

CONSTRUCTION CONTRACT

Bear Branch Sports Field Decomposed Granite Pathway Project

This Contract made and entered into on this _____ day of _____, 2012 by and between The Woodlands Township, a political subdivision of the State of Texas herein called "Owner", and CONTRACTOR, a Texas corporation, herein called "Contractor".

1. SCOPE OF WORK

Contractor agrees to furnish all labor, materials and other requirements as set forth herein or as required to perform and complete in a workmanlike and expeditious manner, with adequate, skilled and competent workers, in strict compliance with the Contract Documents (hereinafter defined), all applicable Federal, State, County and Municipal regulations, codes, laws and ordinances, and in conformity with the directions of the Owner the following (herein called "the Work"):

Bear Branch Sports Field (BBSF) Decomposed Granite as outlined in the bid documents.

2. INTENTIONALLY REMOVED

3. SCHEDULE OF WORK

Contractor shall start the Work no later than seven (7) days following receipt of Owner's written notice to proceed, and complete same on or before 45 days thereafter. Any provisions in this Contract to the contrary notwithstanding, Owner shall not be liable to Contractor for any delays in Contractor's performance of the Work irrespective of cause, including but not limited to those caused by Owner, other contractors employed by Owner, or by any of Contractor's subcontractors, or for any other cause whatsoever, including, but not limited to, loss or damage incurred by Contractor in the event Contractor is unable to start or complete its work as herein contemplated.

4. PAYMENTS

In consideration of the prompt, complete and faithful performance of every provision of this Contract in accordance with the Plans and Specifications, Owner will pay to Contractor a total of \$\$\$\$ for the Work. Partial payments shall be made to Contractor according to Paragraph 29 of the General Conditions of Agreement attached hereto and made a part hereof ("General Conditions"). No partial payment made for Work under the Contract shall constitute acceptance by Owner of the performance of this Contract by Contractor, in whole or in part, and the final payment shall not constitute an acceptance of defective work or improper materials. Any added Work (as defined in Item 35 of the General Conditions) shall be paid for under the unit prices method set out in General Conditions, Item 35 – Added Work.

5. INSURANCE

Contractor agrees to procure and maintain at all times, at Contractor's sole cost and expense, during the performance of the Work and for so long as this Contract remains in effect policies of insurance with carriers permitted and licensed to provide insurance in the State of Texas and having a "General Liability Policy Rating" of "A-VIII" or better, as set forth in the most current issue of the Best Key Rating Guide and being reasonably acceptable to the Owner in the minimum amounts outlined below:

a. Worker's compensation and employer's liability coverage complying with the applicable laws of the State of Texas, covering all employees, agents and representatives of Contractor and all subcontractors engaged any manner in performance of the Work. Employer's liability coverage shall have a minimum limit of \$100,000 for liability arising out of any accident related to the Work.

b. Comprehensive general liability insurance, including Contractor's protective liability, in Contractor's name, with combined bodily injury and property damage of not less than \$1,000,000 per occurrence and with an aggregate coverage of no less than \$5,000,000, and will include, without limitation, the following coverages:

- (1) XCU Coverage,
- (2) Contractual Liability Coverage,
- (3) Completed Operations and/or Products Liability Coverage, commencing with issuance of Final Certificate for Payment, and extending for at least two (2) years from that date, and
- (4) (X), (C) and (U) exclusions shall be removed.

c. Comprehensive Automobile Liability Insurance, with combined single limit bodily injury and property damage of not less than \$1,000,000 per occurrence. Such coverage shall include owned, hired and non-owned vehicles of Contractor or Contractor's employees, agents, representatives or subcontractors.

d. Contractor shall require all of its subcontractors to provide the foregoing coverages, as well as any other coverage that Contractor considers necessary. Contractor will require that all subcontractors maintain a comprehensive commercial general liability policy with a minimum limit of at least \$500,000 per occurrence. Any exclusions shall first be approved by Owner.

e. All insurance policies required by this Section 5 shall contain a clause waiving any right of subrogation against The Woodlands Township. Insurance policies under (b), and (c), shall include The Woodlands Township as additional insured.

f. Contractor shall, before the Contract is signed, and at any time following execution thereof at the request of the Owner, furnish Owner with a certificate or other documentary evidence that the aforementioned insurance policies have been procured, premiums paid and that such are and remain in place. Such certificate or other evidence shall bear an agreement that Owner will be given thirty (30) days prior written notice by the Insurance Company furnishing the certificate before the insurance is cancelled or changed in any manner or for any reason during the period of coverage as stated on the certificate and shall provide a primary/excess coverage declaration, "other insurance" excess provision, or endorsement stating that any coverage maintained by Contractor shall be primary to any policy maintained by Owner.

6. LIENS

Contractor shall pay promptly when due and shall cause all subcontractors to promptly pay when due, for all labor, materials and other expenses incurred hereunder in connection with the Work and hold Owner and all of the property comprising the project free from all claims, liens, judgments, court costs, attorney's fees and expenses from Contractor or any subcontractor, or any of their respective employees, agents, representatives, successors and assigns. Any liens upon any or all of the property not paid or bonded by Contractor with five (5) days after receipt of written notice thereof from Owner, may be paid or bonded by Owner, and Contractor shall pay to Owner, upon demand, or Owner may deduct from amounts owed Contractor, all costs thereby incurred, including without limitation all attorney's fees incurred by Owner resulting from the Lien and efforts by counsel to remove or pay such Lien.

7. DEFECTS, ERRORS AND GUARANTEES

Contractor hereby guarantees that all Work shall be free from defects due to faulty materials or workmanship for a period of ten (10) years from the date of final acceptance of all of the Work or as defined in the Project Manual. Correction of defects, errors and guarantee work shall be promptly performed by Contractor at Contractor's sole cost and expense. Contractor shall indemnify and hold Owner harmless from any and all costs and expenses for any defect or error contained in the Work. Should Contractor, upon written notice from Owner, refuse or fail to correct, within the time required by Owner, all such defects and errors together with any and all damage to other work caused by the performance of this Contract, Owner shall have the right to remedy and make good such defects and damage. Owner shall provide notice of such charges, errors or damages to Contractor in writing, and, at Owner's discretion, (i) Contractor shall pay, within the time period specified by Owner, the amount of such charges specified in such written notice, (ii) Owner shall deduct the amount of such charges from any payment retained and withheld by Owner, or yet to be made by Owner hereunder, or (iii) if Owner has any monies which may be payable to Contractor pursuant to this Contract or any other contract, then Owner shall have the right to deduct from the monies owed to Contractor pursuant to such other contract the amount of charges specified by the written notice to Contractor. Final payment by Owner to Contractor hereunder shall in no event affect, alter or diminish Contractor's warranties and guarantees provided to Owner hereunder.

8. CLEAN UP

Contractor shall keep the premises neat and where the Work is to be performed free at all times from accumulation of waste materials, rubbish and debris, and at the completion of the Work shall clean the premises and improvements in a manner satisfactory to Owner and in compliance with Owner's applicable development standards, restrictions and covenants in regard to the premises. Should Contractor fail to comply with the provisions of this paragraph within twenty-four (24) hours of receipt of written notice thereof, Owner may clean the area and/or remove said waste materials, rubbish or debris at Contractor's expense, and Contractor shall reimburse Owner, upon demand by Owner, for all costs or expenses thereby incurred.

9. SOLE AGREEMENT

This Contract cannot be changed, modified, terminated, cancelled, rescinded, assigned in whole or in part, or in any other way altered or negated by prior, simultaneous or subsequent agreement or understanding, unless the same is signed by both parties to this Contract at the time such modification is agreed upon. Owner has not made and does not make any representations or warranties with respect to any matter or thing affecting or related to the subject matter of this Contract, and Contractor hereby expressly acknowledges that no such representations or warranties have been made. It is agreed that all prior understandings and agreements heretofore had between the parties hereto are of no further force and effect, and this Contract alone fully and completely expresses the agreement of the parties hereto. This Contract has been entered into after full investigation, with no party relying upon any statement or representation not embodied in this Contract which may be claimed to have been made by any of the parties hereto.

10. CONTRACT DOCUMENTS

The "Contract Documents" shall consist of this Contract which includes the attached Special Conditions and General Conditions, and the Digeronimo Sports Engineering, LLC Project Manual (standards, specifications, drawings, etc.).

11. GOVERNING LAW AND VENUE AND ATTORNEYS' FEES

Notwithstanding the place where this Contract may be executed by either party, this Contract and any claim, controversy, dispute or other matter arising hereunder or related hereto (whether by contract, tort or otherwise) shall be governed in accordance with and construed and interpreted by the laws of the State of Texas, United States of America, without regard to the conflict of laws provisions thereof. In any litigation arising out of or relating to this Contract, the parties agree that venue shall be in Montgomery County, Texas. The non-prevailing party in any dispute between the parties regarding this Contract must reimburse the prevailing party for the prevailing party's reasonable expenses incurred, including, without limitation, attorneys' fees and court costs.

12. INDEPENDENT CONTRACTOR STATUS OF CONTRACTOR

Contractor shall be an independent contractor with respect to the performance of all Work, and neither Contractor nor anyone employed by Contractor shall be deemed for any purpose to be the employee, agent, servant, borrowed servant, or representative of Owner in the performance of any Work (despite Contractor's obligation to comply with various rules and regulations of the Owner). The Work contemplated herein shall meet the approval of Owner and be subject to the general right of inspection of Owner to secure the satisfactory completion thereof. The actual performance and supervision of all Work shall be by Contractor, but Owner or its representatives shall have full and complete access to the Work site to determine whether the Work is being performed by Contractor in accordance with all provisions of this Contract and for reasons otherwise stated in this Contract. No provisions herein shall be construed as creating a partnership, joint venture or other association whereby the Owner and Contractor would be jointly liable or liable as partners or co-venturers.

13. SUCCESSOR AND ASSIGNS

All of the terms of this Contract will apply to, be binding upon and inure to the benefit of the parties hereto, their successors, permitted assigns, heirs and legal representatives, and all other persons claiming by, through or under them.

14. GOVERNING LAW

Notwithstanding the place where this Contract may be executed by either Party, this Contract and any claim, controversy, dispute or other matter arising hereunder or related hereto (whether by contract, tort or otherwise) shall be governed in accordance with the laws of the State of Texas, United States of America, without regard to the conflict of laws provisions thereof. In any litigation arising out of or relating to this Contract, the Parties agree that venue shall be in Montgomery County, Texas.

15. RIGHTS AND REMEDIES

The rights and remedies provided by this Contract are given in addition to any other rights and remedies either Party may have by law, statute, ordinance or otherwise. All such rights and remedies are intended to be cumulative, and the use of any one right or remedy by either Party shall not preclude or waive its right to any or all other rights or remedies.

16. NO WAIVER OF RIGHTS.

If either party fails to enforce any of the provisions of this Contract or any rights hereunder or fails to exercise any election provided in the Contract, it will not be considered to be a waiver of those provisions, rights or elections or in any way affect the validity of the Contract. The failure of either party to exercise any of these provisions, rights or elections will not preclude or prejudice such party from later enforcing or exercising the same or any other provisions, rights or elections which it may have under this Contract.

17. SEVERABILITY.

If any term, clause, or provision hereof is held invalid or unenforceable by a court of competent jurisdiction, such invalidity shall not affect the validity or operation of any other term, clause or provision and such invalid term, clause or provision shall be deemed to be severed from this Contract.

18. ENTIRE AGREEMENT.

The Contract Documents sets forth the entire agreement and understanding of the parties relating to the subject matter hereof, and supersedes all prior agreements, arrangements and understandings, written or oral, between or among the parties, except as specifically provided herein. Except as explicitly set forth herein, there are no promises, conditions, representations, understanding, interpretations or terms of any kind as conditions or inducement to the execution hereof or in effect among the Parties.

19. HEADINGS.

The section headings included in this Contract are for convenience of reference only and shall not affect or be utilized in construing or interpreting this Agreement.

20. Counterparts.

This Contract may be executed in counterparts, each of which shall be deemed an original binding document but all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Contract at The Woodlands, Texas, on the day and year first above written.

CONTRACTOR

The Woodlands Township

By: _____

By: _____

Name: _____

Name: Don Norrell

Title: Owner

Title: President/General Manager

CONTRACTOR

OWNER

Attachments

- 1. SPECIAL CONDITIONS
- 2. GENERAL CONDITIONS OF AGREEMENT
- 3. Bear Branch Sports Field Bid Documents and Specifications

SPECIAL CONDITIONS

1. INTENTIONALLY REMOVED

2. SITE OF THE WORK

The site of the Work is located at Bear Branch Sportfields, 5205 Research Forest Drive, The Woodlands, Montgomery County, Texas

3. SCOPE OF WORK

It is the declared and acknowledged intention and meaning of the Contract Documents to provide and secure the improvements described in the Plans and Specifications, complete and ready for use. All work and materials shall be provided in strict conformity with the Plans and Specifications.

4. MATERIALS AND WORKMANSHIP

The Contractor shall use only new materials in the permanent structures. The finished Work shall not include materials used for temporary purposes. Where materials or equipment are specified by a trade or brand name, it is not the intention of the Owner to discriminate against an equal product of another manufacturer, but rather to set a definite standard of quality or performance, and to establish an equal basis for the evaluation of bids. Items identified by a manufacturer's name and model designation or their equal shall be complete in every respect and shall be provided as specified under the Contract Documents. To qualify an item as equal to that specified under the Contract Documents, the Contractor shall submit evidence that the material is equal in quality, workmanship, appearance, finish and all other characteristics as specified by the named manufacturer. Where called for in these Special Conditions, the Contractor shall submit test data from an approved independent testing laboratory to show compliance with all characteristics specified. The Owner may accept the manufacturer's certificates of compliance in lieu of the required laboratory tests. The specifically designated item shall be used, unless a substitute has been approved in writing by the Owner. Owner shall have ample time to consider proposed substitutions.

5. INTENTIONALLY REMOVED

6. PERMITS

Permits and licenses necessary for the prosecution of the Work shall be secured and paid for by the Contractor.

7. CUTTING, PATCHING AND FITTING

The Contractor shall use due diligence in performing all cutting, patching or fitting of its work that may be required to make its several parts come together properly and fit to receive or to be received by work of others shown on, or reasonably implied by the drawings and specifications, for the completed facility. The Contractor shall not endanger any work by cutting, digging, or otherwise, and shall not cut or alter the work of others unless specifically noted on the drawings and specifications.

8. OPERATIONS AND BUSINESS OF OWNER

It is of great importance that the Owner's operations meet with a minimum of interference resulting from the Work performed hereunder. The Contractor shall, therefore, conduct the Work in such a manner as to permit these continued operations and so as not to interfere with the activities of the Owner or Owner's employees, agents or representatives, other contractors of the Owner, or persons using Owner's facilities or the street rights-of-way. The Contractor and all subcontractors and suppliers shall use the route of entry designated by the Owner and restrict all work vehicles and personnel to this route and to the site. The blocking or hindering of traffic will not be permitted.

9. COORDINATION WITH OWNER

The Contractor shall keep in daily contact with the Owner and shall have someone responsible for the conduct of the job on the job site at all times during the Work, which Project Manager shall be reasonably available to Owner, in connection with the Work.

10. SAFETY AND INCONVENIENCE TO THE PUBLIC

The safety of the public, the convenience of traffic, and uninterrupted ingress and egress to private property shall be regarded as of prime importance. All operations shall be planned and executed in a manner that will cause minimum interference with traffic (vehicular, pedestrian, etc). The approval of the proposed plan of operation, sequence of work, and methods of providing for the safe passage of traffic shall be approved by Owner or appropriate county officials before it is placed into operation. If at any time during construction, the approved plan does not accomplish the intended purpose, due to weather or other conditions affecting the safe handling of traffic, the necessary changes therein to correct the unsatisfactory conditions shall immediately be made.

10.1 All work such as backfilling of excavations, repairs to roads and drives, and clean-up or other such operations shall follow as closely as practical to the laying or installing operations, in such manner that the public is not unnecessarily inconvenienced nor a hazard to the public safety created. If the work forces or equipment are insufficient to such a degree that the public is inconvenienced, measures shall immediately be taken to remedy the problem. The Owner may require such changes in work forces and equipment necessary to prevent or remedy unnecessary inconvenience to the public or hazard to the public safety. The notice of such required changes will be made in writing.

10.2 At night or on days when Work is not being performed by Contractor, all equipment not in use shall be stored in such manner and at such locations as not to interfere with the safe passage of traffic, nor be a visual or an unattractive nuisance to residents of the community. Flagmen shall be provided and maintained at such points and for such periods of time as may be required to provide for the safety and convenience of public travel and Contractor's personnel, and as directed by the Owner.

10.3 Public safety shall be the direct responsibility of the Contractor. The Contractor shall provide barricades, lights, and warning and detour signs as required.

11. TRAFFIC

11.1 If the Work requires special traffic control signing, including, but not limited to, flagmen or barricades, same shall be provided by Contractor. All signing shall conform to the Manual on Uniform Traffic Control.

11.2 When performing Work requiring vehicles or equipment to be parked on the shoulder of streets, an approved traffic hazard warning system shall be used, such as flagmen, traffic cones, flashing barricades, etc. No construction equipment or vehicle is to be parked within three (3) feet of any thoroughfare shoulder overnight. If it becomes necessary to leave equipment in a location which may create a traffic hazard, adequate warning devices, visible both day and night, shall be installed. It is the responsibility of Contractor to provide the approved signing.

11.3 It is the responsibility of Contractor to keep the thoroughfare cleared of any traffic hazards that are not properly marked as such.

12. EXCAVATION

All excavations shall be marked with approved warning devices and barricaded or covered, when not attended, in a manner sufficient to keep the motoring public and pedestrian traffic from harm.

13. UNDERGROUND OBSTACLES-

The Contractor shall make every effort to locate all underground pipelines, conduits, cables and structures, and shall contact owners of the underground installations and by prospecting in advance of excavation. The repair of existing installations cut or damaged by the Contractor shall be made at the sole cost and expense of the Contractor, and shall be scheduled so as to cause the least possible inconvenience to the public and to the owners of the installations.

14. OCCUPATIONAL SAFETY AND HEALTH STANDARDS

The Work and the Contractor's operational activities shall at all times comply with all applicable provisions of the Department of Labor, safety and health regulations for construction and applicable occupational safety and health standards.

15. EXAMINATION OF SITE

The Contractor shall make an examination of the site of the Work to become familiar with the conditions to be encountered. The actual site and the drawings and specifications shall be compared. No extra compensation will be allowed for any work made necessary due to unusual conditions or obstacles encountered during the progress of the Work which could have been determined during a site visit.

16. CARE OF TREES

This Work is being performed in reserves and natural areas. No trees shall be removed without the express written permission of the Owner or its representative that are outside of the clearing and grading plans. Needless damage to trees which are to remain shall be prevented.

17. CLEARING OPERATIONS-

When clearing in areas containing excess moisture as a result of either run-off or ground water, the Contractor is required to pile, push or gather material away from these areas for further handling and disposal. The Contractor is further required, when operating in areas described above or wetlands, to exert supreme care and avoid unnecessary crisscrossing of the area with equipment, vehicles, etc., even if the area is to be totally excavated. Clearing in these areas shall be accomplished with the blade of the dozer raised so that no scraping of the surface will result and the debris shall be gathered away from the area.

18. STATE SALES TAX

The Owner is holder of an Exemption Certificate and thus the Contractor shall not charge Owner for sales and use taxes attributable to the tangible personal property to be incorporated into the Work.

19. DOCUMENTS

Accompanying these Special Conditions, and forming an integral part thereof, is the following listed documents:

Bear Branch Sports Fields Decomposed Pathway Project Bid Documents and Specifications.

20. CONTRACT PRICE

It is the intent of the proposal that the contract price specified in paragraph 4 of the Contract shall cover all Work required by the Contract Documents, including furnishing of all materials, equipment and tools, and performing all necessary labor to fully complete the project. No item of Work that is required by the Contract Documents for the proper and successful completion of contract will be paid for outside of or in addition to the contract price.

GENERAL CONDITIONS OF AGREEMENT

DEFINITION OF TERMS

1. OWNER, CONTRACTOR

The Owner and the Contractor are those mentioned as such in the Contract. They are treated throughout the Contract Documents as if each were of the singular number and masculine gender.

2. SUBCONTRACTOR

The term “subcontractor”, as employed herein, includes only those having a contract (which shall be in writing and otherwise in conformance with the requirements of this Contract) with the Contractor to perform any of the Work at the site and it includes one who furnishes material worked to a special design according to the drawings or specifications of this Work, but does not include one who merely furnishes material not so worked.

3. CONTRACT DOCUMENTS

The Contract Documents together with this Contract and the attachments, schedules and exhibits thereto constitute the Contract between Owner and Contractor, and what is called for by any one of such documents shall be as binding as if called for by all. In case of conflict of terms between any of the said documents, priority of interpretation shall be in the following order – Fully Executed Contract, Performance and Payment Bond, Special Bond (if any), Special Conditions, and within the Special Conditions and General Conditions of Agreement.

4. WRITTEN NOTICE

Any notice required or permitted to be given under the Contract Documents shall be in writing and shall be deemed to have been given when actually delivered if given by hand delivery or transmitted by overnight courier service, or if mailed when deposited in a United States Post Office, registered or certified mail, postage prepaid, return receipt required; provided that the same is delivered to or addressed as follows:

If to Owner:

The Woodlands Township
2801 Technology Forest Drive
The Woodlands, Texas 77381

Attention: Kelly Dietrich, Assistant Director of Parks and Recreation
kdietrich@thewoodlandstowship-tx.org
Cell: 936-672-2245
Office: 281-210-3902

If to Contractor:
ADDRESS

Attention: XXXXXXXXXXXX
XXXXXXXXXXXX

or such other address as either party may from time to time specify in writing to the other.

5. WORK

Unless otherwise stipulated hereunder, the Contractor shall provide and pay for all materials, supplies, machinery, equipment, tools, equipment rentals, superintendence, labor, services, taxes, insurance and all water, light, power, fuel, transportation and other facilities reasonably necessary for the execution and completion of the Work covered by the Contract Documents, in accordance with these General Conditions of Agreement and the Contract Documents. Unless otherwise specified, all materials shall be new and all workmanship and materials shall be of top quality based upon standards established by leading companies in the industry. The Contractor shall, if required, furnish satisfactory evidence as to the kind and quality of materials. Materials or work described in words which so applied have a well-known technical or trade meaning shall be held to refer to such recognized standards. Unless otherwise specified, Contractor shall pay its employees and ensure sub-contractors employees are paid the prevailing wage for specific trades and/or skills as adopted by The Woodlands Township.

6. WORKING DAY AND CALENDAR DAY

A "working day" is defined as any day, not including Saturdays and Sundays or any legal holidays, in which weather or other conditions not under the control of the Contractor will permit construction of the principle units of the Work for a continuous period of not less than seven (7) hours between 7 AM and 4 PM. A "calendar day" is defined as any day indicated on the calendar, including Saturdays, Sundays and holidays.

7. LINES AND GRADES

Unless otherwise specified, the Contractor shall furnish and maintain all lines and grades, based upon existing site conditions or a bench mark established by the Owner. The lines and grades shall be checked periodically by the Contractor. The Contractor shall take immediate steps to correct errors or inconsistencies in all Work involved so that it shall be in conformity with the Drawings and Specifications. The Contractor shall be fully responsible for the accuracy of its work and the correction of it as required.

8. CONTRACTOR'S DUTY AND SUPERINTENDENT'S

The Contractor shall give full and adequate attention to the faithful execution and completion of the Contract Documents and the Work contemplated under the Contract Documents, in a good and workmanlike manner, and shall keep on the Work, during its progress, an experienced and duly qualified superintendent and any necessary assistants. The superintendent shall represent the Contractor in its absence and all directions given to it shall be as binding as if given to the Contractor. Other directions shall be so confirmed on written request in each case.

9. CONTRACTOR'S UNDERSTANDING

It is understood and agreed that the Contractor has, by careful examination, satisfied itself as to the nature and location of the Work, the confirmation of the ground, the character, quality and quantity of the materials to be encountered, the character of equipment and facilities needed preliminary to and during the prosecution of the Work, the general and local conditions, and all other matters which can in any way affect the Work under the Contract Documents. No verbal agreement or conversation with any officer, agent or employee of the Owner, either before or after the execution of the Contract Documents, shall affect or modify any of the terms or obligations herein contained.

10. CHARACTER OF WORKMEN

The Contractor agrees to employ only orderly and competent workers, skillful in the performance of the type of Work required under its Contract, to do the Work and further agrees that whenever the Owner shall inform it in writing that any worker on the Work is, in Owner's sole opinion, incompetent, unfaithful, disorderly or in any way inappropriate for the Work, such worker shall be discharged from the Work and shall not again be employed on the Work without the Owner's written consent.

11. DEFECTS AND THEIR REMEDIES

It is further agreed that if the Work or any part thereof, or any material brought on the site of the Work for use in the Work or selected for the same, shall be deemed by the Owner, at Owner's sole discretion, as unsuitable or not in conformity with the Contract Documents, the Contractor shall, at Contractor's sole cost and expense, upon receipt of written notice thereof from the Owner, forthwith remove such material and rebuild or otherwise remedy such Work so that it shall be in full accordance with the Contract Documents.

12. CHANGES AND ALTERATIONS

The Contractor further agrees that the Owner may make such changes and alterations as the Owner may see fit, in the line, grade, form dimensions, drawings or materials for the Work herein contemplated, or any part thereof, either before or after the beginning of the construction, without affecting the validity of the Contract Documents and accompanying bonds where required. If such changes or alterations diminish the quantity of the Work to be done, they shall not constitute the basis for a claim for damages, or anticipated profits on the Work that may be dispensed with, except as hereinafter provided for unit price items.

No work for which Contractor expects compensation in addition to the contract price shall be performed unless Contractor has prepared and secured Owner's written approval to a change order. In approving any change order request, Owner will base approval on the quantity actually done and the unit price, if any, established for such Work. If no unit price has been established nor any unit price agreed to, then such additional work shall be paid for as provided under "Added Work".

13. RIGHT OF ENTRY

The Owner reserves the right at any time, with or without notice, to enter the property or location on which the Work herein contracted for is to be constructed or installed by such agent or agents as it may elect, for the purpose of inspecting the Work, or for the purpose of constructing or installing such collateral Work as said Owner may desire.

14. COLLATERAL CONTRACTS

The Owner agrees to provide by separate contract or otherwise, all labor and materials essential to the completion of any work specifically excluded from the Contract Documents.

15. DISCREPANCIES AND OMISSIONS

It is further agreed that it is the intent of the Contract Documents and these General Conditions of Agreement that all Work must be done and all material must be furnished in accordance with the generally accepted practices, and in the event of any discrepancies between the separate Contract Documents, the priority of the interpretation defined under "Contract Documents" shall govern.

16. EQUIPMENT, MATERIALS AND CONSTRUCTION PLANT

The Contractor shall be responsible for the care, preservation, conservation and protection of all materials, supplies, machinery, equipment, tools, apparatus, accessories, facilities, all means of construction, and any and all parts of the Work, whether the Contractor has been paid, partially paid, or not paid for such Work, until entire Work is completed and accepted.

17. DAMAGES

In the event the Contractor is damaged in the course of the completion of the Work, and it is shown to be as a result of the sole negligence or default of the Owner, the Owner agrees to reimburse the Contractor for the reasonable costs and expenses incurred as a result of such damages. In the event the Owner, Owner's person or real property is damaged in the course of the Work by a negligent or willful act or omission of the Contractor or its subcontractors, suppliers agents or employees, or should the Contractor unreasonably delay the progress of the Work being done by others on the job so as to cause loss for which the Owner becomes liable, then the Contractor shall reimburse the Owner for any and all such losses. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS CONTRACT, NOTHING CONTAINED IN THIS CONTRACT SHALL BE CONSTRUED AS A WAIVER, CONTRACTUAL OR OTHERWISE, OF THE PROTECTIONS AND LIMITATIONS ON LIABILITY PROVIDED TO OWNER AND ITS EMPLOYEES (INCLUDING ITS OFFICERS AND DIRECTORS).

18. PROTECTION AGAINST ACCIDENT TO EMPLOYEES AND THE PUBLIC

The Contractor and all of its subcontractors shall take out and procure a policy or policies of worker's compensation insurance with an insurance company licensed to transact business in Texas, which policy shall comply with the Worker's Compensation Law of the State of Texas. The Contractor shall at all times exercise reasonable precautions for the safety and well being of employees and others on or near the Work and shall comply with all applicable provisions of Federal, State, and Municipal safety laws and building and construction codes. All machinery and equipment and other physical hazards shall be guarded in accordance with the "Manual of Accident Prevention in Construction" of the Associated General Contractors of America except where incompatible with Federal, State or Municipal laws or regulations or Owner's safety regulations, if any. The Contractor shall provide such machinery, guards, safety walkways, ladders, bridges, gangplanks, barricades, lights and other safety devices as may be considered requisite to the prevention of accidents. The safety precautions actually taken and their adequacy shall be the sole responsibility of the Contractor, acting at its discretion as an independent Contractor.

The Contractor agrees to release, indemnify, save and hold harmless The Woodlands Township from any and all claims, demands, or causes of action, including, but not limited to property damage, personal injuries or death, and all court costs and attorney's fees, arising or growing out any act or omission by Contractor in the performance of the Work, including, without limitation, any claim, demand or cause of action by, through or on behalf of any employee or agent of Contractor and any third party.

In any and all claims against the Owner or any of Owner's agents or employees or representatives by Contractor or any subcontractor, or any employee, agent or representative of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any subcontractor under Workmen's Compensation Acts, Disability Benefit Acts or other Employee Benefit Acts.

19. LOSSES FROM NATURAL CAUSES

All loss or damage to the Contractor, arising out of the nature of the Work to be done, or from the action of the elements, or from any unforeseen circumstances in the prosecution of the same, or from unusual obstructions or difficulties which may be encountered in the prosecution of the Work, shall be sustained and borne by the Contractor at its sole cost and expense.

20. PROTECTION OF ADJOINING PROPERTY

The said Contractor, at its sole cost and expense, shall take proper means to protect the adjacent or adjoining property of properties in any way encountered, which might be injured or seriously affected by any process of construction to be undertaken under the Contract Documents, from any damage or injury by reason of said process of construction, and Contractor shall be liable for any and all claims for such damage on account of its failure to fully protect all adjoining property. The Contractor agrees to indemnify, save and hold harmless the Owner against any claim or claims for damages due to any injury to any adjacent or adjoining property, arising or growing out of the performance of the Contract.

21. PROTECTION AGAINST CLAIMS OF SUBCONTRACTORS, VENDORS, ETC.

THE CONTRACTOR AGREES TO INDEMNIFY, DEFEND, HOLD THE OWNER HARMLESS FROM ANY AND ALL CLAIMS GROWING OR ARISING OUT OF THE LAWFUL DEMANDS OF SUBCONTRACTORS, LABORERS, WORKMEN, MECHANICS, MATERIAL MEN AND FURNISHERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT, POWER TOOLS, AND ALL SUPPLIES, INCLUDING COMMISSARY, INCURRED IN THE FURTHERANCE OF THE PERFORMANCE OF THESE GENERAL CONDITIONS OF AGREEMENT AND THE CONTRACT DOCUMENTS. The Contractor shall furnish satisfactory evidence that all obligations of the nature hereinabove designated have been paid, discharged or waived, as provided in the signed Contract. If the Contractor fails to do so, then the Owner may at Owner's option either pay directly any unpaid bills or claims, of which the Owner has written notice, and charge Contractor therefore, or withhold from the Contractor's unpaid compensation a sum of money deemed reasonably sufficient to liquidate any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged, whereupon payment to the Contractor shall be resumed in full, in accordance with the terms of these General Conditions of Agreement and the Contract Documents, but in no event shall the exercise by Owner of the option provided in this paragraph be construed to impose any obligation upon the Owner or to constitute a release or waiver of the duties of the Contractor of its surety.

22. LAWS AND ORDINANCES

The Contractor shall at all times observe and comply with all Federal, State and Local laws, ordinances and regulations which in any manner affect the Contract or the Work, and shall indemnify and save harmless the Owner against any claim arising from the violation of any such laws, ordinances, and regulations whether by the Contractor or its employees, agents or subcontractors. If the Contractor observes that the Drawings and Specifications are at variance therewith, Contractor shall promptly notify the Owner in writing of any necessary changes in the Work. If the Contractor performs any Work

knowing it to be contrary to such codes, ordinances, rules and regulations, Contractor shall bear all such costs arising there from.

23. ASSIGNMENT AND SUBLETTING

The Contractor further agrees that it will retain adequate control and will give sufficient attention to the fulfillment of these General Conditions of Agreement and the Contract Documents, and Contractor further agrees that it will not assign by Power of Attorney, or otherwise, or sublet said Contract without the prior written consent of the Owner, which consent may be withheld or conditioned by Owner in its absolute discretion. Any purported assignment by Contractor without such consent shall be void. Contractor further agrees that the subletting of any portion or feature of the Work, or materials required in the performance of these General Conditions of Agreement and the Contract Documents, shall not relieve Contractor from its full obligations to the Owner, as provided by these General Conditions of Agreement and the Contract Documents. With regard to the certain Work to be performed under the Contract Documents which the Owner reasonably believes should be performed by specialized experts in the applicable specialized field, Owner shall have the right to identify specific subcontractors for such work to Contractor, which Contractor shall then contract for performance of such specialized Work with such subcontractors, absent specific written objection to the contrary.

Owner may assign this Contract in part or in whole including all rights and obligations to any assignee at its sole discretion and without any prior notice to or consent from Contractor. Upon any such assignment by Owner, this Contract shall remain a valid and enforceable agreement and the original terms and conditions contained herein, or any properly amended terms and conditions shall remain valid and enforceable. Contractor shall not assign this Agreement, including to any Affiliates, without The Associations' prior written consent, which shall not be unreasonably withheld.

24. TIME AND ORDER OF COMPLETION

It is the meaning and intent of these General Conditions of Agreement and the Contract Documents, unless otherwise herein specifically provided that the Contractor shall be allowed to execute its Work at such times and seasons, in such order or precedence, and in such manner as shall be most conducive to economy of construction, provided, however, that the Work shall not be comprised and the order and time of prosecution shall be such that the Work shall be completed as a whole and in part, in accordance with these General Conditions of Agreement, the Contract Documents and Technical Specifications, and within the time of completion designated in the fully executed Contract. When the Owner is having other work done, either by contract or by its own force, the time and manner of constructing the work done under the Contract Documents shall be such that conflict will be avoided and the construction of the various works being done for the Owner shall be harmonized by the Contractor.

Unless otherwise scheduled in the signed Contract or the schedules incorporated therein, the Contractor shall submit, at such times as may reasonably be requested by the Owner, schedules which shall show the order in which the Contractor proposes to carry on the Work, with dates at which the Contractor will start the several parts of the Work, and estimated dates of completion of the several parts. By use of the term "substantially completed", it is meant that the structure has been made suitable for use and occupancy and the facility is in condition to serve its intended purpose, but still may require minor miscellaneous work and adjustment not material to or harmful to such use, occupancy or service.

25. EXTENSION OF TIME

Should the Contractor be delayed in the completion of the Work by any act or neglect of the Owner, or by changes ordered in the Work, or by strikes, lock outs, fires, and unusual delays by common carriers, or unavoidable cause or causes beyond the Contractor's control, then a reasonable extension of time shall be allowed for completing the Work, sufficient to compensate for the delay, the amount of the extension to be determined in the sole discretion of the Owner. Any and all claims for extension of time shall be made in writing to the Owner within ten (10) days after the occurrence of the delay or after the cause of the delay has become apparent. Otherwise they shall be deemed waived. In the case of a continuing cause of delay, only one claim is necessary. Delays caused by other Contractors or subcontractors, through no fault of the Owner shall not be a basis of claim by the Contractor herein.

26. INTENTIONALLY OMITTED

27. QUANTITIES AND MEASUREMENT (FOR USE WHERE COMPENSATION IS BASED UPON UNIT PRICE METHOD)

No extra or customary measurements of any kind will be allowed, but the actual measured and/or computed length, solid contents, number and weight only shall be considered unless otherwise specifically provided.

28. ESTIMATED QUANTITIES (FOR USE WHERE COMPENSATION IS BASED UPON UNIT PRICE METHOD)

These General Conditions of Agreement and the Contract Documents, including the Technical Specifications and estimate, are intended to show clearly all work to be done and materials to be furnished hereunder. Where the estimated quantities are shown of the various classes of work to be done and material to be furnished under the Contract Documents, they are approximate and are to be used only as a basis for estimating the probable cost of the work and for comparing the proposals offered for the work. It is understood and agreed that the actual amount of work done and material to be furnished under these General Conditions of Agreement and the Contract Documents may differ from these estimates, and that where the basis for payment under the Contract Documents is the unit price method, payment shall be for the actual amount of such work done and the material furnished.

Contractor agrees that it will make no claim for damages, anticipated profits or otherwise on account of any differences which may be found between the quantities of work actually done or the materials actually furnished under the Contract Documents and the estimated quantities contemplated and contained in the Proposal; provided, however, that in case the actual quantity of any major item should become as much as twenty percent (20%) more than, or twenty percent (20%) less than the estimated or contemplated quantities for such item, then either party, upon demand, shall be entitled to a revised consideration upon that portion of the work above or below twenty percent of the estimated quantity. A "major item" shall be construed to be any individual bid item included in the Proposal that has a total cost equal to or greater than five percent (5%) of the total contract cost, computed on the basis of the Proposal quantities and the Contract unit prices. Any revised consideration is to be determined by agreement between the parties, otherwise by the terms of these General Conditions of Agreement, as provided under "Added Work".

29. PARTIAL PAYMENTS

Before the first application for payment on lump sum contracts, the Contractor shall submit to the Owner, a schedule of values of the various portions of the Work, including quantities as required, aggregating the total contract sum. Each item shall include its proper share of overhead and profit. This

schedule of values, when approved by the Owner, shall be used as a basis for review of applications for payment.

The Contractor shall submit to the Owner an application for partial payment, and if required, receipts or other vouchers, showing its payments for materials and labor, including payments to subcontractors. The Owner shall review the statement for its correctness concerning the quantity of the work done up to and including the last day of the preceding month as well as partial lien releases from Contractor for the portion of the Work being paid for by Owner as well as lien releases from every subcontractor or materialsmen providing labor or materials for that portion of the Work. Said statements shall include the value of all sound materials in place or fabricated into the Work, and seventy-five percent (75%) of the value of all sound materials delivered on site, but not in place.

The Owner shall then pay the Contractor during the subsequent Accounts Payable cycle, as prescribed by the Woodlands Township-Finance Department, the total amount of the approved statement, less ten percent (10%) of the amount thereof, which ten percent (10%) shall be retained until final payment and further less all previous payments and further sums that may be retained by the Owner under the terms these General Conditions of Agreement.

30. USE OF COMPLETED PORTIONS

The Owner shall have the right to take possession of and use any completed or partially completed portions of the Work, notwithstanding that the time established for the completion or partial completion of such Work may not have expired but such taking possession and use shall not be deemed in acceptance of any Work not completed in accordance with the Contract Documents. If such prior use increases the cost or delays the Work, the Contractor shall be entitled to such extra compensation, or extension of time, or both as the Owner may determine.

31. FINAL COMPLETION AND ACCEPTANCE

Within ten (10) days after the Contractor has given the Owner written notice that the Work has been completed, the Owner shall inspect the Work and, if the Work has been found to be completed in accordance with the Contract Documents, the Owner shall issue a certificate of acceptance of the Work to the Contractor. If the Owner finds any defects in the Work, upon such inspection, Owner shall provide a written list of such defects and requirements for remedying such defects. Only upon the Work being found to have been completed in accordance with the Contract Documents and such defects having been remedied, shall a certificate of acceptance of the Work be issued to the Contractor.

32. FINAL PAYMENT

Owner shall pay the Contractor on or before the 45th day after the date of the certificate of acceptance, the balance due the Contractor under the terms of the Contract Documents, provided Contractor has fully performed its contractual obligations under the terms of the Contract Documents. Neither the certificate of acceptance nor the final payment, nor any provisions in the Contract Documents, shall relieve the Contractor of the obligation for fulfillment of any warranty which may be required in the Contract Documents.

Neither the final payment nor the remaining retained percentage shall become due until the Contractor submits appropriate affidavits of payment of all bills, consent of the Contractor's surety, final lien releases from Contractor and every subcontractor or materialsmen who provided labor or materials for the Work or other data as may be requested by the Owner or required pursuant to the Contract Documents.

33. PAYMENT WITHHELD

The Owner may, on account of subsequently discovered evidence, withhold or nullify the whole or part of any payment to such extent as may be necessary to protect itself from loss resulting from:

- a. Defective work not remedied;
- b. Claims filed or reasonable evidence indicating probable filing of claims;
- c. Failure of the Contractor to make payments properly to subcontractors or for material of labor;
- d. Damage to another contractor;
- e. Reasonable doubt that the Work can be completed for the unpaid balance of the Contract sum;
- f. Reasonable indication that the Work will not be completed within the contract time; or
- g. Breach of any of the terms of these General Conditions of Agreement and the Contract Documents by the Contractor.

34. DELAYED PAYMENTS

Should the Owner fail to make payment to the Contractor of the sum named in any partial or final statement, when payment is due, then the Owner shall pay the Contractor, in addition to the sum shown as due by such statement, interest thereon at the rate of six percent (6%) per annum from date due until fully paid, which shall fully liquidate any injury to the Contractor growing out of such delay in payment.

35. ADDED WORK

The term "added work" as used in these General Conditions and the Contract Documents shall be understood to mean and include all work that may be required by the Owner to be done by the Contractor to accomplish any change, alteration or addition to the Work. It is agreed that the Contractor shall perform all added work when presented with a written work order signed by the Owner. It is also agreed that, unless otherwise specified in the Contract Documents, the compensation be paid to the Contractor for performing said added work shall be determined by agreed unit prices (Method A) or lump sum (Method B).

36. TIME OF FILING CLAIMS

It is further agreed by both parties hereto that all questions of dispute or adjustment presented by the Contractor shall be in writing and filed with the Owner within ten (10) days after the receipt of the interpretation or decision to which the Contractor desires to take exception.

37. ABANDONMENT BY CONTRACTOR

In case the Contractor should abandon and fail or refuse to resume work within ten (10) days after written notification from the Owner, or if the Contractor fails to comply with the orders of the Owner, when such orders are consistent with the Contract Documents, then, and in that case, where performance bond exists, the surety on the bond shall be notified in writing and directed to complete the Work, and a copy of said notice shall be delivered to the Contractor.

After receiving said notice of abandonment the Contractor shall not remove from the Work any machinery, equipment, tools, materials or supplies then on the job, but the same, together with any materials and equipment under contract for the Work, may be held for use on the Work by the Owner or the surety on the construction bond, or another Contractor in completion of the Work and the Contractor shall not receive any rental or credit therefore (except when used in connection with added work, where credit shall be allowed as hereinabove provided for), it being understood that the use of such equipment and materials will ultimately reduce the cost to complete the Work and be reflected in the final settlement.

Where there is no performance bond provided or in the case surety should fail to commence compliance with the notice for completion hereinabove provided for, within ten (10) days after service of such notice then the Owner may provide for completion of the Work in either of the following manners.

37.1 The Owner may thereupon employ such force of men and use such machinery, equipment, tools, materials and supplies as said Owner may deem necessary to complete the Work and charge the expense of such labor, machinery, equipment, tools, materials and supplies to said Contractor, and the expense so charged shall be deducted and paid by the Owner out of such moneys as may be due, or that may thereafter at any time become due to the Contractor under and by virtue of the Contract Documents. In case such expense is greater than the sum which would have been payable under the Contract Documents, the Contractor and/or its surety shall pay the amount of such excess to the Owner; or

37.2 The Owner under sealed bids, after five (5) days notice published one or more times in a newspaper having a general circulation in the County of the location of the Work, may let the contract for the completion of the Work under substantially the same terms and conditions which are provided in the Contract. In case of any increase in cost to the Owner under the new contract, as compared to what would have been the cost under the Contract Documents, such increase shall be charged to the Contractor, and Contractor and the surety shall be and remain bound therefore.

When the Work shall have been completed the Contractor and its surety shall be so notified and certificates of acceptance, as provided under "Final Completion and Acceptance", shall be issued. A complete itemized statement of the Contract accounts shall then be prepared and delivered to the Contractor and its surety, whereupon the Contractor and/or its surety or the Owner as the case may be, shall pay the balance due as reflected by said statement, within fifteen (15) days after the date of such certificate.

In the event the statement of accounts shows that the cost to complete the Work is less than that which would have been the cost to the Owner had the Work been completed by the Contractor under the terms of the Contract Documents or when the Contractor and/or its surety shall pay the balance shown to be due by them to the Owner, then all machinery, equipment, tools, materials or supplies left on the site of the Work shall be turned over to the Contractor and/or its surety. Should the cost to complete the Work exceed the Contract price, and the Contractor and/or its surety fail to pay the amount due to the Owner within the time designated hereinabove, and there remains any machinery, equipment, tools, materials, or supplies on the site of the Work, notice thereof, together with an itemized list of such equipment and materials, shall be mailed to the Contractor and its surety at the respective addresses designated in the Contract Documents; provided however, that actual written notice given in any manner will satisfy this condition. After mailing or other giving of such notice, such property shall be held at the risk of the Contractor and its surety subject only to the duty of the Owner to exercise ordinary care to protect such property. After fifteen (15) days from the date said notice is received by Contractor, the Owner may sell such machinery, equipment, tools, materials or supplies and apply the net sum derived from such sale to the balance due Owner under the Contract Documents. Such sales may be made at either public or private sale, with or without notice, as the Owner may elect. The Owner shall release any machinery, equipment, tools, materials or supplies, which remain on the Work, and belong to persons other than the Contractor or its surety, to their proper owners. The books on all operations provided herein will be made available to Contractor and its surety for review at Owner's offices during normal business hours.

38. ABANDONMENT BY OWNER

Except in the event of Contractor's nonperformance or breach of the Contract Documents, if Owner shall fail to comply with the terms of this Contract, and should fail or refuse to comply with said terms within ten (10) days after written notification by the Contractor, then the Contractor may suspend or wholly abandon the Work, and may remove therefrom all machinery, tools and equipment and all materials on the site of the Work that have not been included in payments to the Contractor and have not been brought into the Work. In such case, Owner shall make an estimate of the total amount earned by the Contractor, which estimate shall include the value of all work actually completed by said Contractor (at the prices stated in the attached Proposal where unit prices are used), the value of all partially completed work at a fair and equitable price, and the amount of all added work performed at the prices agreed upon or provided for by the terms of this Contract, and a reasonable sum to cover the cost of any provisions made by the Contractor to carry the whole Work to completion and which cannot be utilized. The Owner shall then make a final statement of the balance due to Contractor by deducting from the above estimate all previous payments by the Owner and all other sums that may be retained by the Owner under the terms of the Contract Documents, and shall certify same, whereupon Owner shall pay to the Contractor (on or before the 45th day after the date of the notification by the Contractor) the balance shown by said final statement as due the Contractor, if any, under the terms of the Contract Documents.