**Section 00500**

**STANDARD FORM OF AGREEMENT**

THISAGREEMENT isby and between City of Pearland (hereinafter called OWNER or City) and (hereinafter called CONTRACTOR).

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

Article 1. WORK

CONTRACTOR shall complete all work as specified or indicated in or reasonably inferable fromthe Contract Documents (hereinafter the “Work”). The Work is generally described as follows:

**[Project Name]**

**[Project Limits]**

**City of Pearland, Texas**

**COP PN:** **[Insert Project Number]**

**BID NO.:** **[## (Insert Bid No.)]**

Article 2. ENGINEER

TheWork has been designed by [Engineering firm’s name, physical address, and point of contact] who is hereinafter called ENGINEER andwho is to assume all duties and responsibilities and have the rights andauthority assigned to ENGINEER 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 Complete (as defined in Article 1 of the General Conditions) within [ten (10) edit as required] days (including weekends and holidays) from the date when theContract Time commences to run as provided in paragraph 5.01 of the General Conditions (as revised in the Special Conditions ifapplicable), and completed and ready for Final Payment within [ninety (90) edit as required] days from the date when the Contract Time commences to run. No work will be allowed on Sundays.

3.2 Liquidated Damages. OWNER and CONTRACTOR recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss ifthe Work is not completed within the times specified in paragraph 3.1 above, plus any extensions thereof allowed in accordance with Article 5 ofthe General Conditions. OWNER and CONTRACTOR also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration preceding the actual loss suffered by OWNER ifthe 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 [Numbers in word] dollars [($###.##) edit as required] for each day that expires after the time specified in paragraph 3.1 for Substantial Completion until the Work is substantially complete. After Substantial Completion, if CONTRACTOR shall neglect, refuse or fail to complete the remaining Work within the time set out in the Certificate of Substantial Completion or any proper extension thereof granted by OWNER, CONTRACTOR shall pay OWNER [Numbers in words] dollars [($###.##) edit as required] for each day that expires after the time specified in the Certificate of Substantial Completion for completion and readiness for Final Payment.

3.3 Inspection Time. Working hours for the Pearland Inspection personnel are from 7:30 a.m. to 4:30 p.m., Monday through Friday, excluding City approved holidays. The Contractor shall notify the OWNER of any required inspection overtime work at least 48 hours in advance and shall pay the overtime wages for the required City inspections.

Article 4. CONTRACT PRICE

4.1 OWNER shall pay CONTRACTOR for completion of the Work in strict accordance with the Contract Documents in current funds [$###,###.## edit as required] (the “Contract Price”).

The Contract Price includes the Base Bid [and Alternate(s) #, #, #, & #, as accepted by OWNER and edit as required]as shown in Document 00300 – Bid Proposal.

Article 5. PAYMENT PROCEDURES

CONTRACTOR shall submit Applications for Payment in accordance with Section 6.0 “Measurement and Payment” of the General Conditions. Application for Payment will be processed by ENGINEER as provided in the General Conditions.

5.1 Progress Payments. OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR’s Application for Payment as recommended by ENGINEER as provided below. All progress payments will be on the basis of the progress of the Work and actual quantity of Work completed, in accordance with Article 6 “Measurement and Payment” of the General Conditions.

5.1.1Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage or actual quantity of Work complete, but, in each case, less the aggregate of payments previously made and less such amounts as ENGINEER shall determine, or OWNER may withhold, in accordance with the General Conditions. The OWNER shall make payment within 30 days of receipt of application for payment by the ENGINEER.

5.1.2 Each progress payment shall be less retainage as specified in Paragraph 6.06 of the General Conditions, and further less all previous payments and all further sums that may be retained by the OWNER under the terms of this Agreement. It is understood, however, that in case the whole work be near to completion and some unexpected and unusual delay occurs due to no fault or neglect on the part of the CONTRACTOR, the OWNER may upon written recommendation of the ENGINEER pay a reasonable and equitable portion of the retained percentage to the CONTRACTOR, or the CONTRACTOR at the OWNER’s option, may be relieved of the obligation to fully complete the Work and, thereupon, the CONTRACTOR shall receive payment of the balance due him under the contract subject only to the conditions stated under “Final Payment.”

5.2 Final Payment. Upon final completion and acceptance of the Work in accordance with paragraph 6.09 of the General Conditions, OWNER shall pay the remainder of the Contract Price as recommended by ENGINEER as provided in said paragraph

6.09.

Article 6. INTEREST

Interest on any overdue payment from OWNER to CONTRACTOR shall be paid in accordance with the provisions of Chapter 2251.025 of the Texas Government Code, as amended.

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 himself 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 studied carefully all available surveys, assessments, reports of explorations, investigations, and tests of subsurface conditions and drawings of physical conditions of the site. Such technical reports and drawings are not Contract Documents, and Owner makes no representations or warranties as to the accuracy of such documents or information, or to whether or not they are complete, comprehensive, or all-inclusive.

7.3 CONTRACTOR has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all such examinations, investigations, explorations, tests, reports, and studies (in addition to or to supplement those referred to in paragraphs 7.2 above) which pertain to the subsurface or physical conditions at or contiguous to the site or otherwise may affect the cost, progress, performance or furnishing of the Work, and CONTRACTOR assumes the risk of such subsurface and physical conditions, and shall furnish the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents; and no additional examinations, investigations, explorations, tests, reports, and studies or similar information or data are or will be required by CONTRACTOR for such purposes.

7.4 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 finish the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents.

7.5 CONTRACTOR has correlated the results of all such observations, examinations, investigations, explorations, tests, reports, and studies with the terms and conditions of the Contract Documents.

7.6 CONTRACTOR has given ENGINEER written notice of all conflicts, errors or discrepancies in the Contract Documents of which Contractor knew or should have known, and CONTRACTOR shall perform the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including any written resolution of any such conflict, error or discrepancy by ENGINEER. In the event of a conflict that was not brought to the OWNER’s or ENGINEER’s attention prior to the bid, the CONTRACTOR is assumed to have bid the most expensive alternative.

Article 8. CONTRACT DOCUMENTS

The Contract Documents, which comprise the entire agreement between OWNER and CONTRACTOR concerning the Work, consist of the following, each of which are incorporated herein by reference:

8.1 Standard Form of Agreement (Section 00500).

8.2 Performance, Payment, and/or Maintenance Bonds (Sections 00610, 00611, and 00612).

8.3 General Conditions of Agreement (Section 00700), including Attachment No. 1 Workers’ Compensation Insurance Coverage, Attachment No. 2 Agreement for Final Payment and Contractor’s Sworn Release, and Attachment No. 3 Owner’s Insurance Requirements of Contractor.

8.4 Special Conditions of Agreement (Section 00800).

8.5 TxDOT Local Government Project Procedures documents (Section 00850).

8.6 Plans, consisting of sheets numbered 1 through [ \_\_\_ edit as required] inclusive with attachments with each sheet bearing the following general title: [Project name (edit as required)]

8.7 Instructions to Bidders and CONTRACTOR’s Bid Proposal, including any Addenda referenced therein.

8.8 Technical Specifications for the Work.

8.9 The following, which may be delivered or issued after this Agreement becomes effective: Any Change Orders or other documents amending, modifying, or supplementing the Contract Documents in accordance with the General Conditions.

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 the

General Conditions.

Article 9. MISCELLANEOUS

9.1 Terms used in this Agreement which are defined in Section 1, “Definitions and Interpretations” 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 interests in the Contract

Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

9.3 OWNER and CONTRACTOR each binds itself, its partners, successors, assigns and legal representative 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.

9.4 CONTRACTOR agrees to warranty the Work for a period of one (1) year from Substantial Completion against defects in materials and workmanship. CONTRACTOR agrees to repair or replace any defective work within this warranty period immediately unless such repairs require long lead time materials and equipment in which case CONTRACTOR shall provide an agreeable schedule for repairs at no additional cost to OWNER.

* 1. The Work will be completed according to the Contract Documents and in accordance with codes, ordinances, and construction standards of the City of Pearland, and all applicable laws, codes and regulations of governmental authorities.

9.6 In the event any notice period required under the Contract Documents is found to be shorter than any minimum period prescribed by applicable law, the notice period required shall be construed to be the minimum period prescribed by applicable law.

9.7 This Contract and the Contract Documents, insofar as they relate in any part or in any way to the Work undertaken therein, constitute the entire agreement between the parties hereto, and it is expressly understood and agreed that there are no agreements or promises by and between said parties, except as aforesaid, and that any additions thereto or changes shall be in writing.

9.8 The provisions of this Contract shall be applied and interpreted in a manner consistent with each other so as to carry out the purposes and the intent of the parties, but if for any reason any provision is unenforceable or invalid, such provisions shall be deemed severed from this Contract and the remaining provisions shall be carried out with the same force and effect as if the severed provision had not been part of this Contract.

9.9 The headings of the paragraphs are included solely for the convenience of reference and if there is any conflict between the headings and the text of this Contract, the Contract text shall control.

9.10 The waiver of any breach hereof shall not constitute a waiver of any subsequent breach of the same or any other provision hereof. Failure by the OWNER in any instance to insist upon observance or performance by CONTRACTOR shall not be deemed a waiver by CONTRACTOR of any such observance or performance. No waiver will be binding upon OWNER unless in writing and then will be for the particular instance only. Payment of any sum by OWNER to CONTRACTOR with knowledge of any breach or default will not be deemed a waiver of such breach or default or any other breach or default.

9.11 The CONTRACTOR acknowledges that the OWNER (through its employee handbook) considers the following to be misconduct that is grounds for termination of an employee of the OWNER: Any fraud, forgery, misappropriation of funds, receiving payment for services not performed or for hours not worked, mishandling or untruthful reporting of money transactions, destruction of assets, embezzlement, accepting materials of value from vendors, or consultants, and/or collecting reimbursement of expenses made for the benefit of the OWNER. The CONTRACTOR agrees that it will not, directly or indirectly; cause an employee of the OWNER to engage in such misconduct.

9.12 The CONTRACTOR agrees to comply with Appendix A (attached) of the City of Pearland’s Title VI Nondiscrimination Plan Assurances.

IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed this Agreement in duplicate. One counterpart each has been delivered to OWNER and one to CONTRACTOR.

This Agreement will be effective upon execution and attestation by authorized representatives of the City of Pearland and upon the following date: , 20 .

OWNER: CONTRACTOR:

CITY OF PEARLAND

By: By:

Title: Title:

Date: Date:

(Corporate Seal)

ATTEST ATTEST

Address for giving notices

Phone:

Fax:

Agent for service of process:

END OF SECTION