

THE STATE OF TEXAS

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COUNTY OF GALVESTON

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**CONTRACT FOR
PROFESSIONAL SERVICES - ARCHITECT**

THIS AGREEMENT, entered into as of this [INSERT DATE] day of [INSERT MONTH], [INSERT YEAR], by and between the City of Friendswood, Texas (hereinafter called the "CITY") acting herein by its Mayor, duly authorized by resolution of the City Council of the City of Friendswood and [INSERT ARCHITECTURAL FIRM], [INSERT ADDRESS], [INSERT CITY, STATE, ZIP] (hereinafter called the "ARCHITECT") acting herein by [INSERT PRINCIPAL NAME], [INSERT PRINCIPAL TITLE] hereunto duly authorized:

WITNESSETH THAT:

WHEREAS, the CITY desires to engage the ARCHITECT to (1) render certain technical and professional services hereafter described in "Scope of Services" or (2) perform certain work hereafter described in "Scope of Services" for the project briefly described as [INSERT PROJECT NAME]: NOW, THEREFORE, the Parties hereto do mutually agree as follows:

I. EMPLOYMENT OF ARCHITECT

The CITY hereby agrees to engage the ARCHITECT and the ARCHITECT hereby agrees to perform the "Scope of Services" hereinafter set forth. This contract shall be performed in Galveston County, Texas.

II. SCOPE OF SERVICES

Architectural services in connection with preparation of plans and specifications and construction phase services including, but not limited to, all necessary design, surveying, plans, and specifications for [INSERT PROJECT NAME].

The ARCHITECT shall also prepare detailed cost estimates of authorized construction, and shall use reasonable skill and care befitting the profession in preparing cost estimates that shall reflect current, local construction costs or current wage rate.

The work is further described in detail on Attachment A - [INSERT ARCHITECTURAL FIRM] proposal dated [INSERT PROPOSAL DATE] and shall include a proposed schedule for the design of the project.

The ARCHITECT shall review submittals, substitutions, pay requests and/or change order requests and make recommendations to the CITY. The ARCHITECT has no authority to approve any changes to the Construction

Documents, Design, Materials, Contract Amount, or Contract Time nor make any other decisions on behalf of the CITY, only the CITY has this authority, and the ARCHITECT'S responsibilities are in an advisory capacity only.

Certain elements of the architectural work shall be performed as Basic Services; others shall be performed as Additional Services. Those elements of the architectural work which cannot be accurately pre-determined or controlled entirely by the ARCHITECT shall be performed as Additional Services.

In addition to the preparation of plans and specifications and cost estimates for the [INSERT PROJECT NAME] project, the following is required:

B. ADDITIONAL SERVICES

1. Provide Project Management services to direct, supervise and coordinate the various items of work within the Project Design, including review of activities of subcontracted architects or other professionals.
2. Furnish the CITY all necessary copies of approved Contract Documents including notices to bidders and proposal forms.
3. Assist the CITY in the opening and tabulation of bids for construction of the Project, and consult with the CITY as the proper action to be taken, based on the architectural considerations involved.
4. Assist in the preparation of formal Contract Documents.
5. Make regular visits to the construction site (minimum of once a month). ARCHITECT shall also make visits at intervals appropriate to the various stages of construction to observe and to evaluate the progress and quality of work, and to determine in general if the construction is proceeding in accordance with the Contract Documents as requested by the CITY. ARCHITECT shall work closely with the Resident Project Representative (as required by the CITY) to ensure that complete, accurate construction records, reports and information are being provided and that the quantities and quality of work done by the Contractor are consistent with the Contract Documents.
6. Consult and advise with the CITY; issue all instructions to the Contractor requested by the CITY; and prepare and issue routine change orders with CITY'S approval. On matters requiring the CITY'S involvement, the ARCHITECT shall provide the CITY'S Project Manager with all facts relevant to such matters along with a

complete recommendation for the CITY to consider. Upon the decision of the CITY, the ARCHITECT shall be notified of the CITY'S decision with instructions to inform the Contractor. All matters of this nature shall be reduced to writing for the record as soon as practical.

- 7. The ARCHITECT shall also consult with the CITY for replacement of work resulting from fire or other causes during construction.

- 8. The ARCHITECT shall have other duties associated with the construction project that may be related to the General Conditions of the Construction Contract Documents including, but not limited to the following:
 - a. Review samples, catalog data, schedules, shop drawings, laboratory, shop and mill tests of material and equipment and other data which the Contractor submits. This review is for the benefit of the CITY and covers only general conformance with the information given by the Contract Documents. The Contractor shall review and stamp his approval on submittals prior to submitting to ARCHITECT, and review by the ARCHITECT shall not relieve the Contractor of any responsibility such as dimensions to be confirmed and correlated at the job site, appropriate safety measures to protect workers and the public, or the necessity to construct a complete and workable facility in accordance with the Contract Documents.

 - b. Obtain and review monthly the final estimates for payments to Contractors, and furnish to the CITY any recommended payments to Contractors; and assemble written guarantees which are required by the Contract Documents.

 - c. Conduct, in company with the CITY, a final inspection of the Project for compliance with the Contract Documents, and submit recommendations concerning Project status, as it may affect CITY'S final payment to the Contractor.

III. TIME OF PERFORMANCE

ARCHITECT shall proceed immediately upon execution of this Contract with performance of the services called for under the Basic Services with completion within [INSERT WRITTEN AMOUNT] ([INSERT # DAYS]) calendar days after execution, unless delayed by causes outside the control of ARCHITECT, and shall proceed with subsequent work only on authorization by CITY. ARCHITECT shall immediately submit to CITY in writing evidence of delay satisfactory to the

CITY'S reasonable discretion, upon which an extension of time equal to the period of actual delay, if approved by the CITY, shall be granted in writing.

IV. INFORMATION AND SERVICES TO BE FURNISHED ARCHITECT

It is agreed that the CITY shall furnish, without charge, for the purpose of the Contract, information, data, reports, records, and maps as are existing and available for the carrying out of the work of the ARCHITECT as outlined under "Scope of Services"; provided, however, the CITY makes no representation or warranty regarding the reliability of any such information, data, reports or maps. The CITY its agencies shall cooperate with the ARCHITECT and will, to the fullest extent reasonably practicable, facilitate the performance of the work described in this Contract.

V. COMPENSATION AND METHOD OF PAYMENT

A. COMPENSATION

It is agreed that total fees for Basic Services for the work as described in Attachment A hereto (including subcontracted Architectural and professional services as described in Attachment A) shall not exceed the sum of [INSERT WRITTEN DOLLARS] Dollars and [INSERT WRITTEN CENTS] (\$INSERT AMOUNT IN #) unless specifically authorized by the CITY.

B. PAYMENT

ARCHITECT shall invoice CITY monthly for its services and charges incurred by ARCHITECT for services performed under the direction and control of ARCHITECT as described herein.

CITY agrees to pay ARCHITECT at its office the full amount of each such invoice upon receipt or as otherwise specified in this Agreement. A charge of one percent per month shall be added to the unpaid balance of invoices not paid within thirty-one days (31 D) after date of invoice. The ARCHITECT shall pay its subcontractors no later than the tenth day after he receives payment as required under Chapter 2251, Texas Local Government Code.

1. REIMBURSABLES – as stated in Attachment A of ARCHITECT'S Proposal and shall not exceed the limits proposed. All reimbursables shall be accompanied with documentation to expenses incurred, and shall only be paid with the approval of the CITY.

2. SITE VISITS – as stated at rate and frequency in Attachment A and approved by the CITY.
3. ARCHITECT shall not charge for corrections of errors and omissions, by the ARCHITECT, to the design of the project.
4. ARCHITECT shall be responsible for large number of change orders due to errors or omissions of Design and Construction Documents.

VI. RECORDS

ARCHITECT shall keep accurate records, including time sheets and travel vouchers, of all time and expenses allocated to performance of Contract work. Such records shall be kept in the office of the ARCHITECT for a period of not less than five years (5 Yr) and shall be made available to the CITY for inspection and copying upon reasonable request.

VII. OWNERSHIP OF DOCUMENTS

All documents, including original drawings, estimates, specifications, field notes and data are the property of CITY. ARCHITECT may retain reproducible copies of drawings and other documents for its use.

All documents, including drawings and specifications prepared by ARCHITECT are instruments of service in respect to the project. They are not intended or represented to be suitable for reuse by CITY or others on extensions of the Project or on any other project. Any reuse without written verification or adaption by ARCHITECT for the specific purpose intended shall be at CITY’S sole risk and without liability or legal exposure to ARCHITECT. Any such verification or adaption shall entitle ARCHITECT to further compensation at rates to be agreed upon by CITY and ARCHITECT.

VIII. INSURANCE

All insurance shall be written by an insurer licensed to conduct business in the State of Texas, unless otherwise permitted by CITY. The City of Friendswood, its officers, agents and employees shall be named as an additional Insured. The ARCHITECT shall, at his own expense, purchase, maintain and keep in force insurance that shall protect against injury and/or damages which may arise out of or result from operations under this contract, whether the operations be by himself or by any agent, subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, of the following types and limits (no insurance policy or certificate of insurance required below shall contain any aggregate policy year limit unless a specific dollar amount (or specific formula for determining a specific dollar

amount) aggregate policy year limit is expressly provided in the specification below which covers the particular insurance policy or certificate of insurance):

- A.** Worker's Compensation Insurance (with Waiver of Subrogation in favor of the City of Friendswood, its officers, agents and employees), with statutory limits.
- B.** Commercial General Liability occurrence type insurance (No "XCU" restrictions shall be applicable). Products/completed operations coverage must be included.
 - 1.** Bodily injury five hundred thousand dollars (\$500,000) single limit per occurrence or five hundred thousand dollars (\$500,000) each person/ five hundred thousand dollars (\$500,000) per occurrence.
 - 2.** Property Damage one hundred thousand dollars (\$100,000) per occurrence.
 - 3.** Minimum aggregate policy year limit one million dollars (\$1,000,000).
- C.** Commercial Automobile Liability Insurance (including owned, non-owned and hired vehicles coverages).
 - 1.** Minimum combined single limit of five hundred thousand dollars (\$500,000) per occurrence for bodily injury and property damage.
 - 2.** If individual limits are provided minimum limits are three hundred thousand dollars (\$300,000) per person, five hundred thousand dollars (\$500,000) per occurrence for bodily injury and one hundred thousand dollars (\$100,000) per occurrence for property damage.
- D.** Contractual Liability Insurance covering the indemnity provision of this contract in the same amount and coverage as provided for Commercial General Liability Policy, specifically referring to this Contract by date, job number and location.
- E.** ARCHITECT also agrees to maintain Professional Liability Insurance coverage of one million dollars (\$1,000,000) minimum per occurrence/claim/policy year aggregate limits to protect the CITY against damages arising from the ARCHITECT'S negligent or wrongful act or omission in the performance of services under this Contract. Coverage shall continue for a minimum of two years (2 Yr) after the ARCHITECT'S assignment under this Contract is completed. The deductible on the policy for Professional Liability shall not exceed twenty-five thousand dollars (\$25,000) unless specifically approved by the CITY.

ARCHITECT shall cause ARCHITECT'S insurance company or insurance agent to fill in all information required (including names of insurance agencies, ARCHITECT and insurance companies, and policy numbers, effective dates and expiration dates, and provide proof that the CITY is an additional insured) and to date and sign and do all other things necessary to complete and make into a valid certificate of insurance the CERTIFICATE OF INSURANCE Form attached to and made a part of this Contract, and pertaining to the above listed Items A, B, C, D, and E; and before commencing any of the work and within the time otherwise specified, ARCHITECT shall file said completed Form with the CITY. None of the provisions in said Form shall be altered or modified in any respect except as herein expressly authorized. Said CERTIFICATE OF INSURANCE Form contains a provision that coverages afforded under the policies shall not be altered, modified or cancelled unless at least fifteen days (15 D) prior written notice has been given to the CITY. ARCHITECT shall also file with the CITY valid CERTIFICATE(s) OF INSURANCE on like form from or for all Subcontractors and showing the Subcontractor(s) as the Insured. Said completed CERTIFICATE OF INSURANCE Form(s) shall in any event be filed with CITY not more than ten days (10 D) after execution of this Contract.

IX. PROFESSIONAL LIABILITY

- A.** ARCHITECT shall be responsible for the use and employment of reasonable skill and care befitting the profession in the designs, drawings, plans, specifications, data, reports and designation of materials and equipment provided by ARCHITECT for the Project covered by this Contract. Approval by CITY shall not constitute nor be deemed a release or waiver of the responsibility and liability of ARCHITECT for the accuracy and competency of such designs, drawings, plans, specifications, data, reports and designation of materials and equipment. Contractor shall be responsible for the actual supervision of Construction operations and safety measures involving the work, his employees and the public, but the ARCHITECT, on behalf of the CITY, shall advise the Contractor of any items requiring the attention and action of the Contractor after notification to the CITY. ARCHITECT shall immediately make the CITY aware of any fault or defect in the project, including any errors, omissions, or inconsistencies in the ARCHITECTS Documents or Instruments of Service.
- B.** If services include periodic visits to the site to observe work performed by the Project Contractor, ARCHITECT shall be responsible for exercising reasonable care and skills befitting the profession to assure that the Contractor performs the work in general accordance with Contract Documents and to endeavor to safeguard the CITY against defects and

deficiencies in the work; provided, however, ARCHITECT does not guarantee or insure the work completed by the Contractor. During visits to the construction site, and on the basis of the ARCHITECT'S on-site observations as an experienced and qualified design professional, ARCHITECT shall keep the CITY informed on the extent of the progress of the work, and shall advise the CITY of material and substantial defects and deficiencies in the work of Contractors that are discovered by the ARCHITECT or otherwise brought to the ARCHITECT'S attention in the course of construction, shall not exercise whatever rights the CITY may have to disapproved work and materials as failing to conform to the Contract Documents.

- C.** In connection with the services of Contractor's Project Representatives, ARCHITECT shall use the usual degree of care and prudent judgment in the selection of competent Project Representatives, and the ARCHITECT shall use its best efforts to see that the Project Representatives are on the job to perform their required duties.
- D.** In performing these services, the ARCHITECT shall not be responsible for the actual supervision of construction operations or for the safety measures that the Contractor takes or should take, except as stipulated in the Scope of Services.

X. INDEMNIFICATION

ARCHITECT SHALL PROTECT, DEFEND, INDEMNIFY, AND HOLD THE CITY, ITS OFFICERS, ELECTED OFFICIALS, AGENTS, AND EMPLOYEES, HARMLESS FROM ANY CLAIMS, FINES, DEMANDS, LOSS, DAMAGE, SUIT, AND LIABILITY OF EVERY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY, CAUSED BY THE NEGLIGENT, INTENTIONAL OR WILLFUL ACTS OR OMISSIONS OF THE ARCHITECT, ITS OFFICERS, EMPLOYEES, AGENTS, CONTRACT LABORERS, OR SUBARCHITECTS IN THE PERFORMANCE OF THIS AGREEMENT.

ARCHITECT SHALL COMPLY WITH THE REQUIREMENTS OF ALL APPLICABLE LAWS, RULES, AND REGULATIONS IN CONNECTION WITH THE SERVICES OF ARCHITECT AND SHALL EXONERATE, INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY, ITS OFFICERS, AGENTS AND ALL EMPLOYEES FROM ANY AND ALL LIABILITY, LOSS OR DAMAGE ARISING OUT OF NONCOMPLIANCE WITH SUCH LAWS, RULES AND REGULATIONS, WITHOUT LIMITATION. ARCHITECT SHALL ASSUME FULL RESPONSIBILITY FOR PAYMENTS OF FEDERAL, STATE AND LOCAL TAXES OR CONTRIBUTIONS IMPOSED OR REQUIRED UNDER THE SOCIAL SECURITY, WORKER'S COMPENSATION, AND INCOME TAX LAWS WITH RESPECT TO ARCHITECT'S EMPLOYEES. FURTHER, ARCHITECT SHALL EXONERATE, INDEMNIFY, DEFEND, AND HOLD HARMLESS

THE CITY, ITS OFFICERS, AGENTS AND ALL EMPLOYEES FROM ANY AND ALL LIABILITY, LOSS, DAMAGES, EXPENSES OR CLAIMS ARISING OUT OF ANY ACT OR OMISSION, INTENTIONAL TORT, OR FAILURE TO PAY A SUBARCHITECT OR SUPPLIER OF ARCHITECT, ITS OFFICERS, AGENTS AND EMPLOYEES IN CONNECTION WITH ANY OF THE WORK PERFORMED OR TO BE PERFORMED UNDER THIS CONTRACT BY ARCHITECT OR AS A RESULT OF ARCHITECT'S FAILURE TO USE AND EMPLOY REASONABLE SKILL AND CARE BEFITTING THE PROFESSION IN ACCORDANCE WITH THE TERMS OF THIS AGREEMENT. FURTHER, ARCHITECT SHALL EXONERATE, INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY, ITS OFFICERS, AGENTS, AND ALL EMPLOYEES FROM ANY AND ALL LIABILITY, LOSS, DAMAGES, EXPENSES OR CLAIMS FOR INFRINGEMENT OF ANY INTELLECTUAL PROPERTY ARISING OUT OF THE USE OF ANY PLANS, DESIGN, DRAWINGS, OR SPECIFICATIONS FURNISHED BY ARCHITECT IN THE PERFORMANCE OF THIS AGREEMENT.

THE FOREGOING INDEMNIFICATION PROVISION SHALL APPLY TO ARCHITECT REGARDLESS OF WHETHER OR NOT SAID LIABILITY, LOSS, DAMAGES, EXPENSES, OR CLAIMS IS CAUSED IN PART BY A PARTY INDEMNIFIED HEREUNDER.

THE ARCHITECT SHALL REQUIRE ALL OF ITS APPROVED SUBARCHITECTS TO INCLUDE IN THEIR SUBCONTRACTS, A RELEASE AND INDEMNITY IN FAVOR OF THE CITY IN SUBSTANTIALLY THE SAME FORM AS ABOVE.

XI. ADDRESS OF NOTICE AND COMMUNICATIONS

CITY: CITY OF FRIENDSWOOD 910 S. Friendswood Drive Friendswood, Texas 77546 Attn: [INSERT CONTACT] Title: [INSERT CONTACT TITLE]	ARCHITECT: [INSERT ARCHITECTURAL FIRM] [INSERT ADDRESS] [INSERT CITY, STATE, ZIP] Attn: [INSERT CONTACT] Title: [INSERT CONTACT TITLE]
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All notices and communications under this Contract shall be mailed or delivered to CITY and ARCHITECT at the above addresses, respectively.

XII. CAPTIONS

Each paragraph of this Contract has been supplied with a caption to serve only as a guide to the contents. The caption does not control the meaning of any Paragraph or in any way determine its interpretation or application.

XIII. SUCCESSORS AND ASSIGNMENTS

The CITY and the ARCHITECT each binds themselves and their successors, executors, administrators, and assigns to the other party of this Contract and to

the successors, executors, administrators and assigns of such other party, in respect to all covenants of this Contract. Except as above, neither the CITY nor the ARCHITECT shall assign, sublet, or transfer its interest in this Contract without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body which may be a party hereto.

XIV. TERMINATION OF CONTRACT FOR CAUSE

If, through any cause, the ARCHITECT shall fail to fulfill in a timely and proper manner its obligations under this Contract, or if the ARCHITECT shall violate any of the covenants, agreements, or stipulations of this Contract, the CITY shall thereupon have the right to terminate this Contract by giving written notice to the ARCHITECT of such termination and specifying the effective date thereof, at least five days (5 D) before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, survey, drawings, maps, models, photographs, and reports prepared by the ARCHITECT under this Contract shall become the property of the CITY, and the ARCHITECT shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder.

Notwithstanding the above, the ARCHITECT shall not be relieved of liability to the CITY for damages sustained by the CITY by virtue of any breach of the Contract by the ARCHITECT and the CITY may withhold any payment to the ARCHITECT for the purpose of setoff until such time as the exact amount of damages due the CITY from the ARCHITECT is determined.

XV. TERMINATION FOR CONVENIENCE OF THE CITY

The CITY may terminate this Contract at any time by giving at least thirty days (30 D) notice in writing to the ARCHITECT. If the Contract is terminated by the CITY as provided herein, the ARCHITECT shall be paid for the time provided and expenses incurred up to the termination date. If this Contract is terminated due to the fault of the ARCHITECT, other terms and conditions contained in Paragraph 14 of this Contract relative to termination shall apply.

XVI. CHANGES

The CITY may, from time to time, request changes in the scope of the services to be performed by the ARCHITECT under this Contract. Such changes, including any increase or decrease in the amount of the ARCHITECT'S compensation, which are mutually agreed upon by and between the CITY and ARCHITECT shall be incorporated in written amendments to this Contract.

XVII. PERSONNEL

- A.** The ARCHITECT represents that it has, or shall secure at its own expense, all personnel required in performing the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the CITY.
- B.** All of the services required hereunder shall be performed by the ARCHITECT or under its supervision and all personnel engaged in the work shall be fully qualified and, if applicable shall be authorized or permitted under State and local law to perform such services.
- C.** None of the work or services covered by this Contract shall be subcontracted without the prior written approval of the CITY. Any work or services subcontracted hereunder shall be specified by written Contract or agreement and shall be subject to each provision of this Contract.

XVIII. REPORTS AND INFORMATION

The ARCHITECT shall, at such times and in such forms as the CITY may require, furnish the CITY such periodic reports as it may request pertaining to the work or services undertaken pursuant to this Contract, the costs and obligations incurred or to be incurred in connection therewith, and any other matters covered by this Contract.

XIX. CIVIL RIGHTS

The ARCHITECT shall comply with applicable requirements of Chapter 106 Civil Practice and Remedies Code of the State of Texas which prohibits discrimination on the grounds of race, religion, color, sex or national origin, while performing work on behalf of the CITY.

The ARCHITECT shall carry out its work under this Contract in a manner that shall ensure full compliance by the CITY with the Statute.

XX. INTEREST OF ARCHITECT AND EMPLOYEES

The ARCHITECT covenants that it presently has no interest and shall not acquire any interest, direct or indirect, in the study area or any parcels therein or any other interests which would conflict in any manner or degree with the performance of its services hereunder.

The ARCHITECT further covenants that in the performance of this Contract, no person who has any such interest shall be employed by the ARCHITECT.

XXI. INCORPORATION OF PROVISIONS REQUIRED BY LAW

Each provision and clause required by law to be inserted into the Contract shall be deemed to be enacted herein and the Contract shall be read and enforced as though each were included herein. If through mistake or otherwise any such provision is not inserted or is not correctly inserted, the Contract shall be amended to make such insertion upon application by either party.

XXII. PAYMENT BOND

A payment bond shall be required for all sub-consultants, surveyors, geotechnical engineers and for all other professional services wherein the services are not performed by employees of the ARCHITECT'S firm.

XXIII. VENUE

Any action brought by either party based on any claim arising under or as a result of this contract shall be brought in a court of competent jurisdiction in Galveston County, Texas.

XXIV. TIME IS OF THE ESSENCE

Time is of the essence for the completion of all work described in this contract. It is anticipated that all work will be completed within the time as stated in the Schedule from the date of execution, and that any delay in the completion of the work described herein shall constitute a breach of this contract.

EXECUTED IN on behalf of the Architect by [INSERT ARCHITECT REPRESENTATIVE] its [INSERT THEIR TITLE] shown below, and on behalf of the City by [INSERT CITY REPRESENTATIVE NAME], its [INSERT THEIR TITLE], thereto duly authorized this [INSERT DAY] day of [INSERT MONTH], [INSERT YEAR].

ACCEPTED:

CITY:

CITY OF FRIENDSWOOD, TEXAS
FIRM]

MAYOR

DATE: _____

PROPOSED AND AGREED TO:

ARCHITECT REPRESENTATIVE:

[INSERT CONSTRUCTION MANAGER

BY: _____
[INSERT TITLE]

DATE: _____

ATTEST:

CITY SECRETARY

ATTEST:

(OFFICER OR SECRETARY)

APPROVED AS TO FORM:

CITY ATTORNEY

END OF DOCUMENT