

AN ORDINANCE 2006-06-01-0652

APPROVING A TOTAL OF \$3,558,602.31, TO INCLUDE AWARDING A \$2,955,482.00 CONSTRUCTION CONTRACT WITH MAC, INC., TO RESTORE THE NATURAL CHANNEL CONTOUR OF BEITEL CREEK IN DISTRICT 2, IN CONNECTION WITH THE BEITEL CREEK ENVIRONMENTAL RESTORATION PROJECT; AND APPROPRIATING FUNDS FROM 2003 STORM WATER REVENUE BOND FUNDS.

* * * * *

WHEREAS, bids were submitted in connection with the Beitel Creek Environmental Restoration Project located in District 2; and

WHEREAS, this Ordinance accepts the lowest responsive bid submitted by **MAC, Inc.** in the amount of \$2,955,482.00 for the Beitel Creek Environmental Restoration Project; and

WHEREAS, this Project provides for restoring the natural channel capacity to convey flood waters by removing illegal fill material from Beitel Creek downstream of the Perrin Beitel Bridge; and

WHEREAS, this Ordinance also authorizes \$295,548.20 for project contingency, \$227,572.11 for Capital Administrative Costs, \$63,000.00 for Environmental Clean-up Monitoring, \$15,000.00 for Material Testing, and \$2,000.00 for advertising expenses; and

WHEREAS, approval of this Ordinance will be a continuation of City Council policy to complete previously approved 2003 Storm Water Revenue Bond funded Capital Improvement Projects, **NOW THEREFORE;**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The lowest responsive bid of **MAC, Inc.** in the amount of \$2,995,482.00 in connection with the Beitel Creek Environmental Restoration Project is hereby accepted. All other bids will be considered rejected upon the execution of a contract by the successful bidder and the deposit of all required bonds and insurance certificates or the expiration of ninety (90) days from the effective date hereof, whichever occurs first.

SECTION 2. The City Manager or her designee is hereby authorized to execute a standard form contract covering said Project, a copy which is in substantially the same form as **Attachment I** is incorporated herein for all purposes.

SECTION 3. The following financial adjustments are hereby approved:

- a.) The amount of \$2,542,602.31 is appropriated in fund 48003000, 2003 Storm Water Revenue Bonds, WBS RB-00078-01-01-50 GL account 6102100 – Interfund Transfer out entitled Transfer to 23-00121-90-05. The amount of \$2,542,602.31 is authorized to be transferred to fund 48099000.
- b.) The budget in fund 48099000, Project Definition 23-00121, Beitel Creek Environmental Restoration, shall be revised by increasing WBS element 23-0121-90-05 entitled Trf Fr

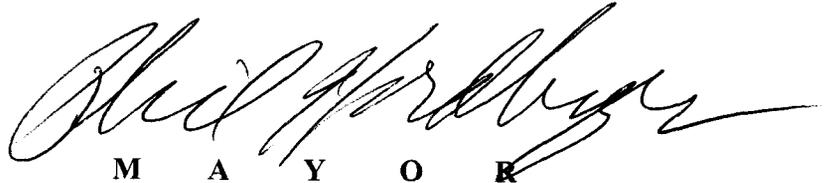
- RB-00078-01-01-50, GL account 6101100 – Interfund Transfer In, by the amount of \$2,542,602.31.
- c.) The amount of \$1,016,000.00 is appropriated in fund 29071000, Drain Detention Projects, Internal Order # 390000000435 GL account 6102100 – Interfund Transfer out entitled Transfer to Fund 48099000. The amount of \$1,016,000.00 is authorized to be transferred to fund 48099000.
 - d.) The budget in fund 48099000, Project Definition 23-00121, Beitel Creek Environmental Restoration, shall be revised by increasing WBS element 23-00121-90-06 entitled Trf Fr I/O # 390000000435, GL account 6101100 – Interfund Transfer In, by the amount of \$1,016,000.00.
 - e.) The amount of \$2,955,482.00 is appropriated in Fund 48099000, Munciple Drainage Capital Projects, Project Definition 23-00121, Beitel Creek Environmental Restoration, WBS element 23-00121-05-02-01, entitled City Construction, G/L Account 5201140, and is authorized to be encumbered and made payable to **MAC, Inc.** for construction services.
 - f.) The amount of \$295,548.20 is appropriated in Fund 48099000, Munciple Drainage Capital Projects, Project Definition 23-00121, Beitel Creek Environmental Restoration, WBS element 23-00121-05-06, entitled Project Contingency, G/L Account 5201140, and is authorized to be encumbered and made payable for project contingencies.
 - g.) The amount of \$227,572.11 is appropriated in Fund 48099000, Munciple Drainage Capital Projects, Project Definition 23-00121, Beitel Creek Environmental Restoration, WBS element 23-00121-05-04, entitled Construction Capital Administration, G/L Account 5402010, and is authorized to be encumbered and made payable for Capital Administrative Costs.
 - h.) The amount of \$2,000.00 is appropriated in Fund 48099000, Munciple Drainage Capital Projects, Project Definition 23-00121, Beitel Creek Environmental Restoration, WBS element 23-00121-05-01, entitled Advertise, G/L Account 5201150, and is authorized to be encumbered and made payable for advertising.
 - i.) The amount of \$63,000.00 is appropriated in Fund 48099000, Municipal Drainage Capital Projects, Project Definition 23-00121, Beitel Creek Environmental Restoration, WBS element 23-00121-04-02, entitled Environmental Costs, G/L Account 5201040, and is authorized to be encumbered and made payable for environmental clean-up monorting.
 - j.) The amount of \$15,000.00 is appropriated in Fund 48099000, Municipal Drainage Capital Projects, Project Definition 23-00121, Beitel Creek Environmental Restoration, WBS element 23-00121-06-01, entitled Other, G/L Account 5201140, and is authorized to be encumbered and made payable for material testing.

SECTION 4. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager’s designee, correct allocation to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost

Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 5. This Ordinance shall take effect on the 11th day of June, 2006.

PASSED AND APPROVED this 1st day of June, 2006.



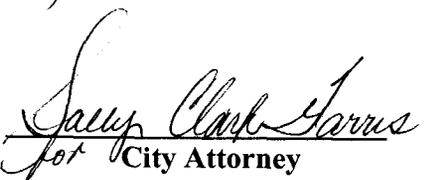
M A Y O R

PHIL HARDBERGER

ATTEST:


City Clerk

APPROVED AS TO FORM:


for City Attorney

Agenda Voting Results

Name: 10.

Date: 06/01/06

Time: 11:38:24 AM

Vote Type: Multiple selection

Description: An Ordinance approving a total of \$3,558,602.31, to include awarding a \$2,955,482.00 construction contract with MAC, Inc., to restore the natural channel contour of Beitel Creek in District 2, in connection with the Beitel Creek Environmental Restoration Project; and appropriating funds from 2003 Storm Water Revenue Bond funds. [Presented by Thomas Wendorf, Director, Public Works; Jelynne LeBlanc Burley, Deputy City Manager]

| Voter | Group | Status | Yes | No | Abstain |
|--------------------------|-------------|-------------|-----|----|---------|
| ROGER O. FLORES | DISTRICT 1 | Not present | | | |
| SHEILA D. MCNEIL | DISTRICT 2 | | x | | |
| ROLAND GUTIERREZ | DISTRICT 3 | Not present | | | |
| RICHARD PEREZ | DISTRICT 4 | Not present | | | |
| PATTI RADLE | DISTRICT 5 | | x | | |
| DELICIA HERRERA | DISTRICT 6 | Not present | | | |
| ELENA K. GUAJARDO | DISTRICT 7 | | x | | |
| ART A. HALL | DISTRICT 8 | | x | | |
| KEVIN A. WOLFF | DISTRICT 9 | | x | | |
| CHIP HAASS | DISTRICT_10 | | x | | |
| MAYOR PHIL HARDBERGER | MAYOR | | x | | |

CONSTRUCTION CONTRACT
(General Form)

STATE OF TEXAS
COUNTY OF BEXAR
CITY OF SAN ANTONIO

CONTRACT FOR
<Project Name>

THIS AGREEMENT made and entered into in San Antonio, Bexar County, Texas between the City of San Antonio, a municipal corporation, in the State of Texas, hereinafter termed "City", and

<Name of Contractor>, a <Type of company> organized under the laws of the State of <DATA>

hereinafter termed "Contractor", said agreement being executed by the City pursuant to the City Charter and Ordinances and Resolutions of the City Council, and by said Contractor,

WITNESSETH: That the parties hereto, each in consideration of the agreements on the part of the other herein made and referred to, have covenanted mutually, and hereby mutually covenant, the City for itself and its successors, and the Contractor for itself or himself or themselves and his or their heirs, executors and administrators or successors, as follows, to-wit:

A. DEFINITIONS & SCOPE OF CONTRACT

1. **CITY AND OFFICIALS.** Whenever in this contract is found the term "City", "City Council", "City Manager", "Director of Public Works", "Director of Finance", "City Clerk" or other designation of any City institution, officer, employee or title, or a pronoun in its, his or their place, the same shall, unless indicated otherwise, be understood to mean the City of San Antonio or its successors, or the governing body, or the person or persons now or hereafter holding or exercising the duties of such designated official position, office, employment or title, in said City, or any person or persons acting lawfully in the corresponding official capacity on behalf of said City at such time and within the powers and authority held by him or them;

2. **CONTRACTOR.** Whenever the term "Contractor" or a pronoun in its place is used herein, it shall be taken to include any person, association or persons, firm or corporation, notwithstanding such pronoun may be used in the masculine gender or singular number, and said term or pronoun shall include in their respective capacities, the President, Manager, or other officer or agent for the time being, representing or locally managing the work of any corporation contracting herein.

3. **INCLUDED INSTRUMENTS.** The Request for Competitive Sealed Proposals, specifications including any Special and General Conditions, Supplemental General Conditions, plans, instructions to bidders, advertisement for bids, the bid proposal, and the construction bond, payment bond, and other bonds, if any, made by the Contractor, the Charter, Ordinances and Resolutions of the City, all in so far as prepared for or relating to said work herein undertaken are hereby made a part of this Construction Contract and are included in this Contract as if rewritten or copied in full herein, and shall be deemed "Included Instruments" when that term is used. This document and the Included Instruments taken together constitute the contract between the parties and may be referred to herein as the "Contract."

4. **CONTRACT INTERPRETATION.** In case of conflict or inconsistency between this document and the specifications or other Included Instruments, this document shall control, but insofar as such provisions can stand together they shall all be regarded as cumulative.

ATTACHMENT I

5. **SCOPE OF CONTRACT AND SPECIAL PROVISIONS FOR SUPERVISION OF WORK.** It is contemplated that this Contract shall be used as a general form of construction contract for public works projects and for some of said work independent consulting Architects or Engineers may be engaged, their identity and capacity shall be designated herein; however, Contractor understands that City may remove such consultant as provided in the terms of its contract relationship with the latter, and the Director of Public Works shall, in such event, be vested with all powers formerly exercised by such consultant, provided written notice of such substitution shall be immediately served on the Contractor in writing. Nothing herein shall authorize independent agreements between Contractor and such Engineer or Architect, nor shall the consultant be deemed to bear a legal relationship to either Contractor or City other than as evidenced by the City's contract with such consultant.

6. **DEFAULT AND VIOLATIONS OF CONTRACT.** If Contractor shall fail or refuse to take such measures as the Director of Public Works may determine to be necessary to insure the completion of the work within the time allowed therefor, or if the work to be done under this Contract shall be abandoned by Contractor, or if this Contract, or any right or interest therein shall be assigned or sub-let by Contractor otherwise than is herein specified, or if at any time said Director of Public Works shall certify in writing that Contractor is willfully violating or refusing to observe any of the conditions, provisions or stipulations of this Contract or of the specifications, or is executing the same in bad faith or not in accordance with the terms thereof, or if the work is not fully completed within the time allowed for its completion, then, in any such event, the City Manager shall be authorized at his election to order Contractor to discontinue all work under this Contract by written notice given as herein provided; and Contractor and his employees shall thereupon discontinue all work upon said premises; and the City shall, upon such notice having been given, be authorized fully to enter upon said premises, through any designated officer, agent or Contractor, and to take full possession of said work, and to order or contract for the completion of said work in any manner it may deem proper; and said City shall thereupon have a right to take full possession of, and to use for the purposes of said work, all materials, tools, implements or machinery previously provided by the Contractor for the performance of the work and located at the project site. All costs and expenses requisite to the completion of the work by the City whether accomplished by contract or otherwise, and including reasonable costs of supervision, together with damages for delay as herein specified, shall be charged to and paid by the Contractor. If the cost of such completion by the City shall be less than the amount agreed to be paid to the Contractor hereunder, the Contractor shall forfeit by virtue of his default the right to any difference unless otherwise specified by the City Manager; if, however, the cost of such completion shall exceed the amount herein agreed to be paid to the Contractor, then the Contractor or his bondsman shall pay to the City the amount of such additional costs and expenses to be fixed and determined as herein provided.

7. **COMMUNICATIONS BETWEEN CONTRACTOR AND CITY.** The Contractor agrees that the following address in the City of San Antonio, Texas, shall be used for the transmission to him of any notices or correspondence in connection with the performance of this Contract:

The above address may be changed only by filing written notice to that effect with the Director of Public Works. All communications, notices and other correspondence forwarded to the above address shall be presumed conclusively to have been delivered by regular course of mail to the Contractor.

8. **PREVAILING WAGE RATE AND GENERAL LABOR CONDITIONS.** The provisions of Chapter 2258, Texas Government Code, are expressly made a part of this Contract. In accordance therewith, a schedule of the general prevailing rate of per diem wages in this locality for each craft or type of workman needed to perform this Contract is included with the Special Conditions and made a part hereof. The Contractor shall forfeit as a penalty to the City sixty dollars (\$60.00) for each laborer, workman, or mechanic employed, for each calendar day, or portion thereof, that such laborer, workman or mechanic is paid less than the said stipulated rates for any work done under said contract, by the Contractor or any sub-contractor under him. The establishment of prevailing wage rates pursuant to Chapter 2258, Texas Government Code shall not be construed to relieve the Contractor from his obligation under any Federal or State Law regarding the wages to be paid to or hours worked by laborers, workmen or mechanics insofar as applicable to the work to be performed hereunder. The Contractor, in the execution of this project, agrees that he shall not discriminate in his employment practices against any person because of race, color, creed, sex or origin. The Contractor shall not engage in employment practices which have the effect of discriminating against employees or prospective employees because of race, color, religion, national origin, sex, age, handicap or political belief or affiliation. In addition, Contractor shall abide by all applicable terms and provisions of the Nondiscrimination Clause and the Small and/or Minority Business Advocacy Clause as contained in the City of San Antonio's current Small, Minority and Women Business Advocacy Program on file in the City Clerk's Office.

9. **ASSIGNMENTS AND SUBLETTING.** Contractor shall not assign, transfer, convey, sub-let or otherwise dispose of this Contract, or any portion thereof, or any right, title or interest in, to or under the same, without previous consent in writing of the City, to be endorsed hereon or hereto attached; and Contractor shall not assign by power of attorney or otherwise any of the monies or other considerations to become due and payable by the City under this Contract; unless by and with the consent signified in like manner. And in any event whatsoever, whether by such consent, by operation or law or otherwise, any and all such assignments, transfers or sub-letting, and the entire subject matter thereof, shall be and remain subject to all rights of the City herein or otherwise provided, and no waiver of this stipulation can be invoked against the City. In no event shall the City be liable in excess of the consideration of this Contract in the case of any such assignment, transfer, conveyance or sub-letting of the work or performance which is the subject hereof. The City reserves the right to withhold any monthly payment hereafter provided for in the event of an assignment or sub-letting of a portion of the work without the consent and knowledge of the City and by reserving such right, the City shall not be deemed to have waived its right to declare a full breach of this Contract for Contractor's failure to comply with provisions hereof, such remedy being alternative only and exercisable at the option of the City.

B. SCOPE OF WORK

1. **DESCRIPTION AND LOCATION.** The site of the work herein contemplated is located and described generally as follows:

<Type of Work being perform at name of location>

and this Contract is performable exclusively in Bexar County, Texas.

2. **GENERAL UNDERSTANDING.** Contractor at his own cost and expense shall furnish all supervision, tools, implements, machinery, labor, materials and accessories, such as are necessary and proper for the purpose, and pay all permit and license fees, and shall at his own cost and expense construct, build and complete, in a good, first class, substantial and workmanlike manner, the structures, work and improvements herein described or referred to in and upon a certain parcel or parcels of land hereinafter described or referred to, all according to this Contract and the Included Instruments, prepared by <Name of Company>

and now on file in the office of the Engineering Division of the Public Works Department; and according to field interpretations to be furnished Contractor by the City upon request. If figures or quantities of materials, supplies or other items needed for this project are furnished in the plans and specifications, same shall be understood to be estimates only and the Contractor shall be responsible for any discrepancies between such estimates and the quantities required. Contractor warrants and represents that it possesses the skill, experience, tools, equipment, and labor necessary to fulfill the terms of this Contract.

3. **WORK UNDERSTOOD BY CONTRACTOR.** Contractor declares that prior to the submission of his bid proposal on this Contract he has thoroughly examined the location of the work to be performed, is familiar with local conditions, and has read and thoroughly understands the Included Instruments as they relate to the physical conditions prevalent or likely to be encountered in the performance of the work at such location. Contractor hereby accepts such Included Instruments as satisfactory in all respects to accomplish the proper performance of the work at the project site and accordingly assumes the risk of any delays or additional costs which might arise from errors or miscalculations in such Included Instruments or from erroneous assumptions upon which same may have been predicated as to the physical conditions at the work site including, but not by way of limitation, latent defects or conditions of the subsoil.

4. **IMPLIED WORK.** Any work or materials that may have been omitted in the description of said project, but the use of which is implied or necessary to the project's completion, shall be deemed to be included in this Contract and shall be furnished by the Contractor as if the same had been stated specifically, without any additional charge to the City.

5. **INCIDENTAL WORK, CONNECTIONS AND PASSAGEWAYS.** The Contractor shall do and perform all implied or incidental work necessary to completion of this Contract including, but not by way of limitation, the following:

- a. make and provide all suitable connections with existing improvements as are necessarily implied herein for proper completion of the project;
- b. provide passageways or leave open such thoroughfares in the work area as may be required by the City;

- c. protect and guard same at his own risk as more specifically detailed in Paragraph E-1 hereof;
- d. continuously maintain the work area in a clean and workman-like manner; and,
- e. prior to final acceptance of the work, restore the site to its prior condition to the extent permitted by the improvement.

All of said incidental work to be done to the satisfaction of the City at Contractor's own cost and expense.

6. WORK AND MATERIALS. All materials used by the Contractor shall conform to the specifications. However, if the specifications are silent, only the best quality materials shall be used, and in the event of dispute as to the relative quality of materials, the selection of the Director of Public Works shall be final. All of said work shall be executed in a good, thorough and workman-like manner, to the satisfaction of the Director of Public Works, who, together with all consultants, assistants and inspectors under his direction, or in the employ of or retained by the City for the purpose of said work, shall at all times have free access to the project site, stores and materials, and shall be privileged to take such samples of all materials and to cause tests of materials or of any part of the work to be made except as otherwise provided in the specifications. Contractor shall render all assistance required of him by the Director of Public Works or his aforementioned assistants or inspectors in connection with any such tests, and if any part of the work or the materials used shall be found unsuitable or improper, either wholly or in part, Contractor shall correct and/or remove such defective work or materials from the project site. In connection with the visual inspection or materials testing contemplated herein, it is clearly understood that the City exercises no right to control the means of accomplishing the end product of the work and no approval of any phase of the construction project by any of the City's agents or inspectors shall relieve the Contractor from full compliance with the specifications regarding the ultimate work product and any additional cost or delay occasioned by defects in the work or failure to meet specifications at any such phase shall be borne by the Contractor.

7. CONTRACTOR'S RISK. Contractor shall be responsible for the complete performance of and compliance with this Contract, and for all materials on the ground or elsewhere, and for all the work performed under this Contract, and shall protect the same from all loss or damage from any cause whatsoever until final completion and acceptance; and shall deliver said structures, work and improvements to the City in a completed and perfect condition in accordance with this Contract.

C. BEGINNING AND COMPLETION OF WORK, DAMAGES FOR DELAY

1. TIME TO BEGIN WORK. The work embraced in this Contract shall be begun by Contractor within seven (7) days after City shall notify Contractor in writing to begin, and if such work be actually begun by Contractor before such notice, then the period of time herein allowed for the completion of the work shall begin to run from such date when work is actually commenced.

2. COMPLETION OF WORK.

a. Work Day Contract -- After beginning work as outlined in Paragraph C-1 above, the Contractor shall prosecute same continuously and diligently for and during the period of <Number of Calendar days spelled out> () calendar days consecutive working days, during which period of time Contractor binds and obligates himself at all times to employ sufficient force and diligence to complete said structures, work and improvements, and to deliver same over to the City in a completed, undamaged, and clean condition; and the time of beginning, rate of progress and time of completion of said work are hereby declared and understood to be of the essence of this Contract; provided, however, said Director of Public Works may suspend said work wholly or in part by his written order whenever in his opinion the interests of the City require the suspension of such work, such orders not to continue in effect longer than one week at any one time. The City may, at its discretion, establish phases of the project or areas of the work to be performed and in such order or sequence as the City shall deem best in the public interest.

Should the work be delayed necessarily by any damage that may happen thereto by any unusual, unavoidable accident, or by the condition of the weather, or by action of the elements, or by any general strike of employees, or by shortage of materials, or by suspension of the work, or by any injunction or other court action or by any delay which may exist for the City to procure any title to lands or any right or interest therein needed for the purposes of said work, Contractor shall have no claim for damages on account of such delay, but working days will not be charged during the period of any such delays.

b. **Date Certain Contract** -- After beginning work as outlined in Paragraph C-1 above, the Contractor shall complete the work <DATA>

during which period of time Contractor binds and obligates himself at all times to employ sufficient force and diligence to complete said structures, work and improvements, and to deliver same over to the City in a completed, undamaged and clean condition; and the time of beginning, rate of progress and time of completion of said work are hereby declared and understood to be of the essence of this Contract; provided, however, said Director of Public Works may suspend said work wholly or in part by his written order whenever in his opinion the interests of the City require the suspension of such work, such orders not to continue in effect longer than one week at any one time. The City may, at its discretion, establish phases of the project or areas of the work to be performed and in such order or sequence as the City shall deem best in the public interest. No additional time for completion will be allowed unless granted in writing by the Director of Public Works.

3. **DAMAGES FOR DELAY.** If Contractor shall fail to complete the work within the time herein specified or otherwise allowed therefore, he shall be liable for the wages of any inspector or inspectors employed by the City on said work at the rate of thirty-five dollars (\$35.00) per day per inspector from the end of said time allowed for the completion of the work, until actual completion thereof; and in addition to said wages of inspectors, the following sums per day for the period of such delay shall be paid or allowed by Contractor to City or be deducted by the City on final estimate and settlement, not as a penalty, but as liquidated damages due to City for expense, loss and public inconvenience resulting from failure to complete said work within the time allowed, such time of completion being an essential element and consideration, as a result of such delay:

| <u>For Amount of Contract</u> | <u>Amount of Liquidated Damages per Day</u> |
|-------------------------------|---|
| \$3,000,001 or above | \$900.00 |
| \$2,000,001 to \$3,000,000 | \$800.00 |
| \$1,000,001 to \$2,000,000 | \$700.00 |
| \$ 750,001 to \$1,000,000 | \$600.00 |
| \$ 500,001 to \$ 750,000 | \$500.00 |
| \$ 250,001 to \$ 500,000 | \$400.00 |
| \$ 100,001 to \$ 250,000 | \$300.00 |
| \$ 50,001 to \$ 100,000 | \$200.00 |
| \$ 0 to \$ 50,000 | \$100.00 |

The amount of all such damage shall be fixed and determined by the written certificate of Director of Public Works, whose judgment shall be final disposition thereof.

4. **COMPLETION.** Completion of the project will be considered only after all stipulations, requirements and provisions of this Contract are faithfully completed and the project is delivered to the City for use. In the event that only minor items remain for completion, the Director of Public Works may issue a conditional approval in accordance with Paragraph D-2, listing the exceptions; however, the completion date will not occur until all items noted as exceptions in the Conditional Approval have been corrected.

5. **NO WAIVER OF CITY'S RIGHTS.** Neither the inspection nor approval by said Director of Public Works or any inspector, officer or employee of the City, nor any order, measurement or certificate by said Director of Public Works, nor any estimate or payment by the City for any part of said work, or material or method or equipment, nor any extension of time, nor any possession of the work or place taken by the City, or any officer or employee thereof at any time before final acceptance, shall operate as a waiver of any provision or obligation of this Contract or of any right or power herein given or reserved to said City, or of any right to claim any indemnity or damages herein provided for; nor shall any waiver of any breach of this Contract be deemed as a waiver of any other or subsequent breach; and every right or remedy under this Contract or Included Instruments shall be cumulative, and in addition to all other rights and remedies.

6. **OCCUPANCY.** The City, at the discretion of the Director of Public Works, shall have the right to take possession of and use any completed portion or partially completed portion of the structure or work, provided, in the opinion of the Director of Public Works, such possession or use does not materially affect the Contractor's ability to proceed with his work on the project. No additional time will be granted the Contractor for such occupancy or possession and use of any

partially completed or completed work by the City, and such occupancy, possession or use shall not constitute acceptance of the work.

D. PAYMENT

1. **PRICES AND CONSIDERATIONS.** In consideration of the faithful performance of this Contract and the construction, completion, and delivery of said structures, work and improvements, the City of San Antonio agrees and shall be and is hereby bound and obligated to pay at the office of the Director of Finance of the City of San Antonio, in Bexar County, Texas, to the Contractor as hereinafter provided out of its fund <DATA>

the following sum or amount or amounts, or prices, to-wit: <DATA>

the same being the amount or amounts or prices for said work named in the Contractor's Bid, attached hereto as an Included Instrument.

2. **MONTHLY ESTIMATES AND RETAINAGE** During the early part of each month as the work progresses said Director of Public Works shall make an estimate of the materials incorporated into the work and the labor performed during the preceding month, as well as the number of working days used during such month, and the City shall thereupon, about the middle of each month, make payments to Contractor of monthly installments based upon such estimate in a sum equivalent to ninety percent (90%) of each such monthly estimate. At the time the last monthly estimate is paid, a letter of conditional approval will be furnished the Contractor. The remaining ten percent (10%) of the estimated value shall be held by the City as retainage until the final settlement hereinafter provided for. However, where the contract price exceeds four hundred thousand dollars, installments shall be paid to Contractor at the rate of ninety-five (95%) percent of each monthly estimate, and the retainage held until final acceptance shall be five (5%) percent. The payments of such installments shall be held to be payments on account of the contract sum, and the certificates or estimates of the Director of Public Works upon which such monthly payments are based shall be held to have been given only for the purposes of fixing the sums to be so paid in compliance with Paragraph D-5 hereof and shall not in any way be deemed to have been an acceptance of any part of the work, or to prejudice said City in the final settlement of account or in requiring the completion of the work as herein provided.

3. **FINAL ESTIMATE.** Contractor shall not be entitled to receive payment of any sum in excess of the amounts paid upon such monthly estimates as outlined above for at least thirty (30) days after transmittal of the letter of conditional approval and not before all the stipulations, requirements and provisions of this Contract are faithfully performed and complied with, and unless and until said structures, work and improvements shall be entirely completed, and delivered to and accepted by the City in accordance with this Contract; and such completion, delivery and acceptance is evidenced by the final certificate of the Director of Public Works and such certificate of acceptance is approved by the City Manager. Simultaneous with the transmittal of the final certificate of completion, delivery and acceptance, the Director of Public Works shall prepare his final estimate as the basis for final settlement upon this Contract, whereupon the same having been first approved by the signature of the City Manager and Director of Finance, City shall pay to Contractor the amount of such final estimate, taking into account all amounts previously retained and deducted from such monthly estimates and remaining payable to Contractor, but deducting from the amount of such final estimate and retaining any and all sums which are to be deducted by the City or paid or allowed by the Contractor to City, or claimed for labor or materials furnished by any person, firm or corporation, or which are to be retained and held by City for any reason.

4. **CLAIMS FOR LABOR OR MATERIALS.** Contractor hereby agrees to promptly pay all persons supplying labor, services and materials in the prosecution of the work provided for in this Contract and any and all duly authorized modifications of said Contract that may hereafter be made, and shall and will fully indemnify and hold harmless the City against any and all claims, liens, suits or actions asserted by any person, persons, firm or corporation on account of labor, materials or services furnished such Contractor during the prosecution of the work herein undertaken and Contractor shall execute a Payment Bond for this purpose as hereinafter set out. Before the City shall be obliged to pay any amount to Contractor on final settlement, Contractor shall furnish to the satisfaction of the Director of Finance, evidence that all labor employed and all materials used in the construction of the work have been fully paid for by Contractor.

5. DIRECTOR OF PUBLIC WORKS TO FINALLY DETERMINE ALL AMOUNTS PAYABLE OR CHARGEABLE. It is specially understood and agreed that subject only to the prices, terms and provisions specifically set forth in this Contract the written estimates and certificates of the Director of Public Works shall be final in fixing and determining amounts payable or chargeable hereunder to Contractor by City as required by the other terms and conditions hereof, also in case of controversy, in fixing and determining all unliquidated sums to be deducted and retained by City for any purpose whatever out of any funds estimated as payable to Contractor by City.

6. ALTERATIONS AND EXTRA WORK. Said Director of Public Works may, by his written order, approved by the signature of the City Manager, make deletions, alterations, modifications or additions in the specifications and plans for the work for the purpose of perfecting the work herein undertaken or the ramifications thereof, and the Contractor shall execute the work as so changed, provided the entire cost of such extra work as results from such changes, including the cost of extra work resulting from any prior alterations modifications, or additions so ordered, shall not exceed twenty-five percent (25%) of the original amount of the contract, as set out in paragraph D-1 hereof; and provided further that the price is agreed upon in writing before the work is done or materials furnished and that such agreement is signed by the Contractor and by the Director of Public Works and the City Manager, it being further agreed and understood that if no such agreement as to price can be reached after discussions, that payment by the City shall be upon the basis of cost of labor and materials plus ten percent (10%). The cost of such extra work shall be added to the estimates payable to the Contractor by the City, all of which shall be governed by the terms and provisions of this Contract. The Director of Public Works may order the Contractor to omit any part or parts of the work remaining to be done and the City shall not be bound to pay for extra work so ordered to be omitted. No additional working time will be granted for alterations and/or extra work unless specified in said written order approving work.

E. INDEMNIFICATION

- 1. CARE TO AVOID ACCIDENTS OR INJURY TO PERSON OR PROPERTY.** During the performance of the work within the contemplation of this Contract and until final completion and acceptance thereof, Contractor shall exercise the utmost care to avoid accident or injury to persons or property. He shall place and maintain all necessary barriers and safeguards, including watchmen, if necessary, about the work site for the prevention of accidents and at night shall maintain adequate lights and other warning devices, and generally shall take all precautions requisite to the protection of the general public and properties adjacent to the work site. Contractor shall and will indemnify and save harmless the City from and against any and all actions and claims, and against all costs, damages and expenses to which the City may be put by reason of any injury or alleged injury to person or property, resulting or alleged to result from or to be occasioned by the acts or omissions of the Contractor, whether negligent or otherwise, in the performance, conduct or maintenance of the work, or in guarding same, or from any improper methods, tools, implements or materials employed therein, or on account of any such acts or omissions of Contractor's agents, servants, employees, assignees or sub-contractors (including the agents, servants and employees of such sub-contractor); and Contractor or his insurer shall well and truly make payment of any and all sums recovered against the City in any suit or suits on account of such alleged injury or damage, to which the City may be made a party, together with all costs, damages and expenses borne by the City in connection with such suits, all in a manner as to save the City harmless from any expense connected with such actions and claims. The City is further authorized, upon the order of the Director of Public Works, to deduct or retain from any estimate or estimates or amounts retained hereunder, such sum as may be claimed for any injury or damage described above unless and until Contractor shall give a further and special bond or deposit adequate to cover such contingent liability as determined by the Director of Public Works or otherwise present evidence of full indemnification to the City in connection with such claims or actions.
- 2. INTELLECTUAL PROPERTY RIGHTS, ETC.** Contractor agrees that he will at all times pay all fees, royalties or license charges on or for all intellectual property, including but not limited to, patents, trademarks, or copyrights used in the construction of said work and supplied as a part of the finished work, or appurtenant thereof; and that he will forever hold the City free and harmless from any and all claims on account of the use of any intellectual property.

F. INSURANCE

1. The following types of insurance shall be furnished for the duration of the project, and two copies of Certificates of Insurance showing compliance with the provisions of this paragraph shall be furnished to the Department of Public Works prior to or at the time this Contract is executed by the Contractor and before a Work Order is issued.

a. General Insurance, Commercial General (Public) Liability, Builder's Risk and Business Automobile, Builder's Risk Insurance Coverage shall be carried as specified in the Included Documents. .

b. Worker's Compensation Insurance Coverage.

A. Definitions:

Certificate of coverage ("certificate")- A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

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

Persons providing services on the project ("subcontractor" in §406.096) - includes all persons or entities performing all or part of the services the Contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the Contractor and regardless of whether that person has employees. This includes, without limitation, independent Contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

B. The Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the Contractor providing services on the project, for the duration of the project.

C. The Contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.

D. If the coverage period shown on the Contractor's current certificate of coverage ends during the duration of the project, the Contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.

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

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

(2) no later than seven days after receipt by the Contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.

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

G. The Contractor shall notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the Contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.

H. The Contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the

project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

I. The Contractor shall contractually require each person with whom it contracts to provide services on a project, to:

(1) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;

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

(3) provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

(4) obtain from each other person with whom it contracts, and provide to the Contractor:

(a) a certificate of coverage, prior to the other person beginning work on the project; and

(b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

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

(6) notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and

(7) contractually require each person with whom it contracts, to perform as required by paragraphs (1) - (7), with the certificates of coverage to be provided to the person for whom they are providing services.

J. By signing this contract or providing or causing to be provided a certificate of coverage, the Contractor is representing to the governmental entity that all employees of the Contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

K. The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor which entitles the governmental entity to declare the contract void if the Contractor does not remedy the breach within ten days after receipt of notice of breach from the governmental entity.

The City shall be named as an additional insured in all coverage described above in paragraphs a, above

In the submission of the Certificates of Insurance, the insurance company in every case must agree to providing notice of cancellation of any insurance to the City ten (10) days prior to such cancellation of policies covered by the certificates.

G. BONDS

1. **PERFORMANCE BOND.** Contractor hereby agrees to execute with sureties and deliver to the City, at once, a "Performance Bond" in accordance with Chapter 252, Texas Local Government Code, in the total amount of the contract price, \$ <DATA> _____, approved by the City as to form and

sufficiency, conditioned that Contractor shall faithfully perform, observe and comply with all the terms, conditions and stipulations, undertakings and provisions of the Contract, said Performance Bond to be attached hereto as an Included Instrument.

2. **PAYMENT BOND.** Contractor hereby agrees to execute with sureties and to delivery to the City, at once, a "Payment Bond" in accordance with Chapter 252, Texas Local Government Code and Chapter 2253 Texas Government Code in an amount at least equal to the contract price, such as shall be satisfactory to the City as to form and sufficiency, as security for the payment of all persons supplying labor and material in the prosecution of the work provided for in this contract; said Payment Bond to be attached hereto as an Included Instrument.

3. **CONTRACTOR AND SURETIES STILL BOUND.** No assignment, transfer or subletting, whether with or without the consent of said City, and no order of said City for or approval or any alterations or modifications in said specifications, plans, or work, and no change in the requirements or order for extra work made by the City as provided in this contract, shall ever in any manner release or diminish the responsibility of Contractor or any surety on any bond of Contractor, but on the contrary, such responsibility shall extend to and comprehend all such changes and other matters.

H. COMPLIANCE WITH FEDERAL REGULATIONS

1. The Contractor is responsible for compliance with all Federal regulations included in the City of San Antonio Compliance Manual, as may occasionally be amended. The Compliance Manual is incorporated and made part of this contract.

I. INTEREST IN CITY CONTRACT PROHIBITED

No officer or employee of the City shall have a financial interest, direct or indirect, in any contract with the City, or shall be financially interested, directly or indirectly, in the sale to the City of any land, materials, supplies or service, except on behalf of the City as an officer or employee. Contractor acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in the Ethics Code, from having a financial interest in any contract with the City or and City agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a city officer or employee; his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

J. General Provisions.

1. **MERGER.** This document and Included Instruments is the entire contract and recites the full consideration between the parties, there being no other written or parol agreement; it being understood that the Charter of the City of San Antonio requires all of its contracts to be written and made by ordinance.

2. **CHOICE OF LAWS, VENUE.** This Contract shall be construed under the laws of the State of Texas.

3. **CONSTRUCTION OF TERMS.** The headings preceding the text of the paragraphs hereof are inserted solely for the convenience of reference and shall not constitute a part of this Contract, nor shall they affect its meaning, construction or effect. The use herein of the singular number shall be deemed to include the plural and vice versa, and the use hereof of the masculine shall be deemed to mean the feminine or neuter and vice versa, wherever the sense of this Contract so requires.

4. **SEVERABILITY.** If any term or provisions of this Contract, or the application thereof, shall, for any reason and to any extent, be invalid or unenforceable, the remainder of this Contract, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, but rather shall be enforced to the fullest extent permitted by law.

IN WITNESS WHEREOF, said City of San Antonio has lawfully caused these presents to be executed by the City Manager of said City, and the corporate seal of said City to be hereunto affixed and this instrument to be attested by the City Clerk; and the said Contractor, acting by thereunto duly authorized does now sign, execute and deliver this instrument.

Executed in San Antonio, Texas on ____ day of _____, AD 20 .

(CITY SEAL)

CITY OF SAN ANTONIO

ATTEST: _____
City Clerk

BY: _____
City Manager

Contractor

BY: _____

ATTEST: _____
Secretary

PERFORMANCE BOND

STATE OF TEXAS)
COUNTY OF BEXAR)
CITY OF SAN ANTONIO)

Know all men by these presents:

1. That we

as Principal, and

as Sureties, do hereby acknowledge ourselves to be held and firmly bound unto the City of San Antonio, a municipal corporation of the County of Bexar and State of Texas in the sum of \$ _____ for payment of which sum well and truly to be made in and unto said City of San Antonio, we do hereby bind and obligate ourselves, our heirs, executors, administrators, assigns, and successors, jointly and severally;

2. THE CONDITIONS OF THIS BOND, HOWEVER, ARE SUCH THAT WHEREAS, the said

hereinafter called Contractor or Principal, has made and does this day make and enter into a certain contract in writing with said City of San Antonio, for the construction and completion for said City of certain structures, work and improvements generally described as

and for the performance and observance of diverse other matters and things in connection with said work; all as more fully described in said contract and its Included Instruments which are expressly made a part of this obligation.

3. NOW THEREFORE, if Contractor, the principal party to this obligation shall faithfully construct and complete said structures, work and improvements, and shall observe, perform and comply with all the terms, conditions, stipulations, undertakings and provisions of said contract and all Included Instruments, according to their intent and purpose insofar as the same relate to or are incident to the construction and completion of said structures, work and improvements then and thereupon this obligation shall be and become null and void, but otherwise to remain in full force and effect; and it is hereby further understood and agreed that this bond shall be a continuous obligation against the principal and each member of said principal party hereto, and each and all sureties hereon, and that successive recoveries may be had hereon for each and every breach of this bond until the full amount thereof shall have been exhausted; and the liability of the sureties on this bond shall not be in any manner released or diminished by any changes in the work which may be authorized or directed by the City, nor by the exercise or failure to exercise by or on behalf of the City any right or remedy provided by the contract or specifications or by any law or ordinance.

4. IN TESTIMONY WHEREOF, witness our hands and the seal of any incorporated surety hereon this ____ day of _____ AD 20 .

5. The foregoing bond is approved and accepted this _____ day of 20 .

By:

City Manager

(SEAL)

Surety

By:

Address of Surety for Service Purposes

PAYMENT BOND

STATE OF TEXAS)
COUNTY OF BEXAR)
CITY OF SAN ANTONIO)

Know all men by these presents:

1. That we

as Principal, and

as Sureties, do hereby acknowledge ourselves to be held and firmly bound unto the City of San Antonio, a municipal corporation of the County of Bexar and State of Texas in the sum of \$ _____ for payment of which sum well and truly to be made in and unto said City of San Antonio, we do hereby bind and obligate ourselves, our heirs, executors, administrators, assigns, and successors, jointly and severally:

2. THE CONDITIONS OF THIS BOND, HOWEVER, ARE SUCH THAT WHEREAS, the said

hereinafter called Contractor or Principal, has made and does this day make and enter into a certain contract in writing with said City of San Antonio, for the construction and completion for said City of certain structures, work and improvements generally described as

and for the performance and observance of diverse other matters and things in connection with said work, and, interalia, therein entered into covenants and agreements to promptly pay all persons supplying labor, materials and services in the prosecution of the work provided for in said contract; all as more fully described in said contract and its Included Instruments which are expressly made a part of this obligation;

3. NOW THEREFORE, if Contractor, the Principal party to this obligation shall promptly make payment to all persons supplying labor and materials in the prosecution of the work provided for in said contract, and any and all duly authorized modifications of said contract that may hereafter be made, notice of which modifications to the surety being hereby waived, then this obligation shall be and become null and void, but otherwise to remain in full force and effect: and it is hereby further understood and agreed that this bond shall be a continuous obligation against the principal and each member of said principal party hereto, and each and all sureties hereon, and that successive recoveries may be had thereon for each and every breach of this bond until the full amount thereof shall have been exhausted; and the liability of the sureties on this bond shall not be in any manner released or diminished by any changes in the work which may be authorized or directed by the City, nor by the exercise or failure to exercise by or on behalf of the City any right or remedy provided by the contract or specifications or by any law or ordinances.

4. It is further understood that this obligation is incurred pursuant to and the bond shall comply with Chapter 252 Texas Local Government Code and Chapter 2253, Texas Government Code, as amended and that this obligation is for the benefit and sole protection of all persons supplying labor and materials in the prosecution of said contract.

5. IN TESTIMONY WHEREOF, witness our hands and the seal of any incorporated surety hereon this ____ day of _____ AD 20 .

6. The foregoing bond is approved and accepted this _____ day of _____ 20 .

By

City Manager

Surety

(SEAL)

By

Address of Surety for Service Purposes
