

CAPITAL IMPROVEMENT AGREEMENT FOR SANITARY SEWER SERVICE

This Capital Improvement Agreement for Sanitary Sewer Service (this “Agreement”) is made effective as of November __, 2020 between the City of Seguin (the “City”), and BITTERBLUE, INC., a Texas corporation (“Developer”) (Developer and the City also referred to individually as “Party” and collectively as the “Parties”).

RECITALS

1. Developer has contracted to acquire an approximate 88.72-acre tract of land in Guadalupe County, Texas (the “Developer Property”), more particularly described on the attached **Exhibit 1**, upon which Developer intends to build single family residential structures and other facilities that would require access to sanitary sewer services.
2. City owns a Wastewater Utility that, with the completion of improvements set out herein, is capable of serving the residential development of approximately 358 homes on the Developer Property as well as the surrounding area with sanitary sewer services.
3. The City and Developer desire to provide a mechanism to ensure that city sanitary sewer services are made available to the Developer Property and to property in the surrounding area.
4. The “Project” contemplated by this Agreement shall consist of a sanitary sewer line running approximately along the line shown on the attached **Exhibit 2**, beginning at an existing manhole located on the parcel labelled as the “Scrappy Development, LLC” tract on **Exhibit 2** and ending at a manhole to be constructed at the north right of way line for Cordova Road, as shown on the attached **Exhibit 2**.

AGREEMENT

The Parties, in consideration of the mutual promises, covenants and agreements set forth in this Agreement, agree and contract as follows:

1. Engagement of Engineer. Developer agrees to contract for and pay for all third-party engineering services reasonably needed for construction of the Project including, without limitation, the preliminary design, final design, bidding, the surveying, construction administration, and warranty inspection phases for the Project. The engineer engaged by Developer (the “Project Engineer”) must be a professional engineer registered in the State of Texas.

2. Oversizing. The City has directed that the size of the eight (8) inch sanitary sewer line proposed by Developer to serve the Project be increased to a 12-inch sewer line, at the City’s cost, for the purpose of facilitating the City’s provision of services in the sewer shed area (and not for the purpose of providing additional capacity to Developer). After determining the costs based on Developer’s needs, Developer shall direct the Project Engineer to prepare a preliminary cost estimate for the oversizing for City approval.

3. Depth and Slope. In order to facilitate service to surrounding areas, City may require that parts of sewer line, as oversized, be installed at a certain depth and slope. Such extra cost caused by the extra depth and slope required by the City will be paid by the City. After determining the costs based on Developer's needs, Developer shall direct the Project Engineer to prepare a preliminary cost estimate for the cost associated with the extra depth and slope required by the City.

4. Engineer's Services. Developer will ensure that all construction work on the Project is performed under the supervision and oversight of the Project Engineer, including the following:

- A. The Project Engineer will coordinate the design and construction of the Project with the City.
- B. The Project Engineer shall be responsible for a survey of the proposed alignment, along with obtaining a metes and bounds description to be used for the easement purchase pursuant to Section 10 below.
- C. The Project Engineer will prepare plans and specifications for the Project in accordance with City design and construction standards and with applicable laws and regulations, and submit them to the City for reasonable review. The Project Engineer will assist Developer in obtaining all necessary permits for the Project from authorities having jurisdiction over the work and City will cooperate to facilitate Developer getting necessary permits.
- D. The Project Engineer will perform periodic inspections of work on the Project in progress at least monthly throughout the construction period, and will coordinate the inspections with the City. The Project Engineer shall also be responsible for inspections required by the Texas Commission on Environmental Quality.
- E. The City's Engineer (the "City Engineer"), or his designee, will conduct inspections to determine the dates of substantial completion and final completion for the Project, and make a written recommendation to the City regarding the acceptance of the Project. All costs associated with any work performed by the City Engineer shall be the sole responsibility of the City.

5. Plans and Plan Approval.

- A. Upon completion of the plans for the Project, prior to seeking a construction contractor, Developer shall provide the City Engineer of a copy of the plans for the Project.
- B. The City Engineer shall have fifteen (15) business days to review the initial plans for the Project and submit its comments to the Project Engineer. In the event that the City Engineer fails to provide its comments within such fifteen- (15-)

business-day period, the City Engineer shall be deemed to have approved the initial plans for the Project.

- C. The Project Engineer shall address all of the City Engineer's comments and submit the revised plans to the City Engineer for final approval.
- D. The City Engineer shall submit any comments, after the initial plan review, within ten (10) business days. In the event the City Engineer fails to provide any comments within such ten- (10-) business-day period, the City Engineer shall be deemed to have approved the final plans. If the City Engineer provides additional comments, (i) the Project Engineer shall re-submit the revised plans again, (ii) the City Engineer shall provide comments (or be deemed to have approved) each iteration of revised plans within ten business days after the latest submittal, and (iii) the review process shall repeat until the plans are finally approved (or deemed approved). The Developer and the City shall each have an obligation to use reasonable, good faith efforts to resolve any concerns raised by the City and approve the revised plans in a timely manner and the City will cooperate therewith.

6. Construction. Developer will ensure that the construction of the Project is performed in accordance with the following:

- A. Developer will obtain bids from at least three contractors and then submit the winning bid to the City Engineer for approval of the contractor, such approval not to be unreasonably withheld, conditioned or delayed;
- B. Developer will require the contractor to obtain a performance bond and a payment bond, on a form reasonably approved by the City, in the full amount of the construction contract from the contractor, naming Developer and the City as obligees.
- C. Developer will require the contractor to maintain commercial general liability insurance coverage for all of its operations and those of its subcontractors, and all persons engaged in work on the site must be covered by workers' compensation insurance as set forth in the attached **Exhibit 3**.
- D. Developer will use commercially reasonable efforts to cause all necessary licenses and permits for the Project to be obtained from authorities having jurisdiction over the work and pay all fees related to such permits.
- E. Developer will require the contractor to construct the Project in a good and workmanlike manner and in accordance with the plans and specifications for the facilities prepared by the Project Engineer and approved by the City Utility Engineer in accordance with this Agreement, and in compliance with all applicable TCEQ regulations.

7. Project Costs.

- A. Developer will be responsible for the costs of the Project, including engineering costs, construction costs, and costs for the acquisition of permanent and temporary sewer line easements (subject to payment by the City of costs under Paragraphs 2, 3 and 7.B, and subject to reimbursement by the City from impact fees under Paragraph 12), and Developer will not request nor require the issuance of bonds or any other form of public indebtedness in financing the Project, provided in no event will Developer be responsible for paying any of the costs incurred by the City in connection with this Agreement, except as specifically set forth in this Agreement.
- B. As the City has requested oversizing of the Project under Paragraph 2 and modification of depth and slope per Paragraph 3, the City will pay to Developer the increase in the cost of the Project associated with the oversizing and changes to depth and slope, consisting of the increase in the construction cost directly associated with the oversizing and changes to depth and slope. The City will make this payment (together with any other cash payments for which the City is responsible, other than the Collected Fees, as defined below) to Developer in cash within thirty (30) days after the later of the following: (i) Acceptance Date (defined below) and (ii) the Project Engineer has submitted to the City an itemization of the increase in costs due to the oversizing and changes to depth and slope.

8. City Inspections and Acceptance. The City agrees, at no cost to Developer, to:

- A. Inspect the construction of the Project as construction progresses;
- B. Inspect the Project promptly upon completion of construction; and
- C. Issue a certificate of acceptance of the Project to Developer after 1) all required inspections for the Project are passed, 2) Developer or contractor submits a one-year warranty against defects in materials and workmanship in the Project executed by the contractor; contractor submits a one-year bond in the amount of 15% of the costs for the project as required by the Seguin Unified Development Code Section 2.9.10.G.2; and 3) the Project Engineer submits as-built drawings for the Project to the City. The date that the City issues a certificate of acceptance will be the "Acceptance Date".

9. Reservation of Wastewater Capacity. The City will reserve, for a period of ten (10) years after the Acceptance Date (the "Reservation Period") sewer capacity for the Developer Property as provided below. The City will issue to the Developer on the Acceptance Date three hundred sixty (360) Living Unit Equivalents (LUE) in accordance with the approved Plat (the "Reserved Capacity"). The Reserved Capacity will be reduced for each LUE used with respect to the Developer Property (but not with respect to wastewater service units from any other facilities or projects), and the resulting Reserved Capacity will be deemed the "Adjusted

Reserved Capacity.” The City acknowledges and agrees that this Agreement constitutes the Developer’s written request, and the City’s final approval of Developer’s written request, for wastewater service as required by Section 4.7 of the City of Seguin Unified Development Code. City hereby approves the Developer’s request without the requirement of any additional fees, conditions, requirements or contingencies except as explicitly set forth in this Agreement, or the impact and connection fees associated with building site development. To the extent that the Developer timely performs all of its obligations under this Agreement, the City shall continue after the expiration of the Reservation Period to (i) recognize the Reserved Capacity, and (ii) provide wastewater service in accordance with the Reserved Capacity.

10. Easements.

- A. The City will assist Developer in the acquisition of all easements needed for the completion of the Project (including without limitation temporary construction easements and permanent sewer easements), but, except with respect to oversizing of the Project, Developer will reimburse the City for the reasonable, out-of-pocket, third party costs actually incurred by City to obtain such easements.
- B. When necessary the City will exercise its eminent domain authority to acquire easements needed for the Project. Developer will pay for all out-of-pocket, third party easement costs associated with these acquisitions actually incurred by the City, which easements shall be treated as a project cost for the Project and reimbursable to Developer.

11. Dedication to Seguin. Upon payment by the City of the oversizing and slope and depth costs, Developer agrees to dedicate, grant and convey to the City all rights, title and interest of Developer in both the off-site and on-site utility infrastructure that Developer constructs under this Agreement, and to dedicate, grant, and convey to the City easements for such utility infrastructure on the Developer Property. Upon written acceptance of off-Site and on-Site utility infrastructure by the City, the infrastructure shall be owned, operated and maintained by the City.

12. Reimbursement of Cost of Project. Other than the cash payment by the City to Developer of the costs under Paragraph 2, 3 and 7.B, the Developer shall be reimbursed for its share of the Project costs through cash payments derived from impact fees assessed against other users of the Project on Developer’s Property (“Collected Fees”). The total Collected Fees shall not exceed, in the aggregate, Developer’s share of the Project cost. Developer understands and agrees that Collected Fees may not fully compensate Developer for Developer’s share of the costs of the Project. Collected Fees will be based upon Section 102-364 of the City’s Ordinance and the impact fee amount based on the existing fee at the time a final plat is recorded. The City shall, semi-annually, pay said Collected Fees to Developer until full reimbursement per this Agreement has occurred.

13. Connection Fee. The City has established a connection fee, separate from the wastewater impact fee, for connections to all of the City sanitary sewers, including the Project. This fee shall not be waived by the City.

14. **Annexation.** The Developer Property has been annexed by the City.

15. **Contingencies.** The Developer Property intended to be served by the Reserved Capacity in the Project is subject to subdivision platting approvals by the City that will affect the use of the Developer Property and the need for utility facilities. Developer shall use commercially reasonable efforts to file all required applications for such approvals and shall pursue the approval of the applications. The City agrees to process these applications in accordance with applicable laws and ordinances and to render decisions on the applications in a timely manner. In the event that a (i) platting approval requested by Developer or a subsequent owner of the Developer Property is finally denied prior to the completion of the Project, or (ii) Developer does not acquire the Developer Property and Developer has not yet executed the construction contract for the Project, Developer or the then owner of the Developer Property may terminate this Agreement by giving written notice to the City. The termination of this Agreement will take effect ten (10) days after the date Developer delivers the notice to the City.

16. **Applicable Laws; Impact Fees.** This Agreement and the provision of wastewater service through the Project are subject to all valid and applicable ordinances, fees (including City wastewater impact fees as specified in Paragraph 12), rules, regulations, and laws of all governmental agencies having lawful jurisdiction over them.

17. **Entire Agreement; Assignment.** This Agreement constitutes the entire agreement between the Parties hereto with respect to the Project and may be amended only by a written document signed by the Parties. This Agreement shall be binding upon the successors and permitted assigns of the Parties. Developer may assign all or part of its rights and/or obligations under this Agreement without the consent of the City, but with written notice of the assignment to the City, to (i) a purchaser of all or part of the Developer Property, (ii) any affiliate of Developer, (iii) any entity that controls, is controlled by or under common control with Developer, (iv) any entity resulting from the merger or consolidation of Developer. Furthermore, Developer may assign its rights to receive the Collected Fees to any third party without the prior consent of the City, but with written notice that shall include a copy of the assignment agreement, to the City. Developer may assign this Agreement to any other entity with prior written notice and approval by the City, which said approval shall not be unreasonably withheld. City may not assign this Agreement or its rights or obligations hereunder without the written consent of Developer.

18. **Authority of Signatories.** Each of the persons executing this Agreement represents that he or she has full power and authority to execute this Agreement on behalf of the Party that person represents.

19. **Notice.** Notices required by this Agreement will be provided by the Parties to one another by certified mail, return receipt requested, or by confirmed facsimile transmission, to the following addresses:

<u>To the City:</u>	City Manager
	City of Seguin

205 N. River Street
Seguin, TX 78155
Fax: (830) 401-2499

To: Developer: BITTERBLUE, INC.
11 Lynn Batts Lane #100
San Antonio, TX 78218
Attn: Derek Milikien

With a copy to: Kruger Carson PLLC
711 Navarro, Ste. 230
San Antonio, TX 78205
Attn: Bradley S. Carson
Fax: 210.853.5969
Email: Brad@krugercarson.com

If a Party changes its address or facsimile number for notice purposes, it will provide written notice of the new address to the other Parties within ten (10) days of the change.

20. **Venue; Governing Law.** This Agreement shall be construed and enforced according to the laws of the State of Texas; and exclusive venue for any legal action arising under this Agreement shall lie in Guadalupe County, Texas.

21. **Third Parties.** It is the express intention of the Parties that the terms and conditions of this Agreement may be enforced by either Party to the Agreement but not by any third party or alleged third-party beneficiary.

22. **Captions.** Captions are included solely for convenience of reference and if there is any conflict between captions and the text of the Agreement, the text shall control.

23. **Litigation Expenses.** The prevailing Party in any legal proceeding brought by a Party to this Agreement against the other Party, for claims under this Agreement, will be entitled to recover court costs and reasonable attorneys' fees from the non-prevailing Party.

24. **Severability.** The provisions of this Agreement are severable, and if any word, phrase, clause, sentence, paragraph, section, or other part of this Agreement or the application thereof to any person or circumstance is ever held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such word, phrase, clause, sentence, paragraph, section, or other part of this Agreement to other persons or circumstances will not be affected thereby and this Agreement will be construed as if such invalid or unconstitutional portion had never been contained therein.

[Signatures on following page]

EXECUTED by the Parties effective as of the date first set forth above.

City of Seguin:

By: _____
Steve Parker, City Manager

Date: _____

Developer:

BITTERBLUE, INC.,
a Texas corporation

By: _____

Name:

Title:

Date: _____

EXHIBIT 1
DEPICTION OF DEVELOPER PROPERTY

[see attached.]

EXHIBIT 2

DEPICTION OF SANITARY SEWER LINE

[see attached.]

EXHIBIT 3

INSURANCE REQUIREMENTS

INSURANCE

SECTION A. Prior to the approval of this contract by the City, CONTRACTOR shall furnish a completed Insurance Certificate to the Purchasing office. The certificate shall be completed by an agent authorized to bind the named underwriter(s) to the coverages, limits, and termination provisions shown thereon, and shall furnish and contain all required information referenced or indicated thereon. CITY SHALL HAVE NO DUTY TO PAY OR PERFORM UNDER THIS CONTRACT UNTIL SUCH CERTIFICATE IS RECEIVED BY THE CITY OF SEGUIN'S PURCHASING DEPARTMENT, and no officer or employee of the City shall have authority to waive this requirement.

INSURANCE COVERAGE REQUIRED

SECTION B. CITY reserves the right to review the insurance requirements of this section during the effective period of the contract and to adjust insurance coverages and their limits when deemed necessary and prudent by CITY, based upon changes in statutory law, court decisions, or the claims history of the industry as well as the CONTRACTOR.

SECTION C. Subject to CONTRACTOR'S right to maintain reasonable deductibles in such amounts as are approved by CITY, CONTRACTOR shall obtain and maintain in full force and effect for the duration of this contract, and any extension hereof, at CONTRACTOR'S sole expense, insurance coverage written by companies approved by the State of Texas and acceptable to CITY, in the following type(s) and amount(s):

<u>Type of Coverage</u>		<u>Limits of Liability</u>	
1.	Workers' Compensation	Statutory	
2.	Employer's Liability	\$100,000	\$300,000
3.	Commercial General (public) Liability		
a.	Bodily Injury (ea.oc.)	\$1,000,000	\$3,000,000
b.	Property Damage (Incl. Contractual Coverage of the Contractor's Indemnity under Section D hereof)	\$100,000 (ea. oc.)	\$300,000 (aggreg.)
4.	Comprehensive	Automobile	Liability
a.	Bodily Injury	\$300,000 (ea. pers.)	\$1,000,000 (ea. oc.)
b.	Property Damage	\$300,000(ea. oc.)	
5.	Owner's Commercial General Liability Insurance Policy:		
	The Contract shall obtain at his expense an Owner's Protective Liability Insurance Policy naming the <u>City of Seguin and its employees</u> as insured with the following limits.		

- a. Bodily Injury \$1,000,000 (ea. pers.) \$1,000,000 (ea. oc.)

6. Builder's Risk Insurance:

The Contractor shall obtain at his expense Builder's Risk Insurance against the perils of fire, lightning, windstorm, hurricane, hail, explosion, riot, civil commotion, smoke, aircraft, land vehicles, vandalism and malicious mischief in the amount of insurance equal at all times to the insurable value of materials delivered and labor performed. The policy issued in the name of the Contractor shall also name his Subcontractors and the Owner as additional insured, as their respective interests may appear. The policy shall have endorsements as follows:

"This insurance shall be specific as to coverage and not considered as contributing insurance with any permanent insurance maintained on the present premises."

All costs for the above specified insurance shall be borne by the Contractor. Insurance Requirement Affidavit shall be submitted with bid.

The Contractor shall require all subcontractors engaged to do work in connection with this contract to carry Public Liability and Property Damage Insurance in amounts not less than specified above.

ADDITIONAL POLICY ENDORSEMENTS

CITY shall be entitled, upon request, and without expense, to receive copies of the policies and all endorsements thereto and may make any reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any of such policies). Upon such request by CITY, CONTRACTOR shall exercise reasonable efforts to accomplish such changes in policy coverages, and shall pay the cost thereof.

REQUIRED PROVISIONS

CONTRACTOR agrees with respect to the above required insurance, all insurance contracts and certificate(s) of insurance will contain and state, in writing, on the certificate or its attachment, the following required provisions.

- a. Name, the CITY OF SEGUIN and its officers, employees, and elected representatives as additional insured(s), (as the interest of each insured may appear) to all applicable coverage.
- b. Provide for 30 days' notice to City for cancellation, non-renewal, or material change.
- c. Provide for notice to City at the address shown below by registered mail.
- d. CONTRACTOR agrees to waive subrogation against the City of Seguin, its officers, employees, and elected representatives for injuries, including death, property damage, or any other loss to the extent same may be covered by the proceeds of insurance.
- e. Provide that all provisions of this agreement concerning liability, duty, and standard of care together shall be underwritten by contractual liability coverage sufficient to include such obligations within applicable policies.
- f. For coverages that are **only** available with claims made policies, the required period of coverage will be determined by the following formula: Continuous coverage for the life of the contract,

plus one year (to provide coverage for the warranty period) and an extended discovery period for a minimum of five years which shall begin at the end of the warranty period.

NOTICES

CONTRACTOR shall notify CITY in the event of any change in coverage and shall give such notices not less than fifteen (15) days prior to the change, which notice must be accompanied by a replacement CERTIFICATE OF INSURANCE. All notices shall be given to CITY at the following address:

Purchasing Department
City of Seguin
P.O. Box 591
Seguin, TX 78156

SECTION D. INDEMNIFICATION. The CONTRACTOR agrees to indemnify and save harmless the CITY OF SEGUIN from any and all claims, causes of action, and damages of every kind, for injury to or death of any person and damages to property arising out of the construction of said improvements or the operations embraced by this contract, and including acts or omissions of the CITY OF SEGUIN in connection with said construction.

SECTION E. Approval, disapproval, or failure to act by CITY regarding any insurance supplied by CONTRACTOR shall not relieve CONTRACTOR of full responsibility or liability for damages and accidents as set forth in the contract documents. Neither shall the bankruptcy, insolvency, or denial of liability by the insurance company exonerate CONTRACTOR from liability.

WORKERS COMPENSATION INSURANCE
for
Building or Construction Projects and Services Provided at City-Owned Facilities

TEXAS WORKERS' COMPENSATION COMMISSION RULE 28, §110.110

As required by the Texas Workers' Compensation Rule 28, §110.110, the Contractor shall accept the following definitions and comply with the following provisions:

Workers' Compensation Insurance Coverage

A. 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 (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a 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 City of Seguin.
3. Persons providing services on the project ("subcontractor" in §406.096) - 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, without 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.

- B. 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.
- C. The Contractor must provide a certificate of coverage to the City of Seguin prior to being awarded the contract.
- D. 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 City of Seguin showing that coverage has been extended.
- E. The Contractor shall obtain from each person providing services on a project, and provide to the City of Seguin:

1. A certificate of coverage, prior to that person beginning work on the project, so the City of Seguin 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.
- F. The Contractor shall retain all required certificates of coverage for the duration of the project and for one (1) year thereafter.
- G. The Contractor shall notify the City of Seguin 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.
- H. The Contractor shall post 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.
- I. 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 City of Seguin 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 (1) - (7), with the certificates of coverage to be provided to the person for whom they are providing services.
- J. By signing this contract or providing or causing to be provided a certificate of coverage, the Contractor is representing to the City of Seguin 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.
- K. The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor which entitles the City of Seguin 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 City of Seguin.

As defined by the Texas Labor Code, Chapter 269, Section 406.096(e), building or construction is defined as:

1. Erecting or preparing to erect a structure, including a building, bridge, roadway, public utility facility, or related appurtenance;
2. Remodeling, extending, repairing, or demolishing a structure; or
3. Otherwise improving real property or an appurtenance to real property through similar activities.

The employment of a maintenance employee who is not engaging in building or construction as the employer's primary business does not constitute engaging in building or construction.

**CITY OF SEGUIN
INSURANCE REQUIREMENT AFFIDAVIT**

**To be Completed By Appropriate Insurance Agent
and submitted with bid proposal.**

I, the undersigned Agent/Broker, certify that the insurance requirements contained in this bid document have been reviewed by me with the below identified Contractor. If the below identified Contractor is awarded this contract by the City of Seguin, I will be able to, within ten (10) days after being notified of such award, furnish a valid insurance certificate to the City meeting all of the requirements defined in this bid.

Agent (Signature)

Agent (Print)

Name of Agency/Broker:

Address of Agent/Broker:

City/State/Zip:

Agent/Broker Telephone #: (_____) _____

CONTRACTOR'S NAME:

(Print or Type)

NOTE TO AGENT/BROKER

If this time requirement is not met, the City has the right to invalidate the bid award and award the contract to the next lowest bidder meeting specifications. Should an awarded bid be invalidated the Contractor may be liable for breach of contract. If you have any questions concerning these requirements, please contact the Purchasing Manager for the City of Seguin at (830) 401-2451.

Performance Bond

STATE OF _____

COUNTY OF _____

We, _____ (Contractor name) , _____ (address), as Principal, and _____ (bond company name), as Surety, are held and firmly bound unto the City of Seguin, Texas, as Owner, in the penal sum of _____ dollars (\$ _____), for the payment of which the Principal and Surety bind themselves and their heirs, administrators, executors, successors and assigns, jointly and severally, by this bond:

The Principal has entered into a written Contract with the Owner dated _____ for the _____ ("Project"), which is fully incorporated into this bond by reference.

The condition of this obligation is that if the Principal faithfully and promptly performs all work for the Project in accordance with the Contract Documents, and faithfully and promptly observes and performs all of its covenants, conditions, duties and obligations under the Contract Documents according to their true intent and meaning, then this obligation will be satisfied; otherwise it will remain in full force and effect.

If the Owner declares the Principal to be in default under the Contract, the Surety agrees to either 1) promptly remedy the default, or 2) faithfully and promptly perform and complete the Project in accordance with the Contract Documents.

The Surety, for value received, agrees that no modification, change order, extension of time, amendment or addition to the Contract, or to the plans, specifications, drawings or other Contract Documents, will in any way affect the Surety's obligation on this bond, and the Surety waives notice of any such modification, change order, extension of time, amendment or addition.

The Surety certifies that it is authorized and admitted to write surety bonds in Texas. If this bond exceeds \$100,000.00 the surety certifies that it either 1) holds a certificate of authority from the United States Secretary of the Treasury to qualify as a surety on obligations permitted or required under federal law, or 2) has obtained qualified reinsurance for any liability in excess of \$100,000.00 from a reinsurer that is authorized and admitted as a reinsurer in the State of Texas, and is the holder of a certificate of authority from the United States Secretary of the Treasury to qualify as a surety or reinsurer on obligations permitted or required under federal law. This bond is governed by Chapter 2253 of the Texas Government Code, and it is provided solely for the protection of the Owner.

This bond is filed with the Owner in Guadalupe County, Texas, and the Principal and Surety agree that mandatory venue for any legal action filed upon this bond is in the District Courts of Guadalupe County, Texas.

Executed and sealed by the Principal and Surety
on_____.

_____ Principal	_____ Surety
By: _____	By:_____
Title:_____	Title:_____
Address:_____	Address:_____
_____	_____
_____	_____
	Telephone Number:_____
	Facsimile Number:_____

(SEAL)

(SEAL)

The name and address of the Resident Agent of Surety is:

THIS BOND MUST BE ISSUED AFTER EXECUTION OF OWNER-CONTRACTOR AGREEMENT BY BOTH PARTIES. ATTACH ORIGINAL POWER OF ATTORNEY FOR THE SURETY’S REPRESENTATIVE TO THIS BOND.

THE ADDRESS OF THE SURETY COMPANY TO WHICH ANY NOTICE OF CLAIM SHOULD BE SENT MAY BE OBTAINED FROM THE TEXAS DEPARTMENT OF INSURANCE BY CALLING 1-800-252-3439.

Payment Bond

STATE OF _____

COUNTY OF _____

_____(Contractor name), of
_____(address),
as Principal, and _____
(bond company name), as Surety, are held and firmly bound unto the City of Seguin,
Texas, as Owner, in the penal sum of _____ dollars (\$
_____) for the payment of which the Principal and Surety bind themselves and
their heirs, administrators, executors, successors and assigns, jointly and severally, by
this bond.

The Principal has entered into a Contract with the Owner dated _____
for the _____ ("Project"), which is fully incorporated into
this bond by reference.

The condition of this obligation is that if the Principal pays all persons who supply
public work labor or material for the Project, then this obligation will be satisfied;
otherwise this bond will remain in full force and effect.

This bond is provided under the provisions of Chapter 2253 of the Texas
Government Code, as amended and all liabilities on this bond shall be determined in
accordance with the provisions of that statute to the same extent as if it were copied at
length in this document.

The Surety, for value received, stipulates and agrees that no change,
extension of time, alteration or addition to the terms of the Contract, or the plans,
specifications, drawings or other Contract Documents, or to the work performed under
the Contract Documents, shall in any way affect its obligation on this bond, and the
Surety waives notice of any such change, extension of time, alteration or addition.

The Surety certifies that it is authorized and admitted to write surety bonds in
Texas. If this bond exceeds \$100,000.00 the surety certifies that it either 1) holds a
certificate of authority from the United States Secretary of the Treasury to qualify as a
surety on obligations permitted or required under federal law, or 2) has obtained
qualified reinsurance for any liability in excess of \$100,000.00 from a reinsurer that is
authorized and admitted as a reinsurer in the State of Texas, and is the holder of a
certificate of authority from the United States Secretary of the Treasury to qualify as a
surety or reinsurer on obligations permitted or required under federal law. This bond is
governed by Chapter 2253 of the Texas Government Code, and it is provided solely for
the protection of the Owner.

Mandatory venue for any legal action filed upon this bond is in the District Courts of Guadalupe County, Texas.

Executed and sealed by the Principal and Surety on_____.

Principal	Surety
By: _____	By: _____
Title: _____	Title: _____
Address: _____	Address: _____
_____	_____
_____	_____
	Telephone Number: _____
	Facsimile Number: _____
(SEAL)	(SEAL)

The name and address of the Resident Agent of the Surety is:

THIS BOND MUST BE ISSUED AFTER EXECUTION OF OWNER-CONTRACTOR AGREEMENT BY BOTH PARTIES. ATTACH ORIGINAL POWER OF ATTORNEY FOR THE SURETY’S REPRESENTATIVE TO THIS BOND.

THE ADDRESS OF THE SURETY COMPANY TO WHICH ANY NOTICE OF CLAIM SHOULD BE SENT MAY BE OBTAINED FROM THE TEXAS DEPARTMENT OF INSURANCE BY CALLING 1-800-252-3439.