

EXHIBIT

"A"

INTERLOCAL AGREEMENT FOR FUNDING AND CONSTRUCTION OF RAW WATER INTAKE SCREEN REPLACEMENT

THIS AGREEMENT (the "Agreement") is dated and entered into as of the ____ day of _____, 2020, by the City of Round Rock, Texas ("Round Rock"), a Texas home-rule municipality and Brushy Creek Municipal Utility District ("District"), a conservation and reclamation district of the State of Texas. Round Rock and the District are individually referred to as a "Party" and collectively as the "Parties".

RECITALS

1. The Parties each own and operate water utility systems providing utility service to their respective customers in Williamson County.
2. The Parties each own raw water intake and pumping facilities located at Lake Georgetown.
3. The Parties desire to replace their respective raw water intake screens with new screens for zebra mussel mitigation (the "Screen Replacement Project").
4. The Parties recognize that substantial benefits are derived from joint cooperation with respect to contracting for the Screen Replacement Project under one construction contract.
4. The Parties desire to set forth their agreement regarding the financing, design, construction, ownership and operation of the Screen Replacement Project.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the sufficiency of which are hereby conclusively acknowledged, and subject to the terms and conditions here set forth, the Parties mutually agree as follows:

ARTICLE 1 STATEMENT OF INTENT

Section 1.1 Purpose of this Agreement. The purpose of this Agreement is to set forth the terms and conditions under which the Parties will cooperate with respect to undertaking the Screen Replacement Project by a common contractor in order to achieve project efficiencies and cost savings for their mutual benefit.

ARTICLE II PROJECT COMMITTEE

Section 2.1 Composition of Project Committee. There is hereby created a Project Committee to be composed of not less than one representative appointed by each Party. The following persons are hereby designated as the initial members of the Project Committee: Jeff Bell on behalf of Round Rock; and Joey Miller and Tom Caponi on behalf of the District. Each representative of a Party shall serve at the will of the governing body that the person represents. Upon the death, resignation, or revocation of the power of such representative, the governing body

of the appropriate Party shall promptly appoint a new representative to the Project Committee, and shall immediately notify the other Party of such appointment. Each Party may revise or add additional members to the Project Committee at any time by providing written notice thereof to the other Party.

Section 2.2 Responsibility of Project Committee. The Project Committee shall represent the individual and collective interests of the Parties with respect to the following matters:

- (i) The review and approval of bid documents relating to the Screen Replacement Project;
- (ii) The review of the bid tabulation and qualification of prospective contractors for the Screen Replacement Project;
- (iii) The periodic review of the status of construction of the Screen Replacement Project; and
- (iv) The confirmation of final completion of construction of the Screen Replacement Project; and
- (v) Any other pertinent matters relating to the Screen Replacement Project.

The Project Committee shall meet at regular intervals to review the matters over which it has authority. The Project Committee shall be diligent, prompt and timely in reviewing and acting on matters submitted to it.

ARTICLE III

DESIGN AND CONSTRUCTION OF SCREEN REPLACEMENT PROJECT

Section 3.1 Engineering and Design Matters.

- (a) Walker Partners LLC (the “*Project Engineer*”) shall be the project engineer for the Screen Replacement Project.
- (b) Round Rock shall cause the Project Engineer to prepare construction bid documents for the Screen Replacement Project with the exception of the design documents for the District’s screen replacement, which shall be prepared by the District and furnished to the Project Engineer.
- (c) With respect to the design of the Screen Replacement Project, each Party shall be responsible for all design costs associated with preparation of the design specifications for their respective raw water intake screen facilities.

Section 3.4 Bid Documents.

(a) The Screen Replacement Project shall be undertaken by Round Rock as a single project and shall not be combined with other projects undertaken by Round Rock.

(b) Round Rock shall be identified as the “Owner” for purposes of the construction contract documents related to the Screen Replacement Project (the “*Project Bid Documents*”). The Project Bid Documents shall specifically identify the District as a third party beneficiary with respect to the construction of the raw water intake screen improvements to be undertaken on behalf of the District including, without limitation, specific rights of enforcement of the project contractor’s warranty obligations relating to the District’s screen replacement work.

(c) The Project Bid Documents shall identify the District as a co-beneficiary for the performance bond, and shall provide for assignment of the contractor’s warranty obligations for the District’s screen replacement work from Round Rock to the District.

(d) Both Parties must approve the Project Bid Documents prior to advertisement for bids for construction; provided, however, that each Party shall have sole discretion to determine the specifications applicable to their respective raw water intake screen work. Round Rock shall not modify or amend the Project Bid Documents, as they may relate to the District’s facilities, without the prior approval of the District’s representative on the Project Committee. The Project Bid Documents shall be structured so that the District’s screen replacement work is identified as an alternate bid item.

(e) The Parties agree that the Project Bid Documents shall be prepared so that the costs associated with each Party’s raw water intake screen installation work shall be separately identified, and all pay applications by the contractor shall segregate work relating to each Parties’ screen replacement work from the other Party’s screen replacement work.

Section 3.5 Bid Award.

(a) All construction contracts for the Screen Replacement Project will be competitively bid and awarded by Round Rock in the manner provided by State laws and in accordance with this Section. The bid tabulation and related information for the construction of the Screen Replacement Project, including the proposed contractor to whom the contract shall be awarded, will be submitted to the Project Committee for review and consideration. The Project Committee shall review the bid tabulation for each contract within 10 working days of receipt of the bid tabulation and related bidding materials, and shall provide comments regarding the bids and bidders during such period. In considering whether or not to accept any bid, Round Rock shall consider the advice and recommendations of the Project Committee, but the decision as to the acceptance of any bid shall be within the sole discretion of Round Rock.

(b) The Project Bid Documents shall be structured so that the District’s screen replacement work is identified as an alternate bid item.

(c) In the event that the District objects to the proposed award of the contract by Round Rock prior to formal award of the contract by Round Rock, then the District shall provide written

notice of its objection to Round Rock prior to award of the contract by Round Rock. Under such circumstances and except as otherwise agreed by the Parties, this Agreement shall automatically terminate for all purposes, and the Parties shall be without further obligation to each other. If the District provides timely notice of its objection, then any contract awarded by Round Rock will not include the alternate bid item for the District's work.

(d) In the event of the District elects to not participate in the contract for the Screen Replacement Project, each Party may otherwise proceed with its own zebra mussel control projects, and neither Party shall interfere with the other Party's projects.

Section 3.6 Construction Matters.

(a) **General.** Round Rock shall be responsible for constructing the Screen Replacement Project on behalf of the Parties. In connection with the construction of the Screen Replacement Project, Round Rock shall use good faith and reasonable efforts to ensure that the project contractor completes construction of the Screen Replacement Project in accordance with the plans and specifications and other requirements set forth in the approved bid documents. Round Rock shall commit the same level of attention, diligence and oversight for the District facilities as its own facilities. Notwithstanding the foregoing, the District shall monitor the construction work undertaken by the project contractor relating to the District's raw water intake facilities. In the event the District identifies any defects or concerns, it shall promptly communicate such matters to the Project Committee, and Round Rock will direct the contractor to promptly remedy the work or condition.

(b) **Inspection.** Round Rock and the District will each notify the Project Committee of any construction defects coming to its attention as soon as practicable and in no event later than five calendar days (excluding city holidays) after obtaining knowledge of the defect. Each Party shall have a reasonable right to access and inspect its facilities as construction progresses, and no Party shall interfere with such access or inspection by the other Party or its designated representative(s). Round Rock shall promptly notify the contractor the project contractor of any defects identified by either Party as a result of its inspections.

(c) **Change Orders.** During construction, any change orders related to either Party's screen replacement work shall be subject to the approval of that Party only.

(d) **Insurance.** Round Rock shall require that all workers involved with the installation and construction of the Screen Replacement Project are covered by workers' compensation insurance as required by the laws of the State of Texas. Round Rock shall also require that the contractors procure and maintain comprehensive general liability insurance insuring against the risk of bodily injury, property damage, and personal injury liability occurring from, or arising out of, construction of the Screen Replacement Project, with such insurance in the minimum amounts set forth on **Exhibit "A"** attached hereto. Such insurance coverage shall be maintained in force at least until the completion, inspection and acceptance of the Screen Replacement Project by Round Rock. The District, MRB Engineering, and S. Kanetzky Engineering, LLC shall be named as additional insureds on all such insurance coverages.

Section 3.7 Payment of Costs.

(a) General. All construction contracts and other agreements relating to the construction of the Screen Replacement Project will contain provisions to the effect that the project contractors will look solely to Round Rock for payment of all sums coming due thereunder.

(b) Common Costs. All common costs for the Screen Replacement Project, such as general contractor mobilization costs, shall be shared equally by the Parties.

(c) Separate Costs. All costs to be paid to a contractor for work relating specifically to a Party's raw water intake screen shall be paid by that Party only

(d) Change Orders. Costs for change orders relating to the Screen Replacement Project shall be shared equally if they are common, or allocated to each Party with respect to change costs that relate to that Party's facilities only.

(e) Project Pay Applications. Round Rock shall ensure that each invoice for payment from the Screen Replacement Project contractor shall segregate and separately identify the costs and services relating specifically to a Party's raw water intake screen from the other Party's intake screen and from common costs.

(f) Review by Project Committee. Upon Round Rock's approval of each invoice for Screen Replacement Project costs, Round Rock will transmit a copy of the invoice to the Project Committee. All pay requests related to the Screen Replacement Project shall include the engineer's approval and shall specify the percentage of construction of the project that has been completed. The members of the Project Committee shall have 10 calendar days to furnish comments or objections regarding the proposed invoice(s) for payment. Failure to timely dispute or object to the invoice shall be deemed approval by the Project Committee. Thereafter, Round Rock will promptly pay each invoice for Screen Replacement Project costs as they become due.

(g) Billing Disputes. In the event that any member of the Project Committee disputes an invoice for payment, then the Parties agree that the payment and dispute shall be addressed as follows:

(i) If the dispute relates to the performance of work or services by a contractor or consultant, or a contractor's or consultant's entitlement to payment for work or services, then Round Rock shall exercise all rights to which it is entitled under the construction or consulting contract to resolve the dispute, require correction of the defective work, and otherwise address the concern of the District. The Parties acknowledge and agree that Round Rock may pay an invoice notwithstanding such dispute, but the District shall have the right to seek a determination regarding the matter through the dispute resolution process set forth in this Agreement, and the Parties shall be bound by and act in accordance with such determination.

(ii) In the event that the District disputes an invoice for reasons not related to the performance of work or services or a contractor's or consultant's entitlement to payment, including by way of example whether services or costs included on the invoice should be

borne by both Parties, then the Project Committee shall endeavor in good faith to resolve the matter by unanimous agreement. If the Project Committee cannot unanimously agree to the proper resolution within 10 calendar days, then the invoice shall be paid as received; provided, however, that either Party may subsequently seek a determination of the proper allocation of such costs through the dispute resolution process set forth in this Agreement, and the allocation of costs between the Parties shall be adjusted in accordance with such determination.

Section 3.8 Reimbursement by District. Upon payment of each pay application by Round Rock that includes work for which the District is responsible for payment, the city shall send an invoice for payment to the District identifying all costs under the pay application for which the District is responsible in accordance with the terms of Section 3.7 of this Agreement. The invoice shall include evidence of the Project Engineer's approval of the pay application and evidence of the City's payment. The District shall provide payment of all costs for which it is responsible under this Agreement within 30 days after receipt of each written invoice from the city.

Section 3.9 Acceptance.

(a) Upon completion of construction of each of the Screen Replacement Project, Round Rock shall obtain the approval of the Project Committee prior to acceptance and final payment of retainage to the project contractor.

(b) Round Rock agrees to withhold final payment to the project contractor until the District has received a concurrence letter from its engineer (MRB Engineering) certifying that construction of the project has been completed by the project contractor in accordance with the approved plans, specifications and change orders applicable to the District facilities, and that such facilities have been tested and approved for use in accordance with the approved contract documents.

(c) Within thirty days after substantial completion of construction of the Screen Replacement Project, Round Rock will cause the Project Engineer to provide to each Party a copy of the final as-build drawing markups (redlines) of the completed facilities owned by each Party.

Section 3.10 Minimum Warranties. A minimum one year warranty period from the date of acceptance shall apply to the Screen Replacement Project. Round Rock agrees to cause the project contractor to repair all defects in materials, equipment or workmanship appearing within the warranty period. Upon receipt of written notice from the District of the discovery of any defects during this period, Round Rock shall promptly cause the contractor to remedy the defects and repair or replace any property damaged as a result thereof. Notwithstanding the foregoing, the Project Bid Documents shall designate the District as a third party beneficiary entitled to enforce the contractor's warranty obligations as related to the District facilities, and the performance bond (and any maintenance bond) shall designate the District as a co-beneficiary.

Section 3.11 Ownership. Upon completion of the Screen Replacement Project and final acceptance, each Party shall be deemed the owner all project improvements related to its respective intake facilities without any separate conveyance. Notwithstanding the foregoing, upon request

by the District, Round Rock agrees to execute a bill of sale or other instrument conveying to the District the Screen Replacement Project improvements relating to the District's raw water intake.

Section 3.12 Dispute or Litigation. In the event of any dispute between a project contractor and Round Rock relating to the Screen Replacement Project, or in the event of any claim by or against any third person arising out of or relating to construction of the Screen Replacement Project, the Parties agree as follows:

(i) Round Rock will provide written notice of the details of such dispute or litigation to the District as soon as reasonably practicable, and shall continue to provide timely status reports to the District as such dispute or litigation progresses. The foregoing shall not be construed to require Round Rock to notify the District of claims or notices from subcontractors or others that would not impact the District's share of project costs;

(ii) Round Rock will not initiate litigation against a contractor for any matter that pertains to the Screen Replacement Project or that may impact the project costs for which the District is responsible without first seeking the written consent of the District. If the District withholds its consent and does not participate in the litigation or dispute, then Round Rock shall be entitled to any award or settlement that results from such litigation or dispute;

(iii) If the District joins or intervenes in the lawsuit, it shall pay its costs and expenses, and Round Rock will not be responsible for payment of any such costs and expenses; and

(iv) Round Rock and the District shall use their respective reasonable efforts to resolve the dispute or litigation in a manner that mutually benefits the Parties equally and is mutually beneficial to the common interests of the Parties participating in the litigation;

(v) In the event that the District participates in any litigation or dispute resolution process, then it shall be responsible for its respective legal costs and fees. The District further agrees that it will share the costs and expenses incurred by Round Rock associated with litigation pertaining to the litigation equally; provided, however, that: (i) any costs or expenses that arise out of the gross negligence or willful misconduct of a Party shall be paid only by that Party, and (ii) if the litigation or proceeding relates solely to a Party's intake facilities, then that Party shall provide payment of all costs relating to such;

(vi) Round Rock will not agree to any resolution of the dispute that would increase the project costs for which the District is responsible without the written consent of the District; and

(vii) Any monetary awards, judgments, or settlements received by Round Rock in litigation that relates to the Screen Replacement Project shall be applied against project costs. Each Party shall receive equal credit for the amount of the award, judgment or settlement (unless the proceeding relates solely to one Party's intake screen, in which

event the monetary awards, judgments, or settlements shall be credited between the Parties according to the ownership of the facilities).

Notwithstanding any provision in this Agreement to the contrary, the District shall have the right, as a third party beneficiary, to pursue rights and remedies against the project contract for claims relating to construction of the District's raw water intake facilities, including enforcement of warranty obligations.

ARTICLE IV **OPERATION AND MAINTENANCE**

Section 4.1 Operation and Maintenance. After final completion and acceptance of the Screen Replacement Project, each Party shall own and be responsible for operation and maintenance of its respective facilities.

ARTICLE V **DEFAULT**

Section 5.1 Events of Default.

(a) The failure of either Party to pay when due any sum of money provided herein, provided such failure continues for more than 30 days after written notice that such payment is due.

(b) The breach by either Party of any other covenant, condition, or agreement required to be performed or observed hereunder, if such breach has not been cured within thirty (30) days of deliver of notice of such breach.

Section 5.2 Remedies upon Default. If any event of default shall have occurred and not been cured as aforesaid, the non-breaching Party may give the breaching Party written notice that it has determined to terminate this Agreement, and take whatever action at law or in equity as may appear necessary or desirable to collect any amounts then due, or to recover damages for nonpayment or non-performance of this Agreement.

ARTICLE VI **GENERAL PROVISIONS**

Section 6.1 Participation by the Parties. Each of the Parties represents to the other that it is empowered by law to execute this Agreement and other agreements and documents as are or may hereafter be required to accomplish the same; that its execution of this Agreement has been duly authorized by action of its governing body at a meeting conducted in accordance with the Texas Open Meetings Act, as amended, Chapter 551, Texas Government Code. Each Party agrees to execute the contracts and other agreements as the other Party may reasonably request, and to take and perform such other and further actions and execute such other agreements and documents as may be reasonably required to carry out the provisions of this Agreement.

Section 6.2 Force Majeure. If by reason of "Force Majeure", either Party is rendered unable wholly or in part to carry out its obligations under this Agreement, and if that Party gives notice and full particulars of such "Force Majeure" in writing to the other Party within a reasonable time after occurrence of the event or cause relied on, the obligation of the Party giving such notice will be suspended during the continuance of the inability then claimed, but for no longer period, and such Party will endeavor to remove or overcome such inability with all reasonable dispatch. The term "Force Majeure" as employed herein will mean acts of God, strikes, lockouts or other industrial disturbances, acts of public enemy, orders of any kind of the United States or the State or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, and impossibility by operation of law. It is understood and agreed that the settlement of strikes and lockouts will be entirely within the discretion of the Party having the difficulty and that the above requirement that any Force Majeure will be remedied with all reasonable dispatch will not require the settlement of strikes and lockouts by acceding to the demands of the opposing Party when such settlement is unfavorable in the judgment of the Party having the difficulty.

Section 6.3 Term of Contract. This Agreement shall remain in effect until it terminates according to its terms, or until final completion and acceptance of the Screen Replacement Project, and corresponding payment by the District, whichever is first.

Section 6.4 Amendment and Modification. This Agreement will not be amended except in writing by the authorized representatives of the Parties hereto.

Section 6.5 Addresses and Notice. Unless otherwise provided herein, any notice, communication, request, reply, or advice (collectively, "Notice") hereunder provided or permitted to be given, made, or accepted by any party to the other Party must be in writing and may be given or be served by depositing the same in the United States mail postpaid and registered or certified and addressed to the Party to be notified, with return receipt requested, or by delivering the same to an officer of such Party, or by prepaid telegram when appropriate, addressed to the Party to be notified. Notice deposited in the mail in the manner herein described will be conclusively deemed to be effective, unless otherwise stated herein, from and after the expiration of three days after it is so deposited. Notice given in any other manner will be effective only when received by the Party to be notified. For the purposes of notice, the addresses of the Parties will, until changed as herein provided, be as follows:

If to District:

16318 Great Oaks Drive
Round Rock, Texas 78681
Attn: General Manager

With Copies to the District's Project Committee members.

If to Round Rock:

City Manager
221 E. Main St.
Round Rock, Texas 78664

The Parties hereto will have the right from time to time and at any time to change their respective addresses and each will have the right to specify as its address any other address by at least 15 days' written notice to the other Party.

Section 6.5 Severability. The Parties specifically agree that in case any part of this Agreement or the application of such part to any situation or circumstance should be held to be invalid or unconstitutional, under the laws or constitutions of the State or the United States of America, or in contravention of any such laws or constitutions, such invalidity, unconstitutionality, or contravention will not affect any other part of this Agreement or the application of such part to any other situation or circumstance, and it is intended that this Agreement will be severable and will be construed and applied as if any such invalid or unconstitutional part had not been included herein, and the rights and obligations of the Parties hereto will be construed and remain in force accordingly.

Section 6.6 Venue. All amounts due under this Agreement, including, but not limited to, payments due under this Agreement or damages for the breach of this Agreement, will be paid and be due in Williamson County, Texas. It is specifically agreed among the Parties that Williamson County, Texas, is the place of performance of this Agreement; and in the event that any legal proceeding is brought to enforce this Agreement or any provision hereof, the same will be brought in Williamson County, Texas.

Section 6.7 Agreement for Benefit of the Parties. This Agreement is made for the exclusive benefit of the Parties only, and not for any third party or parties, and such third parties may not assert any rights or remedies under or by reason of this Agreement.

Section 6.8 Succession and Assignment. This Agreement is binding on and inures to the benefit of the Parties hereto and their respective successors, representatives, and assigns. This Agreement may not be assigned by either Party hereto without (i) complying with any provisions relating to the right of a Party to assign this Agreement and (ii) prior written notice to and approval by the other Party, which consent may not be unreasonably withheld or delayed.

Section 6.9 Incorporation of Preamble Recitals. The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this Agreement for all purposes and are adopted as a part of the judgment and findings of the Parties.

Section 6.10 Entire Agreement. This Agreement constitutes the entire agreement among the Parties with respect to the matters described herein.

Section 6.11 Applicable Law. This Agreement will be governed by and construed in accordance with the laws of the State, and the obligations, rights, and remedies of the Parties hereunder will be determined in accordance with such laws without reference to the laws of any other state or jurisdiction, except for applicable federal laws, rules, and regulations.

Section 6.12 Multiple Counterparts. This Agreement may be executed in multiple counterparts, each of which will be an original and all of which together will constitute but one and the same instrument.

IN WITNESS WHEREOF, the Parties hereto acting under authority of their respective governing bodies has caused this Agreement to be duly executed as of the day and year first above written.

**** SIGNATURE PAGES TO FOLLOW ****

CITY OF ROUND ROCK, TEXAS

By: _____
Craig Morgan, Mayor

Date: _____

Attest:

By: _____
Sara White, City Clerk

BRUSHY CREEK MUNICIPAL UTILITY DISTRICT

By: _____
Shean Dalton, President

Date: _____

Attest:

By: _____
Secretary

Exhibit "A"
Minimum Insurance Coverage

ARTICLE 5 - BONDS AND INSURANCE

5.1 Surety and Insurance Companies:

All bonds and insurance required by the Contract Documents shall be obtained from solvent surety or insurance companies that are duly licensed by the State of Texas and authorized to issue bonds or insurance policies for the limits and coverages required by the Contract Documents. The bonds shall be in a form acceptable to the OWNER and shall be issued by a surety which complies with the requirements of Art. 7.19-1, Texas Insurance Code (1997) and which is otherwise acceptable to the OWNER.

OWNER may require the surety to obtain reinsurance for any portion of the risk that exceeds 10% of the surety's capital and surplus. For bonds exceeding \$100,000, the surety must also hold a certificate of authority from the U.S. Secretary of the Treasury or have obtained reinsurance from a reinsurer that is authorized as a reinsurer in Texas and holds a certificate of authority from the U.S. Secretary of the Treasury.

5.2 Workers' Compensation Insurance Coverage:

5.2.1 Definitions:

- .1** Certificate of coverage ("certificate") - A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on the Project, for the duration of the Project.
- .2** Duration of the Project - includes the time from the beginning of the Work on the Project until the CONTRACTOR's/ person's Work on the Project has been completed and accepted by the OWNER.
- .3** Persons providing services on the Project ("subcontractor" herein) - includes all persons or entities performing all or part of the services the CONTRACTOR has undertaken to perform on the Project, regardless of whether that person contracted directly with the CONTRACTOR and regardless of whether that person has employees. This includes, by way of illustration and not of limitation, independent contractors, Subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the Project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the Project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

5.2.2 The CONTRACTOR shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the CONTRACTOR providing services on the Project, for the duration of the Project.

5.2.3 The OWNER will not execute the Contract prior to the CONTRACTOR providing all required certificates of coverage.

5.2.4 If the coverage period shown on the CONTRACTOR's current certificate of coverage ends during the duration of the Project, the CONTRACTOR must, prior to the end of the coverage period, file a new certificate of coverage with the OWNER showing that coverage has been extended.

5.2.5 The CONTRACTOR shall obtain from each person providing services on the Project, and provide to the OWNER:

- .1** a certificate of coverage, prior to that person beginning Work on the Project, so the OWNER will have on file certificates of coverage showing coverage for all persons providing services on the Project; and
- .2** no later than seven (7) days after receipt by the CONTRACTOR, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project.

5.2.6 The CONTRACTOR shall retain all required certificates of coverage for the duration of the Project and for one (1) year thereafter.

5.2.7 The CONTRACTOR shall notify the OWNER in writing by certified mail or personal delivery within ten (10) days after the CONTRACTOR knew or should have known of any change that materially affects the provision of coverage of any person providing services on the Project.

5.2.8 The CONTRACTOR shall post at its office or on each Project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the Project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

5.2.9 The CONTRACTOR shall contractually require each person with whom it contracts to provide services on a Project to:

- .1** provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the Project, for the duration of the Project;
- .2** provide to the CONTRACTOR, prior to that person beginning Work on the Project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the Project, for the duration of the Project;
- .3** provide the CONTRACTOR, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;
- .4** obtain from each other person with whom it contracts, and provide to the CONTRACTOR:
 - a)** a certificate of coverage, prior to the other person beginning Work on the Project; and
 - b)** a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;
- .5** retain all required certificates of coverage on file for the duration of the Project and for one (1) year thereafter;

- .6 notify the OWNER in writing by certified mail or personal delivery within ten (10) days after the person knew or should have known of any change that materially affects the provision of coverage of any person providing services on the Project; and
- .7 contractually require each person with whom it contracts, to perform as required by paragraphs 5.2.9.1 - 5.2.9.7, with the certificates of coverage to be provided to the person for whom they are providing services.

5.2.10 By signing this Contract or providing or causing to be provided a certificate of coverage, the CONTRACTOR is representing to the OWNER that all employees of the CONTRACTOR who will provide services on the Project will be covered by workers' compensation coverage for the duration of the Project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the CONTRACTOR to administrative penalties, criminal penalties, civil penalties, or other civil actions.

5.2.11 The CONTRACTOR's failure to comply with any of these provisions is a breach of Contract by the CONTRACTOR which entitles the OWNER to declare the Contract void if the CONTRACTOR does not remedy the breach within ten (10) days after receipt of notice of breach from the OWNER.

5.3 Contractor Insurance Requirements:

For specific bond requirements and additional insurance requirements, refer to the Supplemental General Conditions.

5.3.1.1 General Requirements:

- .1 CONTRACTOR shall carry insurance in the types and amounts indicated below for the duration of the Contract, which shall include items owned by OWNER in the care, custody and control of CONTRACTOR prior to and during construction and warranty period.
- .2 CONTRACTOR must complete and forward the required Certificates of Insurance to OWNER before the Contract is executed as verification of coverage required below. CONTRACTOR shall not commence Work until the required insurance is obtained and until such insurance has been reviewed by OWNER. Approval of insurance by OWNER shall not relieve or decrease the liability of CONTRACTOR hereunder and shall not be construed to be a limitation of liability on the part of CONTRACTOR. CONTRACTOR must also complete and forward the required Certificates of Insurance to OWNER whenever a previously identified policy period has expired as verification of continuing coverage.
- .3 CONTRACTOR's insurance coverage is to be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better, except for hazardous material insurance which shall be written by companies with A.M. Best ratings of A- or better.
- .4 All endorsements naming the OWNER as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall indicate: City of Round Rock, 221 E. Main St., Round Rock, Texas 78664.
- .5 The "other" insurance clause shall not apply to the OWNER where the OWNER is an additional insured shown on any policy. It is intended that policies required in the Contract,

covering both OWNER and CONTRACTOR, shall be considered primary coverage as applicable.

- .6 If insurance policies are not written for amounts specified below, CONTRACTOR shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.
- .7 OWNER shall be entitled, upon request and without expense, to receive certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.
- .8 OWNER reserves the right to review the insurance requirements set forth during the effective period of this Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by OWNER based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as CONTRACTOR.
- .9 CONTRACTOR shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.
- .10 CONTRACTOR shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance.
- .11 CONTRACTOR shall provide OWNER thirty (30) days written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Contract.
- .12 If OWNER-owned property is being transported or stored off-site by CONTRACTOR, then the appropriate property policy will be endorsed for transit and storage in an amount sufficient to protect OWNER's property.
- .13 The insurance coverages required under this contract are required minimums and are not intended to limit the responsibility or liability of CONTRACTOR.

5.3.1.2 Business Automobile Liability Insurance.

Provide coverage for all owned, non-owned and hired vehicles. The policy shall contain the following endorsements in favor of OWNER:

- a) Waiver of Subrogation endorsement TE 2046A;
- b) 30 day Notice of Cancellation endorsement TE 0202A; and
- c) Additional Insured endorsement TE 9901 B.

Provide coverage in the following types and amounts:

- .1 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.

5.3.1.3 Workers' Compensation and Employers' Liability Insurance:

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

- 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:

- .1 \$100,000 bodily injury per accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee.

5.3.1.4 Commercial General Liability Insurance.

The Policy shall contain the following provisions:

- a) Blanket 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.
- e) Aggregate limits of insurance per project, endorsement CG 2503.
- f) OWNER listed as an additional insured, endorsement CG 2010.
- g) 30 day notice of cancellation in favor of OWNER, endorsement CG 0205.
- h) Waiver of Transfer of Recovery Against Others in favor of OWNER, endorsement CG 2404.

Provide coverages A&B with minimum limits as follows:

- .1 A combined bodily injury and property damage limit of \$500,000 per occurrence.

5.3.1.5 Builders' Risk Insurance.

CONTRACTOR shall maintain Builders' Risk Insurance or Installation Insurance on an all risk physical loss form in the Contract Amount. Coverage shall continue until the Work is accepted by OWNER. OWNER shall be a loss payee on the policy. If off site storage is permitted, coverage shall include transit and storage in an amount sufficient to protect property being transported or stored.

5.4 Bonds:

5.4.1 General.

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

5.4.2 Performance Bond.

- .1 If the Contract Amount exceeds \$100,000, CONTRACTOR shall furnish OWNER with a Performance Bond in the form set out by OWNER.
- .2 If the Contract Amount exceeds \$25,000 but is less than or equal to \$100,000, CONTRACTOR shall furnish OWNER with a Performance Bond in the form set out by OWNER, unless the original Contract Time is 60 Calendar Days/40 Working Days or less, in which case CONTRACTOR can agree to the following terms and conditions for payment in lieu of providing a Performance Bond: no money will be paid to CONTRACTOR until completion and acceptance of the Work by OWNER; CONTRACTOR shall be entitled to receive 95% of the Contract Amount following Final Completion, and the remaining 5% of the Contract Amount following the one year warranty period.
- .3 If the Contract Amount is less than or equal to \$25,000, CONTRACTOR will not be required to furnish a Performance Bond; provided that no money will be paid to CONTRACTOR until completion and acceptance of the Work by OWNER under the following terms and conditions: CONTRACTOR shall be entitled to receive 95% of the Contract Amount following Final Completion, and the remaining 5% of the Contract Amount following the one year warranty period.
- .4 If a Performance Bond is required to be furnished, it shall extend for the one year warranty period.

5.4.3 Payment Bond.

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

completion and acceptance of the Work by OWNER under the terms and conditions specified in paragraph 5.4.2.3.