

CONTRACT DOCUMENTS

CITY OF WEST UNIVERSITY PLACE

CONTRACT FOR

**JENNIE E. HUGHES PARK
IMPROVEMENTS**



APRIL 2018



WHITE OAK STUDIO
LANDSCAPE ARCHITECTURE

White Oak Studio Landscape Architecture
611 West 22nd Street, Suite 202
Houston, Texas 77008
(713) 682-2638



3/6/18

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BIDDING REQUIREMENTS

NOTICE TO BIDDERS

The City of West University Place is requesting bids for park improvements at Jennie E. Hughes Park, 6446 Sewanee Avenue, West University Place, Texas 77005. The Project includes limited concrete removal and tree removal, site utilities, earthwork, drainage, open-air pavilion, masonry, hardscape improvements, water feature, fencing, landscape lighting, planting and landscape irrigation.

Bid Deadline: Bids must be sealed and marked “Jennie E. Hughes Park Improvements” and delivered to the City Secretary’s office located at 3800 University Boulevard, West University Place, Texas, to arrive no later than **10:00 AM**, local time, on **Thursday April 19, 2018**. Bids received after that time will not be accepted. Bids will be opened publicly and read aloud at **10:05 AM on Thursday April 19, 2018** in the Bill Watson Conference Room located at 3800 University Boulevard, West University Place, Texas.

A **Pre-Bid conference** will be held at **10:00 AM**, local time, **Tuesday, April 10, 2018** in the Bill Watson Conference Room located at 3800 University Boulevard, West University Place, Texas. Attendance at the pre-bid conference is not mandatory.

Bid Security in the amount of five (5) percent of the Base Bid must accompany each bid.

It shall be each bidder’s sole responsibility to inspect the site of the work and to inform himself regarding all local conditions under which the work is to be done. It shall be understood and agreed that all such factors have been thoroughly investigated and considered in the preparation of the bid submitted.

Documents Available: Drawings, specifications and bid documents may be obtained by bidders by download at www.civcastusa.com, available **Wednesday, March 28, 2018**. Addenda will be posted there as required. Drawings, specifications and addenda may be reviewed informally by appointment at the office of the Consultant: White Oak Studio 611 West 22nd Street, Suite 202, Houston, TX 77008 (713/682-2638).

Deadline for Request for Information from bidders will be **noon, Monday, April 16, 2018**. Responses will be considered addenda to the contract and will be issued no later than 5:00 p.m. Tuesday April 17, 2018.

Upon consideration of the proposals the Owner plans to award a Contract; however the Owner reserves the right to reject any and all bids, to waive any and all formalities and technicalities, and to accept any bid which it deems advantageous to the Owner. Each bidder agrees to waive any claim it

has or may have against the Owner, the Consultant, and their respective employees, arising out of or in connection with the administration, evaluation or recommendation of any bid.

Wage Rate Requirements: Attention is called to the fact that not less than the federally determined prevailing (Davis-Bacon and Related Acts) wage rate contained in the contract documents, must be paid on this project. In addition, the successful bidder must ensure that employees and applicants for employment are not discriminated against because of race, color, religion, sex age or national origin.

Bond Requirements: The successful bidder will be required to furnish a performance bond and payment bond in an amount of 100% of the total contract price. The successful bidder will also be required to furnish a maintenance bond in an amount of 100% of the final contract total price, good for one year after final acceptance of the project by the owner.

Bidder Registration: Bidders are required to register with the City of West University Place Public Works Department by completing the required 'Building-Contractor Registration' form, available online, and paying the related registration fee.

Building Permit: Approved building permit will be on file with the City of West University Place Public Works Department. Successful bidder will be required to obtain the permit. Permit fees will be waived.

Pre-Construction Notification to Neighbors: Successful bidder is required to provide information to the City for pre-construction notification to neighbors. Provide 8 envelopes, stamped, addressed to surrounding neighbors (3 in front, 3 behind and 1 each side of the site) with Contractor's return address, each containing a copy of the site plan. Also include a similar envelope, addressed to CenterPoint Energy, Attn: Code Violation Dept. 4300 Bissonnet, Bellaire, TX 77401. Do not seal; the envelopes will be mailed by the City.

Post-Construction Survey Required: Contractor is required to provide a post-construction topographic survey documenting compliance with the Drawings. Refer to the Drawings for requirements.

[End of Notice to Bidders]

INSTRUCTIONS TO BIDDERS

Owner: City of West University Place, Texas
Owner's Office: City Secretary's Office, 3800 University Blvd.
West University Place, Texas 77005
Phone: 713-662-5813
Contract: Jennie E. Hughes Park Improvements
Contract Number: PR18-001
Contract Location: 6446 Sewanee Ave. West University Place, TX 77005
Contract Officer: Kevin Nowak, PLA. White Oak Studio Landscape Architecture

IN GENERAL: The Owner seeks sealed bids for the Contract. See the Notice to Bidders regarding Pre-Bid Submissions (if any), deadlines, bid opening, and obtaining Contract Documents.

CONDITIONS OF WORK: Each bidder shall fully inform itself of the Contract and the conditions under which the work will be performed. Bidders shall inspect the project site prior to bidding and shall thoroughly familiarize themselves with the Contract Documents. Failure to do so will not relieve a successful bidder of the obligation to perform in accordance with the Contract Documents. The accuracy or completeness of any information provided by the Owner cannot be guaranteed, unless otherwise stated in writing. In any event, the interpretation of all such information must be made by the bidder.

INTERPRETATION OF CONTRACT DOCUMENTS: Bidders desiring additional information or clarification of Contract Documents should request it on www.civcastusa.com. (*Note:* The Notice to Bidders may require delivery of a Pre-Bid Submission form with a separate deadline, which shall apply in lieu of the request mentioned in this paragraph.) Answers to such requests are ineffective unless given in a written addendum issued by the Contract Officer on www.civcastusa.com. If the bidder finds discrepancies in, or omissions from, the Contract Documents, or has any doubt as to their meaning, the bidder shall notify the Contract Officer on www.civcastusa.com, so that a written addendum may be issued. It is the responsibility of each bidder to register on www.civcastusa.com to be notified by email of all addenda. It is the responsibility of each bidder to inquire and make sure it has received all such addenda. A complete file on all addenda will be maintained at the Owner's Office.

PREPARATION OF BIDS: Each bid must be submitted upon the Official Bid Form. All blank spaces shall be filled in and signed as required (see "Signatures," below). In case of discrepancy between a written amount and figures, the written amount governs. In case of discrepancy between a unit price and any extension or total, the unit price governs. A bid may be deemed irregular if it contains any omission, alteration, erasure, addition, or change of any nature in the Official Bid Form, or if it does not include prices for every required bid item and alternate. Any bid in which the prices are obviously unbalanced, or which fails in any manner to conform to the bidding procedures shall also be considered irregular. Each bid must be accompanied by all items mentioned in the Official Bid Form. The Owner requests each bidder to include a photocopy of its bid in the sealed envelope with the original bid; the photocopy should be plainly marked "COPY."

TAX EXEMPTION: The Owner claims tax exemption to the full extent allowed by law for political subdivisions of the State of Texas (of the same type). See General Conditions, Taxes. Bidders should prepare their bids accordingly.

DELIVERY OF BIDS; ENVELOPES: It is the bidder's responsibility to deliver its bid in accordance with the Notice to Bidders. Each bid package must be enclosed in a sealed, opaque envelope clearly marked with the notation "Bid Enclosed," and further identified by the name of the Contract, 'Jennie E. Hughes Park Improvements'. Bids not physically received in this form, at the location specified in the Notice to Bidders, by the prescribed deadline are irregular.

BIDDER'S QUALIFICATIONS: Each bidder shall provide complete and correct information regarding its qualifications, as may be requested in the Pre-Bid Submission (if any) and the Contract Documents. Each bidder shall promptly provide additional information requested by the Contract Officer which bears upon the bidder's qualifications. Special qualification criteria (if any) for this Contract are stated in the Qualification Statement form included in the Contract Documents. The Owner reserves the rights to determine which bidders are qualified for this Contract and to waive any failure to meet special qualification criteria (if any).

BID SECURITY; BONDS; SURETIES: Each bid must be accompanied by the bid security (if any) specified in the Contract Documents. (*Note:* Performance bond in the amount of 100% of the total Contract Price and payment bond in the amount of 100% of the total Contract Price are all required, unless otherwise specified in the Contract Documents.) Each surety (on each bond, including bid bonds) must be licensed to transact surety business in Texas and must either: (i) have an underwriting limitation of at least 150% of the Greatest Amount Bid (GAB), according to the most recently-published list of sureties acceptable on federal Contracts (e.g, Treasury Department, Circular No. 570), or (ii) have capital and surplus equal to at least 10 times the GAB, according to the State Board of Insurance, as provided in Section 7.19-1(b) of the Texas Insurance Code, or (iii) have submitted, together with its sealed bid, written certification of reinsurance up to the full level as contemplated by that Section 7.19-1(b). Each surety must also comply with other applicable requirements of state law, including Section 7.19-1(c), as applicable.

SIGNATURES: Bids, contracts and bonds must be formally signed and attested by duly authorized persons. Proofs of insurance must be signed by a duly authorized agent of each insurance company shown. Documents for a partnership must be signed by one of the partners or a duly authorized agent. Documents for a corporation or LLC must be signed by an authorized officer or agent of the firm, and there must be a formal seal (if provided by law) and attestation. Documents for a sole proprietorship must be signed by the proprietor or duly authorized agent and must clearly set out the name under which the proprietor is conducting business. Supporting documents (such as resolutions and powers of attorney) shall be submitted in a form satisfactory to the Contract Officer, upon request.

CONFLICT OF INTEREST DISCLOSURE: Pursuant to Section 176.006, Texas Local Government Code, a Bidder is required to file a conflict of interest questionnaire, if certain specified conflicts exist. It is the Bidder's responsibility to comply with Section 176.006, Texas Local Government Code, if applicable. Forms for compliance may be found at www.ethics.state.tx.us.

CERTIFICATE OF INTERESTED PARTIES: Pursuant to Section 2252.908 of the Government Code, the bidder is required to file Texas Ethics Commission Form 1295 with the Contract Documents. It is the Bidder's responsibility to comply with Section 2252.908 of the Government Code. Form 1295 is available on the Texas Ethic Commission's website at www.ethics.state.tx.us . Once the bidder is notified of the award of contract, the form must be completed on-line. Use Contract No. referenced on Page No. 1 of the Instructions to Bidders. Once the required information is entered, a PDF of the completed Form 1295 is generated with a unique certification number. Print a copy of the completed Form 1295, have it signed by an authorized agent, notarized and then file it with the Owner.

AWARD OF CONTRACT: Unless all bids are rejected, the Owner reserves the right to award the contract at any time during the Firm Bid Period. If no award is made within such Firm Bid Period, a bidder may withdraw its bid, without prejudice, by submitting a written request for its withdrawal to the Owner. The Owner reserves the right to reject any or all bids and to waive bid irregularities as the interest of the Owner may require. The Owner may award on any base bid, any alternate or any combination thereof. In the case of high technology procurements and other procurements, the Owner reserves the right to conduct discussions to the full extent allowed by Section 252.042, Texas Local Government Code or other law.

ADDITIONAL INFORMATION: All requests for additional information shall be directed to the Contract Officer.

[End of Instructions to Bidders]

QUALIFICATION STATEMENT

Owner: City of West University Place, Texas

Project: Jennie E. Hughes Park Improvements

Similar Work (definition): Public park site improvements including: custom open-air structures, custom metal fabrication, masonry, concrete and brick walks, water feature, planting and irrigation.

(NOTE: If any bid is to be made jointly by two or more entities, each entity must complete a separate statement.)

The undersigned Bidder certifies the following, under oath:

A. GENERAL

Full Legal Name of Bidder:

Check one: () Partnership () Joint Venture () Corporation
() Other: _____

Address:

Telephone:

Fax:

B. ORGANIZATIONAL BACKGROUND

1. If the Bidder is a PARTNERSHIP or JOINT VENTURE

a. Date of organization:

b. State whether partnership is general or limited:

c. List all general partners and any limited partners owning 10% or more:

<i>Name</i>	<i>Address</i>	<i>Phone</i>	<i>% owned</i>
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2. If Bidder is a CORPORATION or LLC

a. Date of incorporation or formation:

- b. State of incorporation or formation:
- c. Charter/permit number:
- d. Principal place(s) of business:
- e. Other state(s) in which firm is authorized to do business:

f. Officers

President:

Vice President(s):

Secretary:

Treasurer:

Other:

g. List all persons and entities owning 10% or more of the firm:

<i>Name</i>	<i>Address</i>	<i>Telephone</i>	<i>%</i>
<i>owned</i>			

3. If the Bidder is *other than a partnership, LLC or corporation*:

a. Describe the organization:

b. List all principals of the organization:

<i>Name</i>	<i>Address</i>	<i>Telephone</i>	<i>Title</i>
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c. Date and manner of the organization's formation:

4. How long has the Bidder done business under its present name and at its present address?

a. Under what other or former names and addresses has the Bidder operated in the past five years?

Name:

Address:

Years:

b. Has the Bidder ever defaulted, declared bankruptcy, or undergone reorganization procedures?

Yes No

If "yes", attach details: list of creditors, amounts owed each, amounts repaid, resolution of proceedings, etc.

c. Has a predecessor of the Bidder defaulted, declared bankruptcy, or undergone reorganization procedures?

Yes No

If "yes", attach details, as above.

d. Does the Bidder presently have outstanding claims pending against it?

Yes No

If "yes", attach details, as above.

e. Has the Bidder been involved in litigation within the past five years, or is it currently involved in litigation?

Yes No

If "yes", attach details, as above.

f. Has an officer or principal of the Bidder ever engaged in any of the activities or had claims against it, him or her as described in this Part B?

Yes No

If "yes", attach details, as above.

5. Has Bidder ever changed its name, changed its form of organization or merged?

Yes No

If "yes," attach a detailed description of any name changes, changes in entity form or mergers, including documentary proof that any surviving entity succeeded to all liabilities of the pre-existing entities.

C. SIMILAR WORK. (Note: "similar work" is defined above.)

1. How many years experience in "similar work" has the Bidder had?

a. As a general contractor: _____ years

b. As a subcontractor: _____ years

2. Has the Bidder ever failed to complete a contract, forfeited a bid bond/proposal guaranty, had liquidated damages withheld from its total compensation due on a contract (in excess of 1% of total contract payments), or refused to enter into contract for work awarded to it?

_____ Yes

_____ No

If "yes", attach details: (a) name of project, (b) contract amount, (c) type of work, (d) name and addresses of: (i) project engineer, (ii) contractor, and (iii) owner, (e) when, (f) where, and (g) why.

3. Attached is a "Project Sheet" (form attached) for each of the Bidder's five most-recently commenced projects for "similar work" (including any projects for which a contract was awarded but the work was not started).

4. Bidder's Surety

Name and address of surety company:

Authorized to do surety bonds in Texas?

Maximum amount of bond authorized to issue:

D. CERTIFICATION. The Bidder certifies, under oath, that all information contained in or attached to this Statement is current, correct, and complete. Any person, depository, agency, or other entity named in the Statement or attachments is authorized to supply Owner or its representative with any information necessary to verify information from this Statement.

(print or type bidder's name)

By:(authorized signature)_____.

Name:_____,Title:_____.

Date:_____.

STATE OF TEXAS §

COUNTY OF HARRIS §

SWORN TO AND SUBSCRIBED before me on the ___ day of _____, _____

(SEAL)

Notary Public My Commission Expires:

SIMILAR WORK: Bidder shall complete the following information for at least 5 projects of Similar Work, and include the 5 'Project Sheets' as part of the completed Qualification Statement.

"PROJECT SHEET" No. ____

(For: _____, Bidder)

Name of project:

Type of work:

Location (city, county, state):

Bidder's compensation:

Required completion date:

Date completed:

Name and address and telephone of project consultant:

Name, address, and telephone of owner:

Owner's principal project representative (name and current contact information):

*Was Bidder declared to be in default by the owner or the surety? _____Yes
_____No*

OFFICIAL BID FORM

TO: City of West University Place, Texas (“Owner”)

FROM: The undersigned bidder (“Bidder”)

CONTRACT: Jennie E. Hughes Park Improvements (“Project”)

INVESTIGATION AND INFORMATION. The Bidder assures the Owner that: (1) the Bidder has become fully informed about the Contract and the conditions under which the work will be performed; (2) the Bidder has inspected the locations; (3) the Bidder has become thoroughly familiar with the Contract Documents (described below); (4) the Bidder understands that the accuracy or completeness of any information relied upon by the Bidder is not guaranteed by the Owner, unless otherwise stated in writing by the Owner, (5) in any event, the Bidder has made its own interpretation of all such information, and (6) the Bidder has not colluded with any other bidder or potential bidder on this Contract.

CONTRACT DOCUMENTS; ADDENDA. The Contract Documents, as amended to date, are on file in the Owner's Office and on www.civcastusa.com. All Contract Documents are incorporated into this bid by this reference. The Bidder acknowledges receipt of all addenda that are posted on www.civcastusa.com and on file in the Owner's Office as of 4:00 PM on the day preceding the deadline for submission of this bid.

OFFER AND BID PRICE. Taking into account the investigation and information mentioned above, the Bidder offers to furnish all labor, materials, tools, equipment, supervision, services, incidentals and other items for the Contract and to perform the other duties required, all in accordance with the Contract Documents and for the price(s) shown in the attached Price Schedule.

DELIVERY OF DOCUMENTS. If the Owner awards the Contract to the Bidder, the Bidder agrees to deliver all of the required Contract Documents and proof of insurance to the Owner within ten days of receiving the Contract Documents. All such documents shall be duly completed and signed as required by the Instructions to Bidders. If the Bidder fails to deliver all such completed and signed documents to the Owner within the time allowed, the Owner may revoke the award to the Bidder. In this case, the Bidder shall pay to the Owner the amount of the Bid Security as the Owner's fixed and liquidated damages for delay, disruption and incidental expenses, it being agreed that the Owner's complete damages would be difficult to ascertain. The Owner may keep the Bidder's bid security in case of revocation of award, and the amount kept shall be applied to the amount the Bidder must pay to the Owner.

BID SECURITY. Bidder understands that it must submit a bid bond payable to the Owner in the amount of 5% of the greatest amount bid, with a surety that meets the prescribed qualifications.

SPECIAL QUALIFICATIONS (RESPONSIBILITY). Bidder understands that the Owner has established the following special qualifications to assist in determining responsibility of bidders for award of the contract, subject to the Instructions to Bidders:

- (1) *Five Years in Business.* The successful bidder must have been “in existence” and “in full operation” continuously during the five years preceding the date this bid is opened. “In existence” means the bidder was in existence in its present form of business organization. A bidder remained “in existence” if it just changed its name, or if it merged with or converted to another entity (provided the surviving entity succeeded to all liabilities of the pre-merger entity). A bidder was “in full operation” if it did not declare bankruptcy, make an assignment for the benefit of creditors, enter a receivership or seek reorganization or other relief from creditors.
- (2) *Surety.* The successful bidder’s surety (on each bond, including bid bond) must meet all the criteria shown in the Instructions to Bidders.
- (3) *Five Projects.* The successful bidder must have completed at least 5 projects for similar work. “Similar work” is defined in the attached Qualification Statement.

QUALIFICATION STATEMENT. Bidder assures the Owner that the information in the attached Qualification Statement is true, complete and correct.

FIRM BID PERIOD. This bid shall remain firm through the 90th day following the day it is opened, and an effective award may be made during that period. During that period, the Bidder may not withdraw this bid, but the Bidder may do so afterward unless an award is made first. *See Instructions to Bidders.*

Respectfully submitted,

_____ (“Bidder”)
(print or type Bidder's full legal name)

By:(authorized signature)_____

Name:_____, Title:_____.

Date:_____.

Address:_____

Phone:_____ Fax:_____

Notes: Bidder must sign this bid and attach: (1) Bid Bond, (2) Price Schedule, and (3) Qualification Statement, BID-105s.

The Owner requests each bidder to include a photocopy of its bid in the sealed envelope with the original bid; the photocopy should be plainly marked “COPY.”

City of West University Place, Texas
Jennie E. Hughes Park Improvements
Exhibit "A"
BID FORM

ITEM NO.	DESCRIPTION	STIPULATED PRICE IN WORDS	STIPULATED PRICE IN FIGURES
<u>BASE BID</u>			
Base Bid Improvements in accordance with the Contract Documents, complete and in place.		_____ DOLLARS AND _____ CENTS	\$ _____
<u>BID ALTERNATES</u>			
1	Delete Masonry Fence and Columns and Replace with Wood Fence, in accordance with the Contract Documents. <u>Deduct</u> the following stipulated sum from the Base Bid amount.	Deduct _____ DOLLARS AND _____ CENTS	Deduct \$ _____
2	Delete Pavilion Roof, Wood Columns, Ceiling Fan and Lights, leaving structural foundation, railing and masonry columns in accordance with the Contract Documents. <u>Deduct</u> the following stipulated sum from the Base Bid amount.	Deduct _____ DOLLARS AND _____ CENTS	Deduct \$ _____
<u>SEPARATE PRICES FOR BASE BID ITEMS</u>			
The following items are included in the Base Bid and are required for information only. Each item should include all labor, materials, services, equipment, fees, insurance premiums, profit and overhead costs required for the completion of the Work.			
			STIPULATED PRICE IN FIGURES
1	Mobilization, Demolition, Site Preparation, including temporary fencing, street cleaning and erosion control		\$ _____
2	Earthwork, not including topsoil or fine grading		\$ _____

City of West University Place, Texas
Jennie E. Hughes Park Improvements
Exhibit "A"
BID FORM

		STIPULATED PRICE IN FIGURES
3	Stormwater Inlets, piping and connection to City stormwater system	\$ _____
4	Water Lines, from existing meter to Backflow Preventer (including supply to drinking fountain and dog bowl). Not including Water Feature lines and valves. Not including Irrigation. Not including Backflow Preventer.	\$ _____
5	Electrical Supply, Panel, Enclosures and Tree Lighting. Not including Pavilion Lights, Ceiling Fan and related wiring and controls. Not including Water Feature wiring and controls.	\$ _____
6	Pavilion, including foundation and overhead structure. Including Pavilion Lights, Ceiling Fan and related wiring and controls. Not including masonry columns or metal railings.	\$ _____
7	Masonry Fence, including related masonry fence columns (and foundations). Include extending neighbor wood fence to connect. Not including concrete curb.	\$ _____
8	3'-6" High Masonry Columns (10 total) and Masonry Pedestal, including foundations	\$ _____
9	Paving, including concrete walks, concrete curbs, brick pavers and subslab, steps, decomposed granite and flagstone pavers	\$ _____
10	Metal Fences, Railings, Gates and Handrails	\$ _____
11	Water Feature, including Activator, related water line and valves, related wiring and controls. Including concrete, stacked stone, accent boulders, landscape boulders and drain.	\$ _____
12	Install Owner-Provided Signs, Plaque and Furnishings (Benches, Table, Chairs, Garbage/Recycling, Bike Rack, Drinking Fountain). Provide and install Timber Seats.	\$ _____
13	Planting and Lawn, including topsoil, fine grading, planting bed preparation, mulch and soil amendments.	\$ _____
14	Irrigation System, including backflow preventer and controller.	\$ _____
TOTAL OF ALL SEPARATE PRICE ITEMS (Must equal Base Bid Amount on Page 1)		\$ _____

CONTRACT FORMS

PERFORMANCE BOND

THE STATE OF TEXAS \$
 \$ KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF HARRIS \$

THAT WE, _____, as principal, hereinafter called "Contractor," and the other subscriber hereto as Surety, do hereby acknowledge ourselves to be held and firmly bound to The City of West University Place ("Owner") in the sum of \$ _____ dollars and _____ cents (\$ _____) for the payment of which sum, well and truly to be made to the Owner, and its successors, the said Contractor and Surety do bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:

WHEREAS, the said Contractor has on or about this day executed a contract in writing with the Owner, for

Jennie E. Hughes Park Improvements

all of such work to be done as set out in full in said contract and plans and specifications therein referred to and adopted by the Owner, all of which are made a part of this instrument as fully and completely as if set out in full herein.

NOW, THEREFORE, if the said Contractor shall faithfully and strictly perform said contract in all its terms, provisions, and stipulations in accordance with its true meaning and effect, and in accordance with the plans and specifications referred to therein and shall comply strictly with each and every provision of said contract and with this bond, then this obligation shall become null and void and shall have no further force and effect; otherwise the same is to remain in full force and effect.

It is further understood and agreed that the Surety does hereby relieve the said Owner or its representatives from the exercise of any diligence whatever in securing compliance on the part of the said Contractor with the terms of the said contract, and the Surety hereby waives any notice to it of any default, or delay by the Contractor in the performance of his contract and agrees that it, the said Surety, shall be bound to take notice of and shall be held to have knowledge of all acts or omissions of the said Contractor in all matters pertaining to said contract. And the said Surety understands and agrees that the provision in said contract that the Owner shall retain certain amounts due the Contractor until after the acceptance of the work is intended for the Owner's benefit and the Owner shall have the right to pay or withhold said retained amounts or any other amount owing under said contract without changing or affecting the liability of the said Surety hereon in any degree.

It is further expressly agreed by said Surety that the Owner or its representatives are at liberty at any time, without notice to the Surety, to make any change in said plans, specifications and drawings and in the work to be done thereunder, as provided in said contract, and in the terms and conditions thereof, or to make any change in, addition to or deduction from the work to be done thereunder; and that such changes, if made, shall not in any way vitiate the obligation in this bond and undertaking, or release said Surety therefrom.

It is expressly agreed and understood that the Contractor and Surety will fully indemnify and save harmless the owner from any liability, loss, cost, expense or damage arising out of or in connection with the work done by the Contractor under said contract. By specific reference to Section 271.159 of the Texas Local Government Code (as amended by the 2005 Texas Legislature), said contract authorizes the prevailing party to recover its reasonable and necessary attorney's fees in the adjudication of a claim by or against the Owner based on such contract, and the same rule shall apply to a claim by or against the Owner based on this bond.

This bond and all obligations created hereunder shall be performable in Harris County, Texas. This bond is given in compliance with the provisions of Chapter 2253, Texas Government Code, as amended, which is incorporated herein by the reference. However, all of the express provisions hereof shall be applicable whether or not within the scope of said statute.

IN TESTIMONY WHEREOF, the said Contractor and Surety have signed and sealed this instrument on the respective dates written below their signatures.

ATTEST/SEAL (if a corporation):

WITNESS (if not a corporation):

(Full Name of Contractor, principal)

By: _____

Name:

Title:

Date:

By: _____

Name:

Title:

Date:

ATTEST/WITNESS: (SEAL)

(Full Name of Surety)

By: _____

Name:

Title:

Date:

By: _____

Name:

Title:

Date:

ATTEST/SEAL (if a corporation):
WITNESS (if not a corporation):

(Full Name of Contractor, principal)

By: _____
Name:
Title:
Date:

By: _____
Name:
Title:
Date:

ATTEST/WITNESS: (SEAL)

(Full Name of Surety)

By: _____
Name:
Title:
Date:

By: _____
Name:
Title:
Date:

ONE-YEAR MAINTENANCE BOND

THE STATE OF TEXAS \$
 \$ KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF HARRIS \$

THAT WE, _____, as Principal, hereinafter called "Contractor", and the other subscriber hereto _____, as Surety, do hereby acknowledge ourselves to be held and firmly bound to the (Owner), a municipal limited partnership, in the sum of _____ for the payment of which sum well and truly to be made to the _____ and its successors, the said Contractor and Surety do bind themselves, their heirs, executors, administrators, successors and assigns jointly and severally.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:

WHEREAS, the Contractor has on or about this day executed a Contract in writing with the **City of West University Place** for **Jennie E. Hughes Park Improvements**, all of such work to be done as set out in full in said Contract Documents therein referred to and adopted by the Owner, all of which are made a part of this instrument as fully and completely as if set out in full herein.

NOW THEREFORE, if said Contractor shall comply with the provisions of the General Conditions, and correct Work not in accordance with the Contract Documents discovered within the established one-year period, then this obligation shall become null and void, and shall be of no further force and effect; otherwise, the same is to remain in full force and effect.

Notices required or permitted hereunder shall be in writing and shall be deemed delivered when actually received or, if earlier, on the third day following deposit in a United States Postal Service post office or receptacle, with proper postage affixed (certified mail, return receipt requested), addresses to the respective other party at the address prescribed in the Contract Documents, or at such other address as the receiving party may hereafter prescribe by written notice to the sending party.

IN WITNESS THEREOF, the said Contractor and Surety have signed and sealed this instrument on the _____ day of _____, 201____, and have attached current Power of Attorney.

ATTEST, SEAL: (if a corporation)
WITNESS: (if not a corporation)

(Name of Contractor)

By: _____
Name:
Title:

By: _____
Name:
Title:

ATTEST/ SURETY WITNESS: (SEAL)

(Full Name of Surety)

(Address of Surety for Notice)

(Telephone Number of Surety)

By: _____
Name:
Title:

By: _____
Name:
Title:

AGREEMENT

Contract Date: _____

**Contract: Jennie E. Hughes Park
Improvements**

Alternates: None

Owner/Address: City of West University Place, Texas (a Texas home-rule municipality),
c/o Parks & Recreation Department Director
6104 Auden
West University Place, TX 77005

Contractor (Type of Entity)/Address:

Consultant/Address:

White Oak Studio Landscape Architecture
611 West 22nd Street, Suite 209
Houston, TX 77008
or successor designated by OWNER.

Contract Time: 120 Calendar Days

Contract Price: \$_____.

Liquidated Damages For Late Completion: Not applicable on this project.

Contract Documents: (1) Notice to Bidders, (2) Instructions to Bidders, (3) Qualifications Statement, (4) Official Bid Form, (5) Bid Bond, (6) Bid, (7) Performance Bond, (8) Payment Bond, (9) Maintenance Bond (10) Agreement, (11) General Conditions, (12) Insurance Specifications, (13) Agreement for Final Payment & Contractor's Sworn Release, (14) Drawings and (15) Technical Specifications.

In General: For mutual consideration, OWNER and CONTRACTOR agree to the CONTRACT DOCUMENTS. The CONTRACTOR will: (1) commence work at the designated site immediately upon receipt of a WORK ORDER, unless a later beginning date is designated in the WORK ORDER, (2) furnish all material, supplies, tools, equipment, labor, services and all other items necessary for completion of each WORK ORDER in accordance with the CONTRACT DOCUMENTS, (3)

comply with all provisions of the CONTRACT DOCUMENTS, and (4) complete each WORK ORDER and all other performance required by the CONTRACT DOCUMENTS within the CONTRACT TIME, such time being of the essence. The OWNER will pay the CONTRACTOR the CONTRACT PRICE, subject to the CONTRACT DOCUMENTS. The original appropriated sum of money (certified below) may be supplemented by subsequent certificate(s) of the same kind, but there is no obligation to supplement. ***The original appropriated and certified sum, plus any such supplement(s), is the limit of the OWNER's obligation to make payments to the CONTRACTOR in connection with the CONTRACT, for all payments, losses, costs, attorney's fees, interest and damages, irrespective of cause or origin, whether based on contract or tort, performance or nonperformance, or strict liability or negligence, active or otherwise, of the OWNER or its officers, agents or employees.***

In witness whereof, the parties have signed multiple originals hereof.

CITY OF WEST UNIVERSITY PLACE ("Owner")

ATTEST:

(Seal)

By: _____
Name:

Title:

I certify that this obligation complies with a budget appropriation and that there is or will be \$ _____* in unencumbered money in Budget Account No. _____* to meet the obligation when it is due.

ATTEST/WITNESS: (Seal)

By: _____
Name:

Title:

** Amount to be inserted by OWNER; amount may not be less than 105% of greatest amount bid (base bid plus accepted alternates).*

CONDITIONS OF CONTRACT

GENERAL CONDITIONS

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1.0 DEFINITIONS.

Wherever used in the CONTRACT DOCUMENTS, the following terms shall have the meanings indicated, which shall be applicable to both the singular and plural thereof:

- ADDENDA - Written or graphic instruments issued prior to the execution of the Agreement which modify or interpret the CONTRACT DOCUMENTS, DRAWINGS and SPECIFICATIONS, by additions, deletions, clarifications or corrections.
- AGREEMENT - Either the document containing the formal signatures of the parties, or the entire CONTRACT DOCUMENTS, depending upon the context where used.
- BID - The offer or proposal of the CONTRACTOR submitted on the prescribed form setting forth the prices for the WORK to be performed.
- BONDS - Bid, Performance, Maintenance and Payment Bonds and other instruments of security, furnished by the CONTRACTOR and its surety in accordance with the CONTRACT DOCUMENTS.
- CHANGE ORDER - A written order to the CONTRACTOR authorizing an addition, deletion or revision in the WORK within the general scope of the CONTRACT DOCUMENTS, or authorizing an adjustment in the CONTRACT PRICE or CONTRACT TIME.
- CONTRACT DOCUMENTS - See Agreement.
- CONTRACT PRICE - See Agreement.
- CONTRACT TIME - The number of calendar days stated in the CONTRACT DOCUMENTS for the completion of the WORK.
- CONTRACTOR - The person, firm or corporation with whom the OWNER has executed the Agreement.
- DRAWINGS - The part of the CONTRACT DOCUMENTS which show the characteristics and scope of the WORK to be performed and which have been prepared or approved by the CONSULTANT.
- CONSULTANT - The person, firm or corporation named as such in the CONTRACT

DOCUMENTS.

- **FIELD ORDER** - A written order effecting a change in the **WORK** not involving an adjustment in the **CONTRACT PRICE** or an extension of the **CONTRACT TIME**, issued by the **CONSULTANT** to the **CONTRACTOR** during construction.
- **NOTICE TO PROCEED** - Written communication issued by the **OWNER** to the **CONTRACTOR** authorizing it to proceed with the **WORK** and establishing the date of commencement of the **WORK**.
- **OWNER** - See Agreement.
- **CONTRACT** - The undertaking to be performed as provided in the **CONTRACT DOCUMENTS**.
- **RESIDENT PROJECT REPRESENTATIVE** - The authorized representative of the **OWNER** who is assigned to the **CONTRACT** site or any part thereof.
- **SHOP DRAWINGS** - All drawings, diagrams, illustrations, brochures, schedules and other data which are prepared by the **CONTRACTOR**, a **SUBCONTRACTOR**, manufacturer, **SUPPLIER** or distributor, which illustrate how specific portions of the **WORK** shall be fabricated or installed.
- **SPECIFICATIONS** - A part of the **CONTRACT DOCUMENTS** consisting of written descriptions of a technical nature of materials, equipment, construction systems, standards and workmanship.
- **SUBCONTRACTOR** - An individual, firm or corporation having a direct contract with the **CONTRACTOR** or with any other **SUBCONTRACTOR** for the performance of a part of the **WORK** at the site. The term includes **SUBCONTRACTORS** on any tier.
- **SUPPLEMENTAL GENERAL CONDITIONS** - Modifications to General Conditions required by a Federal agency for participation in the **CONTRACT** and approved by the agency in writing prior to inclusion in the **CONTRACT DOCUMENTS**, and such requirements that may be imposed by applicable state or federal laws, which are deemed to be a part of the **CONTRACT DOCUMENTS**, even if not listed or attached, to the extent imposed by such laws.
- **SUPPLIER** - Any person or organization who supplies materials or equipment for the **WORK**, including that fabricated to a special design, but who does not perform labor at the site.
- **WORK** - All material, supplies, tools, equipment, labor, services and all other items necessary for completion of the **CONTRACT** in accordance with the **CONTRACT DOCUMENTS**. See, also, Section 4.
- **WRITTEN NOTICE** - A notice: (i) to any entity mentioned in this Agreement relative to any part of this Agreement, (ii) in writing and (iii) posted by certified or registered mail to the said entity at its last given address, or delivered in person to said entity or its authorized representative on the **WORK**, at which time it is considered delivered and the service thereof completed.

2.0 ADDITIONAL INSTRUCTIONS

- 2.1 The **CONTRACTOR** may be furnished additional instructions, by the

CONSULTANT, as necessary to carry out the WORK required by the CONTRACT DOCUMENTS. The CONTRACTOR must pay the cost of copies in excess of two.

2.2 The additional instruction thus supplied will become a part of the CONTRACT DOCUMENTS. The CONTRACTOR shall carry out the WORK in accordance with the additional detail drawings and instructions.

3.0 SCHEDULES, REPORTS AND RECORDS

3.1 The CONTRACTOR shall submit to the OWNER such schedule of quantities and costs, progress schedules, payrolls, reports, estimates, records and other data where applicable as are required by the CONTRACT DOCUMENTS for the WORK to be performed.

3.2 Prior to the first partial payment estimate the CONTRACTOR shall submit construction progress schedules showing the order in which it proposes to carry on the WORK, including dates at which it will start the various parts of the WORK, estimated date of completion of each part and, as applicable:

3.2.1. The dates at which special detail drawings will be required;

and

3.2.2. Respective dates for submission of SHOP DRAWINGS, the beginning of manufacture, the testing and the installation of materials, supplies and equipment.

3.3 The CONTRACTOR shall also submit a schedule of payments that it anticipates it will earn during the course of the WORK.

4.0 INTENT, INTERPRETATION, ETC.

4.1 The intent of the CONTRACT DOCUMENTS is that the CONTRACTOR shall furnish: (i) all labor, materials, tools, equipment, and transportation necessary for the proper execution of the WORK in accordance with the CONTRACT DOCUMENTS, and (ii) all incidental items necessary or customary for completion of the CONTRACT in an acceptable manner, ready for use, occupancy and operation by the OWNER. In addition, the CONTRACTOR shall perform the other duties required by the CONTRACT DOCUMENTS.

4.2 In case of: (i) any discrepancies or differences between CONTRACT DOCUMENTS and actual conditions, or (ii) any discrepancies, conflicts, inconsistencies or ambiguities within or among the CONTRACT DOCUMENTS, the CONSULTANT shall determine the true meaning of the CONTRACT DOCUMENTS. The CONSULTANT may issue written interpretations or corrections, in writing, to reflect the true meaning. In determining the true meaning, the CONSULTANT is not required to give precedence to any particular CONTRACT DOCUMENT (or type of CONTRACT DOCUMENT), but instead, the CONSULTANT may determine that any one (or more) of the CONTRACT DOCUMENTS controls and should be given precedence.

4.3 The CONTRACTOR shall report to the CONSULTANT, in writing, the following circumstances as soon as practicable after they come to the CONTRACTOR's attention: (i) any discrepancies or differences found between CONTRACT DOCUMENTS and site conditions,

and (ii) any discrepancies, conflicts, inconsistencies or ambiguities within or among the CONTRACT DOCUMENTS. Any WORK done by the CONTRACTOR after becoming aware of any such discrepancies, differences, inconsistencies, conflicts or ambiguities shall be done at the CONTRACTOR'S risk.

5.0 SHOP DRAWINGS

5.1 The CONTRACTOR shall provide SHOP DRAWINGS as may be necessary for the prosecution of the WORK as required by the CONTRACT DOCUMENTS. The CONSULTANT shall promptly review all SHOP DRAWINGS. The CONSULTANT'S approval of any SHOP DRAWING shall not release the CONTRACTOR from responsibility for deviations from the CONTRACT DOCUMENTS. The approval of any SHOP DRAWING which substantially deviates from the requirement of the CONTRACT DOCUMENTS is not effective unless evidenced by a CHANGE ORDER.

5.2 When submitted for the CONSULTANT'S review, SHOP DRAWINGS shall bear the CONTRACTOR'S certification that it has reviewed, checked and approved the SHOP DRAWINGS and that they are in conformance with the requirements of the CONTRACT DOCUMENTS.

5.3 Portions of the WORK requiring a SHOP DRAWING or sample submission shall not begin until the SHOP DRAWING or submission has been approved by the CONSULTANT. A copy of each approved SHOP DRAWING and each approved sample shall be kept in good order by the CONTRACTOR at the site and shall be available to the CONSULTANT.

6.0 MATERIALS, SERVICES AND FACILITIES

6.1 It is understood that, except as otherwise specifically stated in the CONTRACT DOCUMENTS, the CONTRACTOR shall provide and pay for all materials, labor, tools, equipment, water, light, power, transportation, supervision, temporary construction of any nature, and all other services and facilities of any nature whatsoever necessary to execute, complete, and deliver the WORK within the specified time.

6.2 Materials and equipment shall be so stored as to insure the preservation of their quality and fitness for the WORK. Stored materials and equipment to be incorporated in the WORK shall be located so as to facilitate prompt inspection.

6.3 Manufactured articles, materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned as directed by the manufacturer.

6.4 Materials, supplies and equipment shall be in accordance with samples submitted by the CONTRACTOR and approved by the CONSULTANT.

6.5 Materials, supplies or equipment to be incorporated into the WORK shall not be purchased by the CONTRACTOR or the SUBCONTRACTOR subject to a chattel mortgage or under a conditional sale contract or other agreement by which an interest is retained by the seller.

7.0 INSPECTION AND TESTING

7.1 All materials and equipment shall be subject to adequate inspection and testing in accordance with generally accepted standards, as required and defined in the CONTRACT DOCUMENTS.

7.2 The OWNER shall provide all inspection and testing services not required by the CONTRACT DOCUMENTS.

7.3 The CONTRACTOR shall provide at its expense the testing and inspection services required by the CONTRACT DOCUMENTS.

7.4 If the CONTRACT DOCUMENTS, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any WORK to specifically be inspected, tested, or approved by someone other than the CONTRACTOR, the CONTRACTOR will give the CONSULTANT timely WRITTEN NOTICE of readiness. The CONTRACTOR will then furnish the CONSULTANT the required certificates of inspection, testing or approval.

7.5 Inspections, tests or approvals by the CONSULTANT or others shall not relieve the CONTRACTOR from its obligations to perform the WORK in accordance with the requirements of the CONTRACT DOCUMENTS.

7.6 The CONSULTANT, the OWNER and their representatives will at all times have access to the WORK. In addition, authorized representatives and agents of any participating Federal or state agency shall be permitted to inspect all work, materials, payrolls, records of personnel, invoices of materials, and other relevant data and records. The CONTRACTOR will provide proper facilities for such access and observation of the WORK and also for any inspection, or testing thereof.

7.7 If any WORK is covered before being observed by the CONSULTANT, it must, if requested by the CONSULTANT, be uncovered for observation and replaced at the CONTRACTOR'S expense. This does not apply if the CONSULTANT approves covering the Work, in writing, without prior observation.

7.8 If the CONSULTANT considers it necessary or advisable that covered-up WORK (that has been observed, or approved, as provided above) be observed, inspected or tested, the CONTRACTOR, at the CONSULTANT'S request, will uncover, expose or otherwise make available for observation, inspection or testing as the CONSULTANT may require, that portion of the WORK in question, furnishing all necessary labor, materials, tools, and equipment. If it is found that such WORK is defective, the CONTRACTOR will bear all the expenses of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction. If, however, such WORK is not found to be defective, the CONTRACTOR will be allowed an increase in the CONTRACT PRICE or an extension of the CONTRACT TIME, or both, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction and an appropriate CHANGE ORDER shall be issued.

8.0 SUBSTITUTIONS

8.1 Whenever a material, article or piece of equipment is identified on the DRAWINGS or SPECIFICATIONS by reference to brand name or catalogue number, it shall be understood

that this is referenced for the purpose of defining the performance or other salient requirements and that other products of equal capacities, quality and function shall be considered. The CONTRACTOR may recommend the substitution of a material, article, or piece of equipment of equal substance and function for those referred to in the CONTRACT DOCUMENTS by reference to brand name or catalogue number, and if, in the opinion of the CONSULTANT, such material, article, or piece of equipment is of equal substance and function to that specified, the CONSULTANT may approve its substitution and use by the CONTRACTOR. Any cost differential shall be deductible from the CONTRACT PRICE and the CONTRACT DOCUMENTS shall be appropriately modified by CHANGE ORDER. The CONTRACTOR warrants that if substitutes are approved, no major changes in the function or general design of the PROJECT will result. Incidental changes or extra component parts required to accommodate the substitute will be made by the CONTRACTOR without an increase in the CONTRACT PRICE or CONTRACT TIME.

9.0 PATENTS

9.1 The CONTRACTOR shall pay all applicable royalties and license fees. It shall defend all suits or claims for infringement of any patent rights and save the OWNER harmless from loss on account thereof, except that the OWNER shall be responsible for any such loss when a particular process, design, or the product of a particular manufacturer or manufacturers is specified, however if the CONTRACTOR has reason to believe that the design, process or product specified is an infringement of a patent, shall be responsible for such loss unless it promptly gives such information to the CONSULTANT.

10.0 SURVEYS, PERMITS, REGULATIONS, DEWATERING

10.1 Permits and licenses of a temporary nature necessary for the prosecution of the WORK (including all municipal construction and occupancy permits) shall be secured and paid for by the CONTRACTOR unless otherwise specifically stated elsewhere in the other CONTRACT DOCUMENTS. Permits, licenses and easements of a permanent nature shall be secured and paid for by the OWNER, unless otherwise specified.

10.2 The CONTRACTOR shall give all notices and comply with all laws, ordinances, rules and regulations (including municipal ordinances and regulations) bearing on the conduct of the WORK as drawn and specified. If the CONTRACTOR observes that the CONTRACT DOCUMENTS are at variance therewith, it shall promptly notify the CONSULTANT in writing, and any necessary changes shall be adjusted as provided in Section 14.

11. PROTECTION OF WORK, PROPERTY AND PERSONS

11.1 The CONTRACTOR will be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the WORK. CONTRACTOR shall take all necessary precautions for the safety of, and will provide the necessary protection to prevent damage, injury or loss to: (i) all employees on the WORK and other persons who may be

affected thereby, (ii) all the WORK, (iii) all materials or equipment to be incorporated therein, whether in storage on or off the site, and (iv) other property at the site or adjacent thereto, including trees, shrubs, lawns, flower beds, irrigation systems, landscaping structures, walks, sidewalks, curbs, gutters, driveways, pavement, roadways, utilities, pipes, meters, valves, cables, wires, vaults, equipment and other plants, structures and equipment not specifically designated for removal, relocation or replacement in the course of construction.

11.2 The CONTRACTOR will comply with all applicable laws, ordinances, rules, regulations and orders of any public body having jurisdiction. It will erect and maintain, as required by the conditions and progress of the WORK, all necessary safeguards for safety and protection. It will notify owners of adjacent utilities and similar facilities when prosecution of the WORK may affect them. The CONTRACTOR will remedy all damage, injury or loss to any property caused, directly or indirectly, in whole or in part, by the CONTRACTOR, any SUBCONTRACTOR or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, except damage or loss attributable to acts or omissions of the OWNER or the CONSULTANT or anyone employed by either of them or anyone for whose acts either of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of the CONTRACTOR. Required remedial action must start at once when the damage, injury or loss is brought to the attention of the CONTRACTOR (unless the CONSULTANT by WRITTEN NOTICE authorizes postponing the start) and shall be completed as soon as practicable. This does not prevent the CONTRACTOR from asserting, in good-faith, that it is not required to take remedial action in a particular case, and the CONSULTANT will normally allow postponement of the start of remedial action to resolve such cases, provided that postponement will not make the loss, damage or injury greater or worse.

11.3 In emergencies affecting the safety of persons or the WORK or property at the site or adjacent thereto, the CONTRACTOR, without special instruction or authorization from the CONSULTANT or OWNER, shall act to prevent threatened damage, injury or loss. It will give the CONSULTANT prompt WRITTEN NOTICE of any significant changes in the WORK or deviations from the CONTRACT DOCUMENTS caused thereby, and a CHANGE ORDER shall thereupon be issued covering the changes and deviations involved, to the extent they are reasonable and necessary. However, unless otherwise agreed to by the OWNER, no increase in the CONTRACT PRICE will be authorized.

12.0 SUPERVISION BY CONTRACTOR; WORKERS

12.1 The CONTRACTOR will supervise and direct the WORK. It will be solely responsible for the means, methods, techniques, sequences and procedures.

12.3 The CONTRACTOR agrees to employ only orderly and competent workers, skillful in the performance of the tasks required under this Agreement, who will apply their best efforts to the WORK. Whenever the CONSULTANT shall inform the CONTRACTOR that any workers on the WORK, in the CONSULTANT's opinion, do not meet all these requirements, the CONTRACTOR agrees to replace such workers and not return them to the WORK without the CONSULTANT's written consent.

12.5 To the extent that it applies to the CONTRACT, the federally determined prevailing

(Davis-Bacon and Related Acts) wage rate must be paid on this project, unless different prevailing wages are specified elsewhere in the CONTRACT DOCUMENTS.

13.0 CHANGES IN THE WORK

13.1 The OWNER may at any time, as the need arises order changes within the scope of the WORK without invalidating the Agreement. If such changes increase or decrease the amount due under the CONTRACT DOCUMENTS, or in the time required for performance of the WORK, an equitable adjustment shall be authorized by CHANGE ORDER (unless otherwise specified in the CONTRACT DOCUMENTS).

13.2 The CONSULTANT, also, may at any time, by issuing a FIELD ORDER, make changes in the details of the WORK. The CONTRACTOR shall proceed with the performance of any changes in the WORK so ordered by the CONSULTANT unless the CONTRACTOR believes that such FIELD ORDER entitles it to a change in CONTRACT PRICE or TIME, or both, in which event it shall immediately give the CONSULTANT WRITTEN NOTICE thereof. After giving such a WRITTEN NOTICE, the CONTRACTOR may suspend work on the changes, unless they are re-ordered by CHANGE ORDER. (Note: The issuance of such a change order is not an admission that a change in CONTRACT PRICE or CONTRACT TIME is justified.) The CONTRACTOR shall document the basis for any change it requests in CONTRACT PRICE or TIME within 30 days.

13.3 CONTRACTOR must execute changes ordered by CHANGE ORDER but may, by WRITTEN NOTICE, reserve the right to contest the adjustment to CONTRACT PRICE and CONTRACT TIME. See Sections 14 and 15, below.

14.0 CHANGES IN CONTRACT PRICE

14.1 The CONTRACT PRICE may change only by CHANGE ORDER. The amount of change shall be determined, for each changed WORK item, by one of the following methods, applied in the order of precedence listed below (unless otherwise specified in the CONTRACT DOCUMENTS):

- Value agreed upon by CONTRACTOR and OWNER.
- Prices in the CONTRACT DOCUMENTS.
- Actual field cost plus 15%. "Actual field cost" is the cost of labor, field supervision, materials, supplies and field equipment. Each cost item must be reasonable, necessary and not more than generally prevailing contractor costs in the area.

14.2 THE CONTRACTOR SHALL RECEIVE NO COMPENSATION FOR DELAYS OR HINDRANCES TO THE WORK, EXCEPT WHEN DIRECT AND UNAVOIDABLE EXTRA COST TO THE CONTRACTOR IS CAUSED BY THE FAILURE OF THE OWNER TO PROVIDE MATERIAL, IF ANY, WHICH IS TO BE FURNISHED BY THE OWNER. WHEN SUCH EXTRA COMPENSATION IS CLAIMED, A WRITTEN STATEMENT THEREOF SHALL BE PRESENTED BY THE CONTRACTOR TO THE CONSULTANT, AND IF BY THE CONSULTANT FOUND

TO BE CORRECT, SHALL BE APPROVED AND REFERRED TO THE OWNER'S GOVERNING BODY FOR FINAL APPROVAL OR DISAPPROVAL, AND THE ACTION THEREON BY THE GOVERNING BODY SHALL BE FINAL AND BINDING. IF DELAY IS CAUSED BY SPECIFIC ORDERS GIVEN BY THE CONSULTANT TO STOP OR SUSPEND WORK, OR BY THE PERFORMANCE OF EXTRA WORK, OR BY THE FAILURE OF THE OWNER TO PROVIDE MATERIAL, INFORMATION OR NECESSARY INSTRUCTIONS FOR CARRYING ON THE WORK, SUCH DELAY WILL ENTITLE THE CONTRACTOR TO AN EQUIVALENT EXTENSION OF TIME, ITS APPLICATION FOR WHICH SHALL, HOWEVER, BE SUBJECT TO THE APPROVAL BY THE OWNER'S GOVERNING BODY; AND NO SUCH EXTENSION OF TIME SHALL RELEASE THE CONTRACTOR OR THE SURETY ON ITS BONDS OR OTHER OBLIGATIONS HEREUNDER, WHICH SHALL REMAIN IN FULL FORCE. IN NO EVENT WILL THE OWNER BE LIABLE FOR ANY MONEY DAMAGES FOR ANY SUCH DELAY.

15.0 TIME FOR COMPLETION; LIQUIDATED DAMAGES

15.1 The date of beginning and the time for completion of the WORK are essential conditions of the CONTRACT DOCUMENTS and the WORK embraced shall be commenced on a date specified in the NOTICE TO PROCEED.

15.2 The CONTRACTOR will proceed with the WORK at such rate of progress to insure full completion within the CONTRACT TIME. It is expressly understood and agreed, by and between the CONTRACTOR and the OWNER, that the CONTRACT TIME for the completion of the WORK described herein is a reasonable time, taking into consideration the climatic and economic conditions and other factors prevailing in the locality of the WORK.

15.3 If the CONTRACTOR shall fail to complete the WORK within the CONTRACT TIME or extension of time granted by the OWNER, then the CONTRACTOR will pay to the OWNER (and the OWNER may withhold from CONTRACTOR) the amount for liquidated damages at the rate specified in the Agreement for each calendar day that the WORK remains uncompleted after the time stipulated in the CONTRACT DOCUMENTS. However, after the CONTRACTOR achieves substantial completion, the rate of liquidated damages is reduced by multiplying it by a fraction, as follows: (i) the numerator is the value of those portions of the PROJECT that are not fully completed, or that the OWNER cannot use or benefit from the same as fully completed portions, or that must be replaced, corrected or modified to comply with this CONTRACT, and (ii) the denominator is the CONTRACT PRICE for the entire PROJECT. The CONSULTANT shall determine the affected portions and estimate values for this purpose. In this paragraph, "substantial completion" means that the CONTRACTOR has completed substantially all of the WORK so that the OWNER can use and obtain the benefit of the whole PROJECT in substantially the same manner as if it were fully completed.

15.4 The CONTRACTOR shall not be charged with liquidated damages or any excess cost to the extent the delay in completion of the WORK is due to the following, but only if the CONTRACTOR has immediately given WRITTEN NOTICE of the beginning of such a delay

(and its cause) to the CONSULTANT:

- 15.4.1 To any preference, priority or allocation order duly issued by the OWNER.
- 15.4.2 To unforeseeable causes beyond the control and without the fault or negligence of the CONTRACTOR, including but not restricted to, acts of God. or of the public enemy, acts of the OWNER, acts of another CONTRACTOR in the performance of a contract with the OWNER, fires, floods, epidemics quarantine restrictions, strikes, freight embargoes and abnormal and unforeseeable weather; and
- 15.4.3 To any delays of SUBCONTRACTORS occasioned by any of the causes specified in paragraphs 15.4.1 and 15.4.2 of this article.

16.0 CORRECTION OF WORK

16.1 The CONTRACTOR shall promptly remove from the premises all WORK rejected by the CONSULTANT for failure to comply with the CONTRACT DOCUMENTS, whether incorporated in the construction or not, and the CONTRACTOR shall promptly replace and reexecute the WORK in accordance with the CONTRACT DOCUMENTS and without expense to the OWNER and shall bear the expense of making good all WORK of others destroyed or damaged by such removal or replacement.

16.2 All removal and replacement WORK shall be done at the CONTRACTOR'S expense. If the CONTRACTOR does not take action to remove such rejected WORK within ten days after receipt of WRITTEN NOTICE, the OWNER may remove such WORK and store the materials at the expense of the CONTRACTOR.

17.0 SUBSURFACE CONDITIONS AND STRUCTURES

17.1 Contractor shall determine the depth, location and presence of subsurface conditions (e.g., soils, water, minerals, gas, rock, voids, waste, latent conditions, etc.) and structures (e.g., footings, foundations, shafts, vaults, conduits, wires, fiber optics, pipes, anchors, utility facilities, etc.) by using all available sources of information and by making explorations and test excavations, as may be necessary. CONTRACTOR understands that the DRAWINGS and other CONTRACT DOCUMENTS do not show all such conditions and structures or their depths or locations--and may not show them completely or accurately--and no representation or guarantee is made that they do. CONTRACTOR further understands that any survey, boring, geotechnical or other subsurface data provided by OWNER is not guaranteed and not represented to be complete or accurate.

17.1.1 The CONTRACTOR shall contact all private companies and other right-of-way users to request that they mark their facilities in the vicinity of the PROJECT, and the CONTRACTOR shall otherwise comply with "one-call" and "call-before-you-dig" laws, rules and regulations applicable to excavations and underground activities.

17.1.2 The CONTRACTOR shall promptly (and, if practicable, before any such subsurface condition or structure is disturbed) notify the CONSULTANT and OWNER by WRITTEN NOTICE of any such condition or structure that:

- (a) differs materially from that indicated in the CONTRACT DOCUMENTS;
- (b) differs materially from conditions or structures ordinarily encountered in connection with work similar to the PROJECT; or
- (c) might require a change in the SPECIFICATIONS, DRAWINGS or WORK.

17.1.3 The CONTRACTOR shall contact private companies and other right-of-way users with facilities that might be affected by the WORK to arrange for adjustment, relocation or removal of those facilities. CONTRACTOR shall coordinate its activities with the private companies or right-of-way users and provide them reasonable access and assistance. CONTRACTOR shall also advise the OWNER and the CONSULTANT, by WRITTEN NOTICE, if their assistance is required in arranging such adjustment, relocation or removal.

17.1.4 CONTRACTOR shall maintain a minimum 12-inch clearance between gas lines and all other utilities (either new or relocated utilities), unless otherwise approved by the CONSULTANT.

17.2 Whenever the CONSULTANT becomes aware of any subsurface condition or structure that, in the opinion of the CONSULTANT, require a change in the WORK, the CONSULTANT shall issue a CHANGE ORDER, subject to the following:

17.2.1 If the CONSULTANT finds that such condition or structure differs materially from those reasonably expected by the CONTRACTOR, or if private companies or other right-of-way users cause an inordinate delay, an equitable adjustment in the CONTRACT TIME shall be included in the CHANGE ORDER.

17.2.2 The CONTRACTOR shall receive no additional payment in connection with such a CHANGE ORDER unless the CONSULTANT determines that all of the following conditions are present:

- (a) the CHANGE ORDER is required by some subsurface condition or structure that differs materially from that indicated in the CONTRACT DOCUMENTS;
- (b) such condition or structure also differs materially from conditions or structures ordinarily encountered in connection with work similar to the PROJECT;
- (c) the CONTRACTOR has complied with subsection 17.1, above (by determining depth, location and presence; contacting and working with private companies, street users "one-call" organizations, etc.; giving WRITTEN NOTICE to OWNER and CONSULTANT; maintaining clearance, etc.); and
- (d) the payment does not exceed the additional, unanticipated expenses

reasonably incurred by CONTRACTOR to comply with the CHANGE ORDER.

To the extent allowed by this paragraph, an equitable adjustment in the CONTRACT PRICE shall be included in the CHANGE ORDER.

18.0 SUSPENSION OF WORK, TERMINATION AND DELAY

18.1 The OWNER may suspend the WORK or any portion thereof for a period of not more than 90 days or such further time as agreed upon by the CONTRACTOR, by WRITTEN NOTICE to the CONTRACTOR and the CONSULTANT, which notice shall fix the date on which WORK shall be resumed. The CONTRACTOR will resume that WORK on the date so fixed. The CONTRACTOR will be allowed an extension of the CONTRACT TIME, directly attributable to any suspension.

18.2 If the CONTRACTOR is adjudged a bankrupt or insolvent, or if it makes a general assignment for the benefit of its creditors, or if a trustee or receiver is appointed for the CONTRACTOR or for any of its property, or if it files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or applicable laws, or if it repeatedly fails to supply sufficient skilled workmen or suitable materials or equipment, or if it repeatedly fails to make prompt payments to SUBCONTRACTORS or for labor, materials or equipment or if it disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction of the WORK or if it disregards the authority of the CONSULTANT, or if it otherwise violates any provision of the CONTRACT DOCUMENTS, then the OWNER may, without prejudice to any other right or remedy and after giving the CONTRACTOR and its surety a minimum of ten days from delivery of a WRITTEN NOTICE, terminate the services of the CONTRACTOR and take possession of the CONTRACT and of all materials, equipment, tools, construction equipment and machinery thereon owned by the CONTRACTOR, and finish the WORK by whatever method it may deem expedient. In such case the CONTRACTOR shall not be entitled to receive any further payment until the WORK is finished. If the unpaid balance of the CONTRACT PRICE exceeds the direct and indirect costs of completing the CONTRACT, including compensation for additional professional services, such excess shall be paid to the CONTRACTOR. If such costs exceed such unpaid balance, the CONTRACTOR will pay the difference to the OWNER. Such costs incurred by the OWNER will be determined by the CONSULTANT and incorporated in a CHANGE ORDER.

18.3 Where the CONTRACTOR'S services have been so terminated by OWNER, said termination shall not affect any right of OWNER against CONTRACTOR then existing or which may thereafter accrue. Any retention or payment of monies by OWNER due CONTRACTOR will not release CONTRACTOR from compliance with the CONTRACT DOCUMENTS.

18.4 After ten days from delivery of a WRITTEN NOTICE to CONTRACTOR, OWNER may, without cause and without prejudice to any other right or remedy, elect to abandon the CONTRACT and terminate the CONTRACT. In such case, CONTRACTOR shall be paid for all WORK executed and reasonable expenses sustained, plus reasonable profit on the part executed, less cost savings.

18.5 If, through no act or fault of the CONTRACTOR, the WORK is suspended for a

period of more than 90 days by the OWNER or under an order of court or other public authority, or the CONSULTANT fails to act on any request for payment within thirty days after it is submitted and drawn to the attention of the CONSULTANT, or the OWNER fails to pay the CONTRACTOR substantially the amount of any sum required to be paid by the CONTRACT DOCUMENTS, then the CONTRACTOR may, terminate the CONTRACT and recover from the OWNER payment for all WORK executed and all expenses sustained, but only if: (i) the CONTRACTOR first gives the OWNER and CONSULTANT WRITTEN NOTICE of such suspension or failure and proposed termination, and (ii) the suspension or failure is not cured within 30 days following receipt of the notices. In addition and in lieu of terminating the CONTRACT, if the CONSULTANT has failed to act on a request for payment or if the OWNER has failed to make any payment as aforesaid, the CONTRACTOR may, after ten days' WRITTEN NOTICE to the OWNER and the CONSULTANT, and if the failure is not cured within that ten-day period, suspend the WORK until it has been paid all amounts then due.

18.6 If the performance of all or any portion of the WORK is suspended, delayed, or interrupted as a result of a failure of the OWNER or CONSULTANT to act within the time specified in the CONTRACT DOCUMENTS, or if no time is specified, within a reasonable time, an extension of the CONTRACT TIME, shall be made by CHANGE ORDER to compensate the CONTRACTOR for the costs and delays necessarily caused by the failure of the OWNER or CONSULTANT.

19.0 PAYMENTS TO CONTRACTOR

19.1 As a condition to receiving any payment, the CONTRACTOR must submit to the CONSULTANT: (i) a signed estimate, on a form prescribed by the OWNER, and (ii) supporting data requested by the CONSULTANT. The CONSULTANT will, within approximately 10 days after receiving an estimate, either approve it in writing and submit it to OWNER or return it to the CONTRACTOR indicating, in writing, the reasons it is not approved (in which case the CONTRACTOR may make corrections and resubmit). OWNER will pay the amount actually due under the CONTRACT DOCUMENTS on or about the 30th day following receipt of the necessary estimate and other paperwork, but the OWNER shall withhold retainage from any progress payments. The retainage is 10% (or 5%, if the total CONTRACT PRICE estimate at the time of the execution of the Agreement is \$400,000 or more). The OWNER may withhold additional sums from progress payments and the final payment to protect against (i) defective work not remedied, (ii) claims threatened or filed, (iii) failure to pay subcontractors, (iv) damage to OWNER or others, (v) reasonable doubt that the PROJECT can be completed within the remaining CONTRACT TIME or for the unpaid part of the CONTRACT PRICE, (vi) failure of the CONTRACTOR to provide documents, releases or other required items, or (vii) other similar risks to the OWNER.

19.1.1 Progress payments are made only if called for by the Agreement, and, if so, they are based upon the percentage of WORK actually completed (in case of a lump sum) or the units of work actually completed (in case of unit PRICE items), as determined by the CONSULTANT, unless otherwise stated in the Agreement.

19.1.2 Requests for progress payments may not be submitted more often than once a month, unless otherwise stated in the Agreement.

19.2 Requests for payment shall not include an allowance for materials and equipment until they are incorporated into the WORK and full title has passed to the OWNER.

19.3 Prior to final completion, OWNER, with the approval of the CONSULTANT, may use any completed or substantially completed portions of the WORK. Such use shall not constitute an acceptance of such portions of the WORK.

19.4 The OWNER shall have the right to enter the premises for the purpose of doing work not covered by the CONTRACT DOCUMENTS. This provision shall not be construed as relieving the CONTRACTOR of the sole responsibility for the care and protection of the WORK, or restoration of any damaged WORK, except such as may be caused by agents or employees of OWNER.

19.5 Upon final completion of the WORK, the CONSULTANT shall issue a certificate attached to the final payment request. The entire balance found to be due the CONTRACTOR, including the retained percentages, but except such sums as are allowed to be withheld by the OWNER, shall be paid to the CONTRACTOR within 30 days of completion and acceptance of the WORK by the OWNER's governing body.

19.6 The CONTRACTOR will indemnify and save the OWNER and OWNER'S agents harmless from all claims arising out of or relating to demands of SUBCONTRACTORS, laborers, workmen, mechanics, materialmen, and furnishers of machinery or parts thereof, equipment, tools, or supplies, in connection with the WORK. The CONTRACTOR shall, at OWNER's request, furnish satisfactory evidence that all obligations of the nature designated above have been paid, discharged, or waived. If the CONTRACTOR fails to do so, OWNER may, after having notified the CONTRACTOR, either pay unpaid bills or withhold from the CONTRACTOR's unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such claims until satisfactory evidence is furnished that all lawful liabilities have been fully discharged, whereupon payment to CONTRACTOR shall be resumed in accordance, with the terms of CONTRACT DOCUMENTS, but in no event shall the provisions of this sentence be construed to impose any obligations upon the OWNER to either the CONTRACTOR, a surety, or any other party. In paying any unpaid bills of the CONTRACTOR, any payment so made by OWNER shall be considered as a payment made under the CONTRACT DOCUMENTS by OWNER to CONTRACTOR, and OWNER shall not be liable to the CONTRACTOR for any such payments made in good faith.

20.0 ACCEPTANCE OF FINAL PAYMENT AS RELEASE

20.1 The acceptance by the CONTRACTOR of final payment shall be and shall operate as a release to OWNER of all claims and all liability to CONTRACTOR other than claims in stated amounts as may be specifically excepted by the CONTRACTOR for all things done or furnished in connection with this CONTRACT and for every act and neglect of the OWNER and others relating to or arising out of this CONTRACT. Any payment, however, final or otherwise, shall not release the CONTRACTOR or its sureties from any obligations under the CONTRACT DOCUMENTS or any surety bonds.

21.0 INSURANCE

21.1 The CONTRACTOR, at its own expense, shall procure and maintain in effect insurance policies and provide proof of insurance, all as specified in the OWNER's Form BID-301, as amended through the date of this Agreement, with only those changes, if any, specifically authorized by the other CONTRACT DOCUMENTS. The required insurance policies must be in effect beginning at the time the CONTRACTOR signs this Agreement and continuing at all times when the CONTRACTOR is performing any WORK or other duty under this Agreement or any of the BONDS. Allowing any insurance required by this Agreement to expire, lapse or be terminated or reduced is an act of default under this Agreement.

21.2 **CONTRACTOR HEREBY RELEASES (AND SHALL CAUSE ITS SUBCONTRACTORS TO RELEASE) OWNER, CONSULTANT AND THEIR OFFICERS, AGENTS AND EMPLOYEES FROM ANY CLAIMS IT MAY HAVE NOW OR IN THE FUTURE FOR CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS AND LIABILITY OF EVERY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS AND ATTORNEYS FEES, RESULTING IN OR FROM, OR IN ANY WAY CONNECTED WITH, ANY LOSS COVERED (OR WHICH SHOULD HAVE BEEN COVERED) BY INSURANCE, INCLUDING THE DEDUCTIBLE AND/OR UNINSURED PORTION THEREOF, MAINTAINED OR REQUIRED TO BE MAINTAINED BY CONTRACTOR OR ITS SUBCONTRACTORS PURSUANT TO THIS AGREEMENT.**

22.0 CONTRACT SECURITY

22.1 The CONTRACTOR shall furnish all bonds required by the other CONTRACT DOCUMENTS, simultaneously with the executed Agreement. Such BONDS shall be executed by the CONTRACTOR and a surety meeting all the qualifications stated in the Notice to Bidders. The expense of these BONDS shall be borne by CONTRACTOR. If at any time a surety on any such BOND is declared a bankrupt or loses any of its qualifications as stated in the Notice to Bidders, CONTRACTOR shall within ten days, substitute an acceptable BOND (or BONDS) in such form and sum and signed by such other surety or sureties as may be satisfactory to OWNER. The premiums on such BOND shall be paid by CONTRACTOR. No further payments to CONTRACTOR shall be deemed due nor shall be made until the new surety or sureties shall have furnished an acceptable BOND to OWNER.

23.0 ASSIGNMENTS

23.1 Neither CONTRACTOR nor OWNER shall sell, transfer, assign or otherwise dispose of the CONTRACT or any portion thereof, or of its right, title or interest therein, or its obligations thereunder, without written consent of the other party. This does not prohibit an assignment of proceeds, if specifically allowed by law.

24.0 INDEMNIFICATION AND RELEASE

24.1 The CONTRACTOR shall maintain insurance in effect, as more particularly required by other provisions of the CONTRACT DOCUMENTS. **IN ADDITION TO INSURANCE, AND SUBJECT TO THE EXCLUSIONS AND LIMITATIONS SET OUT BELOW, THE CONTRACTOR SHALL PROTECT, DEFEND, INDEMNIFY AND HOLD HARMLESS THE OWNER, THE CONSULTANT AND ALL OF THEIR OFFICERS, AGENTS, EMPLOYEES AND REPRESENTATIVES (“PROTECTED PARTIES”) FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS AND LIABILITY OF EVERY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS AND ATTORNEYS FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY, ARISING OUT OF OR IN CONNECTION WITH THE WORK UNDER THIS CONTRACT, REGARDLESS OF WHETHER SUCH INJURIES, DEATH OR DAMAGES ARE CAUSED IN PART BY THE NEGLIGENCE OF THE PROTECTED PARTIES. CONTRACTOR INTENDS TO DEFEND, INDEMNIFY, HOLD HARMLESS AND PROTECT THE PROTECTED PARTIES FROM THE CONSEQUENCES OF THEIR OWN JOINT OR CONCURRING NEGLIGENCE (BUT NOT SOLE NEGLIGENCE). THE PROTECTED PARTIES MAY SELECT DEFENSE COUNSEL OF THEIR OWN CHOOSING, AND THIS SHALL NOT AFFECT THE CONTRACTOR’S OBLIGATION TO BEAR THE COST.**

24.2 **THE CONTRACTOR ALSO RELEASES THE PROTECTED PARTIES FROM ANY CLAIMS THE CONTRACTOR MAY HAVE NOW OR IN THE FUTURE FOR CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS AND LIABILITY OF EVERY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS AND ATTORNEYS FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY, ARISING OUT OF OR IN CONNECTION WITH THE WORK UNDER THIS CONTRACT, REGARDLESS OF WHETHER SUCH INJURIES, DEATH OR DAMAGES ARE CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OF THE PROTECTED PARTIES.**

24.3 The obligations of the CONTRACTOR under this Section are limited as follows:

- The CONTRACTOR is not required (by this Agreement) to indemnify or hold harmless an architect or CONSULTANT for any claims or liabilities which would void or invalidate the CONTRACTOR’s obligations under Chapter 130 of the Texas Civil Practice & Remedies Code (i.e., “liability for damage that is caused by or resulting from defects in plans, designs or specifications, prepare, approved or used by the architect or CONSULTANT or negligence of the architect or CONSULTANT in the rendition or conduct of professional duties calling for or arising out of the construction contract and the plans, designs, or specifications that are part of the construction contract; and arises from personal injury or death, property injury or any other expense that arises from personal injury, death or

- property injury.”) or other applicable law, rule or regulation.
- The CONTRACTOR is not required (by this Agreement) to indemnify and hold harmless other parties in excess of \$10,000,000 per occurrence. In case losses of two or more parties are both covered and together exceed such limit, the limited sum shall be first applied to losses of the OWNER, and any remainder shall be applied to other losses in proportion to their size. Defense costs (investigations, expenses of litigation, court costs, attorney’s fees, etc.) are not counted toward the limit imposed by this paragraph.

24.4 In connection with any and all claims against OWNER or CONSULTANT, or any of their agents or employees, by any employee of CONTRACTOR, any SUBCONTRACTOR, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the CONTRACTOR or any SUBCONTRACTOR under workmen's compensation acts, disability benefit acts or other employee benefits acts.

25.0 SEPARATE CONTRACTS

25.1 The OWNER reserves the right to let other contracts in connection with this CONTRACT. The CONTRACTOR shall afford other contractors reasonable opportunity for the introduction and storage of their materials and execution of their work and shall properly connect and coordinate its WORK with theirs. If the proper execution or results of any part of the CONTRACTOR'S WORK depends upon any other such contractor, the CONTRACTOR shall inspect and promptly report to the CONSULTANT any defects in such work or performance by the other contractor that renders it unsuitable for such proper execution and results.

25.2 The OWNER may perform additional work related to the CONTRACT by itself, or it may let other contracts containing provisions similar to these. The CONTRACTOR will afford the other contractors (or OWNER, if it is performing the additional work itself), reasonable opportunity for introduction and storage of materials and equipment and the execution of work, and shall properly connect and coordinate its WORK with theirs.

25.3 If performance of additional work by other contractors or OWNER is not noted on the CONTRACT DOCUMENTS prior to The execution of the AGREEMENT, WRITTEN NOTICE thereof shall be given to CONTRACTOR prior to starting any such additional work. If CONTRACTOR believes that performance of such additional work by OWNER or others entitles it to an extension of CONTRACT TIME, it may make a claim therefor as provided in Section 15.

26.0 SUBCONTRACTING

26.1 The CONTRACTOR may utilize services of specialty SUBCONTRACTORS on those parts of the WORK which, under normal contracting practices, are performed by specialty SUBCONTRACTORS.

26.2 The CONTRACTOR shall not award WORK to SUBCONTRACTOR(s), in excess of half of the CONTRACT PRICE, without prior written approval of OWNER.

26.3 The CONTRACTOR shall be fully responsible to OWNER for all acts and omissions of its SUBCONTRACTORS, and of persons either directly or indirectly employed by them, as it is for acts and omissions of persons directly employed by it.

26.4 The CONTRACTOR shall cause appropriate provisions to be inserted in all subcontracts relative to the WORK to bind SUBCONTRACTORS to CONTRACTOR by the terms of the CONTRACT DOCUMENTS insofar as applicable to the WORK of SUBCONTRACTORS and to give CONTRACTOR the same power as regards terminating any subcontract that the OWNER may exercise over the CONTRACTOR under any provision of the CONTRACT DOCUMENTS.

26.5 Nothing contained in this CONTRACT shall create any contractual relation between any SUBCONTRACTOR and OWNER.

27.0 CONSULTANT'S AUTHORITY

27.1 The CONSULTANT shall act as OWNER'S representative during the contract period. The CONSULTANT shall decide questions which may arise as to quality and acceptability of materials furnished the WORK and shall interpret the intent of the CONTRACT DOCUMENTS in a fair and unbiased manner.

27.2 The CONTRACTOR will be held strictly to the intent of the CONTRACT DOCUMENTS in regard to the quality of materials, workmanship and execution of the WORK. Inspections may be made at the factory, fabrication plant or source of materials and equipment.

27.3 The CONTRACTOR is responsible for construction means, controls, techniques, sequences, procedures, and safety.

27.4 The CONSULTANT shall promptly make decisions relative to interpretation of the CONTRACT DOCUMENTS.

28.0 LAND AND RIGHTS-OF-WAY

28.1 The OWNER shall obtain all land and rights-of-way necessary for the permanent sites of the WORK, unless otherwise mutually agreed.

28.2 Upon request, the OWNER shall provide to CONTRACTOR information readily available to the OWNER about lands owned and rights-of-way acquired.

28.3 The CONTRACTOR shall provide at its own expense and without liability to the OWNER any additional land and access thereto that CONTRACTOR may desire; e.g., for temporary construction facilities, or for storage of materials.

29.0 WARRANTY; REPAIR AGREEMENT

29.1 *Warranty.* The CONTRACTOR warrants that the WORK will be done in a good and workmanlike manner and in accordance with the CONTRACT DOCUMENTS. The CONTRACTOR warrants that all goods, materials and fixtures it supplies will be new, free of

defects in title, materials and workmanship, in compliance with the CONTRACT DOCUMENTS and of the best quality generally available, unless a different quality is specified in the CONTRACT DOCUMENTS. If any part of the WORK does not comply with these warranties, it will be deemed defective, unless: (i) the particular defective item is brought to the attention of the OWNER by WRITTEN NOTICE from the CONTRACTOR, (ii) the defect is officially waived by the OWNER's governing body, and (iii) the item is expressly accepted by the OWNER's governing body in its defective condition.

29.2 Repair Agreement. If any defective item, or damage to the WORK, is discovered within one year from and after the date that the PROJECT is fully completed and officially accepted (by the OWNER's governing body), and if the defect or damage arises out of or relates to defects in materials furnished by, or workmanship of, the CONTRACTOR in connection with the PROJECT, the CONTRACTOR shall repair, replace or restore the defect or damage. Work to repair, replace or restore shall begin within ten days following the day that the condition is brought to the attention of the CONTRACTOR and shall be completed as soon as practicable. Any item repaired, replaced or restored under this repair agreement shall be subject to this repair agreement for an additional period of six months from and after the completion of the repair, replacement or restoration and acceptance by the OWNER. This repair agreement is not the exclusive remedy available to the OWNER. It provides an added guaranty to extend, rather than limit, the CONTRACTOR's responsibility for the WORK. This repair agreement does not limit the CONTRACTOR's warranties or other obligations under the CONTRACT DOCUMENTS.

30.0 MEDIATION

30.1 In General. The parties have entered into this Agreement in good faith and in the belief that it is mutually advantageous to them. It is with that same spirit of cooperation that they pledge to attempt to resolve any dispute amicably without the necessity of litigation. Accordingly, they agree if any dispute arises between them relating to this Agreement (the "Dispute") that prior to the commencement of any legal action to interpret or enforce this Agreement, they will first use the procedures specified in this Section (the "Procedure"). If different or additional procedures for mediation are required by applicable law, they shall be followed notwithstanding anything to the contrary in this Agreement.

30.2 Initiation of Procedure. The party seeking to initiate the Procedure (the "Initiating Party"), shall give WRITTEN NOTICE to the other party, describing in general terms the nature of the Dispute, the Initiating Party's claim for relief and identifying one or more individuals with authority to settle the Dispute on such party's behalf. The party receiving such notice (the "Responding Party") shall have five business days within which to send a WRITTEN NOTICE to the Initiating Party designating one or more individuals with authority to settle the Dispute on such party's behalf. (The individuals so designated shall be known as the "Authorized Individuals.")

30.3 Direct Negotiations. The Authorized Individuals shall be entitled to make such investigation of the Dispute as they deem appropriate, but agree to meet promptly (and in no event later than the thirtieth day following the date of the Initiating Party's written notice) to discuss resolution of the Dispute. The Authorized Individuals shall meet at such times and

places and with such frequency as they may agree. If the Dispute has not been resolved on or before the thirtieth day following the date of their initial meeting, the parties shall cease direct negotiations and either party may give the other WRITTEN NOTICE that the Dispute is submitted to mediation (“Submission Notice”) in accordance with the following.

30.4 *Selection of Mediator.* The Authorized Individuals may discuss mediator candidates. If they do not agree on a mediator, they shall, on or before the fifth day following receipt of the Submission Notice, exchange simultaneously written lists of at least five acceptable qualified mediators not affiliated with any of the parties. All mediator candidates must satisfy the qualification standards of Texas law (e.g., Section 154.052, Texas Revised Civil Practices & Remedies Code or other governing law, as amended from time to time). On or before the fifth day following exchange of the lists, each Authorized Individual shall rank the mediators listed by the other party, in numerical order of preference. The Authorized Individuals shall simultaneously exchange such rankings. If one or more names are on both lists, the person with the best combined score shall be designated as the mediator. If no mediator has been selected under this procedure, the parties agree jointly to request a State or Federal District Judge of their choosing (or if they cannot agree, the Local Administrative Judge of Harris County, Texas) to supply within ten business days a list of potential qualified mediators. On or before the fifth day following receipt of the list, the parties shall again rank the proposed mediators in numerical order of preference and shall simultaneously exchange such lists. They shall select as the mediator the person receiving the best combined score. If such mediator is not available to serve, they shall proceed to contact the mediator receiving the next best combined score, and so on, until they are able to select a mediator.

30.5 *Time and Place for Mediation.* In consultation with the mediator selected, the parties shall promptly designate a mutually convenient time and place for the mediation, and unless circumstances require otherwise, such time is to be not later than the 45th day following selection of the mediator.

30.6 *Exchange of Information.* If a party to this Agreement has substantial need for information in the possession of another party to this Agreement in order to prepare for the mediation, all parties shall attempt in good faith to agree on procedures for the expeditious exchange of such information, with the help of the mediator, if required.

30.7 *Summary of Views.* At least seven days prior to the first scheduled session of the mediation, each party shall deliver to the mediator and to the other party a concise written summary of its views on the Dispute, and such other matters required by the mediator. The mediator may also request that each party submit a confidential issue paper to the mediator.

30.8 *Parties to be Represented.* In the mediation, each party shall be represented by an Authorized Individual and may be represented by counsel. In addition, each party may, with permission of the mediator, bring such additional persons as are needed to respond to questions, contribute information and participate in the negotiations. If required by the mediator, the parties agree to make arrangements for simultaneous or joint meetings of their governing bodies.

30.9 *Conduct of Mediation.* The mediator shall determine the format for the meetings, designed to assure that both the mediator and the Authorized Individuals have an opportunity to hear an oral presentation of each party's views on the matter in dispute, and that the authorized parties attempt to negotiate a resolution of the matter in dispute, with or without the assistance of

counsel or others, but with the assistance of the mediator. To this end, the mediator is authorized to conduct both joint meetings and separate private caucuses with the parties. The mediation session shall be private, to the extent allowed by law. The mediator will keep confidential all information learned in private caucus with any party unless specifically authorized by such party to make disclosure of the information to the other party. The parties agree to sign a document agreeing that the mediator shall be governed by the provisions of Chapter 154 of the Texas Civil Practice and Remedies Code and such other rules as the mediator shall prescribe. The parties commit to participate in the proceedings in good faith with the intention of resolving the Dispute, if at all possible.

30.10 *Termination of Procedure.* The parties agree to participate in the mediation procedure to its termination. The mediation shall be terminated: (i) by the execution of a settlement agreement by the parties, (ii) by a declaration of the mediator that the mediation is terminated, or (iii) by a written declaration of a party to the effect that the mediation process is terminated at the conclusion of one full day's mediation session. If a party withdraws from the mediation by either refusing to participate or leaving before one of the foregoing three conditions is satisfied, then that party shall be liable for all attorney fees and court costs arising from all subsequent litigation of the Dispute. Even if the mediation is terminated without a resolution of the Dispute, the parties agree not to terminate negotiations and not to commence any legal action or seek other remedies prior to the fifth day following the mediation.

30.11 *Fees of Mediator; Disqualification.* The fees and expenses of the mediator shall be shared equally by the parties. The mediator shall be disqualified as a witness, consultant, expert or counsel for any party with respect to the Dispute and any related matters.

30.12 *Confidentiality.* Mediation is a compromise negotiation for purposes of the Federal and State Rules of Evidence and constitutes privileged communication under Texas law. The entire mediation process is confidential, and no stenographic, visual or audio record shall be made, unless required by law. All conduct, statements, promises, offers, views and opinions, whether oral or written, made in the course of the mediation by any party, by their agents, employees, representatives or other invitees and by the mediator are confidential to the extent allowed by law and shall, in addition and where appropriate, be deemed to be privileged. Such conduct, statements, promises, offers, views and opinions shall not be discoverable or admissible for any purposes, including impeachment, in any litigation or other proceeding involving the parties, and shall not be disclosed to anyone not an agent, employee, expert, witness, or representative of any of the parties, except as required by law. However, evidence otherwise discoverable or admissible is not excluded from discovery or admission as a result of its use in the mediation.

30.13 *Some Suits Not Prohibited.* Notwithstanding the foregoing, a party may commence litigation sooner than allowed by this Agreement if the party reasonably determines that: (i) litigation, if not commenced, could be barred by an applicable statute of limitations, Agreement provision or other tolling rule, or (ii) exigent circumstances require the party to file suit to seek an extraordinary remedy (including for example injunction, garnishment order, restraining order or other order).

31.0 TAXES

31.1 The CONTRACTOR will pay all sales, use, consumer, income, value added, gross receipts, franchise, unemployment, payroll, Social Security and other taxes arising out of or related to the WORK.

31.2 The CONTRACTOR shall obtain and file necessary documentation so that any sales and use tax exemptions applicable to the WORK will be applied to this Agreement and any cost savings are passed through to the OWNER.

31.3 The CONTRACTOR will assure that it and its SUBCONTRACTORS obtain Texas Limited Sales and Use Tax Permits for all materials they purchase in connection with the WORK. Each permit shall show the CONTRACT site as the point of sale, unless a different location is required by applicable law or regulation.

32.0 MISCELLANEOUS

32.1 PARTIES, ETC. This Agreement shall bind and benefit only the parties hereto and their legal successors and permitted assigns. It shall not confer rights or benefits upon any other person or entity. The parties are not partners or joint venturers. The CONTRACTOR is not an agent of OWNER. The CONTRACTOR is an independent contractor controlling details, methods and techniques of work, it being agreed that OWNER shall look only to the results.

32.2 ATTORNEY'S FEES. By specific reference to Section 271.159 of the Texas Local Government Code (as amended by the 2005 Texas Legislature), this Agreement authorizes the prevailing party to recover its reasonable and necessary attorney's fees in the adjudication of a claim by or against the OWNER based on this Agreement.

32.3 OTHER. This Agreement is governed by Texas law. All obligations are performable in Harris County, Texas. Any previous agreements between the parties relating to the WORK are merged into and included in this Agreement. This Agreement is the full and final expression of their agreement. This Agreement may only be amended in writing, approved as required by the OWNER'S governing laws, rules, orders, resolutions, ordinances, etc.

32.4 NO BOYCOTT ISRAEL. As required by Chapter 2270, Texas Government Code, CONTRACTOR hereby verifies that it does not boycott Israel and will not boycott Israel through the term of this Agreement. For purposes of this verification, "Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

APPENDIX

(Prevailing Wage Rates; See Section 12, above)

General Decision Number: TX130056 01/04/2013 TX56

Superseded General Decision Number: TX20120056

State: Texas

Construction Type: Highway

Counties: Austin, Brazoria, Chambers, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, San Jacinto and Waller Counties in Texas.

HIGHWAY CONSTRUCTION PROJECTS (excluding tunnels, building structures in rest area projects & railroad construction; bascule, suspension & spandrel arch bridges designed for commercial navigation, bridges involving marine construction; and other major bridges).

Modification Number Publication Date

0 01/04/2013

* SUTX2011-013 08/10/2011

Rates

Fringes

CEMENT MASON/CONCRETE

FINISHER (Paving and Structures)..\$ 12.98

ELECTRICIAN.....\$ 27.11

FORM BUILDER/FORM SETTER

Paving & Curb.....\$ 12.34

Structures.....\$ 12.23

LABORER

Asphalt Raker.....\$ 12.36

Flagger.....\$ 10.33

Laborer, Common.....\$ 11.02

Laborer, Utility.....\$ 11.73

Pipelayer.....\$ 12.12

Work Zone Barricade Servicer. \$ 11.67

PAINTER (Structures).....\$ 18.62

POWER EQUIPMENT OPERATOR:

Asphalt Distributor.....\$ 14.06

Asphalt Paving Machine.....\$ 14.32

Broom or Sweeper.....\$ 12.68

Concrete Pavement

Finishing Machine.....\$ 13.07

Concrete Paving, Curing, Float, Texturing Machine....\$ 11.71

Concrete Saw.....\$ 13.99

Crane, Hydraulic 80 Tons or less.....\$ 13.86

Crane, Lattice boom 80 tons or less...\$ 14.97

Crane, Lattice boom over 80 Tons....\$ 15.80

Crawler Tractor.....\$ 13.68

Excavator, 50,000 pounds or less....\$ 12.71

Excavator, Over 50,000 pounds.....\$ 14.53

Foundation Drill, Crawler Mounted....\$ 17.43

Foundation Drill, Truck Mounted.....\$ 15.89

Front End Loader 3 CY or Less..\$ 13.32

Front End Loader, Over 3 CY.\$ 13.17

Loader/Backhoe.....\$ 14.29

Mechanic.....	\$ 16.96
Milling Machine.....	\$ 13.53
Motor Grader, Fine Grade....	\$ 15.69
Motor Grader, Rough.....	\$ 14.23
Off Road Hauler.....	\$ 14.60
Pavement Marking Machine....	\$ 11.18
Piledriver.....	\$ 14.95
Roller, Asphalt.....	\$ 11.95
Roller, Other.....	\$ 11.57
Scraper.....	\$ 13.47
Spreader Box.....	\$ 13.58
Servicer.....	\$ 13.97
Steel Worker	
Reinforcing Steel.....	\$ 15.15
Structural Steel Welder....	\$ 12.85
Structural Steel.....	\$ 14.39
TRUCK DRIVER	
Low Boy Float.....	\$ 16.03
Single Axle.....	\$ 11.46
Single or Tandem Axle Dump..	\$ 11.48
Tandem Axle Tractor w/Semi Trailer...	\$ 12.27

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.
=====

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).-----

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is union or non-union.

Union Identifiers

An identifier enclosed in dotted lines beginning with characters other than "SU" denotes that the union classification and rate have found to be prevailing for that classification. Example: PLUM0198-005 07/01/2011. The first four letters , PLUM, indicate the international union and the four-digit number, 0198, that follows indicates the local union number or district council number where applicable , i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. The date, 07/01/2011, following these characters is the effective date of the most current negotiated rate/collective bargaining agreement which would be July 1, 2011 in the above example.

Union prevailing wage rates will be updated to reflect any changes in the collective bargaining agreements governing the rates.

0000/9999: weighted union wage rates will be published annually each January.

Non-Union Identifiers

Classifications listed under an "SU" identifier were derived from survey data by computing average rates and are not union rates; however, the data used in computing these rates may include both union and non-union data. Example: SULA2004-007 5/13/2010. SU indicates the rates are not union majority rates, LA indicates the State of Louisiana; 2004 is the year of the survey; and 007 is an internal number used in producing the wage determination. A 1993 or later date, 5/13/2010, indicates the classifications and rates under that identifier were issued as a General Wage Determination on that date.

Survey wage rates will remain in effect and will not change until a new survey is conducted.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
 Wage and Hour Division
 U.S. Department of Labor
 200 Constitution Avenue, N.W.
 Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
 U.S. Department of Labor
 200 Constitution Avenue, N.W.
 Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
 U.S. Department of Labor
 200 Constitution Avenue, N.W.
 Washington, DC 20210

4.) All decisions by the Administrative Review Board are final

=====

END OF GENERAL DECISION

INSURANCE SPECIFICATIONS

Owner: City of West University Place, Texas

Contract: Jennie E. Hughes Park Improvements

1.1 GENERALLY.

1.1.1 These specifications are an integral part of a contract or other agreement (“Agreement”) between the above-named OWNER and the other party or parties (“CONTRACTOR”), who will provide goods, services, etc. (“WORK”) in connection with the above-named CONTRACT. These specifications may be attached to the Agreement or incorporated into it by reference, or both. Subcontractors of the CONTRACTOR, of any tier, are referred to as “SUBCONTRACTORS.” Surety bonds of the CONTRACTOR are referred to as “BONDS.”

1.1.2 The CONTRACTOR, at its own expense, shall procure and maintain in effect insurance policies and provide proof of insurance, all as specified in this form BID-301, as amended through the date of the Agreement, with only those changes, if any, authorized by specific provisions in the other parts of the Agreement or by variation (as provided below).

1.1.3 The required insurance policies must be in effect beginning at the time the CONTRACTOR signs this Agreement and continuing at all times when the CONTRACTOR is performing any WORK or other duty under this Agreement or any of the BONDS.

1.1.4 CONTRACTOR’s insurance must cover the types of claims specified below which may arise out of or result from the WORK, including acts or omissions of itself, any SUBCONTRACTOR or anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable.

1.1.5 Allowing any insurance required by this Agreement to expire, lapse or be terminated or reduced is an act of default and breach under this Agreement. If claims or potential claims reduce or impair any coverage, or the available limits of insurance, the CONTRACTOR must immediately acquire additional coverage so that the minimum limits of insurance are available for claims relating to this Contract at all times. Failure to do so is an act of default or breach.

1.2 COVERAGES AND LIMITS. The CONTRACTOR’s insurance must include the following coverages and minimum limits:

- A. General Liability with minimum limits as follows:
 - \$1,000,000 Each Occurrence
 - \$1,000,000 Personal and Advertising Injury
 - \$2,000,000 General Aggregate
 - \$2,000,000 Environmental Damage Each Occurrence
 - \$2,000,000 Products/Completed Operations Aggregate

CGL coverage shall extend to and cover the following, either in the base form or by endorsement:

1. Premises, operations, explosion, collapse and underground hazards.
 2. Contractor's protective for CONTRACTOR'S liability arising out of the hire of SUBCONTRACTORS.
 3. Aggregate Limits of Insurance applicable "Per Contract" (as provided in Form No. CG25031185, or equivalent)
 4. Contractual liability, supporting, but not limited to, the indemnity provisions of the CONTRACT DOCUMENTS.
 5. Personal injury and advertising liability, with no exclusion for employment or contractual liability.
 6. Property damage, including coverage for completed operations.
 7. Products and Completed Operations coverage for at least two years following acceptance of the WORK,
 8. All other standard Commercial General Liability coverages.
- B. Automobile Liability: \$1,000,000 per occurrence combined single limit for Bodily Injury and Property Damage Liability (each accident). This policy shall be on a standard form written to cover "any auto" (all owned, hired and non-owned automobiles).
- C. Workers' Compensation: Statutory Limits
Employer's Liability
\$500,000 Disease Policy Limit
\$500,000 Disease (Each Employee) Limit
\$500,000 Each Accident Limit

CONTRACTOR shall maintain during the term of the Work, Workers' Compensation coverage for all of CONTRACTOR's workers at the site of the WORK, and in case any of the WORK is sublet, the CONTRACTOR shall require all SUBCONTRACTORS similarly to provide Workers' Compensation insurance for all the latter's employees, unless such employees are covered by the protection afforded by the CONTRACTOR. USL&H shall be provided where such exposure exists. No "alternative" form of coverage will be accepted under any condition. See, also, section 1.8, below.

- D. Umbrella Liability: combined single limits of Bodily Injury and Property Damage Liability. This policy shall be written on an Umbrella basis above coverages as described in the policies above. The Umbrella policy shall have the same inception and expiration dates as underlying liability policies and with coverage no less broad than those in the primary policies or program, and including "Per Contract" aggregate limits (as provided in Form No. CG25031185, or equivalent). Minimum limits per occurrence:
---If the WORK includes any construction, boring or excavation: \$5,000,000
—If the WORK does not: \$1,000,000.

- E. Environmental Pollution Liability Insurance (help) \$1,000,000 per occurrence.
- F. (If the CONTRACT PRICE exceeds \$1,000,000) Owner's Protective Liability Insurance Policy, naming the OWNER and CONSULTANT, and their officers, agents and employees as insured parties, with the following minimum limits: \$1,000,000 per occurrence for bodily injury and \$1,000,000 aggregate.
- G. (If the WORK involves construction or modification of any building with a CONTRACT PRICE in excess of \$250,000) Builder's Risk Insurance, as follows:
 - 1. An all risk policy, including workmanship acceptable to the OWNER, in the amount equal at all times to 100% of the CONTRACT PRICE. The policy shall be issued in the name of the CONTRACTOR and shall name any SUBCONTRACTORS as additional insureds. The OWNER shall be named as a loss payee on the policy.
 - 2. The builders risk policy shall have endorsements as follows:
 - a. This insurance shall be specific as to coverage and not considered as contributing insurance with any permanent insurance maintained on the affected premises.
 - b. If off site storage is permitted, include transit and storage in an amount sufficient to protect property being transported or stored.
 - c. Include coverage for existing structures affected by the WORK.

1.3 ADDITIONAL PROVISIONS. All such insurance policies must:

- be issued by insurance companies licensed and admitted to do business in the State of Texas, rated no less than A-VIII as shown in the most current issue of A.M. Best's Key Rating Guide, and under forms of policies satisfactory to OWNER;
- be written on an occurrence (not "claims made") basis, except for professional errors and omissions insurance;
- be endorsed to be primary and non-contributing as to any liability coverage of OWNER, CONSULTANT or other additional insureds, with respect to CONTRACTOR's operations hereunder;
- include waivers of subrogation in favor of OWNER, CONSULTANT and their officers, agents and employees;
- add the OWNER, CONSULTANT and their officers, agents and employees as additional insureds with respect to CONTRACTOR's operations hereunder (this requires an endorsement in Form CG20261185, or equivalent, which includes coverage for completed operations, except on Worker's Compensation and Employer's Liability and errors and omissions coverage).

1.4 PROOF OF INSURANCE. A. Proof of the required insurance policies coverage required to be maintained by the CONTRACTOR must be furnished to OWNER and

CONSULTANT upon execution of this Agreement. New proofs shall be provided to OWNER and CONSULTANT prior to each policy's termination date.

B. Proof must include an original Certificate of Insurance issued by the insurance carrier or its authorized agent. (*Note: The OWNER or the CONSULTANT may require the use of a standard certificate of insurance, filled out and signed as required.*) Certificates of Insurance should be prepared and transmitted as follows:

- (1) Insert CONTRACTOR's name as insured party, which must match that on the Agreement.
- (2) Show the producer of the certificate with correct address, phone and fax.
- (3) List each company providing coverage, the policy number of each coverage and policy dates of each coverage.
- (4) Fill-in the appropriate spaces for carriers, limits, features, etc., per these specifications.
- (5) Insert the following in the space for description of operations, locations, etc.

This certificate is for the Contract for which the Insured provides goods, services or work to City of West University Place.

General Liability and Umbrella Liability coverages comply with Form BID-301 for this Contract, as to scope, exclusions, etc.

Aggregate limits apply "per contract" (endorsement Form No. CG25031185).

Certificate Holder is an additional insured (endorsement Form No. CG20261185), except on WC/EL and Prof. Liability. Waiver of subrogation applies, by endorsement, in favor of Certificate Holder.

Each policy is endorsed to be primary and non-contributing as to any coverage of Certificate Holder or additional insureds.

- (6) Insert or modify the cancellation language to state that the OWNER and CONSULTANT will be notified in writing at least 30 days prior to the cancellation of or reduction in coverage, or intent not to renew coverage (and any different language shall be removed, e.g., "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives . . .").

- (7) Show the OWNER and CONSULTANT (including their officers, agents and employees) as Certificate Holders with correct mailing addresses.
- (8) Include an original signature of an authorized agent of each issuing insurance company.
- (9) Transmit the certificate directly to the OWNER or CONSULTANT.

Note: If one or more variations are approved as provided in Section 1.7, below, the certificate may be modified accordingly.

C. The OWNER or the CONSULTANT may require additional proofs of insurance, including certified copies of insurance policies and direct submissions from the insurance company or agent (not handled or transmitted by others).

1.5 SUBCONTRACTORS' Insurance. Insurance equivalent to that required of CONTRACTOR shall be provided by each SUBCONTRACTOR (or provided by CONTRACTOR on behalf of each SUBCONTRACTOR) to cover its operations. CONTRACTOR shall be held responsible for any modification in these insurance requirements as they apply to SUBCONTRACTORS. CONTRACTOR shall maintain proofs of insurance from all SUBCONTRACTORS, enumerating, among other things, the waivers in favor of, and additional insured status of, the OWNER and CONSULTANT, as required herein, and make them available to OWNER or CONSULTANT upon request.

1.6 EQUIPMENT. The CONTRACTOR and SUBCONTRACTORS may obtain insurance coverage(s) in sufficient amounts and forms to cover their exposures to loss from fire, lightning, wind, vandalism, theft, or other perils of that nature. Any insurance policy covering CONTRACTORS' or SUBCONTRACTORS' equipment against loss by physical damage shall include an endorsement waiving the insurer's right of subrogation against OWNER, CONSULTANT and their officers, agents and employees. Such insurance shall be CONTRACTOR's and SUBCONTRACTORS' sole and complete means of recovery for any such loss. Should CONTRACTOR and/or its SUBCONTRACTORS choose to self-insure this risk, it is expressly agreed that the CONTRACTOR and its SUBCONTRACTORS hereby waive any claim for damage or loss to said equipment against OWNER, CONSULTANT or their officers, agents or employees.

1.7 VARIATIONS. A CONTRACTOR or SUBCONTRACTOR may request variations from this specification. Requests must be in writing, signed by the requestor and the insurance agent and delivered to the OWNER and the CONSULTANT. The OWNER or CONSULTANT

may require the use of a standard form. Requests should explain why a variation is needed and indicate what alternative or additional coverages or provisions would be provided, to compensate for the variation requested. No request is effective until approved, in writing, by the OWNER (and the CONSULTANT, if the variation affects the CONSULTANT). A request may be approved on condition that alternative or additional coverages be provided.

1.8 WORKER'S COMPENSATION (TAC COMPLIANCE). The CONTRACTOR and each SUBCONTRACTOR shall comply with 28 TAC §110.110 and other applicable, laws, rules and regulations. The following excerpt from §110.110 is included for reference, and any amendments to that section are included by reference, whether set out below or not.

Article _____. Workers' Compensation Insurance Coverage.

A. Definitions:

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 contract, for the duration of the contract.

Duration of the Contract - includes the time from the beginning of the work on the Contract until the contractor's/person's work on the Contract has been completed and accepted by the governmental entity.

Persons providing services on the Contract ("subcontractor" in §§406.096) - includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the Contract, 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 Contract. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a Contract. "Services" does not include activities unrelated to the Contract, 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 Contract, for the duration of the Contract.

C. The Contractor must provide a certificate of coverage to the governmental entity 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 Contract, the contractor must, prior to the end of the coverage period, file a

new certificate of coverage with the governmental entity showing that coverage has been extended.

E. The contractor shall obtain from each person providing services on a Contract, and provide to the governmental entity:

(1) a certificate of coverage, prior to that person beginning work on the Contract, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the Contract; and

(2) no later than seven 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 Contract.

F. The contractor shall retain all required certificates of coverage for the duration of the Contract and for one year thereafter.

G. The contractor shall notify the governmental entity in writing by certified mail or personal delivery, within 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 Contract.

H. The contractor shall post on each Contract site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the Contract 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 Contract, 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 Contract, for the duration of the Contract;

(2) provide to the contractor, prior to that person beginning work on the Contract, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the Contract, for the duration of the Contract;

(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 Contract;

(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 Contract; 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 Contract;

(5) retain all required certificates of coverage on file for the duration of the Contract and for one year thereafter;

(6) notify the governmental entity in writing by certified mail or personal delivery, within 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 Contract; 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 governmental entity that all employees of the contractor who will provide services on the Contract will be covered by workers' compensation coverage for the duration of the Contract, 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 governmental entity to declare the contract void if the contractor does not remedy the breach within ten days after receipt of notice of breach from the governmental entity.

[End of Insurance Specifications]

AGREEMENT FOR FINAL PAYMENT
AND CONTRACTOR'S SWORN RELEASE

In order to insure that the rights, obligations and responsibilities of all parties to the original contract document are fully protected, which contract document was signed and executed on the _____ day of _____, 20____ by _____, referred to therein as CONTRACTOR and hereinafter referred to as CONTRACTOR, and the OWNER on the _____ day of _____, 20__, and further in consideration for the final payment of all sums due and claimed by the CONTRACTOR against the OWNER, the CONTRACTOR makes the following representations to the OWNER, either individually if a proprietorship, jointly by all partners if a partnership, or if a corporation, by action of the president and secretary of said corporation, as duly authorized by appropriate action of the stockholders and/or board of directors of said corporation, their signatures hereon constituting a representation under oath by said individuals that they have the power and authority to execute this Agreement for and on behalf of the said corporation:

I.

The CONTRACTOR has received _____ (number) payments pursuant to _____ (number) of CONTRACTOR Payment Estimates, copies of which are attached hereto and marked Exhibit "A", presented to the OWNER and paid during the progress of the job referred to in the Contract between the parties; and in this regard, the undersigned CONTRACTOR represents to the OWNER that it does not claim nor intend to claim at any future date, any additional sums of money of any nature whatsoever under and by virtue of the payment estimates previously submitted to the CONSULTANT for approval, or any other sums of money of any nature whatsoever for materials furnished and used in the job or for work done,

and hereby releases and discharges the OWNER from any liabilities of any nature whatsoever, for any claims of any nature made by the CONTRACTOR at some future date, or by its successors or assigns.

II.

The undersigned CONTRACTOR further represents to the OWNER that the Final Payment Estimate, reflecting all associated Change Orders, if any, submitted by the CONTRACTOR to the OWNER, whether or not modified, corrected or changed in some way by deletions or other modifications by the CONSULTANT, the CONTRACTOR or the OWNER, a copy of which is attached hereto and marked Exhibit "B", is true, correct and accurate; and it is further agreed and stipulated by the undersigned CONTRACTOR that upon the receipt of final payment in the amount as set out on the Final Payment Estimate, the CONTRACTOR, by execution of this instrument of release, does, therefore, release and forever discharge the OWNER of and from all manner of debts, demands, obligations, suits, liabilities and causes of action of any nature whatsoever under and by virtue of the terms and provisions of the Contract hereinbefore referred to, and any change or modification thereof, or in any manner growing out of or arising from or by virtue of the work, labor and services performed by the CONTRACTOR.

III.

CONTRACTOR, in addition to the provisions set out in the contract document, agrees to indemnify and hold the OWNER harmless from any and all causes of action, claims, demands or suits made by any person or other entity against the OWNER, by reason of the work performed by such CONTRACTOR, and agrees to defend or to cause the same to be defended at the CONTRACTOR's sole expense and obligation, whenever such actions may be brought, and further to pay all costs incurred by the OWNER in the defense thereof, including administrative

costs and attorney's fees, and further to pay any judgments or settlements which may be entered into or agreed to against or for the benefit of the OWNER. It is, however, specifically agreed that the OWNER shall not enter into any settlement agreements without the acquiescence and agreement of the CONTRACTOR.

IV.

The CONTRACTOR, acting by and through the person or persons whose names are subscribed hereto, does solemnly swear and affirm that all bills and claims have been paid to all materialmen, suppliers, laborers, subcontractors, or other entities performing services or supplying materials, and that the OWNER shall not be subject to any bills, claims, demands, litigation or suits in connection therewith.

V.

It is further specifically understood and agreed that this Agreement for Final Payment and Contractor's Sworn Release shall constitute a part of the original Contract of the parties heretofore previously referred to, and it is also specifically understood and agreed that this Agreement shall not act as a modification, waiver or renunciation by the OWNER of any of its rights or remedies as set out in the contract itself, but this Agreement for Final Payment and Contractor's Sworn Release shall constitute a supplement thereto for the additional protection of the OWNER.

VI.

This Agreement for Final Payment and Contractor's Sworn Release shall be considered to be continuing and binding upon the parties hereto and shall not terminate upon receipt and acceptance by the CONTRACTOR of final payment, but shall be deemed continuing so long as any actions, claims or other demands contemplated herein against the OWNER, may

lawfully be brought under applicable statutes of limitations, and shall in addition be deemed to be continuing for such additional period of time as shall be necessary to compensate and repay to the OWNER, all costs or damages incurred by it by reason of such claims.

SIGNED and EXECUTED this, the ____ day of _____, 20

CONTRACTOR

Signature

Print Name: _____

[If CONTRACTOR is a proprietorship, OWNER must sign; if a partnership, each partner must sign; if a corporation, the following language should be used.]

SIGNED and EXECUTED this, the _____ day of _____, 20

, by _____, a Texas corporation, under

authority granted to the undersigned by said corporation as contained in the Charter, By-Laws or Minutes of a meeting of said corporation regularly called and held.

CONTRACTOR

By: _____
President

ATTEST:

Corporate Secretary
(Corporate Seal)

[This form is for use by either a proprietorship or a partnership. In the event CONTRACTOR is a partnership or a joint proprietorship, additional signature lines should be added for each individual.]

AFFIDAVIT

STATE OF TEXAS

COUNTY OF _____

BEFORE ME, the undersigned authority, on this day personally appeared the person or persons whose name(s) are subscribed to the above and foregoing Agreement for Final Payment and Contractor's Sworn Release, who each, after being by me duly sworn, on their oaths deposed and said:

I(We) am(are) the person(s) who signed and executed the above and foregoing Agreement for Final Payment and Contractor's Sworn Release, and I(we) have read the facts and statements as therein set out and the representations as made therein, and I(we) state that the above and foregoing are true and correct.

CONTRACTOR - Affiant

SWORN TO AND SUBSCRIBED TO before me this, the ___ day of _____, 20__.

Notary Public, State of Texas

My Commission Expires: _____

[This form is for use in the event CONTRACTOR is a corporation.]

AFFIDAVIT

STATE OF TEXAS

COUNTY OF _____

BEFORE ME, the undersigned authority, on this day personally appeared the persons who signed and executed the above and foregoing Agreement for Final Payment and Contractor's Sworn Release, whose names are set out above, who each, after being by me duly sworn, on their oaths deposed and said:

We each are the persons whose names are subscribed above, and hold respectively the offices in the corporation as set out above, and each state under oath that we have the authority to execute this Agreement for Final Payment and Contractor's Sworn Release for and on behalf of said corporation, pursuant to authority granted to us in the Charter of said corporation, the By-Laws of said corporation and/or the Minutes of said corporation; and the facts, statements and representations as set out in the instrument to which this Affidavit is attached, are true and correct.

SWORN TO AND SUBSCRIBED TO before me this, the ____ day of _____, 20__.

Notary Public, State of Texas

My Commission Expires: _____

STATE OF _____

COUNTY OF _____

**SUBCONTRACTOR/MATERIALMAN'S
FULL AND FINAL
RELEASE AND WAIVER OF CLAIMS AND LIENS**

For consideration in hand paid, _____, (Company) does hereby certify and acknowledge that Company has been fully paid for all work and labor done by it, and for materials supplied by it, to date on that certain project described as follows:

- Contractor:**
- Project Description:**

- Obligee:**
- Amount:**

Company does hereby waive all rights, claims and liens which it may have, or be entitled including statutory and constitutional liens on such project for such work and labor done and material supplied by it to date, or arising out of such transactions.

Company hereby releases in full all claims and liens it has heretofore filed on such property for such work including labor and material.

Executed this _____ day of _____, 20_____.

By: _____

STATE OF _____

COUNTY OF _____

BEFORE ME, the undersigned, a Notary Public in and for said County, _____ on this day personally appeared _____ Known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said _____, a corporation, and that he executed the same as the act of such corporation for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this _____ day of _____, 20_____.

Notary Public

TECHNICAL SPECIFICATIONS