

**ORDINANCE No. 2011-110  
CITY OF SHOREACRES, TEXAS**

AN ORDINANCE ACCEPTING THE LOW, QUALIFIED BASE BID FOR CONSTRUCTION SERVICES FOR THE CONSTRUCTION OF A MONUMENT SIGN ON SHORE ACRES BLVD. NEAR WEST COUNTRY CLUB (KNOWN AS THE SHOREACRES GATEWAY PROJECT); AUTHORIZING THE EXECUTION OF A CONSTRUCTION CONTRACT; PROVIDING FOR PAYMENT; MAKING VARIOUS FINDINGS AND PROVISIONS RELATING TO THE SUBJECT; FINDING COMPLIANCE WITH THE OPEN MEETINGS LAW; AND PROVIDING AN EFFECTIVE DATE HEREOF.

\* \* \* \*

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SHOREACRES:

That if any section, clause, sentence, or phrase of this Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Ordinance; and,

Section 1. The City Council hereby approves and authorizes the contract, agreement, or other undertaking described in the title of this ordinance, a copy of which is on file in the office of the City Secretary. The Mayor is hereby authorized to execute all related documents on behalf of the City of Shoreacres to confirm acceptance by the City of Shoreacres. The City Secretary is hereby authorized to attest to all such signatures and to affix the seal of the City to all such documents.

Section 2. The City Council officially finds, determines, recites, and declares that a sufficient written notice of the date, hour, place and subject of this meeting of the City Council was posted at a place convenient to the public at the City Hall of the City for the time required by law preceding this meeting, as required by the Open Meetings Law, Chapter 551, Texas Government Code; and that this meeting has been open to the public as required by law at all times during which this ordinance and the subject matter thereof has been discussed, considered and formally acted upon. The City Council further ratifies, approves and confirms such written notice and the contents and posting thereof.

Section 3. This Ordinance shall be effective from and after its passage and approval, and it is so ordered.

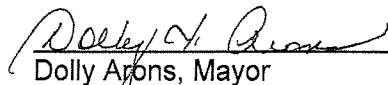
The City Council officially finds, determines, recites, and declares that a sufficient written notice of the date, hour, place and subject of this meeting of the City Council was posted at a place convenient to the public at the City Hall of the City for the time required by law

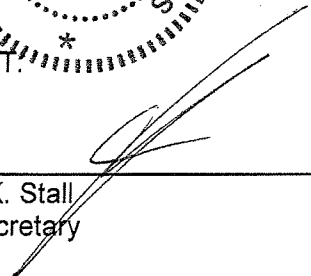
preceding this meeting, as required by the Open Meetings Law, Chapter 551, Texas Government Code; and that this meeting has been open to the public as required by law at all times during which this ordinance and the subject matter thereof has been discussed, considered and formally acted upon. The City Council further ratifies, approves and confirms such written notice and the contents and posting thereof.

PASSED AND APPROVED this the 14th day of November 2011.



ATTEST:

  
\_\_\_\_\_  
Dolly Agons, Mayor

  
\_\_\_\_\_  
David K. Stall  
City Secretary

SECTION 00500

AGREEMENT BETWEEN OWNER AND CONTRACTOR  
ON THE BASIS OF A STIPULATED PRICE

THIS AGREEMENT is dated as of the 1 day of DECEMBER in the year 2011 by and between

The City of Shoreacres (Hereinafter called OWNER) and

National Signs Ltd. (hereinafter called CONTRACTOR).

OWNER and Contractor, in consideration of the mutual covenants set forth, agree as follows:

**Article 1. WORK.**

CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

The City of Shoreacres Gateway, included but not limited to concrete form work, masonry, metal fabrication and installation, electrical and other required elements.

The Project for which the Work under the Contract Document may be the whole or only a part is generally described as follows:

The City of Shoreacres Gateway

**Article 2. LANDSCAPE ARCHITECT**

The project has been designed by:

Knudson, LP.  
8588 Katy Freeway, Suite 441  
Houston, Texas 77024

who is hereinafter called LANDSCAPE ARCHITECT and who is to act as OWNER's representative, assume all duties and responsibilities and have the rights and authority assigned LANDSCAPE ARCHITECT in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

**Article 3. CONTRACT TIME.**

3.1 The Work will be substantially completed on or before **March 15, 2012**, and completed and ready for final payment in accordance with paragraph 14.13 of the General Conditions on or before **April 15, 2012**

3.2 Liquidated Damages. OWNER and CONTRACTOR recognizes 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 paragraph 3.1 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. They also recognize the delays, expenses 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 **Five Hundred and No/100 dollars (\$500.00)** for each day that expires after the time specified in paragraph 3.1

for Substantial Completion until the Work is substantially complete.

After Substantial Completion if CONTRACTOR shall neglect, refuse or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by OWNER, CONTRACTOR shall pay OWNER Five Hundred and No/100 dollars **(\$500.00)** for each day that expires after the time specified in paragraph 3.1 for completion and readiness for final payment.

#### **Article 4. CONTRACT PRICE.**

4.1 OWNER shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents in current funds as follows:

OWNER agrees to pay CONTRACTOR a lump sum amount of **\$74,550.00 (Seventy-four thousand, five hundred, fifty dollars and no/100)** for work completed in accordance with the Contract Documents and as outlined by the CONTRACTOR'S BID FORM (Exhibit A).

#### **Article 5. PAYMENT PROCEDURES.**

CONTRACTOR shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will processed by LANDSCAPE ARCHITECT as provided in the General Conditions.

5.1 Final Payment: Upon final completion and acceptance of the Work in accordance with paragraph 14.13 of the General Conditions, OWNER shall pay the remainder of the Contract Price as recommended by LANDSCAPE ARCHITECT as provided in said paragraph 14.13.

#### **Article 6. INTEREST.**

All moneys not paid when due as provided in Article 14 of the General Conditions shall bear interest at the maximum rate allowed by law at the place of the Project.

#### **Article 7. CONTRACTOR'S REPRESENTATIONS.**

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

7.1 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.

7.2 CONTRACTOR has reviewed and checked all information and data shown or indicated on the Contract Documents 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, including specifically the provisions of paragraph 4.3 of the General Conditions.

7.3 CONTRACTOR has correlated the results of all such observations, examinations and explorations with the terms and conditions of the Contract Documents.

7.4 CONTRACTOR has given LANDSCAPE ARCHITECT written notices of all conflicts, error or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by the LANDSCAPE ARCHITECT is acceptable to CONTRACTOR.

**Article 8. CONTRACT DOCUMENTS.**

The contract Documents which comprise the entire agreement between OWNER and CONTRACTOR concerning the Work consist of the following:

- 8.1 This Agreement (1 through 4, inclusive).
- 8.2 Performance and other Bonds, identified as exhibits 600-E, 600-F and 600-G.
- 8.4 Notice of Award. (This Agreement shall serve as Notice of Award)
- 8.5 General Conditions (1 through 21, inclusive).
- 8.6 Supplemental Conditions (1 through 8, inclusive).
- 8.7 Specifications bearing the title: Project Manual for the Shoreacres Gateway
- 8.8 Drawings, consisting of a cover sheet and sheets numbered L1.00 through E3.00, inclusive with each sheet bearing the following general title: Shoreacres Gateway
- 8.9 Addenda number 1 inclusive.
- 8.10 CONTRACTOR's Bid (marked Exhibit A).
- 8.11 The following which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto: All Written Amendment and other documents amending, modifying, or supplementing the Contract Documents pursuant to paragraph 3.4 and 3.5 of the General Conditions.
- 8.12 The documents listed in paragraphs 8.2 et seq. Above are attached to this Agreement (except as expressly noted otherwise above).

There are no Contract Documents other than those listed above in this Article 8. The Contract Documents may only be amended, modified or supplemented as provided in paragraphs 3.4 and 3.5 of the General Conditions.

**Article 9. MISCELLANEOUS.**

- 9.1 Terms used in this Agreement which are defined in Article 1 of the General Conditions will have the meanings indicated in the General Conditions.
- 9.2 No assignment by a party hereto of any rights under or interest 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 became due and moneys that are due may not be assigned without such consent (except tot 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.
- 9.3 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.

**Article 10. OTHER PROVISIONS.**

IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed this Agreement in triplicate. One counterpart each has been delivered to OWNER, CONTRACTOR and LANDSCAPE ARCHITECT. All portions of the Contract Documents have been signed or identified by OWNER and CONTRACTOR or by LANDSCAPE ARCHITECT on their behalf.

This Agreement will be effective on December 15, 2011.

OWNER – The City of Shoreacres

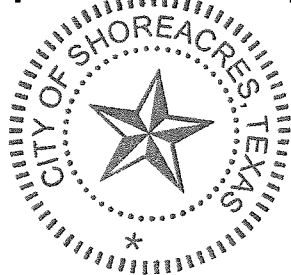
CONTRACTOR – NATIONAL SIGNS LTD.

By *Derek A. Aron*

By *[Signature]*

[CORPORATE SEAL]

[CORPORATE SEAL]



Attest *[Signature]*

Attest \_\_\_\_\_

Address for giving notices:  
601 Shoreacres Blvd.  
Shoreacres, TX 77571

Address for giving notices:

(If Owner is a public body, attach evidence authority to sign, and resolution or other documents authorizing execution of Agreement.)

License No. \_\_\_\_\_

Agent for service of process:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Section 00700

GENERAL CONDITIONS OF THE AGREEMENT

1. ARCHITECT. ARCHITECT is to act as OWNER's Representative and have the rights and authority assigned to ARCHITECT in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.
2. INDEMNIFIED PARTIES. Whenever the phrase "Indemnified Parties" is used, it shall mean OWNER, ARCHITECT, and the consultants, affiliates, officers, directors, employees, agents and representatives of each such parties.
3. INTERPRETATION OF PHRASES. Whenever the words "required," "permitted," "designated," "considered necessary," "prescribed," or words of like import are used, it shall be understood that the requirement, permission, order, designation, or prescription of ARCHITECT is intended and similarly, the words "approval," "acceptable," or "satisfactory," or words of like import shall mean approved by, or acceptable to ARCHITECT. By the term "substantially completed," it is meant that the work is sufficiently completed so that OWNER can occupy the project and put it to the full and unrestricted use for which it was intended, although the project may still require minor miscellaneous work and adjustment.

Whenever in the TECHNICAL SPECIFICATIONS or PLANS accompanying this AGREEMENT, the terms or descriptions of various qualities relative to finish, workmanship, or other qualities of similar kind which cannot from their nature be specifically and clearly described and specified, are necessarily described in general terms, the fulfillment of which must depend on individual judgment, then, in all such cases, any question of the fulfillment of said judgment of said TECHNICAL SPECIFICATIONS or PLANS shall be decided by ARCHITECT, and said work shall be done in accordance with his interpretations of the meaning of the words, terms, or clauses defining the character of the work.

4. EXHIBITS. All work shall be done and all materials furnished in strict conformity with the appended INVITATION TO BIDDERS, INSTRUCTIONS TO BIDDERS, BID, GENERAL and SPECIAL PROVISIONS AND/OR CONDITIONS OF THE AGREEMENT, TECHNICAL SPECIFICATIONS, and PLANS, all of which are hereto attached (or considered as if attached) and are hereby made a part of this Contract.
5. KEEPING OF PLANS AND SPECIFICATIONS ACCESSIBLE. CONTRACTOR shall be furnished with Three (3) copies of all PLANS and TECHNICAL SPECIFICATIONS without expense to CONTRACTOR, and shall keep one copy of each constantly accessible on the work site.
6. RIGHT OF ENTRY. OWNER reserves the right to enter the property or location on which the Work herein contracted for is to be constructed or installed, by such agent or agents as it may elect, for the purpose of examining, observing, or testing the Work, or for the purpose of constructing or installing such collateral work as OWNER may desire.
7. TITLE. Although CONTRACTOR has custody and possession of the Work, as between OWNER and CONTRACTOR, ownership and title to (as opposed to risk of loss of) all of the work completed and in the course of construction at the work site and of all materials furnished

irrespective of the location thereof, shall be in the name of the OWNER; provided, however, CONTRACTOR, and not OWNER, shall bear all responsibility for risk of loss and all liability associated with the Work.

8. QUANTITIES AND MEASUREMENTS. No extra or customary measurements of any kind will be allowed, but the actual length, area, solid contents, number, and weight only shall be considered, unless otherwise specifically provided.

9. EXAMINATION, OBSERVATION, AND TESTING. It is agreed by CONTRACTOR that ARCHITECT shall be and is hereby authorized to appoint from time to time such subordinate architects or project representatives as OWNER may deem proper to examine the material furnished and observe the work done and to ascertain whether the said material is furnished and said work is done in accordance with the TECHNICAL SPECIFICATIONS therefor. CONTRACTOR shall furnish all reasonable aid and assistance required by the subordinate architects or project representatives for the proper examination and testing of the work and materials. The authority of subordinate architects and project representatives shall be limited to examination, observation, and testing of work and materials, and reporting same to ARCHITECT.

10. DISCREPANCIES AND OMISSIONS. It is further agreed that it is the intent of this Contract that all work must be done and all material must be furnished in accordance with generally accepted practice, and to the end that the finished work be complete in every detail. In the event of any discrepancies between the PLANS and TECHNICAL SPECIFICATIONS, or likewise, in the event of any doubt as to the meaning and intent of any portion of the Contract, TECHNICAL SPECIFICATIONS, or PLANS, ARCHITECT shall define that which is intended to apply to the Work.

11. DAMAGES. In the event CONTRACTOR is damaged in the course of the completion of the work by the act, negligence, omission, mistake, or default of OWNER (except with respect to loss or damage: (i) resulting from risks assumed by CONTRACTOR under the terms of this AGREEMENT or otherwise, (ii) resulting from any delay, even if caused by OWNER, or (iii) covered by CONTRACTOR's indemnification and hold harmless in favor of OWNER and others under the terms of this AGREEMENT), thereby causing loss to CONTRACTOR, OWNER agrees to reimburse CONTRACTOR for such loss.

In the event OWNER is damaged in the course of the Work by the act, negligence, omission, mistake, or default of CONTRACTOR, or should CONTRACTOR unreasonably delay the progress of the work being done by others on the job so as to cause loss for which OWNER becomes liable or damaged, then CONTRACTOR shall reimburse OWNER for such loss.

12. LOSSES FROM UNFORESEEN OR NATURAL CAUSES. All loss or damage arising out of the nature of the work to be done, or from the action of the elements, or from any unforeseen circumstances or natural causes in the prosecution of the same, or from unusual obstructions or difficulties which may be encountered in the prosecution of the work, shall be sustained and borne by CONTRACTOR at his own cost and expense.

13. ESTIMATED QUANTITIES. This AGREEMENT, including the TECHNICAL SPECIFICATIONS, PLANS, and BID, is intended to show clearly all work to be done and material to be furnished hereunder. The estimated quantities, if any, of the various classes of work to be done and material to be furnished under this Contract are approximate and are to be used only as a basis for estimating the probable cost of the work and for comparing the BIDS

offered for the work. It is understood and agreed that the actual amount of work to be done and material to be furnished under this Contract may differ from these estimates, and that the basis for determining quantities for payment under this Contract shall be the actual amount of such work done and the material incorporated.

CONTRACTOR agrees that he will make no claim for damages, anticipated profits, or otherwise on account of any differences which may be found between the quantities of work actually done or the material actually incorporated under this Contract and the estimated quantities, if any, contemplated and contained in the BID. Payment for all items in this project will be made on the basis of the contract unit price without adjustment, regardless of overrun or underrun of estimated quantities.

14. CHANGES AND ALTERATIONS. CONTRACTOR further agrees that Owner may make such changes and alterations as OWNER may see fit in the line, grade, form, dimensions, PLANS, or materials for the work herein contemplated, or any part thereof, either before or after the beginning of the construction, without affecting the validity of this Contract and the accompanying Bonds.

If such changes or alterations diminish the quantity of the work to be done, they shall not constitute the basis for a claim for damages, or anticipated profits on the work that may be dispensed with. If they increase the amount of work and the increased work can fairly be classified under the TECHNICAL SPECIFICATIONS, such increase shall be paid for according to the quantity actually done and at the unit price established for such work under this Contract; otherwise such additional work shall be paid for as provided under "Extra Work." In case OWNER shall make such changes or alterations as shall make useless any work already done or materials already furnished or used in said work, then Owner shall recompense CONTRACTOR for any material or labor so used and for any actual loss occasioned by such change due to actual expenses incurred in preparations for the work as originally planned.

15. EXTRA WORK. The term "Extra Work" as used in this Contract shall be understood to mean and include all work that may be required by ARCHITECT or OWNER to be done by CONTRACTOR to accomplish any change, alteration, or addition to the work shown upon the PLANS, or reasonably implied by the TECHNICAL SPECIFICATIONS, and not covered by CONTRACTOR's BID, except as provided under CHANGES AND ALTERATIONS.

It is agreed that CONTRACTOR shall perform all Extra Work when presented with a Written Work Order signed by ARCHITECT; subject, however, to the right of CONTRACTOR to require a written confirmation of such Extra Work Order by OWNER. It is also agreed that the compensation to be paid CONTRACTOR for performing Extra Work shall be determined by one or more of the following methods:

Method (A) - By agreed unit prices; or

Method (B) - By agreed lump sum; or

Method (C) - If neither Method (A) nor Method (B) be agreed upon before the Extra Work is commenced, then CONTRACTOR shall be paid the "actual field cost" of the work, plus 15 percent.

In the event said Extra Work be performed and paid for under Method (C), then the provisions of this paragraph shall apply and the "actual field cost" is hereby defined to include the cost of all

workmen, such as foremen, timekeepers, mechanics, and laborers, and all materials, supplies, teams, trucks, and rentals on machinery and equipment for the time actually employed or used on such Extra Work, plus actual transportation charges necessarily incurred if such equipment or machinery be not already on the job together with all power, fuel, lubricants, water, and similar operating expenses; also all necessary incidental expenses, incurred directly on account of such Extra Work, including Social Security, Old Age Benefits, and other payroll taxes, and a ratable proportion of premiums on Construction and Maintenance Bonds, Public Liability and Property Damage, and Workmen's Compensation, and all other insurance as may be required by any law or ordinance, or required by ARCHITECT or OWNER, or by them agreed to. ARCHITECT may prescribe the form in which accounts of the "actual field cost" shall be kept and may also specify, in writing, before the work commences, the method of doing the work and the type and kind of machinery and equipment to be used, otherwise these matters shall be determined by CONTRACTOR. Unless otherwise agreed upon, the prices for the use of machinery and equipment shall be determined by using 100 percent of the latest schedule of Equipment Ownership Expense adopted by the Associated General Contractors of America. Where practicable, the terms and prices for the use of machinery and equipment shall be incorporated in the Written Extra Work Order. The 15 percent of the "actual field cost" to be paid CONTRACTOR shall cover and compensate him for his profit, overhead, general superintendence and field office expense, and all other elements of cost and expense not embraced within the "actual field cost" as herein defined, save that where CONTRACTOR's Camp or Field office must be maintained primarily on account of such Extra Work, then the cost to maintain and operate this office shall be included in the "actual field cost."

No claim for Extra Work of any kind will be allowed unless ordered in writing by ARCHITECT. In case any requirements made by ARCHITECT appear to CONTRACTOR to involve Extra Work for which he should receive compensation, he shall, within 5 days after being notified of any such requirement, make written request to ARCHITECT for written authorization therefor. Should a difference of opinion arise as to what does or does not constitute Extra Work, or as to the payment therefor, and ARCHITECT insists upon its performance, CONTRACTOR shall proceed with the work after making written request for written authorization and shall keep an accurate account of the "actual field cost" thereof, as provided under Method (C). ARCHITECT shall, within a reasonable time, render and deliver to both OWNER and CONTRACTOR a written decision on all claims of parties hereto as provided under ARCHITECT'S AUTHORITY AND DUTY.

16. PRELIMINARY APPROVAL. Neither ARCHITECT nor his subordinates shall have any power to waive the obligations of this Contract for the furnishing by CONTRACTOR of good material, or for his performance of good work as herein described and in full accordance with the PLANS and TECHNICAL SPECIFICATIONS. No failure or omission of ARCHITECT or his subordinates to discover, object to, or condemn any defective work or material, shall release CONTRACTOR from the obligation to fully and properly perform the Contract, including, without limitation, the obligation to at once tear out, remove, and properly replace the same at any time prior to final acceptance.

Any questioned work may be ordered by ARCHITECT to be taken up or removed for reexamination prior to final acceptance, and if found not in accordance with the TECHNICAL SPECIFICATIONS for said work, all expense of removing, reexamination, and replacement shall be borne by CONTRACTOR; cost of uncovering any work will be borne by OWNER only when the Work is found acceptable and the Work was originally performed with the knowledge of the ARCHITECT.

17. DEFECTS AND THEIR REMEDIES. It is further agreed that if the work or any part thereof, or any material delivered to the project site for use in the work or selected for the work, shall be deemed by ARCHITECT as unsuitable or not in conformity with the TECHNICAL SPECIFICATIONS, CONTRACTOR shall, after receipt of written notice thereof from ARCHITECT, forthwith remove such material and rebuild or otherwise remedy such work so that it shall be in full accordance with this Contract.

18. TIME AND ORDER OF COMPLETION. It is the meaning and intent of this Contract, unless otherwise herein specifically provided, that CONTRACTOR shall be allowed to prosecute his work at such times and seasons, in such order of precedence, and in such manner as shall be most conducive to economy of construction; provided, however, that the order and time of prosecution shall be such that the work shall be substantially completed as a whole and in part, in accordance with this Contract, the PLANS and TECHNICAL SPECIFICATIONS, and within the time of completion shown in the BID provided; also, that when OWNER is having other work done, either by contract or by his own force, ARCHITECT may prescribe the time and sequence of constructing the work done under this Contract so that conflict will be avoided and the construction of the various works being done for OWNER shall be harmonized. Any schedules or charts furnished in connection therewith, or acquisition of any necessary additional equipment, working hours in excess of those encompassed within CONTRACTOR's normal workday, or the performance of certain tasks whether similar or dissimilar to the foregoing shall be furnished without additional cost to OWNER.

19. EXTENSION OF TIME. Should CONTRACTOR be delayed in the completion of the work by any act or negligence of OWNER or ARCHITECT, or by any employee of either, or by other contractors employed by OWNER, or by changes ordered in the work, then an extension of time shall be allowed for completing the work sufficient to compensate for the delay, the amount of the extension to be recommended by ARCHITECT and approved by OWNER; provided, however, that CONTRACTOR shall give ARCHITECT notice in writing of the cause of such delay within 10 days after the date the delay occurred. No extension of time shall be granted for delays caused by inclement weather unless such inclement weather adversely impacts critical path work shown on the CONTRACTOR'S accepted construction schedule. Should CONTRACTOR'S construction schedule not be current at the time inclement weather occurs, then it is agreed that no measure of comparison can be made as to any impact inclement weather may have on critical path work, and in such event, no time extension will be allowed for inclement weather. CONTRACTOR will not be allowed time extensions that are due to non-availability of pipe material.

20. HINDRANCES AND DELAYS. No claim shall be made by CONTRACTOR for damages resulting from hindrances or delays from any cause (even if caused by OWNER) during the progress of any portion of the work embraced in this Contract. IN CASE THE WORK SHALL BE DELAYED OR STOPPED BY THE ACT OF OWNER, THEN CONTRACTOR'S SOLE REMEDY SHALL BE A REASONABLE EXTENSION OF TIME TO COMPLETE THE WORK.

21. PRICE FOR WORK. In consideration of the furnishing of all the necessary labor, equipment, and material and the completion of all work by CONTRACTOR, and on the completion of all work and the delivery of all materials embraced in this Contract in full conformity with the TECHNICAL SPECIFICATIONS and stipulations herein contained, OWNER agrees to pay CONTRACTOR the prices set forth in the BID hereto attached which has been made a part of this Contract. CONTRACTOR hereby agrees to receive such prices in full for furnishing all materials and all labor required for the aforesaid work, also for all expense incurred by him, and for well and truly performing the same and the whole thereof in the manner prescribed by and in

accordance with this AGREEMENT and the attached TECHNICAL SPECIFICATIONS and requirements of ARCHITECT.

22. FINAL COMPLETION, ACCEPTANCE, AND PAYMENT. The CONTRACTOR shall give the ARCHITECT written notice that the work has been completed. Within 10 days after CONTRACTOR has given ARCHITECT written notice that the work has been completed, Architect will schedule inspection by ARCHITECT and OWNER. If the work is found to be completed in accordance with the PLANS and TECHNICAL SPECIFICATIONS and acceptable to the ARCHITECT and OWNER, then ARCHITECT shall proceed to make final measurements and prepare a final statement of the value of all work performed and materials furnished under the terms of the AGREEMENT and shall submit the final statement to CONTRACTOR for approval. Upon receipt from the CONTRACTOR of the approved final statement and the CONTRACTOR's Affidavit of Bills Paid (see Section IX - Part B for affidavit form that must be used), the ARCHITECT shall issue to the OWNER a Certificate of Completion and CONTRACTOR approved final statement of the value of the work performed. The OWNER shall issue a Certificate of Acceptance of the work to the CONTRACTOR and shall pay to the CONTRACTOR on or before the 30th day after the date of the Certificate of Completion the balance due CONTRACTOR under the terms of this AGREEMENT, provided he has fully performed his contractual obligations under the terms of this Contract. The 10 percent retainage will be held by OWNER for 30 days after the date of said payment, after which said retainage will be paid to CONTRACTOR in full, provided he has fully performed his contractual obligations under the terms of this Contract.

Neither the Certificate of Acceptance nor the final payment, nor any provision in the CONTRACT DOCUMENTS, shall relieve CONTRACTOR of: (i) the obligation for fulfillment of any warranty that may be required in the CONTRACT DOCUMENTS and TECHNICAL SPECIFICATIONS; (ii) the obligation to repair defective work or materials; (iii) CONTRACTOR's indemnification obligations under this Agreement; or (iv) any of CONTRACTOR's continuing obligations.

Upon completion of work CONTRACTOR must certify that the project is complete and was built in substantial conformance with PLANS and TECHNICAL SPECIFICATIONS. CONTRACTOR shall also furnish like certifications from all subcontractors who performed work on the project. Subcontractor certifications shall be limited to that work actually performed by the subcontractor. Such certifications shall be executed on the forms provided (see Section IX - Parts B & C). These certifications must accompany the CONTRACTOR's Affidavit of Bills Paid and are a condition precedent to final payment.

23. RIGHT OF SET-OFF. For all purposes and at all times, OWNER shall have the right to deduct and withhold the amount of money, if any, that may ever be due from CONTRACTOR to OWNER (pursuant to this Contract or otherwise) from any monies that OWNER owes CONTRACTOR.

24. NO THIRD PARTY BENEFICIARIES. The CONTRACT DOCUMENTS shall not create any rights in third parties and no provision of the CONTRACT DOCUMENTS shall be construed as creating any obligations for the benefit of, or rights in favor of, any person or entity other than the parties hereto. Without limiting the foregoing, the OWNER shall have no obligation to pay or to see to the payment of any monies due to any CONTRACTOR's subcontractors of every tier or to any other party except as may be required by law.

25. ARCHITECT'S AUTHORITY AND DUTY. It is mutually agreed between the parties to this AGREEMENT that: ARCHITECT will act as OWNER's representative during the construction of the project, and that no act or omission on the part of ARCHITECT, his subordinates or representatives, will excuse CONTRACTOR from full and proper performance of this AGREEMENT according to its terms, or give rise to any liability or obligation from ARCHITECT to CONTRACTOR. All authority and rights assigned by the OWNER to the ARCHITECT with respect to the work are solely and exclusively for the benefit of the OWNER and not for the CONTRACTOR. In order to prevent delays and disputes and to discourage litigation, it is further agreed by and between the parties to the Contract that, if it cannot be otherwise agreed, ARCHITECT shall in all cases determine the amounts and quantities of the several kinds of work which are to be paid for under this Contract, and he shall determine all questions in relation to said work and the construction thereof, and he shall in all cases decide every question which may arise relative to the execution of this Contract on the part of CONTRACTOR; that his estimates and findings shall be the conditions precedent to the right of the parties hereto to any action on the Contract and to any rights of CONTRACTOR to receive any money under this Contract; provided, however, that should ARCHITECT render any decision or make any requirement which, in the opinion of either party hereto, is not in accordance with the meaning and intent of the Contract, either party may file with ARCHITECT within 30 days his written objection to the decision or requirement so rendered. It is the intent of this AGREEMENT that there shall be no delay in the execution of the work. To this end the decision or requirement of ARCHITECT shall be promptly carried out. ARCHITECT shall, within a reasonable time, render and deliver to both OWNER and CONTRACTOR a written decision on all claims of the parties hereto and on all questions that may arise relative to the execution of the work or the interpretation of the Contract, TECHNICAL SPECIFICATIONS, or PLANS.

26. CONTRACTOR'S DUTY. CONTRACTOR is an independent CONTRACTOR and shall give personal attention to the faithful prosecution and completion of this work and shall be present either in person or by duly authorized representatives on the site of the work continuously during its progress. CONTRACTOR shall exercise a high degree of skill, care and diligence in the performance of the Work and CONTRACTOR warrants that the Work shall be performed in a good and workmanlike manner and in strict accordance with the CONTRACT DOCUMENTS. Regardless of what authority and rights may be assigned by the OWNER to the ARCHITECT, CONTRACTOR remains fully and solely responsible and liable for its obligations to perform the work in strict accordance with the requirements of the PLANS and SPECIFICATIONS; to insure against failures in safety precautions; to carry out its work pursuant to safe methods of construction; to select and fulfill the proper manner, means, and methods in performing the work in order to fully comply with the PLANS and SPECIFICATIONS; and to complete the work in accordance with the CONTRACT DOCUMENTS.

27. CONTRACTOR'S AGENT. CONTRACTOR during his absence from the work shall keep a competent superintendent or foreman upon the work, fully authorized to act for him in his absence. Any notice given by ARCHITECT, when given to any superintendent, foreman, or agent of CONTRACTOR in charge of any operation of the work in the absence of CONTRACTOR, shall be considered as notice to CONTRACTOR.

28. CHARACTER OF WORKERS. CONTRACTOR agrees to employ only orderly, competent, and skillful people to do the work; and agrees that whenever OWNER shall inform him in writing that any person(s) on the work are, in his opinion, incompetent, unfaithful, or disorderly, such person(s) shall be discharged from the work and shall not again be employed on the work without OWNER's written consent.

29. CONSTRUCTION. CONTRACTOR shall provide all labor, tools, equipment, machinery, and material necessary in the prosecution and completion of this Contract, unless otherwise specifically provided, and it is also understood that OWNER shall not be held responsible for the care, preservation, conservation, or protection of any material, tools, or machinery or any part of the work until it is finally completed and accepted by OWNER.

30. RIGHT OF ARCHITECT TO MODIFY METHODS AND EQUIPMENT. If at any time ARCHITECT shall find that the methods or equipment used by CONTRACTOR are inadequate to secure the quality of work or the rate of progress required under this Contract, ARCHITECT may, in writing, require CONTRACTOR to improve their character and efficiency, and CONTRACTOR shall comply with such requirements.

If at any time the working force of CONTRACTOR is inadequate for securing the progress herein specified, CONTRACTOR shall, if so notified in writing, increase his force or equipment, or both, to such an extent as to give reasonable assurance of compliance with the schedule of progress.

31. SANITATION. Necessary sanitary conveniences for the use of laborers on the work, properly secluded from public observation, shall be constructed and maintained by CONTRACTOR, in such manner and at such point as shall be approved by OWNER, and their use shall be strictly enforced.

32. CONTRACTOR'S BUILDINGS. The building of structures for housing men, or the erection of tents or other forms of protection will be permitted only at such places as OWNER shall prescribe, and the sanitary conditions of the grounds in or about such structures shall at all times be maintained in a manner satisfactory to OWNER.

33. PROTECTION AGAINST ACCIDENT TO EMPLOYEES AND THE PUBLIC; INDEMNIFICATION. It is understood and agreed that all work done by CONTRACTOR shall meet with the approval of OWNER's representative but that the detailed manner and method of doing the work shall be under the control of CONTRACTOR, OWNER being interested only in the result obtained, and that CONTRACTOR is an independent Contractor as to all work performed hereunder. CONTRACTOR shall maintain such insurance as will protect CONTRACTOR, OWNER and ARCHITECT from claims under Worker's Compensation Acts, and any amendments thereof, and from any other claims for damages from personal injury, including death, which may arise from operations under this AGREEMENT, whether such operations be by himself or by any subcontractor or anyone directly or indirectly employed by either of them. In this connection, CONTRACTOR agrees to carry and maintain such insurance as specified in the Special Conditions hereof or as may be specified by OWNER in writing. Certificates of such insurance shall be furnished OWNER, and shall provide for 30 days written notice in the event of cancellation or material change of the policy or policies. Certified copies of such policies shall be furnished OWNER upon OWNER's request. **TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAWS AND REGULATIONS, CONTRACTOR FURTHER AGREES TO PROTECT, INDEMNIFY, AND SAVE INDEMNIFIED PARTIES HARMLESS FROM AND AGAINST ALL CLAIMS, DEMANDS, COSTS OF ANY KIND, INCLUDING ATTORNEYS AND COURT FEES, AND CAUSES OF ACTION OF EVERY KIND AND CHARACTER ARISING IN FAVOR OF CONTRACTOR'S EMPLOYEES, OWNER'S EMPLOYEES, ARCHITECT'S EMPLOYEES OR THIRD PARTIES ON ACCOUNT OF PERSONAL INJURIES, DEATH, OR DAMAGES TO PROPERTY IN ANY WAY RESULTING FROM THE WILLFUL OR NEGLIGENT ACTS OR OMISSIONS OF CONTRACTOR, CONTRACTOR'S AGENTS, EMPLOYEES, REPRESENTATIVES, OR SUBCONTRACTORS**

**(WHETHER SOLE, JOINT, CONCURRENT OR GROSS).** CONTRACTOR shall at all times exercise reasonable precautions for the safety of employees and all other persons and shall comply with all applicable provisions of the Federal, State, and Municipal safety laws and building and construction codes. All machinery and equipment and other physical hazards shall be guarded in accordance with the Manual of Accident Prevention in Construction of the Associated General Contractors of America unless such instructions are incompatible with Federal, State, or Municipal laws or regulations. CONTRACTOR shall promptly report to ARCHITECT all accidents occurring to CONTRACTOR's employees or any other parties or property.

CONTRACTOR shall require that all policies in any way related to the Work and maintained by CONTRACTOR, as well as by all subcontractors of every tier, be endorsed specifically to name OWNER and ARCHITECT as additional insured, excluding, however, Worker's Compensation Insurance, and to provide that each underwriter waives its right of subrogation against OWNER. All of the aforesaid policies shall be further endorsed to provide that they are primary coverages and not in excess of any other insurance available to OWNER, and without rights of contribution or recovery against any of the insureds or from any such other insurance available to OWNER. Evidence of such specific endorsements shall be furnished with CONTRACTOR's Certificate of Insurance.

Irrespective of the requirements as to insurance to be carried, the insolvency, bankruptcy, or failure of any insurance company carrying insurance for CONTRACTOR, or any subcontractor of any tier, or failure of any insurance company to pay claims accruing shall not be held to waive any of the provisions of the CONTRACT DOCUMENTS.

CONTRACTOR's compliance with these provisions and the limits of liability shown for each of the insurance coverages to be provided by CONTRACTOR shall not be deemed to constitute a limitation of CONTRACTOR's liability for any claims, suits or actions or in any way limit, modify or otherwise affect CONTRACTOR's indemnification obligations.

Provision of the required insurance coverages and the actual certificates is a condition precedent to the obligations of OWNER under the CONTRACT DOCUMENTS, and if CONTRACTOR shall at any time fail to provide the required insurance coverages, such failure shall constitute a material breach of CONTRACTOR's obligations under the CONTRACT DOCUMENTS.

If required by the special conditions of this agreement, CONTRACTOR shall secure Builder's Risk insurance in the amount of the total contract price naming OWNER and CONTRACTOR as insured as their respective interests may appear, and CONTRACTOR shall furnish the information required to obtain the insurance. If OWNER shall request that CONTRACTOR obtain Builder's Risk insurance through a broker designated by OWNER, CONTRACTOR shall procure such insurance as OWNER may direct, and OWNER shall reimburse CONTRACTOR the actual cost of the difference in premiums, if any, for such insurance without markup. Any such insurance shall contain such deductible as shall be reasonably acceptable to OWNER and such deductible shall be borne by CONTRACTOR.

In the event OWNER elects to pursue a claim under any applicable Builder's Risk Policy, CONTRACTOR shall cooperate with OWNER, OWNER's insurance carriers, and their agents and representatives in asserting, substantiating or investigating any insurance claim, whether potential or actual, that OWNER may have in connection with Builder's Risk insurance.

To the extent that liability is created upon ARCHITECT by Sections 130.001, et. seq. Texas Civil Practice and Remedies Code, in addition to existing laws, before CONTRACTOR commences any work in connection with this Contract, or before he allows any subcontractor to commence any work, he will include ARCHITECT as an additional insured on the comprehensive general liability insurance required to be carried by him hereunder.

34. PROTECTION OF ADJOINING PROPERTY. CONTRACTOR shall take proper means to protect the adjacent or adjoining property or properties in any way encountered, or which might be injured or seriously affected by any process of construction to be undertaken under this AGREEMENT, from any damage or injury by reason of said process of construction; and CONTRACTOR shall be liable for any and all claims for such damage on account of his failure to fully protect all adjoining property. Where necessary to take down fences, signs, or other obstruction, replace in their original condition and restore damaged property or make satisfactory restitution, at no cost to OWNER.

35. RESPONSIBILITY FOR CLAIMS; INDEMNIFICATION. **TO THE FULLEST EXTENT PERMITTED BY ALL APPLICABLE LAWS AND REGULATIONS, CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS THE INDEMNIFIED PARTIES FROM AND AGAINST EVERY CLAIM, LOSS, DAMAGE, INJURY, COST, EXPENSE, JUDGMENT OR LIABILITY OF EVERY KIND OF CHARACTER WHATSOEVER, IN CONTRACT, TORT OR OTHERWISE, DIRECT OR INDIRECT, INCLUDING INCIDENTAL, SPECIAL AND CONSEQUENTIAL DAMAGES (INCLUDING BUT NOT LIMITED TO ALL FEES AND CHARGES OF ARCHITECTS, ARCHITECTS, ATTORNEYS AND OTHER PROFESSIONALS AND ALL COURT OR ARBITRATION OR OTHER DISPUTE RESOLUTION COSTS) FOR BODILY INJURY, DEATH, PROPERTY DAMAGE OR ECONOMIC LOSS (INCLUDING LOSS OF USE) CAUSED BY, ARISING OUT OF OR RESULTING FROM ANY ACT OR OMISSION OF CONTRACTOR, ANY SUBCONTRACTOR, ANY SUPPLIER, OR ANY PERSON OR ORGANIZATION DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM TO PERFORM OR FURNISH ANY OF THE WORK OR ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE (THE "CONTRACTOR PARTIES"), TAKEN IN CONNECTION WITH THE PERFORMANCE OF THE WORK, REGARDLESS OF WHETHER OR NOT CAUSED IN WHOLE OR IN PART BY THE SOLE OR CONCURRENT NEGLIGENCE OF EVERY KIND OR CHARACTER WHATSOEVER, WHETHER GROSS, ACTIVE OR PASSIVE, WHETHER AN AFFIRMATIVE ACT OR AN OMISSION, INCLUDING WITHOUT LIMITATION ALL TYPES OF NEGLIGENT CONDUCT IDENTIFIED IN THE RESTATEMENT (THIRD) OF TORTS, OF ALL OR ANY OF THE INDEMNIFIED PARTIES AND REGARDLESS OF WHETHER LIABILITY IS IMPOSED UPON ALL OR ANY OF THE INDEMNIFIED PARTIES BY LAWS AND REGULATIONS REGARDLESS OF THE NEGLIGENCE OF EVERY KIND OR CHARACTER WHATSOEVER (WHETHER SOLE, JOINT, CONCURRENT, GROSS, ACTIVE OR PASSIVE) OF ALL OR ANY OF THE INDEMNIFIED PARTIES. THIS INDEMNIFICATION OBLIGATION OF THE CONTRACTOR PARTIES SHALL NOT BE LIMITED IN ANY WAY BY ANY LIMITATIONS ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR THE CONTRACTOR PARTIES UNDER WORKERS' COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEE BENEFITS ACTS.**

CONTRACTOR shall and does hereby waive its causes of action for and releases and forever discharges the Indemnified Parties from Claims for injuries (including death) to any person or damage to or destruction of any property sustained or alleged to have been sustained in connection with or arising out of or incidental to the Work.

CONTRACTOR shall promptly settle or cause the settlement of all Claims for which it is responsible pursuant to the CONTRACT DOCUMENTS. Upon receipt of any Claim, CONTRACTOR shall immediately notify the OWNER of the full particulars thereof, and the OWNER may elect, by notice to CONTRACTOR, to have its representative accompany CONTRACTOR's representative in making settlement of the same.

In the event that any arrangement is made whereby CONTRACTOR or any of its subcontractors of any tier use any employees of OWNER, any tools, equipment, apparatus, improvements or other property of OWNER or any utilities (such as electricity, gas, water, compressed air and toilet facilities) furnished by or through OWNER, irrespective of who pays the employees and regardless of whether any consideration is paid for the use of the tools or the utilities, then the employees while engaged in the use of the tools or the utilities shall be conclusively considered the agents, servants, and employees of CONTRACTOR, and the acceptance and/or use of the tools or the utilities by CONTRACTOR or its subcontractors of every tier shall mean the CONTRACTOR has inspected and determined the tools and utilities satisfactory for CONTRACTOR's intended purposes and uses, and accepted full responsibility for the tools and utilities. **CONTRACTOR SHALL, UNDER THE TERMS OF THE INDEMNITY AGREEMENTS SET FORTH ELSEWHERE, INDEMNIFY AND HOLD HARMLESS THE INDEMNIFIED PARTIES FROM AND AGAINST CLAIMS IN CONNECTION WITH, ARISING OUT OF, OR INCIDENT OR PERTAINING TO THE USE OF THE EMPLOYEES, THE TOOLS, OR THE UTILITIES OF THE INDEMNIFIED PARTIES, REGARDLESS OF WHETHER THE CLAIMS ARE FORESEEABLE OR UNFORESEEABLE OR ARE FOUNDED IN WHOLE OR IN PART ON BREACH OF CONTRACT, OR THE SOLE, JOINT, CONCURRENT, CONTRIBUTORY, OR COMPARATIVE BREACH OF LEGAL DUTY, FAULT OR NEGLIGENCE OF ANY DEGREE (INCLUDING GROSS NEGLIGENCE) OF ONE OR MORE OF THE INDEMNIFIED PARTIES.** CONTRACTOR shall return the tools at the conclusion of CONTRACTOR's use thereof in the same condition as when received, ordinary wear and tear excepted.

In the event that any statute or rule of law should be held applicable to any indemnity clause in favor of one or more of the Indemnified Parties which would render void, voidable, or unenforceable any such indemnity clause as to any party by reason of any provisions contained therein, then and in only such event, such indemnity clause shall be deemed modified and read, construed and enforced as to such party with respect to the provisions held to violate the statute or rule of law to require indemnity by CONTRACTOR of the Indemnified Parties to the fullest extent required by such indemnity provision modified and limited only to the degree or extent necessary to bring such indemnity into compliance with such statute or rule of law, but otherwise, the indemnity shall remain in full force and effect and binding upon the parties hereto.

Each party hereto agrees and covenants that it will not contest the validity or enforceability of any indemnity or exculpatory provision of this Contract on the basis that the party has no notice or knowledge of such provision or that the provision is not "conspicuous."

If other Provisions contain any indemnities or limitations, such indemnities shall be deemed to be cumulative of and to operate independently of the indemnities provided herein to the end that all indemnities provided in the CONTRACT DOCUMENTS shall be construed to grant indemnity to the Indemnified Parties to the fullest extent of each such indemnity.

CONTRACTOR shall include in each of its subcontracts with its subcontractors of every tier provisions the same as in all material respects those contained herein. Such provisions shall be for the benefit of and in favor of the Indemnified Parties and such other parties on whom CONTRACTOR and such subcontractors may agree.

**NOTWITHSTANDING ANY OTHER PROVISION OF THE CONTRACT DOCUMENTS, OWNER SHALL NOT BE REQUIRED TO INDEMNIFY CONTRACTOR OR ANY OTHER PARTY TO ANY EXTENT WHATSOEVER.**

Notwithstanding anything to the contrary contained in the Contract Documents, the parties hereto do not intend for the indemnity provisions in favor of the Indemnified Parties to create indemnification obligations that would be void under Chapters 127 or 130 of the Texas Practice and Remedies Code; provided, however, the parties do intend that all indemnity provisions be interpreted to provide the maximum amount of indemnification to the Indemnified Parties as allowed by law. If, and only to the extent that, said Chapter 127 applies to this Contract (i.e., if, and only to the extent that, this Contract is "an agreement pertaining to a well for" water as defined in said Chapter 127), then, notwithstanding any other provision of the Contract Documents: (i) to the extent (and only to the extent) that loss or liability for damage is caused by or results from the sole or concurrent negligence of any of the Indemnified Parties, their agents or employees (or any contractor, other than Contractor or its subcontractors, performing work for any of the Indemnified Parties) and arises from personal injury or death, property injury (or any other loss, damage or expense that arises from personal injury, death, or property injury), Contractor's indemnification obligation to the Indemnified Parties shall be limited to \$500,000; (ii) Contractor, in addition to all other insurance required of Contractor, shall provide in favor of the Indemnified Parties contractual liability insurance in the amount of \$500,000 covering the loss or liability described in subsection "(i)" of this sentence, such insurance being intended by the parties hereto to support Contractor's "unilateral indemnity obligation" (as defined in said Chapter 127); and (iii) all other contractual liability insurance required of Contractor shall be solely for the purpose of supporting Contractor's indemnity obligation for the Indemnified Parties' loss or liability that is above and beyond that loss or liability described in subsection "(i)" of this sentence.

36. SETTLING SMALL CLAIMS. To minimize the expense of employing agents in settling Claims CONTRACTOR may authorize OWNER to settle and pay, without advice to or participation by CONTRACTOR but for CONTRACTOR's account, any Claims payable by CONTRACTOR hereunder which may be settled for up to \$10,000 or such greater amount as CONTRACTOR may fix by written notice to OWNER. OWNER will use diligence in undertaking the settlement and payment of any such Claims under any such authority.

CONTRACTOR, understanding that OWNER has a special interest in preserving the good will of persons whose property may be injured in the course of the Work, expressly acknowledges, acquiesces and confirms that:

a. An authorized representative of OWNER may, in good faith, determine whether any such injury is payable in whole or in part by CONTRACTOR, and if found so payable in part, the portion thereof properly payable by CONTRACTOR.

b. Unless CONTRACTOR shall have executed an authorization as provided above, CONTRACTOR will, within 10 days following written request by the OWNER, appoint in writing and thereafter, until the termination of the lien period following completion of the Work, maintain on each job a special agent who shall have full duty and authority on behalf of CONTRACTOR to settle and pay Claims payable by CONTRACTOR described herein to request or confirm payment by OWNER of such Claims for the account of CONTRACTOR, and to do all other things necessary or convenient in connection with the foregoing authority. In addition, CONTRACTOR shall cause said special agent to accompany the representative of OWNER to solicit the settlement of such Claims as

OWNER's representative may request. CONTRACTOR through his special agent shall settle and pay Claims payable by CONTRACTOR hereunder, but only in the presence and with the cooperation of the representative of the OWNER, and in such settlement CONTRACTOR shall take receipts and releases in favor of and releasing the Indemnified Parties as well as CONTRACTOR.

c. OWNER may itself determine whether any amount is payable by CONTRACTOR under the provisions herein (the hazard and expense of litigation and the special interest of OWNER in liquidating all reasonable Claims on a reasonable basis being considered) and may itself settle and pay Claims payable by CONTRACTOR hereunder, at such cost as may in its judgment appear proper, in any one of the following situations:

1. In all cases for which authorization has been given.
2. Should CONTRACTOR have failed to execute such authorization or to appoint such special agent.
3. Should such special agent, if appointed, have failed to accompany the representative of OWNER in a bona fide effort to settle and discharge the Claims.
4. Should such special agent, if appointed, have failed to settle and pay such Claims within 30 days following written notice from OWNER to CONTRACTOR describing the Claims and requesting settlement.
5. In the event CONTRACTOR shall have executed and continued such authorization, should CONTRACTOR have failed to settle such Claims requiring payment on an amount greater than stated in the authorization within 30 days after written notice by OWNER to CONTRACTOR describing the Claims and requesting settlement.
6. With respect to Claims which have not been settled and paid at the termination of the lien period following the completion of the Work, should CONTRACTOR have failed to settle same within 60 days after written notice from OWNER describing the Claims and requesting settlement.

d. CONTRACTOR shall reimburse OWNER for all costs and expenses incurred by OWNER in the settlement of any Claims payable by CONTRACTOR.

### 37. INTELLECTUAL PROPERTY RIGHTS AND INDEMNIFICATION

a. CONTRACTOR shall not furnish or provide to OWNER any Materials or Work that infringes a third party's intellectual property rights (whether it be claims of improper use of confidential information, patent infringement, copyright infringement, or the like). CONTRACTOR shall not disclose or provide to OWNER any information, ideas, concepts, improvements, discoveries, inventions, or forms of expression of ideas which CONTRACTOR does not own or otherwise have the right to disclose or provide to OWNER.

b. CONTRACTOR represents and warrants that the Materials and the Work shall be free from third party claims of ownership and that OWNER's right to own, use, or

otherwise disclose such Materials and Work shall be free from third party claims of infringement of intellectual property rights (whether it be claims of improper use of confidential information, patent infringement, copyright infringement, trademark infringement or the like).

c. CONTRACTOR represents and warrants to OWNER that all information, ideas, concepts, improvements, discoveries, inventions, or forms of expression of ideas disclosed or provided to OWNER shall be free from third party claims of ownership and that OWNER's right to own, use, or otherwise disclose such information, ideas, concepts, improvements, discoveries, inventions, or forms of expression of ideas shall be free from third party claims of infringement of intellectual property rights (whether it be claims of improper use of confidential information, patent infringement, copyright infringement, trademark infringement or the like).

d. CONTRACTOR represents and warrants that all processes or methods utilized by CONTRACTOR to provide its services to OWNER are free from infringement of third party intellectual property rights (whether it be claims of improper use of confidential information, patent infringement, copyright infringement, or the like) and that all products provided by CONTRACTOR to OWNER are free from third party claims of infringement of intellectual property rights, including allegations that the product infringes the claims of the United States process patent in violation of the Process Patents Amendment Act of 1988. CONTRACTOR shall cooperate fully and promptly with OWNER with respect to any notice of infringement or request for disclosure or response to a request for disclosure generated or received by OWNER in connection with CONTRACTOR's Work pursuant to the Process Patents Amendment Act of 1988. To the extent that CONTRACTOR obtains products from third parties which it intends to provide to OWNER, CONTRACTOR shall obtain agreements from CONTRACTOR's vendors to cooperate in connection with requests for disclosure generated or received by OWNER pursuant to the Process Patents Amendment Act of 1988.

**e. CONTRACTOR SHALL DEFEND, PROTECT, INDEMNIFY AND HOLD OWNER HARMLESS FROM AND AGAINST ALL LIABILITY, CLAIMS, DEMANDS AND CAUSES OF ACTION BROUGHT BY THIRD PARTIES (AND ALL COSTS, EXPENSES, DAMAGES, LIABILITIES OR JUDGMENTS SUSTAINED OR INCURRED BY OWNER IN CONNECTION THEREWITH, INCLUDING THE COSTS OF INVESTIGATION AND REASONABLE ATTORNEYS FEES) ARISING OUT OR RELATING TO: (I) CONTRACTOR'S BREACH OF ANY REPRESENTATION OR WARRANTY, WHETHER EXPRESS OR IMPLIED, REGARDING INTELLECTUAL PROPERTY RIGHTS; (II) ALLEGATIONS THAT OWNER, BY USE OF THE MATERIALS OR THE WORK, INFRINGES ANY THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS (WHETHER IT BE CLAIMS OF IMPROPER USE OF CONFIDENTIAL INFORMATION, PATENT INFRINGEMENT, COPYRIGHT INFRINGEMENT, TRADEMARK INFRINGEMENT OR THE LIKE); (III) ALLEGATIONS THAT A THIRD PARTY OWNS INFORMATION, IDEAS, CONCEPTS, IMPROVEMENTS, DISCOVERIES, INVENTIONS, OR FORMS OF EXPRESSION OF IDEAS, DESCRIBED OR PROVIDED BY CONTRACTOR TO OWNER; (IV) ALLEGATIONS THAT OWNER'S OWNERSHIP OR USE OF INFORMATION, IDEAS, CONCEPTS, IMPROVEMENTS, DISCOVERIES, INVENTIONS, OR FORMS OF EXPRESSION OF IDEAS DISCLOSED OR PROVIDED BY CONTRACTOR TO OWNER INFRINGE A THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS; (V) ALLEGATIONS THAT THE PROCESSES UTILIZED BY**

CONTRACTOR IN PROVIDING ITS SERVICES TO OWNER INFRINGE THIRD PARTY INTELLECTUAL PROPERTY RIGHTS (INCLUDING A VIOLATION OF THE PROCESS PATENTS AMENDMENT ACT OF 1988); OR (VI) THE COSTS, EXPENSES, INCLUDING REASONABLE ATTORNEY'S FEES INCURRED BY OWNER, IN ENFORCING THE INTELLECTUAL PROPERTY INDEMNITY INCLUDED IN THIS PARAGRAPH. THIS CONTRACTUAL OBLIGATION OF INDEMNIFICATION SHALL APPLY EVEN IF THE THIRD PARTY ALLEGES OR ESTABLISHES THAT OWNER WAS PARTIALLY NEGLIGENT OR OTHERWISE AT FAULT (E.G., THAT OWNER WAS NEGLIGENT IN RETAINING CONTRACTOR'S SERVICES AND ACCEPTING MATERIALS, WORK, INFORMATION, IDEAS, CONCEPTS, IMPROVEMENTS, DISCOVERIES, INVENTIONS, OR FORMS OF EXPRESSION OF IDEAS FROM CONTRACTOR, OR THAT OWNER WAS NEGLIGENT IN FAILING TO ASCERTAIN WHETHER THE MATERIALS, WORK, INFORMATION, IDEAS, CONCEPTS, IMPROVEMENTS, DISCOVERIES, INVENTIONS, OR FORMS OF EXPRESSION OF IDEAS INFRINGED THE RIGHTS OF THIRD PARTIES).

38. LAWS, REGULATIONS, AND INDEMNIFICATION.

a. CONTRACTOR is now or prior to commencing the Work shall become familiar with all of the Laws and Regulations relating to the Work or which in any manner might affect the Work. CONTRACTOR shall, at its expense, obtain all permits, licenses, certificated and other authorizations required by or reasonably necessary in connection with the Work and shall at all times observe and comply with the Laws and Regulations. The Laws and Regulations shall include, but shall not be limited to Chapter 411 of the Texas Labor Code, Title VII (Equal Employment Opportunity) of the Civil Rights Act of 1964, The Occupational Safety and Health Act of 1970, The National Environmental Policy Act, The Federal Water Pollution Control Act, The Clean Air Act, The Toxic Substance Control Act, The Resource Conservation and Recovery Act, and all amendments thereof. The agencies charged with the administration and enforcement of the Laws and Regulations include, but are not limited to, the Department of the Interior, the Equal Employment Opportunity Commission, the Occupational Safety and Health Administration, the Environmental Protection Agency, the U.S. Corps of Architects, the National Fire Protection Association, the U.S. Geological Survey, the Minerals Management Service, and the U.S. Coast Guard. Certain of the specific regulations that may be applicable to the Work are the Occupational Safety and Health Construction and General Industry Standards (29 CFR Part 1926 and 1910), and various environmental regulations. **CONTRACTOR SHALL INDEMNIFY AND SAVE HARMLESS THE INDEMNIFIED PARTIES FROM AND AGAINST CLAIMS RESULTING FROM OR BASED ON ANY VIOLATION OF THE LAWS AND REGULATIONS, REGARDLESS OF WHETHER SUCH VIOLATION IS CLAIMED TO HAVE BEEN COMMITTED BY CONTRACTOR, ANY OF CONTRACTOR'S SUBCONTRACTORS OF EVERY TIER OR BY ANY OF THE EMPLOYEES OR AGENTS OF CONTRACTOR OR ANY SUCH SUBCONTRACTOR.**

b. CONTRACTOR agrees that all financial settlements, billings, and reports rendered to OWNER as provided for in this AGREEMENT and/or any amendment to it, will, to the best of its knowledge and belief, reflect properly the facts about all activities and transactions handled for the account of OWNER, which data may be relied upon as being complete and accurate in any further recording and reporting made by OWNER for whatever purpose.

c. CONTRACTOR agrees to notify OWNER promptly upon discovery of any instance where the CONTRACTOR fails to comply with provision (a) above or where CONTRACTOR has reason to believe data covered by (b) above are no longer accurate and complete.

39. SEVERABILITY. Except as provided under RESPONSIBILITY FOR CLAIMS: INDEMNIFICATION if any term, condition or provision of the CONTRACT DOCUMENTS, or the application thereof to any person or circumstance, shall ever be held to be void, voidable or unenforceable, then in each such event the remainder of the CONTRACT DOCUMENTS or the application of such term, condition or provision to any other person or any other circumstance (other than those as to which it shall have been held void, voidable or unenforceable) shall not be affected thereby, and each term, condition or provision of the CONTRACT DOCUMENTS shall remain valid and enforceable to the fullest extent permitted by Law.

40. SUBCONTRACTOR'S ASSIGNMENT AND SUBLETTING. CONTRACTOR shall be fully responsible to OWNER for all acts and omissions of any subcontractor, supplier, or other person or organization performing or furnishing any of the work under a direct or indirect contract with CONTRACTOR. All work performed for CONTRACTOR by such subcontractor, supplier, persons or organization shall be pursuant to an appropriate agreement between CONTRACTOR and each such party that specifically binds such party to the applicable terms and conditions of the CONTRACT DOCUMENTS for the benefit of OWNER and ARCHITECT.

CONTRACTOR must furnish a properly executed release of lien satisfactory to the OWNER from all subcontractors and suppliers. Such release of liens shall accompany the CONTRACTOR Affidavit of Bills Paid and are a condition precedent to final payment.

41. NON-WAIVER OF RIGHTS. Any failure by the OWNER at any time, or from time to time, to enforce or require the strict keeping and performance of any of the terms or conditions of the CONTRACT DOCUMENTS shall not constitute a waiver of the right to enforce or require the strict keeping of such terms or conditions and shall not affect or impair such terms or conditions in any way or the right of OWNER at any time to avail itself of such remedies as it may have for any subsequent breach or breaches of any such term or condition or of any other term or condition of the CONTRACT DOCUMENTS, including, without limitation, the right to suspend and the right to terminate. Notwithstanding any provision hereof, neither OWNER's receipt of non-compliant bonds or non-compliant insurance certificates nor OWNER's allowance of CONTRACTOR to proceed with the work, shall be construed to relieve CONTRACTOR of its obligation to provide bonds and insurance in favor of OWNER according to the requirements of these CONTRACT DOCUMENTS.

In the event of termination by OWNER of CONTRACTOR's performance under the Contract for convenience, on account of Force Majeure, or by reason of CONTRACTOR's default, no rights or remedies of OWNER shall thereby be waived, nor shall any breach by CONTRACTOR of the material covenants in the CONTRACT DOCUMENTS which has occurred and is continuing at the time of such termination be waived, regardless of whether or not default has been declared.

42. TERMINATION FOR CONVENIENCE OF OWNER. OWNER may terminate CONTRACTOR's performance under the Contract for OWNER's convenience at any time upon written notice to CONTRACTOR, whether or not CONTRACTOR is in default and, in such event, OWNER's only liability will be to pay CONTRACTOR the following amounts:

a. The unpaid balance due CONTRACTOR for the Work actually performed and accepted, based on the schedules and tables, unit prices and lump sums enumerated in the CONTRACTOR's BID or the Special Provisions of the CONTRACT DOCUMENTS; and

b. All expenditures made and costs incurred by CONTRACTOR for the materials ordered by CONTRACTOR for the Work prior to the date of termination and not incorporated in the Work, less reasonable salvage or resale value, provided such materials conform to the Specifications, and for labor performed on any such materials prior to the date of termination and associated labor insurance and labor payroll taxes.

From the total of the items enumerated in Items a & b above inclusive, there shall be deducted all claims of OWNER against CONTRACTOR, including, without limitation, claims on account of delay or defects in materials and/or workmanship.

The amount payable under the provisions of this Section, plus the sum of all amounts previously paid under the Contract, shall in no event exceed the total Contract Price.

CONTRACTOR shall transfer and assign to OWNER in accordance with OWNER's instructions, all materials, supplies, Work in process, and other things for which CONTRACTOR is entitled to receive reimbursement hereunder, and all plans, drawings, working drawings, sketches, specifications, and information in connection with the Work, and shall take such action as may be necessary to secure to OWNER, at its election, the rights of CONTRACTOR under any or all orders and subcontracts made in connection with the Work.

If and as OWNER so directs or authorizes, CONTRACTOR shall sell at a price approved by OWNER, or retain at a price mutually agreeable, any such materials, supplies, work in progress or other things as referred to above. The proceeds of any such sale or the agreed price shall be paid or credited to OWNER in such manner as OWNER may direct to reduce the amount payable by OWNER.

If requested by OWNER, CONTRACTOR shall endeavor to cancel any or all of its outstanding orders or subcontracts upon such terms as may be approved by OWNER.

Upon the performance of the obligations of the respective parties described herein, all obligations of the respective parties under the Contract shall be discharged, except such obligations as by their terms, express or implied, contemplate continued obligations after acceptance of the Work.

Nothing herein shall affect the right of OWNER to terminate CONTRACTOR's performance as provided elsewhere in the CONTRACT DOCUMENTS.

43. DEFAULT. If a petition in bankruptcy is filed by or against CONTRACTOR, or if CONTRACTOR makes a general assignment for the benefit of creditors, or if a receiver is appointed on account of the insolvency of CONTRACTOR or to take charge of the Work or any part thereof, then CONTRACTOR shall be in default under the CONTRACT DOCUMENTS.

If CONTRACTOR fails or refuses to supply enough properly skilled workers or proper equipment, or fails to commence, continue or complete the work on a timely basis, or fails to make prompt payment when due to subcontractors or for materials, equipment or labor, or disregards the Laws and Regulations, or the instructions of OWNER or of the ARCHITECT, or

breaches any of the provisions of the CONTRACT DOCUMENTS, or breaches any of its representatives or warranties in the CONTRACT DOCUMENTS, or otherwise fails or refuses to perform or fulfill all or any part of its obligations under the CONTRACT DOCUMENTS, and any such failure, refusal or breach continues for a period of **5 calendar days** after CONTRACTOR's receipt (and the Surety's receipt) of written notice by OWNER or the ARCHITECT, then in any such case OWNER, without further notice to CONTRACTOR or Surety, may declare CONTRACTOR in default under the CONTRACT DOCUMENTS and may at its option employ any remedies provided for in the CONTRACT DOCUMENTS or otherwise available at law or in equity.

Nothing contained herein shall be interpreted as enlarging OWNER's legal duty to CONTRACTOR or to CONTRACTOR's agents, employees, subcontractors, or third parties, or altering the status of CONTRACTOR as an independent CONTRACTOR.

44. REMEDIES FOR DEFAULT OF CONTRACTOR. In case Surety should fail to commence compliance with the notice for completion hereinbefore provided for, within **5 calendar days** after service of such notice, then OWNER may elect to provide for completion of the work. The OWNER, at its sole election and discretion, without prejudice to any other right or remedy available to it, without further notice to CONTRACTOR, and without notice to or release of any surety on any bond, may terminate the performance of CONTRACTOR under the CONTRACT DOCUMENTS and take possession of the Work and the Work Site, and, also at its sole election and discretion, may use all or any part of CONTRACTOR's equipment and materials and may finish the Work by whatever method OWNER may deem expedient. Should OWNER deem it desirable, OWNER shall have the right to and CONTRACTOR hereby consents to the appointment of a receiver by any court with jurisdiction, without bond (or, if local rules require, a bond of nominal amount), to take charge of the Work, the Work Site, and all of CONTRACTOR's equipment, material, tools and other appliances on or near the Work Site and associated with the Work, at any time when CONTRACTOR is in default and such default has not been remedied or cured to the satisfaction of OWNER. OWNER may employ such receiver to continue the Work, receive any payments due to CONTRACTOR hereunder, pay all bills and invoices to subcontractors and material men due from CONTRACTOR, and otherwise perform CONTRACTOR's obligations hereunder, without discharging or limiting the liability of CONTRACTOR to OWNER or of any surety on any bond. In either such event, CONTRACTOR shall not be entitled to receive any further payment hereunder until the Work is finished. If the unpaid balance of the Contract Price shall exceed the expense of finishing the Work, including compensation to the receiver, if any, such excess shall be paid to CONTRACTOR. If such expense shall exceed such unpaid balance, CONTRACTOR shall pay the difference to OWNER. The expense incurred by OWNER as herein provided, and the damage incurred through CONTRACTOR's default, shall control as between the parties and the surety on any bond.

The remedies provided herein shall be cumulative of and not in lieu of all other remedies available to OWNER at law or in equity. Should OWNER elect to terminate the performance of CONTRACTOR hereunder, then such termination shall not waive, extinguish or otherwise affect the obligations and liabilities of the parties existing as of termination. CONTRACTOR shall submit and does hereby submit to the personal jurisdiction of the state or federal courts having subject matter jurisdiction and sitting in the county where the contract is executed, for the adjudication of any suit brought to enforce OWNER's rights and remedies under the Contract.

Any sum of money or indebtedness owed by CONTRACTOR to OWNER as a refund or offset on account of audit, under any indemnity, or otherwise arising in connection with the Contract, shall be paid to OWNER at such address or addresses which OWNER may specify in writing.

45. ABANDONMENT BY OWNER. In case OWNER shall fail to comply with the terms of this Contract and should fail or refuse to comply with said terms within 45 days after written notification by CONTRACTOR, then CONTRACTOR may suspend or wholly abandon the Work and may remove therefrom all machinery, tools and equipment, and all materials on the ground that have not been included in payments to CONTRACTOR and have not been wrought into the work. And thereupon ARCHITECT shall make an estimate of the total amount earned by CONTRACTOR; which estimate shall include the value of all work actually completed by CONTRACTOR at the prices stated in the attached BID, the value of all partially completed work at a fair and equitable price, and the amount of all Extra Work performed at the prices agreed upon or provided for by the terms of this Contract, and a reasonable sum to cover the cost of any provisions made by CONTRACTOR to carry the whole Work to completion and which cannot be utilized. ARCHITECT shall then make a final statement of the balance due CONTRACTOR by deducting from the above estimate all previous payments by OWNER and all other sums that may be retained by OWNER under the terms of this AGREEMENT and shall certify same to OWNER who shall pay to CONTRACTOR on or before 45 days after the date of the notification by CONTRACTOR the balance shown by said final statement as due CONTRACTOR, under the terms of this AGREEMENT.

46. BOND. It is further agreed by the parties to this Contract that CONTRACTOR will execute a PERFORMANCE AND MAINTENANCE BOND and a PAYMENT BOND, each in the sum of 100 percent of the Contract price, for the satisfactory performance of the work, the fulfillment of any guarantees required, and the prompt payment to all persons supplying labor and materials in the prosecution of the work, in accordance with this Contract on the forms provided for this purpose; and it is agreed that this Contract shall not be in effect until such BONDS are furnished and approved by OWNER.

47. TIME OF FILING CLAIMS. It is further agreed by both parties hereto that all questions of dispute or adjustment presented by CONTRACTOR shall be in writing and filed with ARCHITECT within 30 days after ARCHITECT has given any order or instruction to which CONTRACTOR desires to take exception. ARCHITECT shall reply to such written exceptions by CONTRACTOR and render his final decision in writing. It is further agreed that final acceptance of the Work by OWNER and the acceptance by CONTRACTOR of the final payment shall be a bar to any claim by either party, except as herein provided.

48. BUSINESS STANDARDS. CONTRACTOR, in performing its obligations under Contract, shall establish and maintain appropriate business standards, procedures, and controls, including those necessary to avoid any real or apparent impropriety or adverse impact on the interests of the OWNER. CONTRACTOR shall review with the OWNER at reasonable frequency during the performance of the work hereunder, such business standards and procedures including, without limitation, those related to the activities of CONTRACTOR's employees and agents in their relations with the OWNER's employees, agents, and representatives, vendors, subcontractors and other third parties, and those relating to the placement and administration of purchase orders and subcontracts.

Neither CONTRACTOR, its subcontractors of every tier, nor the employees, representatives, and agents of CONTRACTOR or any such subcontractor shall at any time solicit, accept, offer or bestow gratuities of more than nominal value from or to one or more of the Indemnified

Parties, any of OWNER's other contractors, the employees, agents, or representatives of such other contractors, one or more of the CONTRACTOR Work Parties, or anyone else associated with the Work. Violation of this policy by CONTRACTOR or any subcontractor shall constitute a material breach of CONTRACTOR's obligations under the CONTRACT DOCUMENTS that may result at the OWNER's election in a declaration of default. The individual or company found to have violated the provisions of this paragraph shall be immediately removed from the Work by CONTRACTOR at CONTRACTOR's sole risk, cost and expense.

49. SAFETY.

a. CONTRACTOR shall develop a safety program applicable to each job site and to the work to be done and enforce such program at all times. Further, CONTRACTOR shall comply with all applicable laws and regulations including, but not limited to, the standards and regulations promulgated by the Secretary of Labor under the Occupational Safety and Health Act of 1970 (OSHA) and any other legislation enacted for the safety and health of CONTRACTOR employees. CONTRACTOR shall have complete responsibility for protecting the safety and health of its employees, subcontractors, and all other persons.

b. CONTRACTOR shall notify OWNER immediately by telephone with prompt confirmation in writing, of injuries and fatalities that occur on the work site in connection with any work being performed under this Agreement and shall provide OWNER with such reports of injuries and fatalities as OWNER shall deem necessary, including but not limited to, copies of all reports or other documents filed or provided to CONTRACTOR's insurers or the State of Texas in connection with such injury or fatality.

c. Nothing contained herein shall be interpreted as enlarging OWNER's legal duty to CONTRACTOR or to CONTRACTOR's agents, employees, subcontractors, or third parties, or altering the status of CONTRACTOR as an independent CONTRACTOR.

50. OWNER'S AUDIT RIGHTS. OWNER's duly authorized representatives shall have access at all reasonable times to all CONTRACTOR's and subcontractor's personnel, job description, employment and qualification records, books, records, correspondence, instructions, plans, drawings, receipts, vouchers, data stored in computers, and memoranda of every description pertaining to Work under Contract for the purpose of auditing and verifying Costs of Work or for any other reasonable purpose. OWNER's representatives shall have the right to reproduce any of the aforesaid documents.

CONTRACTOR shall preserve and shall cause its subcontractors to preserve all the aforesaid documents for a period of four years after completion and acceptance of termination of work.

If audit by OWNER reveals charges or costs charged to or paid by OWNER as costs or fees which are not proper or exceed the rates or amounts permitted under the CONTRACT DOCUMENTS for any of such matters, the OWNER shall be entitled upon demand for a refund from CONTRACTOR of all such amounts, plus interest thereon from the date of payment by OWNER until the date of refund by CONTRACTOR at the rate of the lesser of (i) 18 percent per annum or (ii) the maximum rate allowed by law.

51. ALCOHOL, DRUGS, WEAPONS, ETC. The use of alcohol or controlled substances by any person on OWNER's premises or any person remaining on OWNER's premises under the influence of such substances is strictly prohibited. In addition, possession of alcohol, controlled

substances, firearms, explosives, weapons, and hazardous substances or articles without proper authorization is not permitted on OWNER's property. Entry onto OWNER's property is deemed to be consent to and recognition of the right of OWNER or a representative of the OWNER who has been specifically authorized to search the person, motor vehicles, and other property of each individual while entering, on, or departing the premises.

52. PERMITS AND LICENSES. The CONTRACTOR shall, without any additional expense to the OWNER, be responsible for obtaining any necessary licenses and permits and for complying with any federal, state, county, and municipal laws, code and regulations applicable to the performance of the work.

53. SOILS REPORT. Any soils report or log of borings made available to CONTRACTOR is made available for CONTRACTOR's information only. Such report is not a warranty of subsurface conditions, nor is it a part of the CONTRACT DOCUMENTS. CONTRACTOR is expected to examine the site and such reports and then decide for itself the character of the materials to be encountered.

OWNER and ARCHITECT disclaim any responsibility for the accuracy, true location and extent of the surface and subsurface investigations that have been prepared by others. OWNER and ARCHITECT further disclaim responsibility for interpretation of that data by CONTRACTOR, *i.e.* projecting soil-bearing values, rock profiles, soil stability and the presence, level and extent of underground water or underground facilities.

54. ASSIGNMENT. CONTRACTOR shall not be allowed to assign or otherwise convey all or any portion of this Contract without the express written consent of OWNER.

55. LIQUIDATED DAMAGES. Time is of the essence in this AGREEMENT, it being important that this public improvement be completed on schedule. The CONTRACTOR and the OWNER understand and agree that a breach of this AGREEMENT as to completion on the appropriate date will cause damage to the OWNER, but further agree that such damage cannot be accurately measured or that it will be difficult. It is agreed between the OWNER and the CONTRACTOR that if the actual date of Substantial Completion exceeds the time for Substantial Completion of the project as stated in this AGREEMENT and as adjusted by any Change Order, damages will be sustained by the OWNER. And because such damages are difficult to determine, the OWNER and the CONTRACTOR agree that for each and every calendar day that actual Substantial Completion exceeds the time for Substantial Completion authorized under terms of this AGREEMENT, the CONTRACTOR shall pay as liquidated damages five hundred dollars (\$500.00) per calendar day. This amount shall be charged against the Contract Sum as liquidated damages. The OWNER shall have the right to deduct and withhold the amount of any and all such liquidated damages from any and all monies owing to the CONTRACTOR, or the OWNER may recover such amount from the CONTRACTOR and the sureties on the CONTRACTOR'S bond. All of said remedies shall be cumulative and the OWNER shall not be required to elect any one remedy nor be deemed to have made an election by proceeding to enforce any one remedy.

END OF SECTION

## SECTION 00800

### SUPPLEMENTAL CONDITIONS

#### PART 1 - GENERAL

##### 1.01 GENERAL CONDITIONS

The General Conditions – Section 00700, are a part of this Contract and are referred to in the Contract Documents as "General Conditions of the Contract."

##### 1.02 SUPPLEMENTAL CONDITIONS

These Supplemental Conditions modify (change, delete, add to) the General Conditions. Where a part of the General Conditions is modified, the unaltered portion of that part shall remain in effect.

##### 1.03 OWNER AND LANDSCAPE ARCHITECT

Add the following definitions to Section 1 of the General Conditions.

1. Owner. Where the word "Owner" is used in the Contract Documents it shall be understood as referring to the City of Shoreacres and its designated representative.
2. Engineer/Landscape Architect/Architect. Where the word "Engineer", "Landscape Architect", or "Architect" is used in the Contract Documents, it shall be understood as referring to Knudson, LP., consultant to the Owner.

##### 1.04 ACTION AND APPROVAL BY LANDSCAPE ARCHITECT/ENGINEER/ARCHITECT

- A. Wherever the words "Directed," "Required," "Permitted," "Designated," "Considered Necessary," "Prescribed," or words of like import are used in the Contract Documents, it shall be understood that they are intended to refer to action by the Landscape Architect and the Owner's designated representative. Similarly, the words "Approval," "Acceptable," "Satisfactory," or words of like import shall mean approval by the Landscape Architect and the Owner's designated representative.
- B. Whenever in the Contract Documents the terms or descriptions of various qualities relative to finish, workmanship, or other qualities of similar kind cannot, because of their nature, be specifically and briefly described and are customarily described in general terms, the Landscape Architect shall be the final judge as to whether or not the workmanship so described is being performed in compliance with his interpretation of the meaning of such words, terms or clauses.

##### 1.05 EXISTING UNDERGROUND FACILITIES

The Landscape Architect has made a reasonable effort to locate all underground facilities. The Contractor shall immediately report to the Landscape Architect any additional underground facilities which he discovers. It shall be the Contractor's responsibility to determine the true location and depth of all underground facilities.

## 1.06 EXISTING SITE CONDITIONS

Prior to beginning work, the Contractor shall confirm the site conditions as indicated on the Drawings and shall notify the Landscape Architect of any deviations between the conditions on the Drawings and the actual site conditions. The Contractor must notify the Landscape Architect of all topographic deviations greater than 0.20 feet. The absence of notice to the Landscape Architect concerning such deviations shall constitute acceptance of the information indicated on the Drawings as accurate and adequate.

## 1.07 EXISTING STRUCTURES

The Owner assumes no responsibility for failure to show any or all of known surface and subsurface structures on the Drawings, or to show them in their exact location. The parties agree that such failure shall not be considered sufficient basis for any claims regarding additional compensation for extra work or for an increase in pay, unless the obstruction encountered: (1) necessitates changes in the line or grades, or (2) requires the building of special work which is not indicated in the Drawings or Specifications. In the event that the building of special work not indicated in the Drawings or Specifications is required under this paragraph, the provisions for extra work shall apply under Section 00700, paragraph 7.0 of the General Conditions of the Agreement.

## 1.08 DUST CONTROL

The Contractor shall sprinkle areas under construction, haul routes and detours as required to maintain sufficient moisture content in the surface layer for dust control.

## 1.09 USE OF EXPLOSIVES

The use of explosives will not be permitted.

## 1.10 CLEANUP

The Contractor shall clean the site and roadways of dirt, mud, debris, and other objectionable materials deposited during construction activities. Upon completion and before making application for acceptance of the work, the Contractor shall clean all streets, borrow pits, and all ground occupied in connection with the work, of all rubbish, excess materials, temporary structures, and equipment. The Contractor shall leave all parts of the work in a neat and presentable condition, as deemed satisfactory to the Owner. The Contractor shall also comply with all special cleanup conditions specified in the technical specifications.

## 1.11 SAFETY

The Contractor is responsible for the safety of himself, his employees, and other persons, as well as for the protection of the safety of the improvements being erected and the property of himself or any other person, as a result of his operation. All work shall be done in accordance with the Occupational Safety and Health Administration, Safety and Health Regulations of the United States Government for construction and all other applicable state and local government regulations.

## 1.12 ACCIDENTS

- A. The Contractor shall provide, at the site, such equipment and medical facilities as are necessary to supply first aid service to anyone who may be injured in connection with the Work.
- B. The Contractor shall promptly report in writing to the Owner and Landscape Architect all accidents whatsoever arising out of, or in connection with the performance of the work whether on or adjacent to the site which caused death, personal injury, or property damage, giving full details and statements of witnesses. In addition, if death, serious injury, or serious damage is caused, the accident then shall be reported immediately by telephone or messenger.

## 1.13 CONSTRUCTION STAKING

- A. The Contractor shall provide all construction staking necessary for the facilities to be constructed under this contract.
- B. No direct compensation will be paid to the Contractor for the construction staking of the facilities included in this project. It is understood that the cost of the construction staking is included in the bid price for the items in the Proposal.

## 1.14 CONTRACTOR COST BREAKDOWN

- A. Within ten (10) days after being awarded a contract for the work, the Contractor shall furnish the Landscape Architect with a breakdown of its lump sum bid items suitable for use in the preparation of progress estimates for the job. Such a breakdown shall tabulate quantities and the unit prices to be applied for the various features of the work and shall be in sufficient detail as to permit its use in preparation of progress estimates. The cost breakdown shall not be unbalanced. Refer to Section 01300 - Administrative Submittals.
- B. Progress payment for materials on hand and equipment delivered for installation as a part of the work will be based on invoices.
- C. The Landscape Architect will not approve a progress estimate for payment until a satisfactory cost breakdown for the project has been submitted by the Contractor.

## 1.15 EQUAL OPPORTUNITY CLAUSE

During the performance of this contract, the Contractor agrees as follows:

- (1) The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin. The Contractor will take affirmative action to insure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin. Such action shall include, but not limited to, the following: employment, upgrading, demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection of training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of the nondiscrimination clause."

- (2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex or national origin."
- (3) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246, as amended (3CFR 169 (1974)), and shall post copies of the notice in conspicuous places available to employees and applicants for employment."
- (4) The Contractor will comply with all provisions of Executive Order No. 11246, as amended, and of the rules, regulations and relevant orders of the Secretary of Labor."
- (5) The Contractor will furnish all information and reports required by Executive Order No. 11246, as amended, and by the rules, regulations and order of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders."
- (6) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246, as amended, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246, as amended or by rule, regulation, or order of the Secretary of Labor. or as otherwise provided by law."
- (7) The Contractor will include the provisions of Paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246, as amended, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order, as the contracting agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor becomes involved in, or is threatened with, litigation to protect the interest of the United States."

#### 1.16 SITE ACCESS

Access into and out of the site will be determined by the City of Shoreacres and shall conform to Owner access requirements.

#### 1.17 CONTRACTOR QUALIFICATIONS

- A. Contractor qualifications shall be in conformance with Section 00600 Governing Forms, Bonds, and Certificates. The Contractor shall submit the required Contractor's Qualification Statement with the Bid Proposal in accordance with paragraph 1.03 of such section.
- B. The City reserves the right to reject any bid if the information submitted by the Contractor or determined by investigation fails to indicate the ability of the Contractor to carry out the obligations of the Contract described herein or the proposed work.

1.18 CONSTRUCTION DOCUMENTS

The Owner will provide five (5) sets of Drawings and Specifications to the Contractor. The Contractor may purchase additional sets of Drawings and Specifications at the printer of their choice.

1.19 DEFECTIVE WORK AND FORENSIC INVESTIGATIONS

- A. Refer to Section 00700 - General Conditions.
- B. Contractor shall bear the cost (by deductive Change Order) of all investigations by the Owner and/or Owner's authorized representative relating to defective work.

1.20 FINAL ACCEPTANCE

Final acceptance will be awarded upon award of Substantial Completion and the proper execution of Punch List requirements, as determined by the Owner and the Owner's Landscape Architect.

1.21 INSURANCE IN SUPPORT OF INDEMNITY

- A. Contractor shall name the **City of Shoreacres** as additional insured under Contractor's general liability policy. The commercial liability insurance form of policy may be used in lieu of comprehensive general liability form. The limits of liability for the insurance required by the General Conditions shall provide coverage for not less than the following amounts or greater where required by laws and regulations:

1. Worker's Compensation

- a. State: Statutory
- b. Applicable Federal (e.g. Longshoremen's): Statutory
- c. Employer's Liability: \$100,000

2 Comprehensive General Liability:

- a. Bodily Injury (including completed operations and products liability):

\$500,000	Each Occurrence
\$1,000,000	Annual Aggregate

- b. Property Damage:

\$500,000  
\$1,000,000  
or a combined single limit of

Each Occurrence  
Annual Aggregate  
\$1,000,000

c. Property Damage Liability Insurance will provide Explosion, Collapse and Underground coverage's where applicable.

d. Personal Injury, with employment exclusion deleted

\$500,000

Annual Aggregate

### 3 Comprehensive Automobile Liability

a. Bodily Injury:

\$500,000 Each Person  
\$500,000 Each Occurrence

b. Property Damage:

\$250,000 Each Occurrence  
or combined single limit of \$750,000

### 4 "Umbrella" Excess Liability:

\$2,000,000 combined limit, bodily injury and property damage.

## 1.22 CONTRACTUAL LIABILITY INSURANCE

The contractual liability required by the General Conditions shall provide coverage for not less than the following amounts:

Bodily Injury:

\$500,000

Each Occurrence

Property Damage:

\$250,000  
\$250,000

Each Occurrence  
Annual Aggregate

## 1.23. PROPERTY INSURANCE

The OWNER will not obtain Property Insurance. The contractor must provide insurance covering the losses described in the General Conditions for all work in place and materials on hand when such portions of the work are to be included in a application for payment.

## 1.24 INSPECTION

Notify the Owner's designated Representative prior to beginning construction and keep the inspector informed as to the daily schedule for performance of the work. The

inspector will be available to inspect the work on any working day from 8:00 a.m. to 5:00 p.m. The Contractor will not perform work which requires inspection at any other time unless he has made prior arrangements with the Knudson, LP and The City of Shoreacres.

#### 1.25 BONDS

- A. All Bonds shall be in accordance with the provisions of Article 5160, Revised Civil Statutes of Texas, as amended.
- B. Performance and Payment Bonds shall be furnished in favor of the OWNER for one hundred percent (100%) of the Contract Price. A Maintenance Bond shall be furnished in the amount of one hundred percent (100%) of the Contract Price in favor of the OWNER for a period of one (1) year and shall be executed by an approved surety company authorized to do business in the State of Texas.
- C. Use bond forms provided herein.

#### 1.26 CONTRACT TIME

- A. Contract time shall be as noted on the Bid Proposal.
- B. Requests for time extension shall be submitted weekly.
- C. Time extensions will be granted for inclement and muddy weather only to the extent

#### 1.27 LIQUIDATED DAMAGES

Time is of the essence in this Contract, it being important that this public improvement be completed on schedule. The Contractor and the Owner understand and agree that a breach of this Contract as to completion on the appropriate date will cause damage to the Owner, but further agree that such damage cannot be accurately measured or that it will be difficult. It is agreed between the Owner and the Contractor that if the actual date of Substantial Completion exceeds the time for Substantial Completion of the project as stated in this Contract and as adjusted by any Change Order, damages will be sustained by the Owner. And because such damages are difficult to determine, the Owner and the Contractor agree that for each and every calendar day that actual award of Substantial Completion and / or Final Acceptance exceeds the time for Substantial Completion authorized under terms of this Contract, the Contractor shall pay as liquidated damages five hundred dollars (\$500.00) per calendar day. This amount shall be charged against the Contract Sum as liquidated damages. The Owner shall have the right to deduct and withhold the amount of any and all such liquidated damages from any and all monies owing to the Contractor, or the Owner may recover such amount from the Contractor and the sureties on the Contractor's bond. All of said remedies shall be cumulative and the Owner shall not be required to elect any one remedy nor be deemed to have made an election by proceeding to enforce any one remedy.

#### PART 2 - PRODUCTS

Not Applicable

#### PART 3 - EXECUTION

Before any digging is to take place, first contact Texas One Call System at 800-245-4545.

END OF SECTION

# EXHIBIT A

## BID FORM

BID FORM				
<b>Contractor Costs</b>				
Item	Unit	Qty	Unit\$	Total
Mobilization (not to exceed 5% of Base Bid)	ls	1	\$500.00	\$500.00
Bonds and Insurance (3%)	ls	1	\$1,600.00	\$1,600.00
Traffic Control - complete in place	ls	1	\$1,200.00	\$1,200.00
<b>SUBTOTAL</b>				<b>\$3,300.00</b>
<b>Site Preparation</b>				
Item	Unit	Qty	Unit\$	Total
Site Preparation and Grading	ls	1	\$500.00	\$500.00
Solid Sod	sf	150	\$300.00	\$300.00
<b>SUBTOTAL</b>				<b>\$800.00</b>
<b>Gateway Monument</b>				
Item	Unit	Qty	Unit\$	Total
Structural Footing - Concrete and Steel Reinforcing	cf	120	\$40.00	\$4,800.00
Concrete Masonry Units	sf	125	\$15.00	\$1,875.00
Cast Stone Veneer	sf	185	\$75.00	\$13,875.00
Architectural Gateway Star - complete in place	ls	1	\$8,750.00	\$8,750.00
Aluminum Sign Letters - complete in place	ls	1	\$2,100.00	\$2,100.00
LED Outdoor Video Board and Aluminum Cabinet - complete in place	ls	1	\$30,500.00	\$30,500.00
<b>SUBTOTAL</b>				<b>\$61,900.00</b>
<b>Electrical</b>				
Item	Unit	Qty	Unit\$	Total
Architectural Gateway Star Uplight	ea	1	\$750.00	\$750.00
Lighting Circuitry and Controls	ls	1	\$6,000.00	\$6,000.00
Electrical Boring - complete in place - Power to Sign	ls	1	\$1,800.00	\$1,800.00
<b>SUBTOTAL</b>				<b>\$8,550.00</b>
<b>TOTAL LUMP SUM BID</b>			<b>\$74,550.00</b>	
LUMP SUM BID AMOUNT WRITTEN:				
<p>Note: Quantities shown on the Bid Form are solely for comparison of Bids. Each Bidder is responsible for calculating quantities and Bid amounts based on the Drawings and Specifications, and is solely responsible for the volumes, quantities, and units incorporated into their Bid.</p>				
<b>BID ALTERNATE</b>				
Item	Unit	Qty	Unit\$	Total
Additional LED Outdoor Video Board and Aluminum Cabinet (back side) - complete in place	ls	1	\$17,000.00	\$17,000.00
Nautical Flat Pole - complete in place	ls	1	\$6,000.00	\$6,000.00
<b>TOTAL BID ALTERNATE</b>				<b>\$23,000.00</b>