

SECTION IV  
STANDARD FORM OF AGREEMENT

As Adopted By  
THE TEXAS SECTION OF  
THE AMERICAN SOCIETY OF CIVIL ENGINEERS

STATE OF TEXAS  
COUNTY OF HARRIS

THIS AGREEMENT, made and entered into this \_\_\_\_ day of \_\_\_\_\_, A.D., 20\_\_, by and between **CITY OF SEABROOK**, of the City of **SEABROOK**, of the State of Texas, acting through their \_\_\_\_\_, thereunto duly authorized so to do, Party of the First Part, hereinafter termed OWNER, and Viking Painting LLC of the City of Omaha, and State of Nebraska, Party of the Second Part, hereinafter termed CONTRACTOR.

WITNESSETH: That for and in consideration of the payments and agreements hereinafter mentioned, to be made and performed by the Party of the First Part (OWNER), and under the conditions expressed in the bond bearing even date herewith, the said Party of the Second Part (CONTRACTOR), hereby agrees with the said Party of the First part (OWNER) to commence and complete the construction of certain improvements described as follows:

Furnish all material and labor for **Rehabilitation of the Friendship Park Elevated Water Storage Tank located at 3511 Park Dr., Seabrook, Texas 77586.**

In accordance with the base bid and all extra work in connection therewith, under the terms as stated in the General Conditions of the Agreement and at his own proper cost and expense to furnish all the materials, supplies, machinery, equipment, tools, superintendence, labor, insurance, and other accessories and services necessary to complete the said construction in accordance with the conditions and prices stated in the Proposal attached hereto, and in accordance with the Notice to Contractors, General and Special Conditions of Agreement, Plans and other drawings and printed or written explanatory matter thereof, and the Specifications and addenda therefore, as prepared by Dunham Engineering, Inc., 6102 Imperial Loop Drive, College Station, Texas 77845, (979) 690-6555 herein entitled the ENGINEER, each of which has been identified by the CONTRACTOR and the ENGINEER, together with the CONTRACTOR'S written Proposal, the General Conditions of the Agreement, and the Performance and Payment Bonds hereto attached; all of which are made a part hereof and collectively evidence and constitute the entire contract.

The CONTRACTOR hereby agrees to commence work within ten (10) days after the date written notice to do so shall have been given to him, and to **substantially complete the same within (120) calendar days** after the date of the written notice to commence work, subject to the extensions of time as are provided by the General Conditions of the contract.

OWNER and CONTRACTOR recognize that time is of the essence and that OWNER will suffer financial loss if the work contemplated in the Project is not completed within the time specified plus any extensions allowed in change orders granted pursuant to the General Conditions. OWNER and CONTRACTOR recognize the delays, expenses and difficulties involved in proving the actual loss suffered by OWNER if the work to be completed in the Project is not completed on time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty), CONTRACTOR shall pay OWNER Two Hundred Fifty Dollars (\$250.00) per calendar day for each day that expires after the time specified herein for completion of the work.

IN WITNESS THEREOF, the parties to these presents have executed this Agreement in the year and day first above written.

Party, First Part (OWNER)

By: \_\_\_\_\_  
Signature  
\_\_\_\_\_  
Printed Name  
\_\_\_\_\_  
Title

Attest: \_\_\_\_\_  
Signature  
\_\_\_\_\_  
Printed Name  
\_\_\_\_\_  
Title

Party, Second Part (CONTRACTOR)

*RORY SUDBECK*  
By: \_\_\_\_\_  
Signature  
RORY SUDBECK  
\_\_\_\_\_  
Printed Name  
Rory Sudbeck  
\_\_\_\_\_  
Title

*Serena Stach*  
Attest: \_\_\_\_\_  
Signature  
Serena Stach  
\_\_\_\_\_  
Printed Name  
Secretary  
\_\_\_\_\_  
Title

**ADDENDUM**  
**TO THE GENERAL CONDITIONS AND SPECIAL CONDITIONS OF**  
**THE 2020 WATER TANKS REHABILITATION PROJECT,**  
**CITY OF SEABROOK, TEXAS**

This Addendum is made this \_\_\_\_\_ day of \_\_\_\_\_, 2020, and is incorporated into and will be deemed to amend and supplement the Specifications & Contract Documents for Water Tanks Rehabilitation Project, Seabrook, Texas (Contract Documents) in relation to Section IV, "Bidder's Proposal", Section VI, "General Conditions" and Section VII, "Special Conditions" between the City of Seabrook, Texas, (the "City", "Owner" or "Party of the First Part") and Viking Painting LLC (the "Contractor" or "Party of the Second Part") with effective date contemporaneous with the execution of Section IV Standard Form of Agreement ("Contract"). This Addendum shall be made a part of the Contract Documents," Bidder's Proposal", "General Conditions" and "Special Conditions", as more specifically provided hereafter and shall control in case of conflict.

The City and Contractor agree as follows in relation to modifications of the "General Conditions" and "Special Conditions":

A. This Addendum is an amendment to the "General Conditions" and "Special Conditions" contained in the Contract Documents and amends and/or replaces those provisions reflected hereafter. [Additions are intended to be denoted by underlined, specific deletions by strike out, and/or reference to deletion by entirety of entire provision, article or paragraph].

**SECTION III. STANDARD FORM OF AGREEMENT**

After paragraph stating: "WITNESSETH: That for and in consideration of the payments and agreements hereinafter mentioned, to be made and performed by the Party of the First Part (OWNER), and under the conditions expressed in the bond bearing even date herewith, the said Party of the Second Part (CONTRACTOR), hereby agrees with the said Party of the First part (OWNER) to commence and complete the construction of certain improvements described as follows:

Furnish all material and labor for **Rehabilitation of the Friendship Park Elevated Water Storage Tank located at 3511 Park Dr., Seabrook, Texas 77586."**

[Add the following new paragraph confirming payment]

**It is agreed, stipulated and confirmed that the Total Base Proposal submitted by Bidder/Contractor to City is One Hundred Fourteen Thousand Three Hundred Dollars (\$114,300) and Contractor agrees to perform the work and City**

**agrees to pay Contractor the total of such sum for the completed and accepted work as set forth and adjusted in accordance with the terms of the Contract Documents and this Addendum.**

## SECTION VI. GENERAL CONDITIONS

### ARTICLE 3—DOCUMENTS: INTENT, REQUIREMENTS, REUSE

#### 3.03. *Reporting and Resolving Discrepancies*

[Page 9, Add New Subparagraph]

##### 3.03 B. 1.

- c. If conflicting provisions of the Contract Documents call for two different levels of performance by the Contractor, the provision requiring the most stringent level will take precedence.

### ARTICLE 5—AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS

[Page 12 Deletion]

5.01 B. This paragraph is stricken/deleted in its entirety.

~~Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which permanent improvements are to be made and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.~~

[Page 18, Deletion]

#### 5.06. *Hazardous Environmental Conditions at Site*

[Page 18, Delete subparagraph 5.06 I. in its entirety].

~~To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition (1) was not shown or indicated in the Drawings, Specifications,~~

~~or other Contract Documents, identified as Technical Data entitled to limited reliance pursuant to Paragraph 5.06.B, or identified in the Contract Documents to be included within the scope of the Work, and (2) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.H shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.~~

## **ARTICLE 6—BONDS AND INSURANCE**

### *6.02 Insurance—General Provisions*

[Pages 19, Revisions/Deletions Denoted by Strike Out]

A. ~~Owner and Contractor shall obtain and maintain insurance as required in this Article and in the Supplementary Conditions.~~

B. All insurance required by the Contract to be purchased and maintained by ~~Owner or Contractor~~ shall be obtained from insurance companies that are duly licensed or authorized, in the state or jurisdiction in which the Project is located, to issue insurance policies for the required limits and coverages. Unless a different standard is indicated in the Supplementary Conditions, all companies that provide insurance policies required under this Contract shall have an A.M. Best rating of A-VII or better.

D. [Delete this subparagraph in its entirety]

~~Owner shall deliver to Contractor, with copies to each named insured and additional insured (as identified in this Article, the Supplementary Conditions, or elsewhere in the Contract), certificates of insurance establishing that Owner has obtained and is maintaining the policies, coverages, and endorsements required of Owner by the Contract (if any).~~

E. [Revision/Deletions Denoted by Strike Out]

~~Failure of Owner or Contractor to demand such certificates or other evidence of the other party's full compliance with these insurance requirements, or failure of Owner or Contractor to identify a deficiency in compliance from the evidence provided, shall not be construed as a waiver of the other party's obligation to obtain and maintain such insurance.~~

### *6.06 Waiver of Rights*

[Page 25, Deletions denoted by Strike Out]

6.06 C. ~~Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to in Paragraph 6.06.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against Contractor, Subcontractors, or Engineer, or the officers, directors, members, partners, employees, agents, consultants, or subcontractors of each and any of them.~~

## **ARTICLE 7—CONTRACTOR’S RESPONSIBILITIES**

### *7.07 Patent Fees and Royalties*

[Page 30, Deletions denoted by Strike Out]

~~7.07 B. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, and its officers, directors, members, partners, employees, agents, consultants, and subcontractors from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device specified in the Contract Documents, but not identified as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.~~

## **ARTICLE 9—OWNER’S RESPONSIBILITIES**

[Page 39, Deletions Denoted by Strike Out]

### *9.02 Replacement of Engineer*

A. ~~Owner may at its discretion appoint an engineer to replace Engineer, provided Contractor makes no reasonable objection to the replacement engineer. The replacement engineer’s status under the Contract Documents shall be that of the former Engineer.~~

## **ARTICLE 14—TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK**

Page 51, Revisions/Deletions denoted by Strike Out

### *14.02 Tests, Inspections, and Approvals*

B. ~~Owner shall retain and pay for the services of an independent inspector, testing laboratory, or other qualified individual or entity to perform all inspections and tests expressly required by the Contract Documents to be furnished and paid for by Owner, which shall be subject to set off as part~~

of the "Work" as defined herein. ~~except that costs incurred in connection with tests or inspections of covered Work shall be governed by the provisions of Paragraph 14.05.~~

**ARTICLE 15—PAYMENTS TO CONTRACTOR; SET-OFFS; COMPLETION; CORRECTION PERIOD**

[Page 56, Revise as denoted]

D. *Payment Becomes Due:*

1. ~~Ten~~ 30 days after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended (subject to any Owner set-offs) will become due, and when due will be paid by Owner to Contractor.

**ARTICLE 18—MISCELLANEOUS**

[Page 63, Add New Provisions/Paragraphs beginning at Page 64, and to continue as necessary]

18.09 Prevailing Provisions

Notwithstanding anything in this Agreement/Contract Documents to the contrary, the City/Owner, a governmental entity, does not agree to indemnification/hold harmless; obtaining or maintaining insurance for Contractor or Engineer; binding arbitration; nor does it waive its right to a jury trial. This provision shall control over any other Agreement/Contract Documents, or other document to the contrary. This provision shall survive the expiration or earlier termination of this Agreement.

18.10. Survival

Any provision in the Contract Documents, by its plain meaning, is intended to survive the expiration or earlier termination of this Agreement including, but not limited to the Contractor indemnification provisions, and shall survive such expiration or earlier termination. If an ambiguity exists as to survival, the provision shall be deemed to survive.

18.11. Jurisdiction:

City and Contractor agree that any dispute under this Agreement shall be brought in a court of competent jurisdiction exclusively in Harris County, Texas,

and that this Agreement shall be governed by Texas law, except for the conflict of law provisions.

18.11. Prohibition Against Business with Iran, Sudan or Foreign Terrorists Organizations

Contractor warrants, covenants, and represents that Contractor is not engaged in business with Iran, Sudan, or any company identified on the list referenced in Section 2252.152, Texas Government Code.

18.12 Prohibition on Boycotting Israel.

Pursuant to Section 2270.002, Texas Government Code, City may not enter into a contract for goods or services unless the contract contains a written verification that the contractor: (1) does not boycott Israel; and (2) will not boycott Israel during the term of this Agreement. By executing the House Bill 89 Verification Form, attached hereto and incorporated herein for all purposes, Contractor verifies that Contractor does not boycott Israel or will not boycott Israel during the term of this Agreement.

18.13. Workman's Compensation

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

18.14. Special Notice to Contractor.

(Texas Statute Providing for Labor Classification of Wage Scale and Penalties.). Chapter 2258 of the Texas Government Code (the "Act") provides that any government subdivision shall ascertain the general prevailing rate of per diem wages in the locality in which the work is to be performed for each craft or type of workman or mechanic and shall specify in the call for bids and in the Contract the prevailing rate of per diem wages which shall be paid for each craft type of workman. This Act further provides that the Contractor shall forfeit, as a penalty, to the City, County, or State or other political subdivision, Sixty Dollars (\$60.00) per day for each laborer, workman or mechanic who is not paid the stipulated wage for the type of work performed by him set up in the wage scale. The City is authorized to withhold from the Contractor the amount of this penalty in any payment that might be claimed by the Contractor or subcontractor. The Act

makes the Contractor responsible for the acts of the subcontractor in this respect. The Act likewise requires that the Contractor and subcontractor keep an accurate record of the names and occupations of all persons employed by him and to show the actual per diem wages paid to each worker and these records are open to the inspection of the City. In addition, the Act provides that any Contractor or subcontractor or his representative who fails to keep such record or who refuses to allow the inspection of the records or who fails to comply with the Act insofar as payment of the prevailing wage scale is concerned is guilty of a misdemeanor, and upon conviction, shall be punished by a fine not exceeding Five Hundred Dollars (\$500), or by imprisonment in the County Jail not exceeding six (6) months, or by both fine and imprisonment. The City, through its representatives, will make every necessary investigation to determine whether or not the Act is complied with and in case of violation by the Contractor, or subcontractor, of the provisions of the Act, will take all necessary steps to enforce the penalties imposed by this law. This prevailing wage rate does not prohibit the payment of more than the rates stated.

#### 18.15 Default

The Contractor's failure to comply with any of these provisions is a breach of the contract by the Contractor which entitles the City/Owner to declare the contract void if the Contractor does not remedy the breach within ten (10) calendar days after receipt of the notice of breach from the City/Owner.

#### 18.16 Dispute Resolution Agreement

ANY CLAIM ARISING OUT OF OR RELATED TO THE CONTRACT DOCUMENTS SHALL, AFTER INITIAL DECISION BY ENGINEER AND/OR OWNER, OR THIRTY (30) DAYS AFTER ITS SUBMISSION OF CLAIM TO ENGINEER AND/OR OWNER, BE SUBJECT TO NEGOTIATION AS HEREINAFTER PROVIDED PRIOR TO MEDIATION, AND SHALL BE SUBJECT TO MEDIATION AS A CONDITION PRECEDENT TO THE INSTITUTION OF LEGAL OR EQUITABLE PROCEEDINGS BY EITHER PARTY (OTHER THAN INJUNCTIVE RELIEF).

THE PARTIES SHALL ENDEAVOR TO RESOLVE THEIR CLAIMS BY NEGOTIATIONS, AND IF THEY ARE UNABLE TO REACH A RESOLUTION WITHIN A REASONABLE PERIOD OF TIME, BY MEDIATION WHICH, UNLESS THE PARTIES MUTUALLY AGREE OTHERWISE, SHALL BE IN ACCORDANCE WITH THE TEXAS CIVIL PRACTICE AND REMEDIES CODE, CHAPTER 154. REQUEST FOR MEDIATION SHALL BE FILED IN WRITING WITH THE OTHER PARTY TO THE CONTRACT. MEDIATION SHALL PROCEED IN ADVANCE OF LEGAL OR EQUITABLE PROCEEDINGS (OTHER THAN INJUNCTIVE RELIEF) WHICH SHALL BE STAYED PENDING MEDIATION FOR A PERIOD OF SIXTY (60) DAYS FROM THE DATE OF

FILING, UNLESS STAYED FOR A LONGER PERIOD OF TIME BY AGREEMENT OF THE PARTIES OR A COURT ORDER.

THE PARTIES SHALL SHARE THE MEDIATOR'S FEE AND ANY FILING FEES EQUALLY. THE MEDIATION SHALL BE HELD IN THE PLACE WHERE THE PROJECT IS LOCATED, UNLESS ANOTHER LOCATION IS MUTUALLY AGREED UPON. AGREEMENTS REACHED IN MEDIATION SHALL BE ENFORCEABLE AS SETTLEMENT AGREEMENTS IN A COURT HAVING JURISDICTION THEREOF.

**SECTION VII. SPECIAL CONDITIONS**

*[Page 4, Add New Numbered Paragraph]*

20. PAYMENT AND PERFORMANCE BOND: No work shall commence, nor shall the Engineer give notice to proceed until the payment bond and performance bonds are approved in writing by Owner.

*[Page 4, Add New Numbered Paragraph]*

21. PERFORMANCE/VENUE: All provisions of the Charter and Ordinances of the City of Seabrook, together with all state and federal statutes and regulations relating to public improvements are referred and made a part of this Contract; and this Contract and all obligations created hereunder shall be consistent with the provisions thereof and performable exclusively in Harris County, Texas. It is expressly stipulated and agreed that venue and jurisdiction of any legal action in any way relating to this agreement shall be exclusively in Harris County, Texas.

*B. Except as amended herein, all other provisions of the Contract Documents, General and Special Conditions shall remain in full force and effect.*

IN WITNESS WHEREOF, the parties hereto have executed this Addendum in multiple copies, each of equal dignity, on this \_\_\_\_ day of \_\_\_\_\_, 2020.

[Execution Page Follows]

**Party, First Part (OWNER/CITY)**

By: \_\_\_\_\_  
 Signature  
**Thomas Kolupski**  
 Printed Name  
**Mayor**  
 Title

Attest: \_\_\_\_\_  
 Signature  
**Robin Lenio, TMRC**  
 Printed Name  
**City Secretary**  
 Title

**(SEAL)**

**Party, Second Part (CONTRACTOR)**

By: *RORY SUDBECK*  
 \_\_\_\_\_  
 Signature  
**RORY SUDBECK**  
 Printed Name  
 Rory Sudbeck  
 Title

Attest: *Serena Stach*  
 \_\_\_\_\_  
 Signature  
 Serena Stach  
 Printed Name  
 Secretary  
 Title

**(SEAL)**