



City of West University Place

A Neighborhood City

CITY COUNCIL

Bob Higley, Mayor
Kevin Trautner, Mayor Pro Tem
Lauri Lankford, Councilmember
John P. Barnes, Councilmember
Ed Sobash, Councilmember

STAFF

David J. Beach, City Manager
Scott Bounds, Olson & Olson, City Attorney
Thelma Gilliam, City Secretary

City Council Meeting Agenda

Notice is hereby given of a **Workshop and Regular Meeting** of the West University Place City Council to be held remotely on **Monday, April 12, 2021** beginning at **5:30 p.m.** for the purpose of considering the agenda of items listed.

Due to the Novel Coronavirus (COVID 19) pandemic and CDC's recommendation regarding social distancing measures, the meeting will be held via Zoom, which will allow for two-way communications between Council and the public for those desiring to participate. To attend the meeting via telephonic means, please call [346-248-7799](tel:346-248-7799) or you can join via <https://us02web.zoom.us/j/89593089878>. The Meeting ID Number is [895 9308 9878](tel:89593089878). Should you have difficulty entering the meeting or need assistance during the meeting, email westuzoom@westutx.gov.

Any person interested in speaking on any item on the regular agenda or during public comments must submit his/her request via email to the City Secretary at tgilliam@westutx.gov at least **one (1) hour prior to the start of the meeting**. The request must include the speaker's name, address, and the phone number that will be used for the call, and the agenda item number or description, if applicable. Speakers will be remain in a queue and muted until their time to speak.

Handouts or other information must be emailed to tgilliam@westutx.gov no later than one day prior to the start of the meeting. The information will be provided to Mayor and Council in advance of the meeting.

Note: All agenda items are subject to action. The City Council reserves the right to meet in a closed session on any agenda item should the need arise and, if applicable pursuant to authorization by Title 5, Chapter 551, of the Texas Government Code.

The agenda packet is accessible to the public on the City's website. A recording of this meeting will be made available to the public within 3 business days after the meeting. **To obtain a hard copy of the agenda packet, please contact the City Secretary via the email address above.**

WORKSHOP (5:30 p.m.)

1. Call Workshop to Order/Roll Call

2. City-wide Traffic Study

Matters related to an update on a citywide speed and safety traffic study. **Mr. Gerardo Barrera, Public Works Director and Mr. Dustin Qualls with Traffic Engineers**

3. Adjourn Workshop

REGULAR MEETING (6:30 p.m.)

4. Call Regular Meeting to Order/Roll Call

5. Pledge of Allegiance

6. Older Americans and Volunteer Month Proclamation

Matters related to a proclamation for Older Americans and Volunteer Month. *Recommendation: Proclaim the Month of May 2021 as Older Americans and Volunteer Month. Mayor Bob Higley & Ms. Toby Brooks, Senior Services Manager* [see Proclamation]

7. Public Comments

This is an opportunity for citizens to speak to the Council relating to agenda and non-agenda items. Speakers are required to register in advance and must limit their presentations to three minutes each. If the topic the speaker wishes to address is on the agenda, the speaker can either speak at this time or defer his/her comments until such time the item is discussed.

Speakers are advised that comments cannot be received on matters which are the subject of a public hearing once the hearing has been closed. Public comments on matters on the agenda must be kept relevant to the subject before the Council. The presiding officer shall rule on the relevance of comments.

Persons making personal, impertinent, or slanderous remarks may be barred by the presiding officer from further comment before the Council during the meeting. This rule does not prohibit criticism of the City or criticisms of actions or omissions of the City.

8. COVID-19

Matters related to COVID-19. *Recommended Action: Discuss and take any desired action. Mr. Aaron Taylor, Fire Chief and Emergency Management Coordinator* [see Agenda Memo 8]

9. Wastewater Treatment Plant Master Plan – Preliminary Engineering Report (PER)

Matters related to awarding a contract to complete the Preliminary Engineering Report (PER) for the Wastewater Treatment Plan Master Plan. *Recommended Action: Award contract to Kimely-Horn in the amount not to exceed \$300,000 and authorize the City Manager to execute the contract. Mr. Gerardo Barrera Public Works Director* [see Agenda Memo 9]

10. Virtual Gate Security System – Phase II

Matters related to awarding a contract for Phase II of the Virtual Gate project. *Recommended Action: Award contract for Phase II of the Virtual Gate project to Minuteman Security Technologies in the amount not to exceed \$1,765,890 and authorize the City Manager to execute the contract. Mr. Ken Walker, Police Chief* [see Agenda Memo 10]

11. Consent Agenda

All Consent Agenda items listed are considered to be routine by the City Council and will be enacted by one motion. There will be no separate discussion of these items unless a Council member requests in which event the item will be removed from the Consent Agenda and considered in its normal sequence on the agenda.

A. City Council Minutes

Approve Minutes of the regular meeting of March 22, 2021. [see Agenda Memo 11A]

B. Zoning Ordinance Amendment

Matters related to an ordinance amending the Zoning Ordinance. *Recommended Action: Approve ordinance amending the Zoning Ordinance on the second and final reading. Mr. Gerardo Barrera, Public Works Director* [see Agenda Memo 11B]

C. Colonial Park Pool Concessions

Matters related to a contract for concessionaire services at Colonial Park Swimming Pool. *Recommended Action: Approve a one-year contract renewal with Jami's Fine Foods for concessionaire services at the Colonial Park Pool for 2021 season and authorize the City Manager to execute the contract.* **Ms. Susan White, Parks and Recreation Director** [see Agenda Memo 11C]

D. Agreement with Southside Place Relating to Virtual Gate Poles

Matters related an agreement with the City of Southside Place regarding City of West University Place's virtual gate poles within Southside Place's right-of-way. *Recommended Action: Approve agreement between the City of West University Place and the City of Southside Place and authorize the Mayor to execute the final agreement.* **Mr. Ken Walker, Police Chief** [see Agenda Memo 11D]

E. Memorandum of Understanding with West U Baptist Church

Matters related to approval of an MOU with the Baptist Church. *Recommended Action: Approve and authorize the City Manager to execute the revised Memorandum of Understanding with the West U Baptist Church.* **Mr. Gerardo Barrera, Public Works Director** [see Agenda Memo 11E]

F. Budget Amendment – Upfitting Fire Marshal Vehicle

Matters related to approving an ordinance amending the 2021 Budget to authorize the expenditure to upfit the City's Fire Marshal vehicle. *Recommended Action: Approve ordinance on the first and final reading amending the 2021 Budget to appropriate \$5,536 from the Vehicle Replacement Fund for equipment upfit to the Fire Marshal vehicle.* **Mr. Aaron Taylor, Fire Chief** [see Agenda Memo 11F]

12. Senate Bill 1661 Relating to November Elections

Matters related to discussion regarding Senate Bill 1661. *Recommended Action: Discuss and take any desired action.* **Mr. Dave Beach, City Manager and Ms. Thelma Gilliam, City Secretary** [see Agenda Memo 11G]

13. Recess Regular Meeting and Convene into Executive Session

City Council will recess the regular meeting and convene into executive session in accordance with the following provision of Chapter 551 of the Texas Government Code (TGC):

Section 551.072 – Closed meeting to deliberate regarding real property.

14. Adjourn Executive Session / Reconvene Regular Meeting

Matters related to any desired action resulting from the executive session. City Council may take action on the matters discussed in Executive Session as deemed appropriate.

15. Adjourn Regular Meeting

In compliance with the Americans with Disabilities Act, please contact City Secretary Thelma Gilliam at 713.662.5813 at least 24 hours prior to the meeting to see whether the City can arrange for accommodations to assist in your participation in the meeting.

I certify that the attached amended notice and agenda of items to be considered by the West University Place City Council on April 12th, 2021 was posted on the Municipal Building bulletin board on April 8th, 2021, at approximately 4:00 o'clock p.m.

(SEAL)

Thelma A. Gilliam
Thelma A. Gilliam, City Secretary

City of West University Place

Proclamation

Older Americans and Volunteer Month – May 2021

WHEREAS, it is appropriate to honor our mature citizens for their many contributions to the vitality and strength of our community; and

WHEREAS, senior citizens provide an excellent example of responsible citizenship for future generations through their loyalty and dedication to the community; and

WHEREAS, through their experience and wisdom of a lifetime of hard work and dedication, our community's older residents are the sum and substance of much that has made America great; and

WHEREAS, we owe older citizens our thanks and heartfelt salute, which can be demonstrated by ensuring our community is a good place in which to mature and grow older – a place where citizens can participate to the fullest and find encouragement, acceptance and assistance; and

WHEREAS, through the support and advocacy of the West U Seniors Board and West U Good Neighbor Team, West U senior citizens are able to continue to lead lives of independence and dignity; and

WHEREAS, the entire community can effect positive change with any volunteer action no matter how big or small; and

WHEREAS, volunteers are increasingly recognized as important partners with government and industries in providing services to citizens; and

WHEREAS, volunteering efforts offer everyone, young and old, the opportunity to participate in the life of their community and link their talents and resources to address some of the major issues in our community; and

NOW, THEREFORE, BE IT RESOLVED THAT, I, Robert Higley, Mayor of the City of West University Place, do hereby proclaim the month of May 2021 as Volunteer and Older Americans Month in the City of West University Place, and I urge all citizens to celebrate this month and to support the efforts of the Senior Services Board, Good Neighbor Team, Friends of West University Place Parks, Parks and Recreation Board and other volunteer organizations that serve the greater good of the West University Place community; and, I encourage all citizens to join me in recognizing the value of older citizens in our community.

Robert Higley, Mayor

Date



AGENDA MEMO

Business of the City Council
City of West University Place, Texas

Meeting Date	03.22.2021	Agenda Item	8
Approved by City Manager	N/A	Presenter(s)	A. Taylor, EMC, Fire Chief
Reviewed by City Attorney	N/A	Department	Fire
Subject	COVID-19 Update		
Attachments	None		
Financial Information	Expenditure Required:		None
	Amount Budgeted:		None
	Account Number:		None
	Additional Appropriation Required:		None
	Additional Account Number:		None

Executive Summary

Update and discussion between City Council and staff on COVID-19.

Recommended Action

Report and discussion purposes only, no action recommended.



AGENDA MEMO

Business of the City Council
City of West University Place, Texas

Meeting Date	4.12.2021	Agenda Item	9
Approved by City Manager	Yes	Presenter(s)	G.Barrera, Director
Reviewed by City Attorney	Yes	Department	Public Works
Subject	Wastewater Treatment Plant Master Plan – Preliminary Engineering Report (PER)		
Attachments	Professional Services Contract		
Financial Information	Expenditure Required:		\$300,000
	Amount Budgeted:		\$1,800,000
	Account Number:		340-7000-85001
	Additional Appropriation Required:		None
	Additional Account Number:		None

Executive Summary

City Council approved the Wastewater Treatment Plant (WWTP) Master Plan at its meeting on April 27, 2020. The Master Plan is the initial assessment that sets the foundation for identifying necessary technological and mechanical improvements at the treatment plant in future years.

The 2021 Budget allocated funds to complete the preliminary engineering report (PER), as well as, the construction design for improvements and floodwater protection to the WWTP. The PER will explore alternatives for future operational scenarios in the treatment of wastewater and provide a Capital Improvement Plan for construction. Though not limited to these areas, the PER will examine:

- Equipment Selection
- Architectural and Civil Design
- Electrical System Design
- Structural Design
- Agency Coordination with City of Houston and state regulatory agency
- Surveying and Geotechnical Reports
- Floodwater Protection

After extensive review of all qualifications, experience with similar projects and interviews, both City staff and the City Engineer unanimously selected Kimley-Horn (KH) to complete the work associated with the PER. The KH lead for his project has over 25 years of experience, has completed over 30 projects of similar scope, and has staff prepared to begin work on the project immediately. Estimated completion for the PER is 4 months.

Recommended Action

Staff recommends City Council award the contract to complete the Wastewater Treatment Plant Master Plan Preliminary Engineering Report to Kimley-Horn in an amount no to exceed \$300,000 and authorize the City Manager to execute the contract.



The City of West University Place

PROFESSIONAL SERVICES AGREEMENT

Revised 12/13/2019

This Professional Services Agreement (Contract) is made between the City of West University Place, Texas (City), and Contractor. The City and Contractor agree to the terms and conditions of this Contract, which consists of the following parts:

- | | |
|--------------------------------------|----------------------------------|
| I. Summary of Contract Terms | IV. Special Terms and Conditions |
| II. Signatures | V. Additional Contract Documents |
| III. Standard Contractual Provisions | |

I. Summary of Contract Terms.

Contractor: Kimley-Horn

Description of Services/Scope of Work: Engineering Services For Wastewater Treatment Plant Master Plan – Preliminary Engineering

Base Contract Price: “not to exceed” \$300,000.00 (\$277,700 base and \$22,300 contingency)

Repairs/Additional Work in addition to Base Contract Price: **Any additions to the Scope of Work must be submitted in writing and approved by the City via Addendum.**

Effective Date: _____

Termination Date: _____

II. Signatures. By signing below, the parties agree to the terms of this Contract:

CITY OF WEST UNIVERSITY PLACE:*

CONTRACTOR:

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

____ Council Approved on ____ / ____ / ____

____ City Manager

____ Department Head

____ Division Head

*Contract Signature Authority:

Division Head - \$2,999 or less

Department Head - \$3,000 to \$14,999

City Manager - \$15,000 to \$50,000

Over \$50,000 – Council approval required

Attest: City Secretary

III. Standard Contractual Provision.

A. Definitions.

Contract means this Professional Services Agreement.

Services means the services for which the City solicited bids or received proposals as described in this Contract.

B. Services and Payment. Contractor will furnish Services to the City in accordance with the terms and conditions specified in this Contract. Contractor will bill the City for the Services provided at intervals of at least 30 days, except for the final billing. The City shall pay Contractor for the Services in accordance with the terms of this Contract, but all payments to be made by the City to Contractor, including the time of payment and the payment of interest on overdue amounts, are subject to the applicable provisions of Chapter 2251 of the Government Code.

C. Termination Provisions.

(1) *City Termination for Convenience.* The City may terminate this Contract during its term at any time for the City's own convenience where the Contractor is not in default by giving written notice to Contractor. If the City terminates this Contract under this paragraph, the City will pay the Contractor for all services rendered in accordance with this Contract to the date of termination.

(2) *Termination for Default.* Either party to this Contract may terminate this Contract as provided in this paragraph if the other party fails to comply with its terms. The party alleging the default will give the other party notice of the default in writing citing the terms of the Contract that have been breached and what action the defaulting party must take to cure the default. If the party in default fails to cure the default as specified in the notice within 30 days, the party giving the notice of default may terminate this Contract by written notice to the other party, specifying the date of termination. Termination of the Contract under this paragraph does not affect the right of either party to seek remedies for breach of the Contract as allowed by law, including any damages or costs suffered by either party.

(3) *Multi-Year Contracts and Funding.* If this Contract extends beyond the City's fiscal year in which it becomes effective or provides for the City to make any payment during any of the City's fiscal years following the City's fiscal year in which this Contract becomes effective and the City fails to appropriate funds to make any required Contract payment for that successive fiscal year and there are no funds from the City's sale of debt instruments to make the required payment, then this Contract automatically terminates at the beginning of the first day of the City's successive fiscal year of the Contract for which the City has not appropriated funds or otherwise provided for funds to make a required payment under the contract.

D. Liability and Indemnity. Any provision of any attached contract document that limits the Contractor's liability to the City or releases the Contractor from liability to the City for actual or compensatory damages, loss, or costs arising from the performance of this Contract or that provides for contractual indemnity by one party to the other party to this Contract is not applicable or effective under this Contract. Except where an Additional Contract Document provided by the City provides otherwise, each party to this Contract is responsible for defending against and liable for paying any claim, suit, or judgment for damages, loss, or costs arising from that party's negligent acts or omissions in the performance of this Contract in accordance with applicable law. This provision does not affect the right of either party to this contract who is sued by a third party of acts or omissions arising from this Contract to bring in the other party to this Contract as a third-party defendant as allowed by law.

- E. Assignment. The Contractor shall not assign this Contract without the prior written consent of the City.
- F. **Law Governing and Venue**. **This Contract is governed by the law of the State of Texas and a lawsuit may only be prosecuted on this Contract in a court of competent jurisdiction located in or having jurisdiction in Harris County, Texas.**
- G. Entire Contract. This Contract represents the entire Contract between the City and the Contractor and supersedes all prior negotiations, representations, or contracts, either written or oral. This Contract may be amended only by written instrument signed by both parties.
- H. Independent Contractor. Contractor shall perform the work under this Contract as an independent contractor and not as an employee of the City. The City has no right to supervise, direct, or control the Contractor or Contractor's officers or employees in the means, methods, or details of the work to be performed by Contractor under this Contract. The City and Contractor agree that the work performed under this Contract is not inherently dangerous, that Contractor will perform the work in accordance with the professional skill and care ordinarily provided by competent engineers practicing in the same or similar locality and under the same or similar circumstances and professional license and as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer, and that Contractor will take proper care and precautions to insure the safety of Contractor's officers and employees.
- I. Dispute Resolution Procedures. The Contractor and City desire an expeditious means to resolve any disputes that may arise between them regarding this Contract. If either party disputes any matter relating to this Contract, the parties agree to try in good faith, before bringing any legal action, to settle the dispute by submitting the matter to mediation before a third party who will be selected by agreement of the parties. The parties will each pay one-half of the mediator's fees.
- J. Attorney's Fees. Should the City bring suit against the Contractor for breach of contract or for any other cause relating to this Contract, the City shall be entitled to seek an award of attorney's fees or other costs relating to the suit.
- K. Severability. If a court finds or rules that any part of this Contract is invalid or unlawful, the remainder of the Contract continues to be binding on the parties.
- L. Work Product. Any work product generated as a result of this Contract shall be the property of the City.

IV. Special Terms or Conditions.

- A. As required by Section 2252.908, Texas Government Code, if this Contract requires an action or vote by the City Council before the contract may be signed, or has a value of at least \$1 million, then the City may not enter into such Contract unless the Contractor submits a disclosure of interested parties to the City at the time the Contractor submits the signed Contract to the City. The Contractor agrees to submit such disclosure as required by Section 2252.908 of the Texas Government Code on the form 1295, prescribed by the Texas Ethics Commission, unless the Contractor is a publicly traded entity or a wholly owned subsidiary of same, in which case no disclosure is required. The Contractor agrees to access the Texas Ethics Commission website and complete the form 1295, receive a confirmation number and a PDF version of the completed form 1295, execute and notarize a hard copy version of the completed form 1295, and submit it, along with the confirmation number, to the City.
- B. 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 Contract. 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. This Section IV B applies only to contracts with a value of \$100,000 or more that are to be paid wholly or partly from public funds of the City, between the City and any company with 10 or more full time employees. Furthermore, this Section IV B does not apply if Contractor is a sole proprietorship.

- C. Pursuant to Chapter 2252, Texas Government Code, Contractor represents and certifies that, at the time of execution of this Contract neither the Contractor, nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of the same (i) engages in business with Iran, Sudan, or any foreign terrorist organization as described in Chapter 806 or 807 of the Texas Government Code, or Subchapter F of Chapter 2252 of the Texas Government Code, or (ii) is a company listed by the Texas Comptroller of Public Accounts under Sections 806.051, 807.051, or 2252.153 of the Texas Government Code. The term “foreign terrorist organization” in this paragraph has the meaning assigned to such term in Section 2252.151 of the Texas Government Code.

V. *Additional Contract Documents.* The following specified documents attached to this Contract are part of this Contract, except as follows: any provision contained in any of the Contractor’s Additional Contract Documents specified below that conflicts with a Contract provision does not apply to this contract.

A. Contractor’s Additional Contract Documents:

- 1. Proposal

B. City’s Additional Contract Documents:

END OF DOCUMENT



April 2, 2021

Mr. Gerardo Barrera
Public Works Director
City of West University Place
3826 Amherst
West University Place, Texas 77005

Re: Professional Services Agreement for WWTP Preliminary Design

Dear Mr. Barrera:

Kimley-Horn and Associates, Inc. ("Kimley-Horn" or "Consultant") is pleased to submit this letter agreement (the "Agreement") to the City of West University Place, Texas ("Client") for providing preliminary design services for improvements at the Wastewater Treatment Plant (WWTP). This project phase will be followed by additional phases for final design, bid phase services, and construction phase services.

Project Understanding

The City of West University Place is the owner and operator of a WWTP located at 2801 North Braeswood Boulevard. The plant was constructed in 1982 and is permitted for an average daily flow of 2.0 million gallon per day (MGD) and a peak flow of 6.0 MGD. The WWTP is located on a parcel which is approximately 3.7 acres total area.

The City recently prepared a Master Plan for the WWTP to document the existing treatment process, provide alternatives for future operational scenarios, and provide a capital improvement plan for the WWTP. In this first phase of the design project, Kimley-Horn will provide professional engineering services to prepare a Preliminary Engineering Report, preliminary design documents, and permit applications to TCEQ and City of Houston.

Scope of Services

Kimley-Horn will provide the services specifically set forth below.

Task 1: Prepare Preliminary Engineering Report (PER)

Kimley-Horn will prepare a PER for the WWTP improvements through the following tasks:

- Attend a kick-off meeting with the Client to develop design criteria and a schedule for the project.
- Data Collection: Coordinate with client to obtain WWTP influent and operating data including: MLSS, DO, Influent BOD, TSS, VSS, Influent Ammonia and Total Kjeldahl Nitrogen.
- Equipment Selection: Conduct the pre-design equipment selection process including: the following:
 - Prepare equipment selection criteria based on Client input for the following items: Mechanical Step Screen, Blowers, Diffusers, Grit Chamber, Clarifier Mechanism, and Tertiary Filter.

- Equipment Observation: Coordinate site visits with Client staff to up to four existing wastewater treatment plants to observe similar equipment and processes that may be considered for installation on this project. Engineer will coordinate with equipment vendors to schedule site visits. It is anticipated that all visited WWTPs will be located within 100 miles of the City WWTP.
- Preliminary Technical Specifications: Once the equipment list has been selected and approved by Client, prepare preliminary technical specification for the equipment and base design around selected equipment.
- Architectural Design: Perform preliminary architectural services to design and size the following structures: operations building; and canopy for non-potable system. Provide renderings for two alternative proposed operations buildings.
- Civil Design: Perform preliminary civil engineering services to design and size the following treatment units: influent lift station with submersible pumps: mechanical screen: grit chamber; blowers, diffusers, and piping for aeration; clarifier mechanisms; digester and gravity thickener; disinfection; non-potable system; operations building; instrumentation and controls; and electrical power distribution. Provide design calculations, technical analysis, graphs, and technical assumptions required by TCEQ to support the design.
- Electrical System Design: Perform preliminary electrical engineering services to design and size the following electrical equipment: power service; backup generator; automatic transfer switch gear; surge protection device; motor control center, security cameras; influent lift station with submersible pumps: mechanical step screen: grit chamber; blowers, diffusers, and piping for aeration; clarifier mechanisms; digester and gravity thickener; disinfection; operations building; and electrical power distribution. Provide instrumentation and control design for automation systems including replacement of Supervisory Control and Data Acquisition headend, Programmable Language Controllers, and Remote Terminal Units.
- Structural Design: Perform preliminary structural engineering services to evaluate the condition and size structural members for the following treatment units: influent lift station with submersible pumps: mechanical step screen: grit chamber; blowers, diffusers, and piping for aeration; clarifier mechanisms; digester and gravity thickener; disinfection; operations building; and electrical power distribution. Provide conceptual structural design for two alternative proposed operations buildings.
- Kimley-Horn will prepare a PER document containing the findings and recommendations resulting from this Phase of work. PER will include the following items:
 - Executive Summary
 - Project Location: Describe project boundaries and locations within City Limits. Include location and lay-out maps.
 - Master Plan findings
 - Summary of the types of treatment units proposed and their capacities
 - Summary of the organic and volumetric loads pertinent to each treatment unit
 - Summary of treatment equipment selection
 - Plot of the hydraulic grade line at peak flow
 - Recommended process operation
 - Document deviations from the Master Plan
 - Recommendations and findings for floodplain/floodway analysis of site
 - Geotechnical Recommendations
 - Traffic Control Analysis: City of Houston driveway access change requirements
 - Description of required Permits and Licenses
 - Tree/Landscaping Impacts: Describe the potential impact on existing

- trees/landscaping. Delineate between protected and non-protected trees under the City's ordinance and measures to protect those trees covered by the ordinance.
 - Identification of requirements to construct improvements in the Right-of-Way including sidewalks, driveways, encroachments, additions or replacements.
 - Provide recommendations for the project(s), phasing of projects, continuity of operation for the WWTP, and estimates of required laydown areas, staging, and equipment storage.
 - Opinion of Probable Construction Costs (OPCC): Prepare an OPCC for the recommended Project. The Engineer has no control over the cost of labor, materials, equipment, or over the Contractor's methods of determining prices or over competitive bidding or market conditions. Opinions of probable costs provided herein are based on the information known to Engineer at this time and represent only the Engineer's judgment as a design professional familiar with the construction industry. The Engineer cannot and does not guarantee that proposals, bids, or actual construction costs will not vary from its opinions of probable costs.
- PER Exhibits
 - Project location maps: Prepare a color map of Project Area(s). Include a separate vicinity map of general Project Area(s).
 - Proposed site plan
 - Proposed hydraulic profile
 - Proposed process flow diagram

Meetings:

- Prepare for and conduct two review meetings with Client.

Deliverables:

- Meeting notes from kickoff meeting documenting agreed upon design criteria and project schedule.
- Six (6) copies of draft PER.
- Six (6) copies of final PER.

Services/Deliverables provided by the Client:

- Provide requested data and facilitate access to the WWTP.
- Attend kickoff and review meetings.
- Review and comment on the draft PER.

Task 2: Agency Coordination

Concurrently with the Preliminary Engineering Report Task, Kimley-Horn will assist the City in coordinating with Agencies and preparing applications for the following permits:

- City of Houston Floodplain Coordination
- City of Houston Construction Preliminary Coordination
- City of Houston Floodplain Coordination: The City of Houston has identified portions of the site to be within a conveyance zone due to floodway or buffer or overflow and depth, which is defined as any area with a floodplain depth greater than 18-inches. Kimley-Horn will perform a preliminary hydraulic analysis to determine a proposed extent of improvements that will result in no-adverse impact to Brays Bayou. Kimley-Horn will download the effective hydraulic model for Brays Bayou (D100-00-00) from the Harris County Flood Control District (HCFCD) Model and Map Management (M3) System as the basis for this analysis. Kimley-Horn will

modify the effective model to create a revised existing condition with updated topographic information within the subject tract. Revised existing condition geometry will be based on on-ground survey topographic information and LIDAR topographic information available from the Texas Natural Resources Information System (TNRIS). Kimley-Horn will modify the revised existing geometry to create a proposed condition model based on a client approved conceptual proposed condition prepared under a separate task. Kimley-Horn will modify the proposed condition model one time as needed to meet the City requirement of no-adverse impact. Kimley-Horn will summarize the results of this task in a hydraulic workmap exhibit and email for submittal to the Client. Creation and submittal of a No Impact Study can be performed as a separate task.

- City of Houston Construction Coordination: The WWTP site is within the City of Houston (CoH) jurisdiction. Improvements to the site including the new operations building, driveway alterations, and new lift station will require coordination with the CoH permitting department for approvals of site civil plans. Kimley-Horn will coordinate the proposed design with CoH for the WWTP project for two meetings.

Meetings:

- Prepare for and conduct two review meetings with Client.

Deliverables:

- Floodplain hydraulic analysis memo – three (3) copies for Client, four (4) copies for City of Houston

Services/Deliverables provided by the Client:

- Provide requested data and facilitate access to the WWTP.
- Attend review meetings.
- Review and comment on the draft documents.

Task 3: Survey and Mapping

Kimley-Horn, working with a surveying sub-consultant, will Perform a horizontal and vertical survey of the Wastewater Treatment Plant Parcel to locate visible topographic features. A boundary survey will be performed as part of this task. The survey task will include the following:

- Boundary and Improvement Survey: Surveyor will provide a Cat. 1A Cond II boundary and improvement survey. Surveyor is not responsible for abstracting subject property. Surveyor will review and show all existing encumbrances as reflected in current title commitment provided by client and is subject to the limitations and restrictions of that commitment. Should a title commitment not be provided by client, abstracting can provided as an additional service. Review of any oil, gas, and mineral leases or rights as located within a current title commitment are beyond the scope and will not be reflected or noted on the final survey. If any oil, gas, or mineral leases or rights are located within a current title commitment, and review is requested, it will be deemed an additional service. All Horizontal Survey Control shall be referenced to the Texas State Plane Coordinate System, South Central Zone, NAD83.
- Topographic and Utility Survey: Surveyor will provide a Cat. 6, Cond. II Topographic & Utility Survey. Topographic Survey will be performed at an approximate 50' x 50' grid including any grade breaks or changes in elevations. Topographic survey will locate all improvements, elevations, observable utilities, as wells elevation at the Top of Basins, Bottom of Basins, gates and weirs. To the centerline of Braeswood Road and to the nearside toe of slope of Braes bayou at 50-foot cross-sections within the subject area. Vertical Topographic

information will be based on the nearest existing or FEMA published Benchmark, NAVD 1988, 2001 Adjusted and a minimum of 2 (two) temporary benchmarks will be established on-site at the time of survey. Additional future TBM's will be set if necessary as an additional service.

- Ground Control: Surveyor will establish five Ground Control Points (GCP's). All Horizontal Survey Control shall be referenced to the Texas State Plane Coordinate System, South Central Zone, NAD83. Vertical Topographic information will be based on the nearest existing or FEMA published Benchmark, NAVD 1988, 2001 Adjusted and a minimum of 2 (two) temporary benchmarks will be established on-site at the time of survey.
- Mapping: Perform terrestrial scans (FARO Focus S350) of water treatment elements at site. Link all scans to GCPs located throughout the complex provided by survey. Final deliverable will be in the form of: .RCS file and .RCP file upload for future design and modeling efforts.

Meetings:

- None

Deliverables:

- Draft survey documents.

Services/Deliverables provided by the Client:

- Provide access to site.
- Provide previous record drawing and available survey information.
- Review and comment on the draft documents.

Task 4: Geotechnical Engineering

Kimley-Horn will engage a geotechnical sub-consultant to perform geotechnical investigations for the project. Sub-consultant will access bore locations with a buggy-mounted rig and assume that bore locations are not covered by concrete and do not require vegetation clearing.

- Field Investigation: The proposed geotechnical field investigation includes:

Number of Borings	Depth of Boring (feet)	Location
4	35	In the area of proposed operations buildings.
1	25	In the area of proposed lift station.
1	25	In the area of proposed improvements to existing WWTP.

- Sub-consultant field personnel will drill the borings, obtain cohesive and non-cohesive soil samples with three-inch diameter Shelby tube samplers (ASTM D-1587) and two-inch diameter standard split-spoon samplers (ASTM D-1586), respectively.
- An engineering geologist or soils technician will extrude samples in the field, check the samples for consistency with a hand penetrometer, wrap to preserve condition, and return to the laboratory for testing. Sub-consultant will prepare a log of each boring to document field activities and results. Sub-consultant will stake the boring locations using normal taping procedures. Locations will be shown on the boring plan exhibit. At completion of drilling operations, sub-consultant will backfill and plug bore hole with soil cuttings.
- Laboratory Investigation: Sub-consultant will perform laboratory tests on bore samples required for classification purposes, to determine strength characteristics, and to evaluate both the short- and long-term deformation and swell properties of the material. Testing, in accordance with standard procedures, will include moisture content, soil identification, liquid and plastic limit determinations, strength tests on soil, and unit weight determinations. The

specific types and quantities of tests will be determined based on soil conditions encountered in the borings.

- **Geotechnical Engineering Report:** Sub-consultant will prepare a geotechnical engineering report, sealed by a professional engineer, which will present the results of the field and laboratory data together with analysis of the results and recommendations. Sub-consultant will provide a digitally signed and sealed report in electronic (Adobe PDF) format. The report will address:
 - soil and groundwater conditions encountered at the boring locations.
 - foundation design recommendations including foundation type, identification of bearing strata, allowable bearing pressure, and estimated settlement
 - recommendations for floor slab support, including evaluation of swell characteristics of subgrade soils;
 - recommendations for horizontal and lateral earth pressures related to buried and retaining structures;
 - lift station recommendations;
 - underground utilities related recommendations including dewatering, excavation/backfill, utility trench shoring, bracing and bedding recommendations;
 - earthwork recommendations, including material and compaction requirements; and
 - construction considerations related to soil and groundwater conditions at the borings.

Meetings:

- None

Deliverables:

- Draft geotechnical report.

Services/Deliverables provided by the Client:

- Review and comment on the draft documents.

Task 5: Project Management, Meetings, and Quality Control

Kimley-Horn will perform general project management related tasks such as routine communication with the Client, project status updates, quality control efforts, internal team meetings, project invoicing, project planning efforts, preparation of the project schedule and updates to the project schedule:

- **Kick-off Meeting:** Consultant will facilitate a kick-off meeting at Client's office. Consultant will provide agenda, detailed project schedule, and reporting procedures.
- **Progress Meetings:** Consultant will facilitate bi-weekly small group conference calls to discuss project schedule and deliverables. Once a month, we will meet with the City at their office for detailed progress meeting.
- **Agency Meetings:** Consultant will facilitate up to two coordination meetings with City of Houston or other key agencies.
- **Council Workshops:** Kimley-Horn will conduct two workshops with the City Council during this phase of the project to share design progress and receive input and feedback. For each meeting, Kimley-Horn will provide brief handouts (estimated at 3 pages) and powerpoint presentations (estimated at 12 slides for each meeting). Up to three members of Kimley-

Horn's staff will attend, present information, and answer questions at each meeting.

- Quality Control/Quality Assurance: Perform quality control/quality assurance throughout the project duration on project deliverables, design calculations, and design reports.

Meetings:

- Listed above

Deliverables:

- Meeting agendas and meeting notes.

Services/Deliverables provided by the Client:

- Attend and participate in meetings.
- Review and comment on the agendas and notes.
- City will provide a meeting space, announcement of meeting, and staff to attend and answer questions.

Additional Services

Any services not specifically provided for in the above scope will be billed as additional services and performed at our then current hourly rates.

- Attending meetings with or on behalf of the Client not identified in the scope.
- TPDES Discharge Permit and TCEQ Authorization
- Preparing Application for City of Houston Construction Permit
- Preliminary Design Phase Services
- Final Design Phase Services
- Bid Phase Services
- Construction Contract Administration
- Resident Project Representation
- Water reclamation system or water reuse system design or evaluation
- Archaeological study, cultural study, or coordination with Texas Historical Commission
- Environmental studies
- Evaluation of additional treatment technologies.
- Services associated with contracting of water users.
- Preparation for or attendance of mediation between the Client and other parties.

Information Provided By Client

We shall be entitled to rely on the completeness and accuracy of all information provided by the Client or the Client's consultants or representatives.

- Water quality data listed in Task 1
- Record Drawings and previous survey documents
- Flood Study prepared by IDS Engineering Group

Schedule

We will provide our services as expeditiously as practicable with the goal of meeting the following schedule:

- Attend kickoff meeting within 10 business days of notice to proceed.
- Provide draft PER within 90 calendar days of kickoff meeting and receipt of required data.

Fee and Expenses

Kimley-Horn will perform the services in Tasks 1 through 6 for the total lump sum fee below. Individual task amounts are informational only. All permitting, application, and similar project fees will be paid directly by the Client.

<u>Preliminary Engineering Report Tasks</u>	
Task 1 Prepare Preliminary Engineering Report.....	\$179,500
Task 2 Agency Coordination.....	\$16,400
Task 3 Survey and Mapping.....	\$28,600
Task 4 Geotechnical Engineering.....	\$13,900
Task 5 Project Management, Meetings, and Quality Control.....	\$39,300
Total Lump Sum Fee	\$277,700

Lump sum fees will be invoiced monthly based upon the overall percentage of services performed. Payment will be due within 30 days of your receipt of the invoice and should include the invoice number and Kimley-Horn project number.

Closure

In addition to the matters set forth herein, our Agreement shall include and be subject to the attached Standard Provisions, which are incorporated by reference. As used in the Standard Provisions, "Consultant" shall refer to Kimley-Horn and Associates, Inc., and "Client" shall refer to the City of West University Place, Texas.

Kimley-Horn, in an effort to expedite invoices and reduce paper waste, submits invoices via email in an Adobe PDF format. We can also provide a paper copy via regular mail if requested. Please include the invoice number and Kimley-Horn project number with all payments. Please provide the following information:


- Please email all invoices to accountspayable@westutx.gov
- Please copy gbarrera@westutx.gov

If you concur in all the foregoing and wish to direct us to proceed with the services, please have authorized persons execute both copies of this Agreement in the spaces provided below, retain one copy, and return the other to us. We will commence services only after we have received a fully-executed agreement. Fees and times stated in this Agreement are valid for sixty (60) days after the date of this letter.


We appreciate the opportunity to provide these services to you. Please contact me if you have any questions.

Very truly yours,

KIMLEY-HORN AND ASSOCIATES, INC.



Mike Shelton, P.E, AICP
Associate



Aaron K. Rader, P.E.
Aaron K. Rader, P.E.
Vice President

Attachment – Standard Provisions

KIMLEY-HORN AND ASSOCIATES, INC.
STANDARD PROVISIONS

(1) **Consultant's Scope of Services and Additional Services.** The Consultant will perform only the services specifically described in this Agreement. If requested by the Client and agreed to by the Consultant, the Consultant will perform Additional Services, which shall be governed by these provisions. Unless otherwise agreed to in writing, the Client shall pay the Consultant for any Additional Services an amount based upon the Consultant's then-current hourly rates plus an amount to cover certain direct expenses including telecommunications, in-house reproduction, postage, supplies, project related computer time, and local mileage. Other direct expenses will be billed at 1.15 times cost.

(2) **Client's Responsibilities.** In addition to other responsibilities herein or imposed by law, the Client shall:

- (a) Designate in writing a person to act as its representative, such person having complete authority to transmit instructions, receive information, and make or interpret the Client's decisions.
- (b) Provide all information and criteria as to the Client's requirements, objectives, and expectations for the project and all standards of development, design, or construction.
- (c) Provide the Consultant all available studies, plans, or other documents pertaining to the project, such as surveys, engineering data, environmental information, etc., all of which the Consultant may rely upon.
- (d) Arrange for access to the site and other property as required for the Consultant to provide its services.
- (e) Review all documents or reports presented by the Consultant and communicate decisions pertaining thereto within a reasonable time so as not to delay the Consultant.
- (f) Furnish approvals and permits from governmental authorities having jurisdiction over the project and approvals and consents from other parties as may be necessary.
- (g) Obtain any independent accounting, legal, insurance, cost estimating and feasibility services required by Client.
- (h) Give prompt written notice to the Consultant whenever the Client becomes aware of any development that affects the Consultant's services or any defect or noncompliance in any aspect of the project.

(3) **Period of Services.** Unless otherwise stated herein, the Consultant will begin work after receipt of a properly executed copy of this Agreement. This Agreement assumes conditions permitting continuous and orderly progress through completion of the services. Times for performance shall be extended as necessary for delays or suspensions due to circumstances that the Consultant does not control. If such delay or suspension extends for more than six months, Consultant's compensation shall be renegotiated.

(4) **Method of Payment.** Client shall pay Consultant as follows:

- (a) Invoices will be submitted periodically for services performed and expenses incurred. Payment of each invoice will be due within 25 days of receipt. The Client shall also pay any applicable sales tax. All retainers will be held by the Consultant and applied against the final invoice. Interest will be added to accounts not paid within 25 days at the rate of 12% per year beginning on the 25th day. If the Client fails to make any payment due under this or any other agreement within 30 days after the Consultant's transmittal of its invoice, the Consultant may, after giving notice to the Client, suspend services and withhold deliverables until all amounts due are paid.
- (b) If the Client relies on payment or proceeds from a third party to pay Consultant and Client does not pay Consultant's invoice within 60 days of receipt, Consultant may communicate directly with such third party to secure payment.
- (c) If the Client objects to an invoice, it must advise the Consultant in writing giving its reasons within 14 days of receipt of the invoice or the Client's objections will be waived, and the invoice shall conclusively be deemed due and owing. If the Client objects to only a portion of the invoice, payment for all other portions remains due.
- (d) If the Consultant initiates legal proceedings to collect payment, it may recover, in addition to all amounts due, its reasonable attorneys' fees, reasonable experts' fees, and other expenses related to the proceedings. Such expenses shall include the cost, at the Consultant's normal hourly billing rates, of the time devoted to such proceedings by its employees.
- (e) The Client agrees that the payment to the Consultant is not subject to any contingency or condition. The Consultant may negotiate payment of any check tendered by the Client, even if the words "in full satisfaction" or words intended to have similar effect appear on the check without such negotiation being an accord and satisfaction of any disputed debt and without prejudicing any right of the Consultant to collect additional amounts from the Client.

(5) **Use of Documents.** All documents and data prepared by the Consultant are related exclusively to the services described in this Agreement, and may be used only if the Client has satisfied all of its obligations under this Agreement. They are not intended or represented to be suitable for use or reuse by the Client or others on extensions of this project or on any other project. Any modifications by the Client to any of the Consultant's documents, or any reuse of the documents without written authorization by the Consultant will be at the Client's sole risk and without liability to the Consultant, and the Client shall indemnify, defend and hold the Consultant harmless from all claims, damages, losses and expenses, including but not limited to attorneys' fees, resulting therefrom. The Consultant's electronic files and source code remain the property of the Consultant and shall be provided to the Client only if expressly provided for in this Agreement. Any electronic files not containing an electronic seal are provided only for the convenience of the

Client, and use of them is at the Client's sole risk. In the case of any defects in the electronic files or any discrepancies between them and the hardcopy of the documents prepared by the Consultant, the hardcopy shall govern.

(6) **Opinions of Cost.** Because the Consultant does not control the cost of labor, materials, equipment or services furnished by others, methods of determining prices, or competitive bidding or market conditions, any opinions rendered as to costs, including but not limited to the costs of construction and materials, are made solely based on its judgment as a professional familiar with the industry. The Consultant cannot and does not guarantee that proposals, bids or actual costs will not vary from its opinions of cost. If the Client wishes greater assurance as to the amount of any cost, it shall employ an independent cost estimator. Consultant's services required to bring costs within any limitation established by the Client will be paid for as Additional Services.

(7) **Termination.** The obligation to provide further services under this Agreement may be terminated by either party upon seven days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof, or upon thirty days' written notice for the convenience of the terminating party. The Consultant shall be paid for all services rendered and expenses incurred to the effective date of termination, and other reasonable expenses incurred by the Consultant as a result of such termination.

(8) **Standard of Care.** The standard of care applicable to Consultant's services will be the degree of care and skill ordinarily exercised by consultants performing the same or similar services in the same locality at the time the services are provided. No warranty, express or implied, is made or intended by the Consultant's performance of services, and it is agreed that the Consultant is not a fiduciary with respect to the Client.

(9) **LIMITATION OF LIABILITY.** IN RECOGNITION OF THE RELATIVE RISKS AND BENEFITS OF THE PROJECT TO THE CLIENT AND THE CONSULTANT, THE RISKS ARE ALLOCATED SUCH THAT, TO THE FULLEST EXTENT ALLOWED BY LAW, AND NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS AGREEMENT OR THE EXISTENCE OF APPLICABLE INSURANCE COVERAGE, THAT THE TOTAL LIABILITY, IN THE AGGREGATE, OF THE CONSULTANT AND THE CONSULTANT'S OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND SUBCONSULTANTS TO THE CLIENT OR TO ANYONE CLAIMING BY, THROUGH OR UNDER THE CLIENT, FOR ANY AND ALL CLAIMS, LOSSES, COSTS OR DAMAGES WHATSOEVER ARISING OUT OF OR IN ANY WAY RELATED TO THE SERVICES UNDER THIS AGREEMENT FROM ANY CAUSES, INCLUDING BUT NOT LIMITED TO, THE NEGLIGENCE, PROFESSIONAL ERRORS OR OMISSIONS, STRICT LIABILITY OR BREACH OF CONTRACT OR ANY WARRANTY, EXPRESS OR IMPLIED, OF THE CONSULTANT OR THE CONSULTANT'S OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND SUBCONSULTANTS, SHALL NOT EXCEED TWICE THE TOTAL COMPENSATION RECEIVED BY THE CONSULTANT UNDER THIS AGREEMENT OR \$50,000, WHICHEVER IS GREATER. HIGHER LIMITS OF LIABILITY MAY BE NEGOTIATED FOR ADDITIONAL FEE. THIS SECTION 9 IS INTENDED SOLELY TO LIMIT THE REMEDIES AVAILABLE TO THE CLIENT OR THOSE CLAIMING BY OR THROUGH THE CLIENT, AND NOTHING IN THIS SECTION 9 SHALL REQUIRE THE CLIENT TO INDEMNIFY THE CONSULTANT.

(10) **Mutual Waiver of Consequential Damages.** In no event shall either party be liable to the other for any consequential, incidental, punitive, or indirect damages including but not limited to loss of income or loss of profits.

(11) **Construction Costs.** Under no circumstances shall the Consultant be liable for extra costs or other consequences due to unknown conditions or related to the failure of contractors to perform work in accordance with the plans and specifications. Consultant shall have no liability whatsoever for any costs arising out of the Client's decision to obtain bids or proceed with construction before the Consultant has issued final, fully-approved plans and specifications. The Client acknowledges that all preliminary plans are subject to substantial revision until plans are fully approved and all permits obtained.

(12) **Certifications.** All requests for the Consultant to execute certificates, lender consents, or other third-party reliance letters must be submitted to the Consultant at least 14 days prior to the requested date of execution. The Consultant shall not be required to execute certificates, consents, or third-party reliance letters that are inaccurate, that relate to facts of which the Consultant does not have actual knowledge, or that would cause the Consultant to violate applicable rules of professional responsibility.

(13) **Dispute Resolution.** All claims by the Client arising out of this Agreement or its breach shall be submitted first to mediation in accordance with the American Arbitration Association as a condition precedent to litigation. Any mediation or civil action by Client must be commenced within two years of the accrual of the cause of action asserted but in no event later than allowed by applicable statutes.

(14) **Hazardous Substances and Conditions.** Consultant shall not be a custodian, transporter, handler, arranger, contractor, or remediator with respect to hazardous substances and conditions. Consultant's services will be limited to analysis, recommendations, and reporting, including, when agreed to, plans and specifications for isolation, removal,

or remediation. The Consultant will notify the Client of unanticipated hazardous substances or conditions of which the Consultant actually becomes aware. The Consultant may stop affected portions of its services until the hazardous substance or condition is eliminated.

(15) Construction Phase Services.

(a) If the Consultant prepares construction documents and the Consultant is not retained to make periodic site visits, the Client assumes all responsibility for interpretation of the documents and for construction observation, and the Client waives any claims against the Consultant in any way connected thereto.

(b) The Consultant shall have no responsibility for any contractor's means, methods, techniques, equipment choice and usage, sequence, schedule, safety programs, or safety practices, nor shall Consultant have any authority or responsibility to stop or direct the work of any contractor. The Consultant's visits will be for the purpose of endeavoring to provide the Client a greater degree of confidence that the completed work of its contractors will generally conform to the construction documents prepared by the Consultant. Consultant neither guarantees the performance of contractors, nor assumes responsibility for any contractor's failure to perform its work in accordance with the contract documents.

(c) The Consultant is not responsible for any duties assigned to it in the construction contract that are not expressly provided for in this Agreement. The Client agrees that each contract with any contractor shall state that the contractor shall be solely responsible for job site safety and its means and methods; that the contractor shall indemnify the Client and the Consultant for all claims and liability arising out of job site accidents; and that the Client and the Consultant shall be made additional insureds under the contractor's general liability insurance policy.

(16) No Third-Party Beneficiaries; Assignment and Subcontracting. This Agreement gives no rights or benefits to anyone other than the Client and the Consultant, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole benefit of the Client and the Consultant. The Client shall not assign or transfer any rights under or interest in this Agreement, or any claim arising out of the performance of services by Consultant, without the written consent of the Consultant. The Consultant reserves the right to augment its staff with subconsultants as it deems appropriate due to project logistics, schedules, or market conditions. If the Consultant exercises this right, the Consultant will maintain the agreed-upon billing rates for services identified in the contract, regardless of whether the services are provided by in-house employees, contract employees, or independent subconsultants.

(17) Confidentiality. The Client consents to the use and dissemination by the Consultant of photographs of the project and to the use by the Consultant of facts, data and information obtained by the Consultant in the performance of its services. If, however, any facts, data or information are specifically identified in writing by the Client as confidential, the Consultant shall use reasonable care to maintain the confidentiality of that material.

(18) Miscellaneous Provisions. This Agreement is to be governed by the law of the State of Texas. This Agreement contains the entire and fully integrated agreement between the parties and supersedes all prior and contemporaneous negotiations, representations, agreements or understandings, whether written or oral. Except as provided in Section 1, this Agreement can be supplemented or amended only by a written document executed by both parties. Any conflicting or additional terms on any purchase order issued by the Client shall be void and are hereby expressly rejected by the Consultant. Any provision in this Agreement that is unenforceable shall be ineffective to the extent of such unenforceability without invalidating the remaining provisions. The non-enforcement of any provision by either party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or of the remainder of this Agreement.



AGENDA MEMO

Business of the City Council
City of West University Place, Texas

Meeting Date	April 12, 2021	Agenda Item	10
Approved by City Manager	Yes	Presenter(s)	K. Walker, Chief G. Barrera, Director
Reviewed by City Attorney	Yes	Department	Police, Public Works
Subject	Virtual Gate Security System Phase II		
Attachments	Standard Form of Agreement, Phase II		
Financial Information	Expenditure Required:	1,905,000	
	Amount Budgeted:	2,160,000	
	Account Number:	333-7000-80100	
	Additional Appropriation Required:		
	Additional Account Number:		

Executive Summary

In 2017 Council authorized staff to develop a city wide security system that would install cameras and license plate readers covering all entrances to the City. The cameras and license plate readers will provide investigative tools for officers to search for suspect vehicles, stolen or wanted vehicles and any other vehicle of law enforcement interest.

The project was divided into two phases.

- **Phase I** included fifteen locations of which seven have been installed. Eight additional sites are located in the City of Houston and are awaiting permits. The Phase I cameras are working as designed and have recently shown a 97.2 per cent accuracy rate.
- **Phase II** includes twenty five locations all within the City of West University Place.

The contract for Phase I was awarded to Minuteman Security Technologies and in order ensure the taxpayer received best value (time & money) on Phase II. Staff negotiated with our current contractor, who submitted a quote for Phase II in the amount of \$1,765,890.

As mentioned at the City Council workshop on March 22, upon award staff will issue a Notice to Proceed for Phase II no later than May 3, 2021 with an expected completion by the end of 2021.

Recommended Action

Staff recommends that City Council award the contract for Phase II of the Virtual Gate Project to Minuteman Security Technologies in the amount not to exceed \$1,765,890, and authorize the City Manager to execute the contract.

STANDARD FORM OF AGREEMENT

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

THIS AGREEMENT, entitled, Standard Form of Agreement (the “Agreement”), is made and entered into this, the ____ day of _____, 2021, by and between the **CITY OF WEST UNIVERSITY PLACE, TEXAS**, duly incorporated and existing under and by virtue of the Constitution of laws of the State of Texas, acting by and through the undersigned City Manager, as attested to by the City Secretary of the **CITY OF WEST UNIVERSITY PLACE, TEXAS**, thereunto duly authorized to do so, hereinafter referred to as “OWNER,” and **MINUTEMAN SECURITY TECHNOLOGIES, INC.** hereinafter called “CONTRACTOR”.

WITNESSETH:

OWNER and CONTRACTOR, in consideration the mutual covenants hereinafter set forth, agree as follows:

ARTICLE I. WORK

CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. The Work, more specifically and completely described in the Request for Proposal, Performance Specifications, and Construction Drawings, is generally described as follows: the design, construction, and integration of an Automated License Plate Recognition System, furnishing and installing security poles with Automatic License Plate Recognition sensors and PTZ surveillance cameras, furnishing and installing network equipment, workstations and monitors, local network switches at each pole, and all associated electrical equipment, configuration of the new switches, furnishing and installing a pedestrian detection system, programming analytic rules for the

Automated License Plate Recognition System, furnishing and installing a wireless backhaul network system, and furnishing and installing a wireless mesh architecture network. The name of the Project for which the Work will be completed is generally described as follows: City of West University Place Virtual Gate System Phase – II.

ARTICLE II. ENGINEER

The Project has been designed by **HATCH ASSOCIATES CONSULTANTS, INC.**, who is hereinafter called “ENGINEER” and who is to act as OWNER'S representative, assumes all duties and responsibilities and has the rights and authority assigned to ENGINEER in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

ARTICLE III. CONTRACT TIME

- 3.1. The Work will be substantially completed within **211 calendar days** from the date when the Contract Time commences to run, such commencement to begin upon OWNER’S issuance to CONTRACTOR of a Notice to Proceed.
- 3.2. OWNER and CONTRACTOR recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss if the Work is not completed within the times specified in Article 3.1 above, plus any extension thereof allowed in accordance with the Contract Documents and OWNER’S written consent. They also recognize the delays, expense and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by OWNER if the Work is not completed on time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay OWNER Four Hundred dollars (\$400.00) for each day

that expires after the time specified in Article 3.1 for Substantial Completion until the Work is substantially complete.

ARTICLE IV. CONTRACT PRICE.

OWNER agrees to pay CONTRACTOR for services rendered, upon receipt of a proper invoice prepared by CONTRACTOR and within thirty (30) days after receipt and approval of same, in current funds for the performance of the Agreement, in accordance with the Performance Specifications, the amount not to exceed \$1,765,900.

ARTICLE V. CONTRACTOR'S REPRESENTATIONS.

In order to induce OWNER to enter into this Agreement CONTRACTOR makes the following representations:

- 5.1. CONTRACTOR has familiarized itself with the nature and extent of the Contract Documents, Work, site, locality, and all local conditions and Laws and Regulations that in any manner may affect cost, progress, performance or furnishing of the Work.
- 5.2. CONTRACTOR has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all such examinations, investigations, explorations, tests, reports and studies which pertain to the subsurface or physical conditions at or contiguous to the site or otherwise may affect the cost, progress, performance or furnishing of the Work as CONTRACTOR considers necessary for the performance or furnishing of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents; and no additional examinations, investigations, explorations, tests,

reports, studies or similar information or data are or will be required by CONTRACTOR for such purposes.

- 5.3. CONTRACTOR has, or will have reviewed and checked all information and data with respect to existing Underground Facilities at or contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports, studies or similar information or data in respect of said Underground Facilities are or will be required by CONTRACTOR in order to perform and furnish the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents.
- 5.4. CONTRACTOR has correlated the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.
- 5.5. CONTRACTOR has given ENGINEER written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR.

ARTICLE VI. CONTRACT DOCUMENTS

The Contract Documents which comprise the entire agreement between OWNER and CONTRACTOR concerning the Work, and hereby incorporated into this Agreement, consist of the following documents, which pertain to the City of West University Place Virtual Gate System Phase – 1:

- 6.1. Standard Form of Agreement
- 6.2. Performance and Payment Bonds (** bonds to be submitted after award*)

- 6.3. General Conditions
- 6.4. Performance Specifications
- 6.6. Construction Drawings (to be provided by Engineer)

The following which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto: All Written Amendments and other documents amending, modifying, or supplementing the Contract Documents pursuant to Section 32 of the General Conditions.

There are no Contract Documents other than those listed above in this Article VI. The Contract Documents may only be amended, modified or supplemented as provided in Section 32 of the General Conditions.

ARTICLE VII. MISCELLANEOUS.

- 7.1. Terms used in this Agreement which are defined in Section 1 of the General Conditions will have the meanings indicated in the General Conditions.
- 7.2. No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.
- 7.3. OWNER and CONTRACTOR each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns

and legal representatives in respect of all covenants, agreements and obligations contained in the Contract Documents.

7.4 Pursuant to Section 2252.908 of the Texas Government Code, CONTRACTOR will file Form 1295 – Certificate of Interested Parties electronically via the Texas Ethics Commission website (<https://www.ethics.state.tx.us/main/file.htm>). CONTRACTOR will be required to create a profile on the site. Once the form is submitted electronically, CONTRACTOR will print, sign, have the form notarized, and submit it to OWNER as part of this Agreement.

7.5 Pursuant to 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.

7.6 Pursuant to Chapter 2252, Texas Government Code, CONTRACTOR represents and certifies that, at the time of execution of this Agreement neither CONTRACTOR, nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of the same (i) engages in business with Iran, Sudan, or any foreign terrorist organization as described in Chapter 806 or 807 of the Texas Government Code, or Subchapter F of Chapter 2252 of the Texas Government Code, or (ii) is a company listed by the Texas Comptroller of Public Accounts under

Sections 806.051, 807.051, or 2252.153 of the Texas Government Code. The term “foreign terrorist organization” in this paragraph has the meaning assigned to such term in Section 2252.151 of the Texas Government Code.

The undersigned person executing this Agreement and all other documents executed simultaneously herewith, does certify and attest that he or she is executing the same in his or her capacity as herein stated as an officer of said organization.

IN WITNESS WHEREOF, the City Manager of the **OWNER**, the **CITY OF WEST UNIVERSITY PLACE, TEXAS**, as attested to by the City Secretary of the **CITY OF WEST UNIVERSITY PLACE, TEXAS**, hereunto, has executed this **AGREEMENT** in the year and date first above written, under the authority granted to them by the City Council of the **CITY OF WEST UNIVERSITY PLACE, TEXAS**, the ____ day of _____, 2021

**CITY OF WEST UNIVERSITY PLACE,
TEXAS**

Dave Beach, City Manager
City of West University Place, Texas

ATTEST:

Thelma Gilliam, City Secretary
City of West University Place, Texas

APPROVED AS TO FORM:

Scott Bounds, City Attorney
City of West University Place, Texas

IN WITNESS WHEREOF, the **CONTRACTOR**, whose name is hereinafter set out, does certify and attest that he or she has executed this Agreement in his or her capacity as herein stated, for and on behalf of said organization, and that he or she has authority to do so.

**MINUTEMAN SECURITY
TECHNOLOGIES, INC.**

Printed Name:
Title:

WITNESS:

Printed Name:
Title:

PERORMANCE AND PAYMENT BONDS
(BONDS TO BE SUBMITTED AFTER AWARD)

GENERAL CONDITIONS

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.
- DAY – A calendar day, unless specifically described as a “business day”.
- 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 ENGINEER.

- ENGINEER - 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 ENGINEER 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 ENGINEER, 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 ENGINEER and 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 ENGINEER shall determine the true meaning of the CONTRACT DOCUMENTS. The ENGINEER may issue written interpretations or corrections, in writing, to reflect the true meaning. In determining the true meaning, the ENGINEER is not required to give precedence to any particular CONTRACT DOCUMENT (or type of CONTRACT DOCUMENT), but instead, the ENGINEER 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 ENGINEER and OWNER, 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 ENGINEER shall promptly review all SHOP DRAWINGS. The ENGINEER'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 ENGINEER'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 ENGINEER. 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 ENGINEER.

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 ENGINEER.

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 ENGINEER timely WRITTEN NOTICE of readiness. The CONTRACTOR will then furnish the ENGINEER the required certificates of inspection, testing or approval.

7.5 Inspections, tests or approvals by the ENGINEER 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 ENGINEER, 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 ENGINEER, it must, if requested by the ENGINEER, be uncovered for observation and replaced at the CONTRACTOR'S expense. This does not apply if the ENGINEER approves covering the Work, in writing, without prior observation.

7.8 If the ENGINEER 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 ENGINEER'S request, will uncover, expose or otherwise make available for observation, inspection or testing as the ENGINEER 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 ENGINEER, such material, article, or piece of equipment is of equal substance and function to that specified, the ENGINEER 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 ENGINEER.

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 ENGINEER and OWNER 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 ENGINEER 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 Engineer 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 ENGINEER 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 ENGINEER or OWNER, shall act to prevent threatened damage, injury or loss. It will give the ENGINEER and OWNER 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 ENGINEER shall inform the CONTRACTOR that any workers on the WORK, in the ENGINEER's opinion, do not meet all these requirements, the CONTRACTOR agrees to replace such workers and not return them to the WORK without the ENGINEER's written consent.

12.4 The CONTRACTOR shall pay the prevailing rate of per diem wages using the prevailing wage rate as determined by the United States Department of Labor in accordance with the Davis-Bacon Act (40 U.S.C. Section 276a et seq.) unless different prevailing wages are specified elsewhere in the CONTRACT DOCUMENTS in accordance with Tex. Gov't Code Chapter 2258.

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 ENGINEER, 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 ENGINEER 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 ENGINEER 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 thirty (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 fifteen (15) per cent. "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 ENGINEER AND OWNER, AND IF BY THE ENGINEER 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 ENGINEER 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 fails 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 ENGINEER 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 ENGINEER:

- 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 ENGINEER 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 (10) 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 – Not Applicable

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 ninety (90) days or such further time as agreed upon by the CONTRACTOR, by WRITTEN

NOTICE to the CONTRACTOR and the ENGINEER, 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 ENGINEER, 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 (10) 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 ENGINEER 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 (10) 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 ninety (90) days by the OWNER or under an order of court or other public authority, or the ENGINEER fails to act on any request for payment within thirty (30) days after it is submitted and drawn to the attention of the ENGINEER, 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 ENGINEER WRITTEN NOTICE of such suspension or failure and proposed termination, and (ii) the suspension or failure is not cured within thirty (30) days following receipt of the notices. In addition and in lieu of terminating the CONTRACT, if the ENGINEER 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 (10) days' WRITTEN NOTICE to the the ENGINEER and OWNER, and if the failure is not cured within that ten (10)-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 ENGINEER or OWNER 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 ENGINEER or OWNER.

19.0 PAYMENTS TO CONTRACTOR

19.1 As a condition to receiving any payment, the CONTRACTOR must submit to the ENGINEER: (i) a signed estimate, on a form prescribed by the OWNER, and (ii) supporting data requested by the ENGINEER. The ENGINEER will, within approximately ten (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 within or about thirty (30) days following receipt of the necessary estimate and other paperwork, but the OWNER shall withhold retainage from any progress payments. To insure proper performance of the Contract, the OWNER will retain ten (10%) percent of each periodic contract payment to CONTRACTOR; provided, further, the total retainage shall not exceed the lesser of a) 10% of the Contract Price, or b) five (5%) percent of the Contract Price if the Contract Price is four-hundred thousand (\$400,000.00) or more dollars. Tex. Gov't Code Ch. 2252-2253. 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 ENGINEER, 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 ENGINEER, 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 ENGINEER 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 thirty (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 officers and employees 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, ENGINEER 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 (10) 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 ENGINEER 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 CONTRACTOR is not required by this Agreement to indemnify or hold harmless an architect or engineer “from liability for damage that: (1) is caused by or results from: (A) defects in plans, designs, or specifications prepared, approved or used by the architect or engineer; or (B) negligence of the architect or engineer in the rendition or conduct of professional duties called for or arising out of this Agreement and the plans, designs, or specifications that are part of this Agreement; and (2) arises from (A) personal injury or death; (B) property injury; or (C) any other expense that arises from personal injury, death or property injury.” Tex. Civ. Prac. & Rem. Code Ch. 130.

24.4 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.

24.5 In connection with any and all claims against OWNER or ENGINEER, 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 ENGINEER 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 ENGINEER'S AUTHORITY

27.1 The ENGINEER shall act as OWNER'S representative during the contract period. The ENGINEER 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 ENGINEER 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 (10) 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 (5) 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 not more than thirty (30) days 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 within thirty (30) days 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, with five (5) business days following receipt of the Submission Notice, exchange simultaneously written lists of at least five (5) 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 within five (5) business days 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 (10) days a list of potential qualified mediators. On or within five (5) business days 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 forty-five (45) days 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 (7) business 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 within five (5) business days 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 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.

PERFORMANCE SPECIFICATIONS

(SPECIFICATIONS NOT INCLUDED HERE DUE TO LARGE PAGE COUNT)

CONSTRUCTION DRAWINGS
(TO BE PROVIDED BY ENGINEER TO CONTRACTOR)