

Exhibit "A"

CITY OF BAYTOWN
STANDARD FORM OF AGREEMENT FOR DEMOLITION PROJECTS

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

THIS DEMOLITION AGREEMENT (the "Agreement") is entered into by and between the CITY OF BAYTOWN, a municipal corporation located in Harris and Chambers Counties, Texas, and J.T.B. Services, Inc., a Texas corporation with its principle office located at 9026 Lambricht, Houston, TX 77075 (the "CONTRACTOR") for the demolition of the structures to be demolished pursuant to Chapter 26 of the Code of Ordinances, Baytown, Texas.

1. DEFINITIONS OF TERMS

For the purpose of this Agreement, the definitions set forth in Section 26-26 of the Code of Ordinances, City of Baytown, Texas, shall govern unless it is apparent from the context that it has a different meaning or unless such word is specifically defined herein. As such, Section 26-26 of the Code is incorporated herein by this reference for all intents and purposes the same as if fully copied and set forth at length.

1.01 BOARD.

Whenever the term *Board* is used herein, it shall mean and be understood as referring to the Urban Rehabilitation Standards Review Board of the City of Baytown.

1.02 CITY.

Whenever the word *City* is used, it shall mean and be understood as referring to the City of Baytown, Texas, its officers, agents, representatives, and employees.

1.03 CODE.

The term *Code* shall mean the Code of Ordinances of the City of Baytown, Texas, as amended to the effective date hereof, unless otherwise specified in this Agreement or in the Code.

1.04 CONTRACT DOCUMENTS.

The *Contract Documents* shall consist of the Invitation to Bid, Bid Sheet, Bidder's Certification, this Agreement, Performance and Payment Bonds (when required), Special Bonds (when required), Addenda, and Technical Specifications, and all modifications thereof incorporated in any of the documents before the execution of the Agreement.

1.05 CONTRACTOR.

Whenever the word *CONTRACTOR* is used, it shall mean the person, persons, partnership, or corporation who has agreed to perform the work embraced in these Contract Documents.

1.06 FINAL COMPLETION.

The term *final completion* as used in this Agreement shall mean that all work specified in a work order has been completed, all rubbish has been cleaned up and removed from the Property, all work specified in a work order has been inspected and satisfactorily completed, all payments to materialmen and subcontractors have been made, all documentation regarding the proper disposal of rubbish and the payment of employees and subcontractors has been submitted and all closeout documents have been executed and approved by the CITY.

1.07 INTERPRETATION OF PHRASES.

Whenever the words *directed, permitted, designated, required, considered necessary, prescribed*, or words of like import are used, it is understood that the direction, requirement, permission, order, designation, or prescription of the CITY is intended. Similarly, the words *approved, acceptable, satisfactory*, or words of like import shall mean approved by, accepted by or satisfactory to the CITY.

1.08 NONCONFORMING WORK.

The term *nonconforming work* shall mean the work or any part thereof rejected by the CITY as not conforming to the Contract Documents.

1.09 PARTIES.

The term *parties* shall include the CITY and the CONTRACTOR.

1.10 PROJECT.

The term *project* as used in this agreement shall be understood to mean and include all that is required to fully comply with the Contract Documents and that yields a final product acceptable to the CITY. The term *work* shall have like meaning. This project includes all work required as outlined in the Scope of Work. The project shall be identified in separate work orders issued by the City and may be required to be performed after normal working hours if so stated by the City in the work order.

1.11 PROPERTY

The term *property* shall mean the real property on which Structure is located which is to be demolished in accordance with Chapter 26 of the Code.

1.12 RUBBISH

The term *rubbish* as used in this agreement shall include all refuse, useless articles, abandoned pipe, mounds of dirt, concrete blocks and slabs, bricks, and in general all litter and all other things that are liable to produce or tend to produce an unhealthy, unwholesome, unsanitary, or unsightly condition.

1.13 STRUCTURE

The term *structure* shall mean the improvement or improvements located on the Property, which has been declared by the Board as being substandard, obsolete, dilapidated, or unfit for human use or habitation.

1.14 SUBCONTRACTOR.

The term *subcontractor*, as employed herein, includes only those hired by and having a direct contract with the CONTRACTOR for performance of any work or service relating in any way to the Project. The CITY shall have no responsibility to any subcontractor employed by CONTRACTOR for performance of work on the project contemplated by this Agreement, and any said subcontractors shall look exclusively to the CONTRACTOR for any payments due the subcontractor.

1.15 WORK.

The term *work* as used herein shall mean and include all that is required to fully comply with the Contract Documents and that yields a final product acceptable to the CITY. The term *project* shall have like meaning. This project includes the following: demolition and clean-up of the Structure and premises located on the Property. The Work shall be identified in separate work orders issued by the City.

1.16 WORK ORDER.

This contract shall be comprised of separate work orders, which shall cover the OWNER'S annual project needs as contemplated at the time of the execution of this Agreement. Each work order shall be fully and finally completed within fifteen (15) calendar days from its issuance, unless otherwise expressly stated in the work order.

2. CONTRACT DOCUMENTS.

2.01 COMPLEMENTARY DOCUMENTS.

The Contract Documents comprise the entire agreement between the CITY and the CONTRACTOR concerning the Project. The Contract Documents are complementary, and what is called for by any one shall be as binding as if called for by all.

2.02 PRIORITY OF DOCUMENTS.

In case of conflict between any of the Contract Documents, priority of interpretation shall be in the following order:

- 2.02.01 Addenda to this Agreement,
- 2.02.02 This Agreement,
- 2.02.03 Performance and Payment Bonds,
- 2.02.04 Work Orders
- 2.02.05 Technical Specifications applicable to Project dated April 16, 2008,
- 2.02.06 Invitation to Bid on Project dated April 16, 2008,
- 2.02.07 Bid Sheet for Project dated April 16, 2008 and
- 2.02.08 Bidder's Certification for Project dated April 16, 2008.

2.03 AMENDING CONTRACT DOCUMENTS.

No amendments to this Agreement shall be effective and binding until it is reduced to writing and signed by the duly authorized representatives of both parties.

3. CITY.

3.01 RESPONSIBILITY AND AUTHORITY.

3.01.01 The CITY may periodically review and inspect the work of the CONTRACTOR.

3.01.02 The CITY may appoint from time to time such subordinate supervisors or inspectors as the CITY may deem proper to inspect the work performed under this Agreement and ensure that said work is performed in accordance with the Contract Documents.

3.01.03 The CONTRACTOR shall regard and obey the directions and instructions of CITY, any subordinate supervisors or inspectors appointed by the CITY provided such directions and instructions are consistent with the obligations of this Agreement.

3.01.04 Should the CONTRACTOR object to any orders by any subordinate supervisor or inspector appointed by the CITY, the CONTRACTOR may within two (2) calendar days from receipt of such order make written appeal to the CITY's community development planner for his decision, whose decision shall be final and binding on the parties.

3.01.05 The CONTRACTOR shall attend meetings called by the CITY upon twenty-four (24) hours' notice unless otherwise agreed by the parties.

3.01.06 The CONTRACTOR shall not be allowed to erect, install, or use additional structures on the Property for the storage, maintenance of materials or use of employees and subcontractors. Additionally the CONTRACTOR shall not damage the Property or any structure thereon, other than the Structure being demolished. The CONTRACTOR shall maintain sanitary conditions on the property at all times in a manner satisfactory to the CITY.

4. COMMUNICATIONS.

4.01 The CONTRACTOR shall forward all communications, written or oral, to the CITY through the CITY's community development planner.

4.02 WRITTEN NOTICE.

Unless otherwise specified, written notice shall be deemed to have been duly served if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by telecopier, overnight or facsimile transmission or if delivered or sent by certified or registered mail to the last business address as indicated herein. Each party will have the right to change its

business address by giving at least thirty (30) calendar days' written notice to the other party of such change. Notice given by mail shall be deemed given three (3) calendar days after the date of the mailing thereof.

5. AWARD OF CONTRACT.

- 5.01 Upon execution of this Agreement, the CONTRACTOR shall deliver to the CITY all documents, affidavits, bonds, declaration pages and certificates of insurance required herein.
- 5.02 The CONTRACTOR shall be prepared to perform the work in the most expedient manner possible and complete the same on or before the date agreed for final completion.
- 5.03 The work shall be commenced within ten (10) calendar days of the date specified in the work order. In the event of any dispute, the records of the CITY shall be conclusive evidence as to the date specified on the work order.
- 5.04 Time is of the essence in this agreement.

6. WORK

- 6.01 The CONTRACTOR shall complete and be responsible for all work as specified, indicated, or described in the Contract Documents. The CONTRACTOR shall complete and be responsible for all extra work as described in this Agreement. All work done and all materials furnished shall be in strict conformity with the Contract Documents. The substantial completion of the work shall not excuse the CONTRACTOR from performing all the work undertaken, whether of a minor or major nature, and thereby completing the project in accordance with the Contract Documents. In the event that the CONTRACTOR fails to perform the work as required for final completion, the CITY may contract with a third party to complete the work and the CONTRACTOR shall assume and pay the costs of the performance of the work specified or contemplated by the Contract Documents.
- 6.02 The CONTRACTOR shall provide and pay for all materials, supplies, machinery, equipment, tools, superintendents, laborers, insurance, fuel, transportation, and all other facilities and utilities necessary for the execution and completion of the work specified or contemplated by the Contract Documents.
- 6.03 PERMITS, FEES AND LEGAL COMPLIANCE.
 - 6.03.01 The CONTRACTOR shall secure and pay all permits, fees, licenses, and inspections necessary for the proper execution and completion of the work. The CONTRACTOR will not, however, be required to pay for any permit fees normally charged for permits of the CITY, which will be waived in conjunction with this Agreement.
 - 6.03.02 The CONTRACTOR shall give all notices required by law and comply with all laws, ordinances, regulations, codes, rules and lawful orders of all public authorities bearing on the performance of the work.

7. TIME: COMPLETION DATES, EXTENSIONS, DELAYS.

- 7.01 The date of beginning and the date for final completion of work as specified in this Agreement are essential conditions of this Agreement.
- 7.02 The work will be completed within Fifteen (15) calendar days from the date specified on the Work Order that is given by the CITY. In the event of any dispute, the records of the OWNER shall be conclusive evidence as to the date specified on the work order.

7.03 EXTENSIONS.

7.03.01 The CONTRACTOR has submitted its bid in full recognition of the time required for the completion of this project taking into consideration all factors, including, but not limited to, the average climatic range, the characteristics of the site and Structure and industrial conditions.

7.03.02 The CONTRACTOR has considered the liquidated damage provision, and understands and agrees that it shall not be entitled to nor will it request an extension of time for final completion under this Agreement, except with the work that has been delayed by an act or neglect of the CITY or by changes ordered in the work, or reductions thereto in writing.

7.03.03 Within seven (7) calendar days of any act or incident that the CONTRACTOR reasonably believes may justify an extension of time for final completion, the CONTRACTOR may apply in writing for an extension of such time, submitting therewith all written justification as may be required by the CITY. Thereafter, the CITY, within seven (7) calendar days after receipt of a written request for an extension of time from the CONTRACTOR, which is supported by all requested documentation, shall then grant or deny such written request.

7.04 DELAYS.

7.04.01 The CONTRACTOR, in undertaking to complete the work within the time herein fixed, has taken into consideration and made allowance for all hindrances and delays incident to such work, whether growing out of delays in securing material or workmen or weather or otherwise.

7.04.02 No charge whatsoever shall be made by the CONTRACTOR for hindrances or delays from any cause whatever during the progress of any portion of the work contemplated by the specifications, but the CITY may grant an extension of time for the completion of the work, provided the CITY is satisfied that such delays or hindrances were due to the extraordinary causes or to the acts of omission or commission by the CITY.

7.04.03 It is agreed that the granting of such extensions of time shall in no instance exceed the time actually lost by the CONTRACTOR for reason of such causes, provided that the CONTRACTOR shall give the CITY immediate notice in writing of the cause of the detention or delay.

7.05 FINAL COMPLETION. The CONTRACTOR shall notify the CITY when the CONTRACTOR believes that the work is finally completed as defined in section 1.06 herein. If the CITY rejects the project as finally completed, the CONTRACTOR shall be so notified and shall begin to immediately remedy any nonconforming work. If CITY accepts and deems such work finally complete, the CONTRACTOR shall be so notified and a certificate of final completion, as provided herein, shall be issued.

7.06 AFFIDAVIT. The CITY may, prior to the issuance of a certificate of final completion require the CONTRACTOR to execute an affidavit in legal form stating that all bills for labor, materials, and incidentals incurred have been paid in full and that there are no claims pending of which the CONTRACTOR has been notified.

8. PAYMENT.

8.01 PAYMENT AMOUNT. The CONTRACTOR agrees to perform the work orders issued under this Agreement and the CITY agrees to pay the CONTRACTOR for such work based upon the unit prices enumerated in the Invitation to Bid, the total of which shall not exceed the total amount bid, for the completed and accepted work, subject to the allowable deductions specified in this Agreement.

8.02 FINAL PAYMENT. Upon final completion and acceptance of the work performed in accordance with this Agreement for each work order, the CITY shall pay the CONTRACTOR for the work order as specified in

Section 8.01 hereof less all appropriate adjustments within thirty (30) days after completion of each work order or after receipt of an invoice for the same, whichever is later.

- 8.03 **RETAINAGE.** From each approved Work Order statement, the OWNER shall retain until final payment five percent (5%) if the total Contract Price at time of Contract execution is Four Hundred Thousand Dollars (\$400,000.00) or more or ten percent (10%) if the total Contract Price at time of Contract execution is less than Four Hundred Thousand Dollars (\$400,000.00). The OWNER may also retain from each approved statement any sums authorized under other terms of this Agreement.
- 8.03 **OTHER CHARGES.** The CONTRACTOR shall have the sole obligation to pay any and all charges and fees and give all notices necessary to and incidental to the lawful prosecution of the work hereunder. The CONTRACTOR shall not, and shall have no authority whatsoever to, obligate the CITY to make any payments to another party or make any promises or representations of any nature on behalf of the CITY without their specific written approval.
- 8.04 **PAYMENT BASED ON ACTUAL WORK AND MATERIALS.** If the actual amount of the work to be done and the materials to be furnished differ from estimate and where the basis for payment is the unit price method, then payment shall be for the actual amount of accepted work done and materials furnished on the project.
- 8.05 **REDUCTION IN SCOPE OR QUANTITY.** Reduction in the scope or quantity of work on unit price items shall merely reduce the number of units. The CONTRACTOR shall never be entitled to anticipated or lost profits on the deleted or reduced portion of a job whether bid on a unit price or lump sum basis.

9. INDEPENDENT CONTRACTOR.

- 9.01 In all activities or services performed hereunder, the CONTRACTOR is and at all times shall remain an independent contractor, not an agent or employee of the CITY. The CONTRACTOR, as an independent contractor, shall be solely responsible for the project contemplated under this Agreement. The CONTRACTOR shall supply all materials, equipment and labor required for the execution of the work on the project. The CONTRACTOR shall have ultimate control over the execution of the work under this Agreement. The CONTRACTOR shall have the sole obligation to employ, direct, control, supervise, manage, discharge and compensate all of its employees and subcontractors and the CITY shall have no direct control of or supervision over the employees of the CONTRACTOR's subcontractors except to the limited extent provided for in this Agreement.
- 9.02 The work to be provided on this project shall include the furnishing of all labor, materials, equipment, and other services necessary or reasonably incidental to the performance of the work by the CONTRACTOR. Any additional work, material, or equipment needed to meet the intent of this specification shall be supplied by the CONTRACTOR without claim for additional payment, even though not specifically mentioned herein.
- 9.03 The CONTRACTOR shall retain personal control and shall give its personal attention to the faithful prosecution and completion of the work and fulfillment of this Agreement. The subletting of any portion or feature of the work or materials required in the performance of this Agreement shall not relieve the CONTRACTOR from its obligations to the CITY under this Agreement. The CONTRACTOR shall appoint and keep on the project during the progress of the work a competent Project Superintendent-Manager and any necessary assistants, all satisfactory to CITY, to act as the CONTRACTOR's representative and to supervise its employees and subcontractors. All directions given to the Project Superintendent-Manager shall be binding as if given to the CONTRACTOR. Adequate supervision by competent and reasonable representative of the CONTRACTOR is essential to the proper performance of the work, and lack of such supervision shall be grounds for suspending the operations of the CONTRACTOR and is in breach of this Agreement.
- 9.04 The CONTRACTOR agrees to employ only orderly and competent persons, skillful in the performance of the type of work required under this contract, to do the work. Furthermore, the CONTRACTOR agrees that

whenever the CITY shall inform the CONTRACTOR in writing that any person or persons performing any of the requisite work are, in the opinion of the CITY, incompetent, unfaithful or disorderly, such person or persons shall be discharged and shall not again be employed to perform any work on the project without the CITY's prior written consent.

10. NATURE OF THE WORK AND CONDITION OF SITE.

- 10.01 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 and soil, the nature of any structures, the character of equipment and facilities needed for and during the prosecution of the work, the time needed to complete the work, CONTRACTOR's ability to meet all deadlines and schedules required by this Agreement, the general and local conditions, and all other matters that in any way affect the work under this Agreement.
- 10.02 Where the CONTRACTOR is working around or in existing structures, it shall verify conditions at the site, including, but not limited to, door openings and passages. The CONTRACTOR shall provide all special apparatus needed for the project at CONTRACTOR's sole cost and expense.
- 10.03 At the completion of the work, the CONTRACTOR shall leave the premises in a clean and finished condition. Any failure to do so may be remedied by the CITY or its designee and charged back to the CONTRACTOR.
- 10.04 The CONTRACTOR shall remove all waste and rubbish in accordance with the laws of the State of Texas. The CONTRACTOR must provide the CITY a receipt showing proof of proper disposal at an approved solid waste site permitted by the Texas Natural Resources Conservation Commission or the Texas Department of Health or a solid waste site licensed by a county. The receipt of proper disposal must contain the date, time, amount disposed of, cost of disposal, the name of approved solid waste site where the objectionable materials were taken. The parties hereto agree that this Agreement will not be completed until such receipt is submitted to the CITY.

11. WORK STOPPAGE.

- 11.01 The CITY shall have the right to order the work of the CONTRACTOR or any subcontractor wholly or partially stopped immediately under any one or more of the following conditions:
- 11.01.01 the work may be ordered stopped immediately if in the judgment of the CITY, any of the work being done is not in strict accordance with this Agreement;
- 11.01.02 the work may be ordered stopped immediately until any objectionable person or equipment is removed from the premises; or
- 11.01.03 the work may be ordered stopped immediately if any portion of the work is being performed so as to create a hazardous condition.
- 11.02 Such stoppage or suspension shall neither invalidate any of the CONTRACTOR's performance obligations under this Agreement, including time of performance and deadlines therefor, nor will extra charge be allowed the CONTRACTOR by reason of such stoppage or suspension.

12. REJECTED WORK.

- 12.01 The CITY may reject any work found to be defective or not in accordance with the Contract Documents. Neither observations by the CITY nor inspections, tests, or approvals made by the CITY, shall relieve the CONTRACTOR from its obligation to perform the work in accordance with the requirements of the Contract Documents.
- 12.02 In the event that any work or any part thereof is rejected by the CITY, the CONTRACTOR shall, at its sole expense and after receipt of written notice thereof from the CITY remedy the work so that it shall be in full compliance with the Contract Documents. If the CONTRACTOR does not remedy such work within seven

(7) calendar days after receipt of notice from the CITY, then the CITY may have the work performed at the CONTRACTOR's expense and withhold the same from CONTRACTOR's compensation.

13. SUBCONTRACTORS.

- 13.01 The subletting of any portion or feature of the work required in the performance of this Agreement shall not relieve the CONTRACTOR from its obligations to the CITY under this Agreement.
- 13.02 All subcontractors are subject to the approval of the CITY.
- 13.03 If the CITY judges any subcontractor to be failing to perform the work in strict accordance with the Contract Documents, the CONTRACTOR shall discharge the same, but this shall in no way release the CONTRACTOR from its obligations and responsibility under this Agreement.
- 13.04 Every subcontractor shall be bound by the terms and provisions of this Agreement as far as applicable to its work.
- 13.05 The CONTRACTOR shall be fully responsible to the CITY for the acts and omissions of its subcontractors.
- 13.06 Nothing contained herein shall create relations between any subcontractor and the CITY.
- 13.07 **RESPONSIBILITY FOR PAYMENT OF SUBCONTRACTORS.** The CONTRACTOR shall be solely and exclusively responsible for compensating any of the CONTRACTOR's employees, subcontractors, materialmen and/or suppliers of any type or nature whatsoever. The CONTRACTOR shall further be exclusively responsible for ensuring that no claims or liens of any type are filed against the Property or on any property owned by the CITY arising out of or incidental to the performance of any services performed pursuant to this Agreement.

14. LIQUIDATED DAMAGES.

- 14.01 It is expressly understood and agreed by the parties that time is of the essence to this Agreement and that the date set for the final completion of the work described herein is an essential condition of this Agreement. It is further understood and agreed that the date for final completion of the work is reasonable dates for the completion of the project, taking into consideration all conditions, including, but not limited to, the average climatic change and conditions and usual industrial conditions prevailing in this locality.
- 14.02 If the CONTRACTOR should neglect, fail, or refuse to complete the work required for final completion within the date specified in this Agreement, or any proper extension that is granted in writing by the CITY, then the CONTRACTOR hereby agrees, as a part of the consideration for the awarding of this Agreement, that the CITY may withhold permanently from the CONTRACTOR's total Payment Amount the sum of One Hundred Dollars (\$100) for each and every calendar day that the CONTRACTOR is in default after the date stipulated for final completion as the case may be, not as a penalty, but as liquidated damages for the breach of the Agreement.
- 14.03 The amount of liquidated damages for the CONTRACTOR's failure to meet the deadline for final completion is fixed and agreed on by the CONTRACTOR because of the impracticability and extreme difficulty in fixing and ascertaining actual damages that the CITY would in such an event sustain. The amounts to be charged are agreed to be the damages that the CITY would sustain and may, at the option of the CITY, be retained from either current progress payment or from final payment.

15. WITHHOLD PAYMENT.

Regardless of any bond, the CITY may, on account of subsequently discovered evidence, withhold payment or nullify the whole or part of any acceptance of the work necessary to protect the CITY from loss on account of:

- 15.01 Work that is not in strict accordance with the terms of the Contract Documents;

- 15.02 Claims filed or reasonable evidence indicating probable filing of claims, as determined at the sole discretion of the CITY, for any reason stemming from Contractor's work, including, but not limited to, injury to a third party or damage to property of a third party;
- 15.03 Failure of the CONTRACTOR to make prompt payments to subcontractors or employees for labor;
- 15.04 Liquidated damages and administrative charges, as determined by the CITY at its sole discretion;
- 15.05 Charges made for repairs to the CONTRACTOR's defective work or repairs made by the CITY to correct damage to other property; and/or
- 15.06 Other amounts authorized under this Agreement.

16. CHARGES FOR INJURY OR REPAIR.

- 16.01 The CONTRACTOR shall be liable and responsible for any damages incurred or repairs made necessary by reason of its work and/or caused by it. Repairs of any kind required by the CITY will be made and charged to the CONTRACTOR by the CITY, and shall include, but not be limited to, all work, materials and labor to make the repairs deemed necessary by the CITY.
- 16.02 The CONTRACTOR shall take all necessary precautions to protect any areas adjacent to its work.

17. INSURANCE.

- 17.01 Throughout the term of this Agreement, the CONTRACTOR at its own expense shall purchase, maintain and keep in force and effect insurance against claims for injuries to or death of persons or damages to property which may arise out of or result from the CONTRACTOR's operations and/or performance of the work under this Agreement, whether such operations and/or performance be by the CONTRACTOR, its agents, representatives, volunteers, employees or subcontractors or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.
- 17.02 The CONTRACTOR's insurance coverage shall be primary insurance with respect to the CITY and his officers and agents, including the CITY. Any insurance or self-insurance maintained by the CITY, its officials, employees or volunteers shall be considered in excess of the CONTRACTOR's insurance and shall not contribute to it. Further, the CONTRACTOR shall include all subcontractors as additional insureds under its commercial general liability policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.
- 17.03 The following is a list of standard insurance policies along with their respective minimum coverage amounts required in this contract:

- (1) Workers' Compensation Policy
 - Statutory amounts required by Texas law.
 - Employer's Liability of \$500,000.
 - Should CONTRACTOR have no employees, CONTRACTOR shall sign an affidavit to such effect and shall indemnify, protect, and defend the CITY from any claim arising from a person claiming to be an employee of CONTRACTOR.
- (2) Commercial General Liability Policy;
 - General aggregate of \$1,000,000.
 - Contractors Protective Liability of \$500,000.
 - Products and Completed Operations Aggregate of \$1,000,000.
 - Personal and Advertising Injury of \$1,000,000.
 - Minimum of \$500,000 per occurrence.
 - Fire Damage of \$50,000.
 - Coverage shall be at least as broad as ISO CG 00 01 10 93.

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- No coverage shall be deleted from the standard policy without notification of individual exclusions being attached for review and acceptance.
- (3) Business Automobile Liability Policy, which shall include the following:
- Combined Single Limits of \$1,000,000.
 - Coverage for "Any Auto."
- 17.04 Certificates of Insurance provided to the CITY shall contain a provision that coverages afforded under the policies will not be canceled, suspended, voided, or reduced until at least thirty (30) days' prior written notice has been given to the CITY via certified mail, return receipt requested.
- 17.05 The following are general requirements which are applicable to all policies:
- 17.05.01 General Liability and Automobile Liability insurance shall be written by a carrier with an A.M. Best Rating of A or higher in accordance with the current Best Key Rating Guide.
 - 17.05.02 Only Insurance Carriers licensed to do business in the State of Texas will be accepted.
 - 17.05.03 Deductibles shall be listed on the Certificate of Insurance and are acceptable only on a per occurrence basis.
 - 17.05.04 Claims-made policies will not be accepted.
 - 17.05.05 With respect to the Project, the CITY and its officers and employees are to be added as "Additional Insureds" to all commercial general liability and business automobile liability policies. The coverage shall contain no special limitation on the scope of protection afforded to the CITY.
 - 17.05.06 A waiver of subrogation in favor of the CITY with respect to Workers' Compensation Insurance must be included, should Workers' Compensation be required pursuant to section 17.03 (1).
 - 17.05.07 Upon request, certified copies of all insurance policies, declaration pages and/or certificates of insurance shall be furnished to the CITY at no expense to the CITY.

18. PERFORMANCE AND PAYMENT BONDS.

- 18.01 The CITY reserves the right to require the CONTRACTOR to furnish separate performance and payment bonds, each in the sum of one hundred percent (100%) of the total contract price, in such forms as the CITY may approve and with sureties as the CITY may approve, for this purpose, guaranteeing faithful payment to all persons supplying labor and materials or furnishing any equipment in the execution of the Agreement. The cost of such a bond shall be included in the CONTRACTOR's proposed price.
- 18.02 All performance, payment, and special bonds required herein shall remain in effect throughout the term of this Agreement and for a period of one (1) year after the completion of the work and shall be extended for any warranty work to cover the warranty period.
- 18.03 If at any time during the execution of this Agreement or in the required period thereafter, the bond or bonds become invalid or ineffective for any reason, the CONTRACTOR shall promptly supply within ten (10) days such other bond or bonds, which bond or bonds shall assure performance or payment as required. Such replacement bond(s) shall be issued by a surety acceptable to the CITY.
- 18.04 The CONTRACTOR shall make such changes and alterations as the CITY may see fit in the work herein contemplated, or any part thereof without affecting the validity of this Agreement and any work accompanying bond. If such changes or alterations diminish the quantity of the work to be done, they shall

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not constitute the basis for any claim for damages or anticipated profits on the work that may be dispensed with.

19. PROJECT UNDER CONTRACTOR'S CONTROL.

Any injury or damage caused to the CONTRACTOR or the project prior to and including the date of final completion caused by an act of God, natural cause, a party or entity not privy to this Agreement, or other force majeure shall be assumed and borne by the CONTRACTOR.

20. COMPLIANCE WITH LAW.

The CONTRACTOR's work and equipment shall comply with all state and federal laws, municipal ordinances, regulations and direction of inspectors appointed by proper authorities having jurisdiction.

21. SAFETY PRECAUTIONS.

21.01 Safety precautions at the site are CONTRACTOR's sole responsible. The CONTRACTOR is solely responsible for handling and use of hazardous materials or waste, and informing employees of any such hazardous materials or waste.

21.02 The CONTRACTOR has the sole obligation to protect or warn any individual of potential hazards created by the performance of the work set forth herein. The CONTRACTOR shall, at its own expense, take such precautionary measures for the protection of persons, property and the work as may be necessary.

21.03 The CONTRACTOR shall be held responsible for all damages to property, personal injuries and/or death due to failure to safety devices of any type or nature that may be required to protect or warn any individual of potential hazards created by the performance of the work site forth herein; and when any property damage is incurred, the damaged portion shall immediately be replaced or compensated for by the CONTRACTOR at its own cost and expense.

21.04 The CONTRACTOR shall indemnify, hold harmless, and defend the CITY from any liability of whatever nature caused by the CONTRACTOR's failure to comply with applicable federal, state, or local regulations that touch upon or concern the maintenance of a safe and protected working environment and the safe use and operation of machinery and equipment in that working environment no matter where fault or responsibility lies in accordance with Section 22.01 herein.

22. INDEMNITY.

22.01 The CONTRACTOR agrees to and shall indemnify, hold harmless and defend, the CITY and their respective officers, agents and employees, from and against any and all claims, losses, damages, causes of action, suits and liability of every kind, including all expenses of litigation, court costs, and attorneys' fees for injury to or death of any person, or for damage to any property, arising out of or in connection with (i) the work done by the CONTRACTOR under this Agreement and/or (ii) the CONTRACTOR's failure to comply with applicable federal, state, or local regulations that touch upon or concern the maintenance of a safe and protected working environment and the safe use and operation of machinery and equipment in that working environment, where such injuries, death or damages are caused by the sole negligence of the CONTRACTOR or the joint negligence of the CITY and any other person. It is the expressed intention of the parties hereto, both the CONTRACTOR and the CITY, that the indemnity provided for in this paragraph is an indemnity by the CONTRACTOR to indemnify, protect and defend the CITY from the consequences of the CITY's own negligence, where that negligence is a concurring cause of the injury, death or damage.

Furthermore, the indemnity provided for in this paragraph shall have no application to the CITY for any claim, loss, damage, cause of action, suit and liability where the injury, death or damage results from the sole negligence of the CITY, unmixed with the fault of any other person or entity.

22.02 The CONTRACTOR shall indemnify, protect and defend the CITY from the consequences of the CITY's concurrent negligence in accordance with Section 35.01 for all work done by the CONTRACTOR, including, but not limited to, the following specific instances:

22.02.01 In the event the CITY is damaged due to the act, omission, mistake, fault or default of the CONTRACTOR, then the CONTRACTOR shall indemnify and hold the CITY harmless for such damage.

22.02.02 The CONTRACTOR shall indemnify and hold the CITY harmless from any claims of material suppliers, mechanics, laborers, or other subcontractors.

22.02.03 The CONTRACTOR shall indemnify and hold the CITY harmless from any and all injuries to or claims of adjacent property owners caused by the CONTRACTOR, its agents, employees and representatives.

22.02.04 The CONTRACTOR shall be responsible for any damage to property, caused by the CONTRACTOR, its agents, employees and representatives or their equipment during installation.

22.02.05 The CONTRACTOR shall also be responsible for all subcontractors hired by it.

22.03 THE INDEMNITY PROVIDED FOR IN THIS ARTICLE 22 SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THIS AGREEMENT.

23. RELEASE

By this Agreement, the CITY does not consent to litigation and expressly revokes any consent to litigation that they may have granted by the terms of this Agreement, any charter, or applicable state law. The CONTRACTOR assumes full responsibility for the work to be performed and releases, relinquishes, and discharges the CITY, its officers, agents and employees from all claims, demands and causes of action of every kind and character for any injury to, including, but not limited to, death of any person (whether third persons, the CONTRACTOR, or employees of either of the parties). This release includes the cost of defense of any claim and any loss of or damage to property (whether property of the parties or of third parties) that is caused by or alleged to be caused by, arising out of, or in connection with the CONTRACTOR's work to be performed under this Agreement whether or not said claims, demands, and causes of action are covered in whole or in part by insurance.

24. ABANDONMENT.

24.01 In case the CONTRACTOR should abandon, fail or refuse to resume work within ten (10) days after written notification from the CITY, or if the CONTRACTOR fails to comply with the orders of the CITY, when such orders are consistent with the Contract Documents, then, and in that case, (i) where performance and payment bonds exist, the sureties on these bonds shall be notified in writing and directed to complete the

work, and a copy of said notice shall be delivered to the CONTRACTOR (ii) where no bonds exist, the project will be deemed abandoned, and either the CITY or another contractor, at the CONTRACTOR's sole cost and expense, shall complete the work necessary for the project.

24.02 After receiving said notice of abandonment, the CONTRACTOR, unless directed otherwise by the CITY, 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 CITY or the Surety on the performance bond, or another contractor in completion of the work; and the CONTRACTOR shall not receive any rental or credit therefor, it being understood that the use of such equipment and materials may ultimately reduce the cost to complete the work and be reflected in the final settlement.

25. TERMINATION.

25.01 If this Agreement is terminated either for cause or convenience, the CITY shall have the right but shall not be obligated to complete the work either itself or by others; and to this end, the CITY shall be entitled to take possession of and use such equipment and materials as may be on the job site and to exercise all rights, options and privileges of the CONTRACTOR under its subcontracts, purchase orders or otherwise; and the CONTRACTOR shall promptly assign such rights, options, and privileges to the CITY. If the CITY elects to complete the work itself or by others, pursuant to the foregoing, then the CONTRACTOR will reimburse the CITY for all costs incurred by the CITY (including, without limitation, applicable, general and administrative expenses, and field overhead, and the cost of necessary equipment, materials and field labor in correcting work by the CONTRACTOR that fails to meet the requirements of the Contact Documents.

25.02 After receipt of a notice of termination, the CONTRACTOR shall, in good faith and to the best of its ability, do all things necessary in light of such notice to assure the efficient and proper close-out of the terminated work. Among other things the CONTRACTOR shall, except as otherwise directed or approved by the CITY, do the following:

- (a) Stop the work on the date and to the extent specified in the notice of termination;
- (b) Place no further orders or subcontracts for services, equipment, or material, except as may be necessary for completion of such portion of the work as is not terminated;
- (c) Immediately terminate all orders and subcontracts to the extent that they relate to the performance of the work terminated by the notice of termination;
- (d) Assign to the CITY, in the manner and to the extent directed by it, all of the right, title and interest of the CONTRACTOR under the orders or subcontracts so terminated in which case, the CITY shall have the right to settle or pay any or all claims arising out of the termination of such orders and subcontracts; and/or
- (e) With the approval of the CITY, settle all outstanding liabilities and all claims arising out of such termination, orders and subcontracts.

26. TERMINATION FOR CAUSE.

26.01 Without prejudice to any other legal or equitable right or remedy that the CITY would otherwise possess hereunder or as a matter of law, the CITY, upon giving the CONTRACTOR five (5) days' prior written notice, shall be entitled to terminate this Agreement in its entirety at any time for the following:

26.01.01 If the CONTRACTOR becomes insolvent, commits any act of bankruptcy, makes a general assignment for the benefit of creditors, or becomes the subject of any proceeding commenced under any statute or law for the relief of debtors;

- 26.01.02 If a receiver, trustee or liquidator of any of the property or income of the CONTRACTOR shall be appointed;
 - 26.01.03 If the CONTRACTOR shall fail to prosecute the work or any part thereof with diligence necessary to ensure its progress and completion as prescribed by the time schedules;
 - 26.01.04 If within five (5) calendar days after written notice thereof from the CITY, the CONTRACTOR shall fail to remedy any defective work or work that does not conform to the requirements of the Contract Documents; or
 - 26.01.05 If the CONTRACTOR shall fail for any reason to make payment called upon when due.
- 26.02 In the event of such termination for cause, the CONTRACTOR shall not be entitled to receive any payment hereunder and shall be further subject to any claim that the CITY may have against the CONTRACTOR under the provisions of this Agreement or as a matter of law.

27. TERMINATION FOR CONVENIENCE.

- 27.01 The performance of the work may be terminated at any time in whole or in part, by the CITY for its convenience. Any such termination shall be effected by delivery to the CONTRACTOR of a written notice specifying the extent to which performance of the work is terminated and the date upon which termination becomes effective. If, for whatever reason, this contract is terminated for cause which is later determined not to exist, the parties agree that the contract will be deemed to be terminated for convenience.
- 27.02 In the event of termination for convenience, there shall be an equitable reduction of the Payment Amount to reflect the work actually performed, subject to, however, any claim the CITY may have against the CONTRACTOR under other provisions of this Agreement. Costs incurred after the effective date of the notice of termination shall not be treated as reimbursable costs unless they relate to carrying out the unterminated portion or taking close-out measures.

28. COMPLETION AFTER ABANDONMENT OR TERMINATION.

- 28.01 In the event that the CONTRACTOR has abandoned the project or the CITY has terminated the contract for cause and where there is no performance bond provided or where there is a surety but such surety, within seven (7) calendar days after the notice demanding completion is sent, fails to commence the completion and diligent prosecution of the work in compliance with this Agreement, then the CITY may AT ITS OPTION provide for completion of the work in either of the following elective manners:
 - 28.01.01 The CITY may employ such force of men and use such machinery, equipment, tools, materials, and supplies as said CITY may deem necessary to complete the work and charge the expense of such labor, machinery, equipment, tools, materials, and supplies to said CONTRACTOR, and expense so charged shall be deducted and paid by the CITY out of such monies as may be due, or that may thereafter at any time become due to the CONTRACTOR under and by virtue of this Agreement. In case such expense is less than the sum which would have been payable under this contract, if the same had been completed by the CONTRACTOR, then said CONTRACTOR and/or its surety hereby waives any and all privileges, rights, and claims to receive the difference. In case such expense is greater than the sum which would have been payable under this contract, if the same had been completed by said CONTRACTOR, then the CONTRACTOR and/or its surety shall, within seven (7) calendar days, pay the amount of such excess to the CITY.
 - 28.01.02 The CITY, under sealed bids, after notice published as required by law at least twice in a newspaper having general circulation in the CITY of the work, may let the contract for the completion of the work under substantially the same terms and conditions which are provided in this Agreement. In case any increase in cost to the CITY under the new contract as compared to what would have been the cost under this contract, such increase shall be

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charged to the CONTRACTOR and the surety shall be and remain bound therefor. However, should the cost to complete any such new contract prove to be less than what would have been the cost to complete under this contract, the CONTRACTOR and/or its Surety hereby waives any and all privileges, rights and claims to such excess.

28.02 In the event of abandonment by the CONTRACTOR, the CONTRACTOR shall assign to the CITY, in the manner and to the extent directed by the CITY, all of the right, title, and interest of the CONTRACTOR in and to any and all materials located on the property and any subcontracts for work to be performed on the property; in which case the CITY shall have the right to settle or pay all claims arising out of the termination of such orders and subcontracts.

29. DAMAGES.

29.01 Without prejudice to any other legal or equitable right or remedy that the CITY would otherwise possess hereunder or as a matter of law, the CITY upon giving the CONTRACTOR five (5) days' prior written notice shall be entitled to damages for breach of contract, upon but not limited to the following occurrences:

29.01.01 If the CONTRACTOR shall fail to remedy any default after written notice thereof from the CITY as the CITY shall direct; or

29.01.02 If the CONTRACTOR shall fail for any reason to make payments called upon when due; or

29.01.03 If the CONTRACTOR commits a default under any of the terms, provisions, conditions or covenants contained in this Agreement.

30. INVALIDITY.

If any provision of this Agreement shall be held to be invalid, illegal or unenforceable by a court or other tribunal of competent jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The parties shall use their best efforts to replace the respective provisions or provisions of this Agreement with the legal terms and conditions approximating the original intent of the parties.

31. ENTIRE AGREEMENT.

It is understood that this Agreement contains the entire agreement between the parties and supersedes any and all prior agreements, arrangements or understandings between the parties relating to the subject matter. There are no oral understandings, statements, promises or inducements contrary to the terms of this Agreement. This Agreement cannot be changed or terminated orally. No verbal agreement or conversation with any officer, agent, representative or employee of the CITY either before or after the execution of this Agreement, shall affect or modify any of the terms or obligations hereunder.

32. LITIGATION COSTS.

In the event of litigation, the CONTRACTOR agrees to pay and shall pay all of the attorneys' fees, court costs and other litigation costs of the CITY.

33. TEXAS LAW.

This Agreement has been made under and shall be governed by the laws of the State of Texas.

34. PLACE OF PERFORMANCE.

The place of making and the place of performance for all purposes shall be Baytown, Harris County, Texas.

35. WAIVER.

Failure of any party, at any time, to enforce a provision of this Agreement shall in no way constitute a waiver of that provision, nor in any way affect the validity of this Agreement or part hereof or the right of the CITY thereafter to enforce each and every provision hereof. No term of this Agreement shall be deemed waived or breach excused unless the waiver shall be in writing and signed by the party claimed to have waived the same. Furthermore, any

consent to or waiver of a breach will not constitute consent to or waiver of or excuse of any other different or subsequent breach.

36. HEADINGS.

The article headings are used in this Agreement for convenience and reference purposes only and are not intended to define, limit or describe the scope or intent of any provision of this Agreement and shall have no meaning or effect upon its interpretation.

37. GENDER AND NUMBER.

Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, and vice versa, unless context requires otherwise.

38. CONSTRUCTION OF AGREEMENT.

The parties agree that this Agreement shall not be construed in favor of or against any party on the basis that the party did or did not author this Agreement.

39. AUTHORITY TO ENTER CONTRACT.

Each party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each party has been properly authorized and empowered to enter into this Agreement. The persons executing this Agreement hereby represent that they have authorization to sign on behalf of their respective corporations and/or business entities.

40. AGREEMENT READ.

The parties acknowledge that they have read, understand and intend to be bound by the terms and conditions of this Agreement.

41. ASSIGNMENT.

CONTRACTOR may not assign or otherwise transfer this Agreement or any rights or obligations hereunder without the prior written consent of the CITY.

58. SUCCESSORS AND ASSIGNS.

This Agreement shall inure to the benefit of and be binding upon the CONTRACTOR and its successors and assigns.

59. MULTIPLE ORIGINALS.

It is understood and agreed that this Agreement may be executed in a number of identical counterparts each of which shall be deemed an original for all purposes.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in multiple copies, each of which shall be deemed to be an original, but all of which shall constitute but one and the same Agreement on the 2nd day of September, 2008, the date of execution by the City Manager of the City of Baytown.

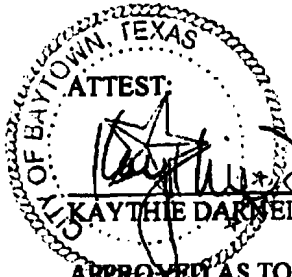
J.T.B. SERVICES, INC.

Cameron R. Brown VP
(Signature)

Cameron R Brown VP
(Printed Name)

VP
(Title)

CITY OF BAYTOWN



Garrison C. Brumbaek
GARRISON C. BRUMBAEK, City Manager

APPROVED AS TO FORM:

Ignacio Ramirez, Sr.
IGNACIO RAMIREZ, SR., City Attorney

STATE OF TEXAS §
COUNTY OF HARRIS §

BEFORE ME, Cameron Brown, the undersigned notary public, on this day personally appeared VP of J.T.B Services, Inc., on behalf of such corporation,

- known to me;
- proved to me on the oath of _____; or
- through his/her current _____ {description of identification card or other document issued by the federal government or any state government that contains the photograph and signature of the acknowledging person}

(check one)

to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed that instrument for the purposes and consideration therein expressed.

Given under my hand and seal of office this 3 day of Sept, 2008.

Bee Leal
Notary Public in and for the State of Texas

My commission expires: 10-24-2009

