **8. PROHIBITION OF STORAGE OF FLAMMABLE MATERIALS**

All structures located or constructed within the area covered by the agreement shall be fire resistant. The storage of flammable, explosive or hazardous materials will be the responsibility of City for any damage due to the storage of flammable materials. Operations deemed to be a potential fire hazard shall be subject to regulation by the State.

## **9. RESTORATION OF AREA**

The City shall provide written notification to the State that such facility will be discontinued for the purpose defined herein. The City shall, within thirty (30) days from the date of said notification, clear the area of all facilities that were its construction responsibility under this agreement and restore the area to a condition satisfactory to the State.

## **10. PREVIOUS AGREEMENTS**

It is understood that this agreement in no way modifies or supersedes the terms and provisions of any existing agreements between the parties hereto.

## **11. DISPUTE RESOLUTION**

Any disputes arising from this Contract shall be resolved using Chapter 2260 of the Texas Government Code.

## **12. LIABILITY**

No party to this agreement intends to waive, relinquish, limit or condition its general governmental immunity from liability in any way.

Each party agrees and acknowledges that it is not an agent, servant, or employee of the other party and that under this provision each party is responsible only for its own acts and for those of its agents, servants, independent contractors or employees. Such responsibility includes, but is not limited to any claims or amounts arising or recovered under the "Workers Compensation Law," the Texas Tort Claims Act, Chapter 101, Texas Civil Practice and Remedies Code; or any other applicable laws or regulations, all as time to time may be amended.

Nothing in this agreement shall be construed as creating any liability in favor of any third party against the State and the City. Additionally, this agreement shall not ever be construed as relieving any third party from any liability against the State. Furthermore, the City shall become fully subrogated to the State's rights of recovery and shall be entitled to maintain any action over and against any third party who may be liable for damages. The State agrees to execute and deliver instruments and papers and to otherwise do that which is necessary to secure such rights.

## **13. INSURANCE**

The City shall provide necessary safeguards to protect the public on State maintained highways including adequate risk transfer or self insured provisions designed to provide avenues for the payment of any damages that might result during the construction, maintenance, repair and operation of the facility. Prior to beginning work on the State's right of way, the City's construction contractor shall submit to the State a completed insurance form (TxDOT Form No. 1560) or appropriate certificate of self-insurance and shall maintain the required coverage as indicated in Exhibit E during the construction of the facility.

The City, a political subdivision as defined by the Texas Labor Code, is self-insured for all third party liability coverage and all workers compensation and employer liability claims. As such, the City has established a Liability Reserve Fund to pay for claims for which the City is legally liable.

City shall require all contractors' entering into construction contracts with City and associated with the construction of the temporary fire station to carry, at a minimum, the insurance required in Exhibit E.

#### **14. USE OF RIGHT OF WAY**

It is understood that the State by execution of this agreement does not impair or relinquish the State's right to use such land for highway purposes when it is required for the construction or re-construction of the facility for which it was acquired, nor shall use of the land under such agreement ever be construed as abandonment by the State of such land acquired for highway purposes, and the State does not purport to grant any interest in the land described herein but merely consents to such use to the extent its authority and title permits.

#### **15. ADDITIONAL CONSENT REQUIRED**

The State asserts only that it has sufficient title for highway purposes. The City shall be responsible for obtaining such additional consent, permits or agreement as may be necessary due to this agreement. This includes, but is not limited to, appropriate permits and clearances for environmental, ADA and public utilities.

#### **16. FHWA ADDITIONAL REQUIREMENTS**

If the Facility is located on the Federal-Aid Highway System, "ATTACHMENT A", which states additional requirements as set forth in the Federal Highway Administration's Title 23, Code of Federal Regulations, § 710, shall be attached to and become a part of this agreement.

#### **17. CIVIL RIGHTS ASSURANCES**

The City, for itself, its personal representatives, successors and interests and assigns, as part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that: (1) no persons, on the grounds of race, color, sex, age, national origin, religion or disabling condition, shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in the use of said facility; (2) that in the construction of any improvements on, over or under such land and the furnishing of services thereon, no person on the ground of race, color, sex, age, national origin, religion or disabling condition, shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; (3) that the City shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-Assisted programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

That if in the event of any breach of the above non-discrimination covenants, the State shall have the right to terminate the agreement and reenter and repossess said land and the facilities thereon, and hold the same as if said agreement had never been made or issued.

## **18. AMENDMENTS**

Any changes in the time frame, character or responsibilities of the parties hereto shall be enacted by a written amendment executed by both parties hereto.

## **19. LEGAL CONSTRUCTION**

In case one or more of the provisions contained in this agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any provision hereof and this agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in this agreement.

## **20. AUDIT**

The State may conduct an audit or investigation of any aspect of this agreement. The CITY must provide the State with access to any information the State considers relevant to the investigation or audit. The audit can include, but is not limited to, any contract for construction or maintenance of any facility or structure authorized by this agreement or any contract to provide a service to the City if that service is authorized by this agreement.

## **21. AUTHORITY OF STATE AUDITOR**

The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the contract or indirectly through a subcontract under the contract. Acceptance of funds directly under the contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

## **22. NOTICES**

All notices required under this agreement shall be mailed or hand delivered to the following respective addresses:

**STATE**  
(Mailing Address)

**(Name of other party)**  
(Mailing Address)

Texas Department of Transportation  
Maintenance Division

\_\_\_\_\_  
\_\_\_\_\_

125 East 11th Street  
Austin, Texas 78701-2483

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### **23. TIMELY PAYMENT**

When required by any provision of this agreement requires a payment to be made to the State, the other party hereto shall within thirty (30) days from receipt of the State's written notification to pay the State for the full cost of repairing any damages to the highway facility which may result from the other party's construction, maintenance, repair or operation of the facility.

Pursuant to Section 791.011, Texas Government Code, any party paying for the performance of governmental functions or services hereunder shall make those payments from current revenues available to the paying party.

### **24. WARRANTS**

The signatories to this agreement warrant that each has the authority to enter into this agreement on behalf of the party represented.

List of Attached Exhibits:

Exhibit A - General Layout

Exhibit B - Approved Construction Plans

Exhibit C - Certificate of Insurance (TxDOT Form 1560)

Exhibit D - Attachment A (FHWA Additional Requirements)

Exhibit E - Contractor Required Minimum Insurance



**IN WITNESS WHEREOF**, the parties have hereunto affixed their signature, the \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and the State on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**STATE OF TEXAS**

Executed and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, and established policies or work programs heretofore approved and authorized by the Texas Transportation Commission.

\_\_\_\_\_  
(Name of other party)

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

By: \_\_\_\_\_  
Director, Maintenance Division

\_\_\_\_\_  
Title

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Agency

\_\_\_\_\_  
Date

**APPROVAL RECOMMENDED:**

\_\_\_\_\_  
Contact Office and Telephone No.

\_\_\_\_\_  
District Engineer

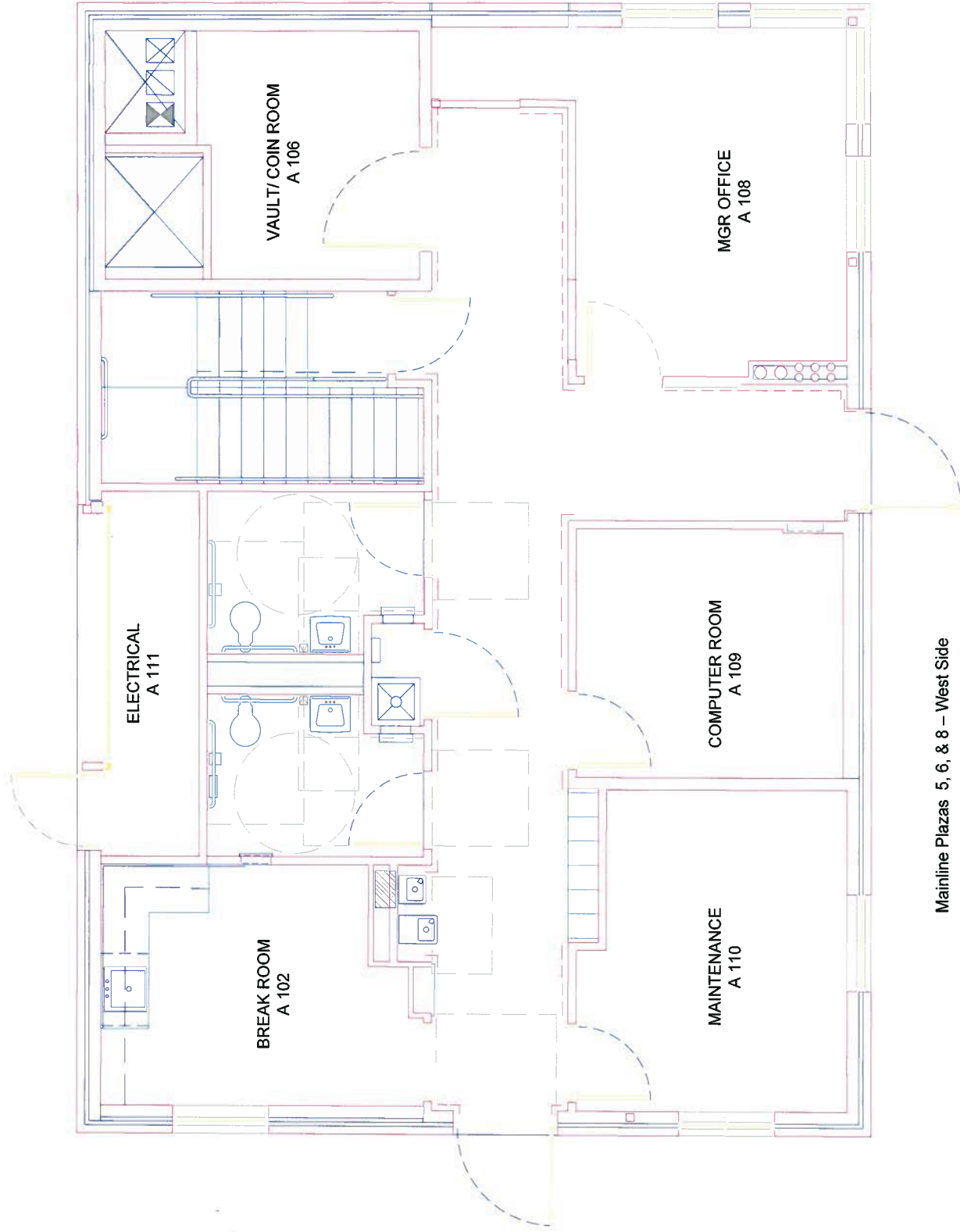
\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

## ATTACHMENT A

Inasmuch as this project is on the Federal-Aid highway system, the following additional requirements as applicable with the Federal Highway Administration's Title 23, Code of Federal Regulations, § 710.

1. Any significant revision in the design or construction of the facility shall receive prior approval by the Texas Department of Transportation subject to concurrency by the FHWA.
2. Any change in the authorized use of airspace shall receive prior approval by the Texas Department of Transportation subject to concurrence by the FHWA.
3. The airspace shall not be transferred, assigned or conveyed to another party without prior Texas Department of Transportation approval subject to concurrence by the FHWA.
4. This agreement will be revocable in the event that the airspace facility ceases to be used or is abandoned.



Mainline Plazas 5, 6, & 8 – West Side

PROJ

FILENAME	DESCRIPTION
060201 ML5,6,8 WEST SIDE BLDGS VSD	<b>DRAFT</b>
DATE	DRAWN BY
1/17/2006	ALLEN BECK

## **EXHIBIT E**

### **CONTRACTOR REQUIRED MINIMUM INSURANCE**

**The following minimum insurance requirements shall be included in each construction contract entered between City and Contractor:**

1. CONTRACTOR must complete and forward the Certificates of Insurance to the City of Austin before construction contracts are executed as verification of coverage required below. CONTRACTOR shall not commence Work until the required insurance is obtained and until such insurance has been reviewed by City. Approval of insurance by City shall not relieve or decrease the liability of CONTRACTOR hereunder and shall not be construed to be a limitation of liability on the part of CONTRACTOR.
2. CONTRACTOR's insurance coverage is to be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better, except for hazardous material insurance which shall be written by companies with A.M. Best ratings of A- or better.
3. If insurance policies are not written for amounts specified below, CONTRACTOR shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.
4. City reserves the right to review the insurance requirements set forth during the effective period of this Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as CONTRACTOR.
5. CONTRACTOR shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.
6. CONTRACTOR shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance.
7. The insurance coverages required under this contract are required minimums and are not intended to limit the responsibility or liability of CONTRACTOR.

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

- a) Waiver of Subrogation endorsement CA 0444;
- b) 30 day Notice of Cancellation endorsement CA 0244; and
- c) Additional Insured endorsement CA 2048.

A minimum combined single limit of \$1,000,000 per occurrence for bodily injury and property damage shall be provided.

**Workers' Compensation and Employers' Liability Insurance.** Coverage shall be consistent with statutory benefits outlined in the Texas Workers' Compensation Act (Section 401). CONTRACTOR shall assure compliance with this Statute by submitting two (2) copies of a standard certificate of coverage (e.g. ACCORD form) to the City for every contractor providing services on the Project as acceptable proof of coverage. The Certificate of Insurance, Section 006509, must be presented as evidence of coverage for CONTRACTOR. The policy shall contain the following endorsements in favor of the City of Austin and the Texas Department of Transportation:

- a) Waiver of Subrogation, form WC 420304; and
- b) 30 day Notice of Cancellation, form WC 420601.

The minimum policy limits for Employers' Liability Insurance coverage shall be as follows:  
\$500,000 bodily injury per accident, \$500,000 bodily injury by disease policy limit and  
\$500,000 bodily injury by disease each employee.

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

- a) Contractual liability coverage for liability assumed under the Contract 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 of Austin and the Texas Department of Transportation listed as additional insureds, 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 of Austin, and the Texas Department of Transportation, endorsement CG 2404.

Provide coverages A&B with minimum limits as follows:

A combined bodily injury and property damage limit of \$1,000,000 per occurrence.

**Professional Liability Insurance.** For Work which requires professional engineering or professional survey services to meet the requirements of the Contract the CONTRACTOR or Subcontractors, responsible for performing the professional services shall provide Professional Liability Insurance with a minimum limit of \$250,000 per claim and in the aggregate to pay on behalf of the assured all sums which the assured shall become legally obligated to pay as damages by reason of any negligent act, error, or omission committed with respect to all professional services provided in due course of the Work of this Contract.

All endorsements naming the City as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall indicate:

1. City of Austin, Att: Brandon Wade – Austin Fire Department P.O. Box 1088, Austin, Texas 78767.

Contact/Help