

E. 5<sup>th</sup> STREET CHILLED WATER LINE PROJECT  
HEALTH & SAFETY  
PURCHASING AFFIDAVIT

STATE OF TEXAS                }  
  }  
COUNTY OF TRAVIS         }

BEFORE ME, the undersigned authority, personally appeared Howard Lazarus, P.E., who being by me first duly sworn, upon oath depose and stated: “My name is Howard Lazarus. I am the Director of the City of Austin’s Public Works Department. I am over eighteen (18) years of age and I have personal knowledge of the facts set forth below and am competent and authorized to make this affidavit.

The City of Austin’s Public Works Department manages the City’s Capital Improvements Program, (the “Program”), including the E. 5<sup>th</sup> Street Chilled Water Line Project, a Project sponsored by Austin Energy. The City, through the Program, is currently providing essential construction management services for the citizens of the City of Austin. In doing so, the City is responsible for the health, safety and security of hundreds of thousands of citizens of the City.

In 2015, City staff encountered unforeseen conditions on the Project in the form of the disclosure of defective welds throughout the 2,000 linear feet of 30” chilled water pressure main that compromise the integrity of the line and constitute defective work which must be corrected. The contractor performed the defective welds and the testing consultant repeatedly approved the welds as the pipe was placed in a tunnel at a depth of 35 to 40 feet underground.

Further investigation and engineering analysis has led to the conclusion that the defective welds present the possibility of catastrophic pipe failure, which may endanger not only the other public improvements in the E. 5<sup>th</sup> Street right-of-way, but also the adjacent private properties. As such, the conditions on the Project constitute a present danger to the public health and safety of the citizens of Austin and to the travelling public.

The contractor has agreed to correct the defective welds and to pay one half of the cost. The consultant had agreed to pay the other half and then reneged. The City has entered into a Reservation of Rights Agreement with the contractor to proceed with the correction of the defective work with the City agreeing to pay the other half in the lump sum amount of \$1,500,000.00. An additional \$1,500,000.00 in Project funding is required to cover the cost of correcting the defective work, pending the recovery of the City’s damages against the consultant. The additional funding will cause the contract amount to temporarily exceed the 25 percent threshold for change orders.

Until the Project is completed, the City will be faced with a continuing probability of health and safety related concerns. The situation described above requires immediate action to complete the scope of work on the Project on a reasonable schedule and to

relieve the health and safety necessity of the municipality. The Public Works Department is satisfied that the quality of the completed work will adequately provide for the health and safety of the public. It is presently contemplated that the Project cannot be completed for an amount under the City Manager's purchasing authority pursuant to Article VII, Section 15, of the City Charter, and, accordingly, the additional contract funding for the Project will be presented to City Council for approval.

As the affiant, I am familiar with state and local laws relating to competition and bidding requirements and realize that the willful violations of these laws can invoke criminal sanctions. I understand further that the Charter of the City of Austin does not exempt emergency or health and safety purchases from the requirement of competition. However, I believe that the time required to package separate bid documents, advertise for contractors, award a contract, and execute a contract, would place the municipality's residents or property in further danger and that my fiduciary responsibilities to the City of Austin requires that the purchase of (item/service) be made as soon as reasonably possible, if not immediately. This procurement is necessary to protect or preserve the public health or safety of the municipality in accordance with the provisions of Texas Local Government Code Section 252.022(a)(2). "Further Affiant sayeth not."

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Howard Lazarus, P.E., Director  
City of Austin Public Works Department

STATE OF TEXAS            }  
  }  
COUNTY OF TRAVIS        }

BEFORE ME, the undersigned notary public, personally appeared Howard Lazarus, known to me personally or on the basis to legally sufficient identification to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purpose and consideration therein expressed, in the capacity therein stated, and that each and every statement therein is within his knowledge and is true and correct.

Given under my hand and seal of office on the \_\_\_\_ day of August, 2015.

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF TEXAS

\_\_\_\_\_  
Printed Name of Notary

My Commission Expires: \_\_\_\_\_