

**TOWN OF ADDISON, TEXAS**

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING THE ASSIGNMENT AND CONSTRUCTION SERVICES AGREEMENT BETWEEN THE TOWN OF ADDISON AND UDR, INC., VPDEV 1 LLC AND VP WEST 1, LLC, IN THE AMOUNT OF \$187,956.24, FOR WORK AND SERVICES AS CONSTRUCTION MANAGER AND SUPERVISOR AND COORDINATOR ASSOCIATED WITH THE VITRUVIAN PARK PUBLIC INFRASTRUCTURE – BLOCK 500 A (PHASE VIII), AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT, AND PROVIDING AN EFFECTIVE DATE.**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS:**

**Section 1.** The Assignment and Construction Services Agreement between the Town of Addison and UDR, Inc., VPDEV 1, LLC and VP West 1, LLC, in the amount of \$187,956.24, for work and services as construction manager and supervisor and coordinator associated with the Vitruvian Park Public Infrastructure – Block 500 A (Phase VIII), a copy of which is attached to this Resolution as **Exhibit A**, is hereby approved. The City Manager is hereby authorized to execute the agreement.

**Section 2.** This Resolution shall take effect from and after its date of adoption.

**PASSED AND APPROVED** by the City Council of the Town of Addison, Texas this the 10<sup>th</sup> day of April, 2018.

\_\_\_\_\_  
Joe Chow, Mayor

ATTEST:

By: \_\_\_\_\_  
Christie Wilson, Interim City Secretary

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Brenda N. McDonald, City Attorney



# EXHIBIT A

STATE OF TEXAS

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## ASSIGNMENT AND CONSTRUCTION SERVICES AGREEMENT

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COUNTY OF DALLAS

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This Assignment and Construction Services Agreement (the "Agreement") is made and entered into this \_\_\_\_\_ day of April, 2018 by and between the Town of Addison, Texas (the "City"), UDR, Inc., a Maryland corporation ("UDR"), DCO Realty, Inc., a Delaware corporation, successor-in-interest to DCO Brookhaven Center LP ("DCO") (the City, UDR, and DCO are sometimes referred to together herein as the "parties" and individually as a "party").

### Recitals:

1. UDR, together with DCO Talisker LP, a Delaware limited partnership, DCO Garden Oaks LP, a Delaware limited partnership, DCO Glenwood Apartments LP, a Delaware limited partnership, DCO Clipper Pointe LP, a Delaware limited partnership, DCO Springhaven LP, a Delaware limited partnership, DCO Addison At Brookhaven LP, a Delaware limited partnership, Savoye LLC, a Delaware limited liability company, Savoye 2 LLC, a Delaware limited liability company, Fiori LLC, a Delaware limited liability company, VP West 1 LLC, a Delaware limited liability company, VPDEV 1 LLC, a Delaware limited liability company, VPDEV 2 LLC, a Delaware limited liability company, and DCO (collectively, the "Property Owners") are the sole owners of certain real property located in the City, which real property is described in Exhibit A to the Facilities Agreement (as the term "Facilities Agreement" is hereinafter defined (the "Property"). DCO is the owner of a portion of the Property, which portion is described in Exhibit A attached hereto and incorporated herein (the "Phase Five Property").

2. The Property is in the process of redevelopment by UDR and the other Property Owners (including DCO) (to the extent of their respective ownership of the Property), which redevelopment consists of a mixed use development with urban residential, commercial, and retail uses organized within a system of pedestrian-friendly streets and trails, integrating therein an existing creek, surrounding green space, and open space for recreation opportunities, along with water features, passive recreation amenities and landscapes intended to provide enhanced aesthetics (the "Project"). The redevelopment of the Property, as reflected in the Facilities Agreement (as hereinafter defined) is divided into phases, as reflected in Exhibit E of the Facilities Agreement. UDR and DCO are in the process of the development and construction of the Block 500 A ("Phase VIII") as defined and described in the Facilities Agreement (as "Facilities Agreement" is hereafter defined).

3. In connection with the redevelopment of the Property, on March 11, 2008, the City, UDR and the Property Owners entered into an agreement entitled "Master Facilities Agreement," as subsequently amended on June 26, 2013 (the "Facilities Agreement") which provides in part for funding by the City to pay for a portion of the cost to design and construct certain public facilities and improvements as described in the Facilities Agreement and referred to therein as the "Public Infrastructure Improvements" (and so called herein). In the Facilities Agreement, the Public Infrastructure Improvements are separated by City funding (identified in the Facilities Agreement as Funding No. 2 (and so called herein)) and by phases (e.g., Phase I Infrastructure,

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Phase II Infrastructure) as reflected in Exhibit C-2 thereof, and further separated by type of improvement as reflected in Exhibit D to the Facilities Agreement.

4. The Facilities Agreement recognizes the construction by UDR and the other Property Owners (including DCO) of certain private facilities and improvements within the Property and the need to coordinate the construction of private facilities and improvements with the construction of public facilities and improvements. In order to accommodate such coordination, the Facilities Agreement provides that, following the award and execution by the City of a contract to construct Public Infrastructure Improvements, the City will assign its rights, powers, duties, and obligations under the applicable construction contract to UDR, and UDR will then act and serve as the owner and construction manager under the applicable construction contract for all purposes.

5. The Public Infrastructure Improvements identified in the Facilities Agreement include those facilities and improvements described in Exhibit B attached hereto and incorporated herein (for purposes of this Agreement, the "Current Public Improvements"). The Current Public Improvements are part of the Phase VIII Infrastructure as shown on Exhibit C-2 to the Facilities Agreement and are included within that area identified as Phase VIII in Exhibit E to the Facilities Agreement. Further, the Current Public Improvements constitute Water, Sanitary Sewer, Storm Drain Improvement associated with Brookhaven Club Drive, Ponte Avenue and Vitruvian Park to be known as the Vitruvian Park Public Infrastructure – Block 500 A as described in Exhibit D to the Facilities Agreement. The Current Public Improvements are to be constructed on or immediately adjacent to the Phase One Property.

6. In accordance with applicable law, the City has selected Flow-Line Construction, Inc. (the "Contractor") to construct the Current Public Improvements and has entered into a contract with the Contractor dated \_\_\_\_\_ to perform such construction (the "Current Public Improvements Construction Contract" or "Construction Contract") for Two Million Three Hundred Forty Nine Thousand Four Hundred Fifty Three Dollars and No Cents (\$2,349,453.00) (a true and correct copy of the Construction Contract is on file in the office of the Public Works Director of the City). Engineering services to design the Current Public Improvements and to prepare plans and specifications for the construction of the Current Public Improvements have been provided by Icon Consulting Engineers, Inc. ("Engineer"). In accordance with the Facilities Agreement, the City by this Agreement desires to assign to UDR the City's rights, powers, duties and obligations under the Construction Contract, and UDR desires to accept such rights, powers, duties and obligations and to serve as the owner and construction manager for all purposes under and with respect to the Construction Contract.

**NOW, THEREFORE**, for and in consideration of the above and foregoing premises, and other good and valuable consideration, the Town of Addison, Texas and UDR, Inc., and Phase V Owners do hereby contract and agree as follows:

**Section 1. Incorporation of Recitals.** The above and foregoing Recitals are true and correct and are incorporated herein for all purposes.

**Section 2. Funding.** The Current Public Improvements described in Exhibit B attached hereto are a part of the Phase VIII Infrastructure as generally described on Exhibit C-2 to the Facilities Agreement and as provided on the concept plan, plans, and specifications for Phase



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VIII as reviewed and approved by the City on January 22, 2018 incorporated herein for all purposes, constitute Water, Wastewater, Drainage and Streetscape Infrastructure (within the Phase VIII Infrastructure) as shown on the said Exhibit C-2, and further constitute Water Improvements, Wastewater Improvements, and Drainage Improvements as shown on Exhibit D to the Facilities Agreement. The Facilities Agreement provides that the City's funding for the design and construction of the Public Infrastructure Improvements will be allocated as described in Exhibit D to the Facilities Agreement and will not exceed the amounts set forth in Exhibit C-2 to the Facilities Agreement. The Facilities Agreement further provides that, with one exception in Section 7.C. of the Facilities Agreement not applicable to this Agreement, if the design and construction costs for any Public Infrastructure Improvements exceeds the projected total costs for the relevant Public Infrastructure Improvements set forth in Exhibit C-2 to the Facilities Agreement, UDR and the Property Owners (including DCO) will pay the City the difference between contracted costs and projected total costs prior to the execution of a construction contract by the City related to such Public Infrastructure Improvements. With respect to the Current Public Improvements, it is anticipated that the design and construction costs for the Current Public Improvements (exclusive of any change orders) will not exceed the projected total costs for the relevant Public Infrastructure Improvements set forth in Exhibit C-2 to the Facilities Agreement.

A description of the anticipated total costs to design and construct the Current Public Improvements, as of the date of this Agreement, is set forth in Exhibit C attached to and incorporated into this Agreement. Upon final completion of the construction of the Current Public Improvements, the City shall prepare revisions to Exhibit C which reflects the actual costs incurred and paid by the City to design and construct the Current Public Improvements (the "True-Up Exhibit C"). The City shall, upon finalizing the True-Up Exhibit C, provide a copy of the same to UDR, and the True-Up Exhibit C shall serve as the final determination of the actual costs incurred by the City to design and construct the Current Public Improvements. For purposes of subsequent design and construction of other Public Infrastructure Improvements, the costs set forth in the True-Up Exhibit C shall be used, in connection with the design and construction of other and additional Public Infrastructure Improvements, in determining whether the maximum amounts set forth in Exhibit C-2 and in Exhibit D have been met.

With respect to any change order in connection with the Construction Contract, to the extent a change order is necessary for the successful completion of the Work and construction as identified and described in the Construction Contract, the cost for such change order will be paid from funds applicable thereto (as set forth in and in accordance with the Facilities Agreement) which may then be available, if any; if such funds are not available, UDR shall pay the change order.

**Section 3. Assignment.** The City does hereby assign and transfer all of its rights, powers, duties and obligations under the Current Public Improvements Construction Contract to UDR. UDR shall act and serve as the owner and construction manager under the Construction Contract for all purposes, including, observation, supervision and coordination of all construction work.

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## Section 4. Construction Management.

### A. Construction Manager; Inspection of Work.

1. In connection with the performance of the Work and the construction of the Current Public Improvements, UDR shall perform construction management services and shall coordinate the construction of the Current Public Improvements. In connection with such services, UDR shall comply with and abide by the terms, conditions, and provisions set forth in Exhibit D attached hereto and incorporated herein (and references in the said Exhibit D shall mean and refer to UDR and the Construction Manager designated by UDR as described below).

UDR shall consult with and obtain approval from the City regarding the designation of an individual to serve as the construction manager (the "Construction Manager") for the Current Public Improvements. UDR and DCO shall be fully responsible for the work and services of a construction manager, and for the Construction Manager and all of the Construction Manager's work and activities. Following such designation UDR shall promptly provide to the City the name of the person so designated and the person's contact information, and shall promptly update such contact information in the event of any change.

The person designated by UDR as the Construction Manager shall have significant experience in managing construction projects of the type that is the subject of the Current Public Improvements Construction Contract. The Construction Manager shall, and UDR shall cause the Construction Manager to, meet and communicate with the City, including the City's Director of Public Works and the Director of Parks, on a regular basis. Among other things, the Construction Manager shall inform the City Manager of all emergencies and the occurrence of any unforeseen circumstances relating to the Construction Contract.

In the event the performance of the Construction Manager is reasonably determined by the City Manager to be unsatisfactory to the City Manager as evidenced by written notice to UDR from the City Manager, UDR shall, if the Construction Manager has not cured the unsatisfactory performance as set forth in the notice within a reasonable period of time following written receipt of such request (but in any event not to exceed 30 days, but such time period may be extended if necessary in order to comply with any applicable federal, state, or local law or regulation), remove the current Construction Manager and appoint a replacement in accordance with the provisions of this subsection within a reasonable time period thereafter (but not to exceed 15 days).

2. UDR shall use its best efforts to ensure that the work as described and set forth in the Current Public Improvements Construction Contract to be performed under the Construction Contract is (and including the construction of the Current Public Improvements) (the "Work") is completed in a timely manner and in accordance with the Construction Contract documents, plans, standards, specifications, and other materials and information related thereto. UDR shall coordinate the construction as a construction manager, including confirming that the Engineer has inspected the Work of the Contractor, to guard the City against defects and deficiencies in the Work without assuming responsibility for the means and methods used by the Contractor, and in accordance therewith UDR shall promptly notify the City of any defects or deficiencies in the Work.



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3. In connection with its construction management services, UDR will facilitate weekly meetings with designated City staff members regarding the planning and construction of the Current Public Improvements, which meetings shall occur more often as may be requested by the City. In connection with or related to the Work, UDR shall coordinate testing by any geotechnical engineering firm which has been selected by the City in accordance with the Facilities Agreement upon written notice thereof to UDR from the City.

B. Contractor Claims. Except as provided in paragraph C of this Section 4, UDR and DCO shall fully resolve and completely pay or settle, by litigation or otherwise, any claims of the Contractor or any subcontractor arising out of the Construction Contract, without involving the City.

C. Payment to Contractor; City's Wrongful Failure to Make Payments.

1. UDR shall review all invoices or pay or draw requests received from the Contractor and forward the same to the City for payment with such supporting documentation as the City may require. Except as provided in this Agreement or in the Facilities Agreement, all payments for Work performed under the Construction Contract shall be paid by the City and made payable to the Contractor and shall be delivered to UDR for forwarding to the Contractor; provided, however, that the City shall not be obligated to make a payment under any such invoice or pay estimate unless UDR has provided to the City a certification regarding the invoice or pay estimate and UDR has reviewed and approved the same.

UDR's certification shall be by affidavit sworn to by the appropriate official of UDR authorized to submit the same, and shall certify that the estimate of Work completed for the relevant period is true and correct to the best of UDR's information and belief, has been measured and verified in accordance with the Construction Contract documents, and that all Construction Contract preconditions to payment have been met. If not previously provided to the City, copies of all material testing results (if applicable) shall be furnished with the certification.

With respect to each invoice or pay or draw request from the Contractor or any other contractor or material supplier, the City may withhold from the payment thereof the amount of retainage which is to be withheld from each payment to the Contractor under the Construction Contract and any other amounts in accordance with or as set forth in the Construction Contract.

Subject to the terms of the Construction Contract, retainage under the Construction Contract (together with any change orders thereto) will be made by the City to UDR for forwarding to the Contractor upon the final acceptance by the City of the Work performed by the Contractor.

2. All change orders with respect to the Construction Contract and the construction of the Current Public Improvements shall be processed and approved by the City in accordance with the City's procedure for the review and approval thereof. In the event of a change order which increases the cost of construction work for the construction of the Current Public Improvements, there shall be withheld from each payment of an invoice, pay request or draw in connection with that change order the retainage required to be withheld under the Construction Contract, and if such payment is made by UDR, UDR shall promptly transfer such retainage to the City.

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3. In order to secure the obligations of UDR to make payments under the Construction Contract (if any such payment is or may be required), UDR shall provide to the City, prior to the issuance of a notice to commence construction under the Construction Contract, UDR's guarantee of UDR's payment obligations in a form acceptable to the City.

4. In the event that claims from the Contractor under the Construction Contract result from the wrongful failure by the City to make construction payments in accordance with the terms of this Agreement, UDR may seek reimbursement in accordance with this paragraph C.4. of this Section. In the event UDR intends to seek reimbursement from the City for the expense incurred by UDR in resolving any claim caused directly by the City's wrongful failure to make such construction payments, UDR shall notify the City in writing of the claim and any proposed settlement or resolution. The City reserves the right upon such notice, and at the City's sole election, to make an audit of those portions of the books, records, accounts and other data of UDR and of the Contractor relating to the claim and overall performance of the Current Public Improvements Construction Contract before approving payment of such claim.

D. Construction Management Fee. In connection with and for UDR's work and services as construction manager and supervisor and coordinator of the construction of the Current Public Improvements, the City shall pay to UDR an amount equivalent to eight percent (8%) of the total construction costs for the Current Public Improvements as set forth in the Construction Contract (and based upon the cost (\$2,349,453.00) of the Construction Contract as set forth above, such amount would be One Hundred Eighty Seven Thousand Nine Hundred Fifty Six Dollars and Twenty Four Cents (\$187,956.24)). Such amount shall be paid within thirty (30) days following the City's receipt of an invoice from UDR requesting such amount. Each such invoice from UDR shall not exceed an amount determined by multiplying (i) the amount of any unpaid invoice or pay or draw request properly submitted by the Contractor pursuant to the Construction Contract (less the amount of any retainage under the Construction Contract) for payment for the then current month and due and owing by the City, times (ii) eight percent (8%) (the intent being that the payment to UDR for UDR's construction management services shall parallel payment to the Contractor for the Contractor's Work and services under the Construction Contract). In accordance with the Facilities Agreement, the amounts paid to UDR pursuant to this paragraph shall be paid solely from Funding No. 2; and provided, however, that in accordance with the Facilities Agreement, UDR shall be entitled to such payment if and only if the costs to design and construct the Current Public Improvements (including the costs of any change orders) do not exceed the amount to be paid for the same as allocated and set forth in Exhibits C-2, and D of the Facilities Agreement.

If following the completion of construction of the Current Public Improvements for which UDR received a management fee, it is determined that UDR was not entitled to the management fee, UDR shall reimburse to the City the management fee to the extent funding was not available to pay the same as described herein.



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## Section 5. Insurance.

A. At all times in connection with this Agreement, UDR and DCO shall purchase and maintain in a company or companies lawfully authorized to do business in Texas such insurance coverages as set forth below:

1. Commercial General Liability insurance at minimum combined single limits of \$2,000,000 per-occurrence and \$5,000,000 general aggregate for bodily injury and property damage, which coverage shall include products/completed operations (\$2,000,000 products/completed operations aggregate), and XCU (Explosion, Collapse, Underground) hazards. Coverage for products/completed operations must be maintained for at least two (2) years after the construction work has been completed. Coverage must be amended to provide for an each-project aggregate limit of insurance. An alternative would be to have separate limits for all lines of General Liability coverage for each project.

2. Employers Liability coverage at minimum limits of \$1,000,00 each occurrence each accident / \$1,000,000 by disease each occurrence / \$1,000,000 by disease aggregate.

3. Builders Risk coverage as follows:

- (a) "All Risk" Builders Risk insurance, including collapse coverage, is required on a completed value form if the contract is for the construction of a structure or building.
- (b) The Builders Risk policy must provide transit and off-premises coverage if the contract with the builder makes the Town of Addison responsible for materials. The deductible shall not exceed \$5,000.

C. UDR and DCO are nonsubscribers under the Texas Workers Compensation Act. Therefore UDR and DCO will maintain coverage and/or adequate collateral to fund payment of claims arising out of workplace injuries of UDR and DCO employees. UDR and DCO shall provide proof of same in form and content acceptable to the City.

D. With reference to the foregoing insurance requirement, UDR and DCO shall specifically endorse applicable insurance policies as follows:

- 1. The Town of Addison, Texas shall be named as an additional insured with respect to General Liability.
- 2. All liability policies shall contain no cross liability exclusions or insured versus insured restrictions applicable to the claims of the Town of Addison.
- 3. A waiver of subrogation in favor of the Town of Addison, Texas, its officers, employees, and agents shall be contained in each policy required herein.
- 4. All insurance policies shall be endorsed to require the insurer to immediately notify the Town of Addison, Texas of any material change in the insurance coverage.

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5. All insurance policies shall be endorsed to the effect that the Town of Addison, Texas will receive at least sixty (60) days' notice prior to cancellation or non-renewal of the insurance.

6. All insurance policies, which name the Town of Addison, Texas as an additional insured, must be endorsed to read as primary coverage regardless of the application of other insurance.

7. Required limits may be satisfied by any combination of primary and umbrella liability insurances.

8. Developer may maintain reasonable and customary deductibles. Developer shall give notice of any deductible or retention obligations in excess of \$25,000.00.

9. Insurance must be purchased from insurers that are financially acceptable to the City and licensed to do business in the State of Texas.

All insurance must be written on forms filed with and approved by the Texas Department of Insurance. Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent, delivered to UDR and DCO and the City prior to the commencement of any Work under the Construction Contract, and shall:

1. List each insurance coverage described and required herein. Such certificates will also include a copy of the endorsements necessary to meet the requirements and instructions contained herein.

2. Specifically set forth the notice-of-cancellation or termination provisions to the Town of Addison.

Upon request, UDR and DCO shall furnish the Town of Addison with complete copies of all insurance policies certified to be true and correct by the insurance carrier.

**SECTION 6. UDR'S AND DCO INDEMNITY OBLIGATION.** UDR AND DCO (UDR AND DCO BEING REFERRED TO TOGETHER IN THIS SECTION 6 AS THE "DEVELOPER") COVENANT AND AGREE TO **FULLY DEFEND, INDEMNIFY AND HOLD HARMLESS** THE TOWN OF ADDISON, TEXAS AND THE ELECTED OFFICIALS, THE OFFICERS, EMPLOYEES, REPRESENTATIVES, AND VOLUNTEERS OF THE TOWN OF ADDISON, TEXAS, INDIVIDUALLY OR COLLECTIVELY, IN BOTH THEIR OFFICIAL AND PRIVATE CAPACITIES (THE ELECTED OFFICIALS, THE OFFICERS, EMPLOYEES, REPRESENTATIVES, AND VOLUNTEERS OF THE TOWN OF ADDISON, TEXAS EACH BEING AN "ADDISON PERSON" AND COLLECTIVELY THE "ADDISON PERSONS"), FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, HARM, DAMAGES, LOSSES, JUDGMENTS, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY, AND SUITS, OF ANY KIND AND NATURE WHATSOEVER MADE UPON ANY ADDISON PERSON, WHETHER DIRECTLY OR INDIRECTLY, (THE "CLAIMS"), THAT ARISE OUT OF, RESULT FROM, OR RELATE TO: (1) ANY ACT OR OMISSION, WORK OR SERVICES OF DEVELOPER OR ANY OWNER, OFFICER, DIRECTOR, MANAGER, EMPLOYEE, AGENT, REPRESENTATIVE, CONSULTANT,

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CONTRACTOR, SUBCONTRACTOR, LICENSEE, OR CONCESSIONAIRE OF DEVELOPER, OR ANY OTHER PERSON OR ENTITY FOR WHOM DEVELOPER IS LEGALLY RESPONSIBLE, AND THEIR RESPECTIVE OWNERS, OFFICERS, DIRECTORS, MANAGERS, EMPLOYEES, AGENTS, REPRESENTATIVES, CONSULTANTS, CONTRACTORS, SUBCONTRACTORS, LICENSEES, AND CONCESSIONAIRE (COLLECTIVELY, THE "DEVELOPER PERSONS") AS THE OWNER AND CONSTRUCTION MANAGER UNDER THE CONSTRUCTION CONTRACT, (2) REPRESENTATIONS OR WARRANTIES BY DEVELOPER UNDER THIS AGREEMENT, AND/OR (3) ANY OTHER ACT OR OMISSION UNDER, IN CONNECTION WITH, OR IN PERFORMANCE OF THIS AGREEMENT OR OF THE CONSTRUCTION CONTRACT BY DEVELOPER OR BY ANY OF THE OTHER DEVELOPER PERSONS. SUCH DEFENSE, INDEMNITY AND HOLD HARMLESS SHALL AND DOES INCLUDE CLAIMS ALLEGED OR FOUND TO HAVE BEEN CAUSED, IN WHOLE OR IN PART, BY THE NEGLIGENCE OF ANY ADDISON PERSON OR BY CONDUCT OF AN ADDISON PERSON THAT GIVES RISE TO STRICT LIABILITY, BUT DOES NOT INCLUDE CLAIMS FOUND TO BE CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF AN ADDISON PERSON.

DEVELOPER SHALL PROMPTLY ADVISE THE CITY IN WRITING OF ANY CLAIM OR DEMAND AGAINST ANY ADDISON PERSON OR DEVELOPER RELATED TO OR ARISING OUT OF DEVELOPER'S ACTIVITIES UNDER THIS AGREEMENT OR THE CONSTRUCTION CONTRACT AND SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT DEVELOPER'S SOLE COST AND EXPENSE. THE ADDISON PERSONS SHALL HAVE THE RIGHT, AT THE ADDISON PERSONS' OPTION AND AT OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING DEVELOPER OF ANY OF ITS OBLIGATIONS HEREUNDER.

## Section 7. Default.

A. In the event of a default by UDR and/or DCO, the City shall have the right to terminate this Agreement by giving at least thirty (30) days written notice of such termination to UDR. A default of this Agreement shall constitute a default under the Facilities Agreement. For purposes hereof, a default means and includes any violation of or breach of any provision of this Agreement.

UDR and DCO shall have a period of not more than thirty (30) days from the time of UDR's receipt of notice of default and termination is delivered by the City within which to cure any default of this Agreement. If any such default remains uncured to the satisfaction of the City at the end of such thirty (30) day period, the City may immediately terminate this Agreement by giving written notice thereof to UDR. Notwithstanding the proceeding to the contrary, the City Manager may approve reasonable extensions to cure periods or deadlines for performance of any work by UDR and DCO.

In the event of termination, all finished or unfinished data, studies, reports and other items related to this Agreement and prepared by or in the possession of UDR or the Construction Manager shall be promptly delivered to the City, such items being the property of the City.

B. Insolvency. If at any time after the execution of this Agreement (i) any insolvency proceedings shall be instituted against UDR or DCO pursuant to any Federal or State law now or hereafter enacted, or any receiver or trustee shall be appointed for all or any portion of UDR or



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any of DCO's business or property for which this Agreement is a material part, or any execution or attachment shall issue against UDR or DCO or any of UDR's or DCO's business or property for which this Agreement is a material part, and any of such proceedings, process or appointment be not discharged, dismissed or otherwise adjudicated within sixty (60) days from the date of such filing, appointment or issuance or within such other time as provided by applicable law or as may be ordered by a court of competent jurisdiction; or (ii) UDR or DCO shall be adjudged insolvent, or UDR or DCO shall make an assignment for the benefit of creditors, or UDR or DCO shall file a petition or petitions for (or enters into) an arrangement for reorganization, composition or any other arrangement with UDR's or DCO's creditors under any Federal or State law now or hereafter enacted, or this Agreement shall pass to or devolve upon, by operation of law or otherwise, anyone other than UDR or DCO, and unless this Agreement is otherwise assumed and the obligations thereunder cured, the occurrence of any one of such contingencies shall be deemed to constitute and shall be construed as a repudiation by UDR or DCO of UDR's or DCO's rights and obligations hereunder and shall cause this Agreement *ipso facto* to be cancelled and terminated effective as soon as permitted by then applicable law without thereby releasing UDR or DCO; and upon such termination this Agreement shall not be treated as an asset of UDR's or DCO's estate.

**Section 8. Texas Law to Apply; Venue.** The validity of this Agreement and of any of its terms or provisions, as well as the rights and duties of the parties hereto, shall be governed by the laws of the State of Texas, without reference to its conflict of law provisions. Venue for any action or matter under this Agreement lies exclusively in Dallas County, Texas. This Agreement and all of its terms and conditions are subject to applicable federal, state, and local laws, ordinances, rules, regulations, and codes, including, without limitation, the Zoning Ordinance and the City Charter of the Town of Addison, Texas.

**Section 9. Independent Contractor.** Each of UDR and DCO is and shall at all times operate as an independent contractor and not as an agent of the City in connection with or during any performance of this Agreement, and nothing herein shall be construed to create a partnership, joint venture, joint enterprise, or agency relationship between the parties hereto, or to allow the City to exercise discretion or control over the manner in which UDR and DCO perform the work and services which are the subject matter of this Agreement; provided always however that the work and services to be provided by UDR and DCO shall be provided in a manner consistent with all applicable laws, standards and regulations governing the same. No personnel of UDR or DCO or of any contractor or UDR or DCO shall be deemed under any circumstances to be an agent or employee of the City, nor do such personnel have authority to bind the City by any representation, promise, contract or agreement. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever. Each party hereto represents that it is acting on its own behalf and is not acting as an agent for or on behalf of any third party.

**Section 10. Entire Agreement.** This Agreement represents the entire and integrated agreement between the City, UDR and DCO relative to the matters contained herein and supersedes all prior negotiations, representations and/or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the City, UDR and DCO. UDR and DCO shall be entitled to no other benefits than those specified herein.

**Section 11. Severability.** If any clause, paragraph, section, term, provision or portion of this Agreement shall be found to be illegal, unlawful, unenforceable, unconstitutional or void

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for any reason by a court of competent jurisdiction, the same shall be fully severable and this Agreement shall be construed as if such said clause, paragraph, section, term, provision or portion had not been in the Agreement initially. In lieu of any such illegal, unlawful, unenforceable, unconstitutional or void provision, the parties agree to seek to reasonably negotiate to add to this Agreement a provision as similar in its terms to such illegal, unlawful, unenforceable, unconstitutional or void provision as may be possible and be legal, valid and enforceable.

## Section 12. Miscellaneous.

A. In connection with this Agreement and the matter set forth herein, all of UDR's, DCO's, and the Construction Manager's books and other records related to the Construction Contract and the construction of the Current Public Improvements shall be available for inspection by the City at UDR's office in Dallas, Texas (located at 3875 Ponte Avenue, Suite 400, Addison, Texas 75001). The City further has the right to conduct inspections of all places where Work is undertaken pursuant to the Construction Contract or otherwise in connection with this Agreement.

B. Neither UDR nor DCO shall have the authority to or shall assign, convey, subcontract, pledge, or otherwise transfer in any manner this Agreement, or any of the privileges, rights, or duties set forth herein, to any other person or entity, without the express prior written approval and consent of the other party. Any assignment, conveyance, pledge, subcontract, or other transfer in violation of this provision shall be null and void *ab initio* and cause for immediate termination (no period of cure) by the other party.

C. This Agreement and each of its provisions are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any third person or entity.

D. Except as otherwise provided for in this Agreement, all obligations and responsibilities arising prior to the expiration or termination of this Agreement allocating responsibility or liability of or between the parties shall survive the completion or termination of this Agreement, and any rights and remedies either party may have with respect to the other arising out of the performance during the term of this Agreement shall survive the cancellation, expiration, or termination of this Agreement.

E. The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by either party shall not preclude or waive its right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law statute, ordinance, or otherwise. The failure by either party to exercise any right, power, or option given to it by this Agreement, or to insist upon strict compliance with the terms of this Agreement, shall not constitute a waiver of the terms and conditions of this Agreement with respect to any other or subsequent breach thereof, nor a waiver by such party of its rights at any time thereafter to require exact and strict compliance with all the terms hereof.

F. Where the terms of this Agreement require that notice in writing be provided or given, such notice shall be in writing, addressed as provided hereinafter to the party to whom the notice or request is given, and shall be either (i) delivered personally, (ii) sent by United States certified mail, postage prepaid, return receipt requested, or (iii) placed in the custody of Federal



# EXHIBIT A

Express Corporation or other nationally recognized carrier to be delivered overnight. Notice shall be deemed delivered and given (x) when received if delivered personally (y) three (3) days following the deposit of the notice in the United States mail, postage prepaid, and sent by certified mail, return receipt requester and properly addressed as set forth below, and (z) twenty-four (24) hours after deposit if sent by Federal Express or other nationally recognized carrier. Address for purpose of this Section are as follows:

To the City:

Town of Addison, Texas  
5300 Belt Line Road  
Dallas, Texas 75254-7606  
Attn: City Manager

To UDR and/or DCO:

c/o UDR, Inc.  
1745 Shea Center Drive, Suite 200  
Highlands Ranch, CO 80129  
Attn: Andrew Cantor

With a copy to:

c/o UDR, Inc.  
1745 Shea Center Drive, Suite 200  
Highlands Ranch, CO 80129  
Attn: Legal

The addresses and addressees for the purpose of this Section may be changed by giving notice of such change in the manner herein provided for giving notice. Unless and until such written notice is received the last addresses and addressee stated by written notice, or provided herein if no written notice of change has been sent or received, shall be deemed to continue in effect for all purposes hereunder.

G. This Agreement and all of its terms and conditions are subject to applicable laws, ordinances, rules, regulations, and codes, including, without limitation, the City Charter of the Town of Addison, Texas.

H. The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto, and each party hereby certifies to the other that any necessary resolutions or other act extending such authority have been duly passed and are now in full force and effect. UDR and DCO warrant and represent to the City that there are no other parties, persons, or entities (including any other parties, persons, or entities who may have a lien against or interest in the Phase One Property) whose consent to or approval of this Agreement is or may be necessary in order to effectuate this Agreement and to allow UDR and/or DCO to carry out their duties, responsibilities, and obligations under this Agreement.

I. Notwithstanding any other provision of this Agreement nothing in this Agreement shall or may be deemed to be, or shall or may be construed to be, a waiver or relinquishment of any immunity, defense, or tort limitation to which the City, its officials, officers, employees, representatives, and agents is or may be entitled.



## EXHIBIT A

J. This Agreement shall be deemed drafted equally by all parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any party shall not apply. Headings in this Agreement are for the convenience of the parties and are not intended to be used in construing this document. All exhibits, schedules and addenda attached to this Agreement are incorporated herein by reference and for all purposes. For purposes of this Agreement, "includes" and "including" are terms of enlargement and not of limitation or exclusive enumeration, and use of the terms does not create a presumption that components not expressed are excluded.


K. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

EXECUTED at Dallas County, Texas on the day and year first written above.

**TOWN OF ADDISON, TEXAS**

**UDR, INC.**  
**a Maryland corporation**

By: \_\_\_\_\_  
Wesley S. Pierson, City Manager


By:  \_\_\_\_\_  
David G. Thatcher  
Vice President – General Counsel

ATTEST:

DCO:

DCO Realty, Inc.,  
a Delaware corporation

By: \_\_\_\_\_  
Christie Wilson, Interim City Secretary

 \_\_\_\_\_  
David G. Thatcher  
Vice President

# EXHIBIT A

## EXHIBIT A TO ASSIGNMENT AND CONSTRUCTION SERVICES AGREEMENT

DCO Greenhaven LP, a Delaware limited partnership, is the owner of a 10.320 acre tract out of the Noah Good Survey Abstract No. 520 and being part of the deed recorded in Instrument No. 200600335782, City of Addison, Dallas County, Texas and being more particularly described as follows:

BEGINNING at a 1/2 inch iron rod found at the Northeast corner of Brooktown Townhouses, Volume 90205 Page 85, Dallas County, Texas and the South line of Brookhaven Club Drive (100 foot R.O.W.);

THENCE North 41 degrees 12 minutes 11 seconds East, 638.50 feet along Brookhaven Club Drive (100 foot R.O.W.) to a 1/2 inch iron rod set in the South line of Brookhaven Club Drive (100 foot R.O.W.);

THENCE South 48 degrees 47 minutes 49 seconds East, 705.81 feet to a 1/2 inch iron rod set;

THENCE South 41 degrees 12 minutes 12 seconds West, 92.00 feet to a 1/2 inch iron rod set;

THENCE North 48 degrees 47 minutes 49 seconds West, 150.24 feet to a 1/2 inch iron rod set;

THENCE South 41 degrees 12 minutes 11 seconds West, 297.17 feet to a 1/2 inch iron rod set being the beginning of a curve to the left having a central angle of 35 degrees 00 minutes 48 seconds a radius of 117.51 feet with a chord bearing and distance of South 06 degrees 30 minutes 5 seconds East, 70.70 feet;

THENCE around said curve an arc distance of 71.81 feet to a 1/2 inch iron rod set being the beginning of a curve to the right having a central angle of 51 degrees 58 minutes 58 seconds a radius of 44.00 feet with a chord bearing and distance of South 01 degrees 59 minutes 00 seconds West, 38.56 feet;

THENCE around said curve an arc distance of 39.92 feet to a 1/2 inch iron rod set being the beginning of a curve to the left having a central angle of 27 degrees 48 minutes 52 seconds a radius of 44.00 feet with a chord bearing and distance of South 14 degrees 04 minutes 03 seconds West, 21.15 feet;

THENCE around said curve an arc distance of 21.36 feet to a 1/2 inch iron rod set;

THENCE South 00 degrees 09 minutes 37 seconds West, 106.59 feet to a 1/2 inch iron rod set at the North line of Brookhaven College REP, Volume 86105 Page 2676;

THENCE North 89 degrees 50 minutes 23 seconds West, 127.16 feet to a 1/2 inch iron rod found at the Northeast common corner of Lots 20 and 21 of Wooded Creek Estates Volume 92134 Page 3046 and the Northwest corner of Brookhaven College REP Volume 86105 Page 2676;

THENCE North 89 degrees 46 minutes 21 seconds West, 349.43 feet along the North line of Lot 20 of Wooded Creek Estates Volume 92134 Page 3046 to a 1/2 inch iron rod found at the Southeast corner of Brooktown Townhouses Volume 90205 Page 85 and the North line of Lot 19 of Wooded Creek Estates Volume 92134 Page 3046;

THENCE North 318.93 feet along the East line of Brooktown Townhouses Volume 90205 Page 85 to a 1/2 inch iron rod found;

## **EXHIBIT A**

### **EXHIBIT B**

#### **TO ASSIGNMENT AND CONSTRUCTION SERVICES AGREEMENT**

Water, Sanitary Sewer, Drainage and Streetscape Improvements associated with Brookhaven Village Shopping Center to be known as **Vitruvian Park Public Infrastructure – Block 500A** in the Town of Addison, Texas, in accordance with specifications and contract documents prepared by Icon Consulting Engineers, Inc. and approved by the Town of Addison..



# EXHIBIT A

## EXHIBIT C

### VITRUVIAN PARK PUBLIC INFRASTRUCTURE - BLOCK 500 A WATER, SANITARY SEWER AND PAVING IMPROVEMENTS TOWN OF ADDISON PROJECT #2017-07

#### BASE BID

ITEM NO.	APPROX QUANT.	UNIT	DESCRIPTION OF ITEMS BID PRICE WRITTEN IN WORDS	UNIT PRICE	TOTAL PRICE
1	1	L.S.	For Mobilization (not to exceed 5% of total bid amount) complete in place, the sum of <u>One Hundred Seventeen Thousand</u> Dollars and <u>Zero</u> Cents per Lump Sum	117,000.00	117,000.00
2	1	L.S.	For Installation and Maintenance of Barricades, Signage, Pav't Markings and Traffic Control Measures for Marsh Lane Improvements complete in place, the sum of <u>Twenty Thousand</u> Dollars and <u>Zero</u> Cents per Lump Sum	29,000.00	29,000.00
3	1	L.S.	For Installation and Maintenance of Barricades, Signage, Pav't Markings and Traffic Control Measures for Spring Valley Road Improvements complete in place, the sum of <u>Fifteen Thousand</u> Dollars and <u>Zero</u> Cents per Lump Sum	15,000.00	15,000.00
4	1	L.S.	For Furnishing, Installation and Maintenance of Traffic Control Measures for Shopping Center Phase 1 Improvements complete in place, the sum of <u>Ten thousand</u> Dollars and <u>Zero</u> Cents per Lump Sum	19,000.00	19,000.00

# EXHIBIT A

## EXHIBIT C

### BASE BID

ITEM NO.	APPROX QUANT.	UNIT	DESCRIPTION OF ITEMS BID PRICE WRITTEN IN WORDS	UNIT PRICE	TOTAL PRICE
5	1	L.S.	For Furnishing, Installation and Maintenance of Traffic Control Measures for Shopping Center Phase 2 Improvements complete in place, the sum of _____ <u>Ten Thousand</u> Dollars and <u>Zero</u> Cents per Lump Sum	10,000.00	10,000.00
6	1	L.S.	For Furnishing, Installation and Maintenance of Traffic Control Measures for Shopping Center Phase 3 Improvements complete in place, the sum of _____ <u>Ten Thousand</u> Dollars and <u>Zero</u> Cents per Lump Sum	10,000.00	10,000.00
7	1	L.S.	For Furnishing, Installation and Maintenance of Traffic Control Measures for Shopping Center Phase 4 Improvements complete in place, the sum of _____ <u>Ten Thousand</u> Dollars and <u>Zero</u> Cents per Lump Sum	10,000.00	10,000.00
8	3	EA.	For Furnishing and Installing Project Signs in Accordance with Sign Plan complete in place, the sum of _____ <u>One Thousand</u> Dollars and <u>Zero</u> Cents per Each	1,000.00	3,000.00

# EXHIBIT A

## EXHIBIT C

### BASE BID

ITEM NO.	APPROX QUANT.	UNIT	DESCRIPTION OF ITEMS BID PRICE WRITTEN IN WORDS	UNIT PRICE	TOTAL PRICE
9	1	L.S.	For Compliance with Storm Water Pollution Prevention Plan Including Maintenance of Erosion Control Devices complete in place, the sum of _____ <u>Four thousand</u> Dollars and <u>Zero</u> Cents per Lump Sum	4,000.00	4,000.00
10	1	EA.	For Furnishing, Installation and Maintenance of Construction Entrance complete in place, the sum of _____ <u>Four thousand</u> Dollars and <u>Zero</u> Cents per Each	4,000.00	4,000.00
11	2,659	L.F.	For Furnishing, Installation and Maintenance of Silt Fence Sediment Barrier complete in place, the sum of _____ <u>Four</u> Dollars and <u>Zero</u> Cents per Linear Foot	4.00	10,636.00
12	13	EA.	For Furnishing, Installation and Maintenance of Inlet Protection Devices complete in place, the sum of _____ <u>Two hundred</u> Dollars and <u>Zero</u> Cents per Each	200.00	2,600.00
13	2	EA.	For Removal, Storage and Re-installation of Existing Street Signage complete in place, the sum of _____ <u>One hundred Twenty</u> Dollars and <u>Zero</u> Cents per Each	120.00	240.00



# EXHIBIT A

## EXHIBIT C

### BASE BID

ITEM NO.	APPROX QUANT.	UNIT	DESCRIPTION OF ITEMS BID PRICE WRITTEN IN WORDS	UNIT PRICE	TOTAL PRICE
14	6	EA.	For Removal and Disposal of Existing Trees complete in place, the sum of _____ <u>Three Hundred</u> Dollars and <u>Zero</u> Cents per Each	300.00	1,800.00
15	4,704	L.F.	For Sawcutting of Existing Concrete Pavement (Reference Sheet 3) complete in place, the sum of _____ <u>Eight</u> Dollars and <u>Zero</u> Cents per Linear Foot	8.00	37,632.00
16	5,495	S.Y.	For Removal & Recycling of Existing Concrete Pavement complete in place, the sum of _____ <u>Fifteen</u> Dollars and <u>Zero</u> Cents per Square Yard	15.00	82,425.00
17	1,781	S.Y.	For Furnishing and Placing 10" Reinforced Concrete Pavement (4200 PSI) complete in place, the sum of _____ <u>Ninety Five</u> Dollars and <u>Zero</u> Cents per Square Yard	95.00	169,185.00
18	2,685	S.Y.	For Furnishing and Placing 8" Reinforced Concrete Pavement (4200 PSI) complete in place, the sum of _____ <u>Seventy Five</u> Dollars and <u>Zero</u> Cents per Square Yard	75.00	201,375.00

# EXHIBIT A

## EXHIBIT C

### BASE BID

ITEM NO.	APPROX QUANT.	UNIT	DESCRIPTION OF ITEMS BID PRICE WRITTEN IN WORDS	UNIT PRICE	TOTAL PRICE
19	780	L.F.	For Constructing 6" Reinforced Monolithic Concrete Curb complete in place, the sum of _____ <u>Fifteen</u> Dollars and <u>Zero</u> Cents per Linear Foot	15.00	11,700.00
20	239	L.F.	For Constructing 6" Reinforced Monolithic Concrete Sidewalk Curb complete in place, the sum of _____ <u>Fifteen</u> Dollars and <u>Zero</u> Cents per Linear Foot	15.00	3,585.00
21	356	L.F.	For Constructing 6" Reinforced Concrete Curb & Gutter complete in place, the sum of _____ <u>Fifty</u> Dollars and <u>Zero</u> Cents per Linear Foot	50.00	17,800.00
22	6,123	S.F.	For Furnishing and Placing 5-inch thick Reinforced Concrete Sidewalk Enhanced Pavement complete in place, the sum of _____ <u>Thirteen</u> Dollars and <u>Zero</u> Cents per Square Foot	13.00	79,599.00
23	5,645	S.F.	For Furnishing and Placing 4-inch thick Reinforced Concrete Sidewalk Pavement complete in place, the sum of _____ <u>Nine</u> Dollars and <u>Zero</u> Cents per Square Foot	9.00	50,805.00

# EXHIBIT A

## EXHIBIT C

### BASE BID

ITEM NO.	APPROX QUANT.	UNIT	DESCRIPTION OF ITEMS BID PRICE WRITTEN IN WORDS	UNIT PRICE	TOTAL PRICE
24	5	EA.	For Furnishing and Placing Sidewalk Pedestrian Curb Ramps (Ref. PED - 12A) complete in place, the sum of _____ <u>Five thousand</u> Dollars and <u>Zero</u> Cents per Each	5,000.00	25,000.00
25	16	EA.	For Furnishing and Installing Detectable Warning Surface (Ref. PED - 12A) complete in place, the sum of _____ <u>One thousand</u> Dollars and <u>Zero</u> Cents per Each	1,000.00	16,000.00
26	286	S.F.	For Furnishing and Installing Pavestone Concrete Street Paver, Running Bond Pattern, 3-1/8" Thickness, Bellows Brown Color complete in place, the sum of _____ <u>Seven</u> Dollars and <u>Zero</u> Cents per Square Foot	17.00	4,862.00
27	1,342	S.F.	For Furnishing and Installing Pavestone Concrete Paver, Holland Stone, 2-3/8" Thickness, Bellows Brown Color complete in place, the sum of _____ <u>Nine</u> Dollars and <u>Zero</u> Cents per Square Foot	9.00	12,078.00
28	112	S.F.	For Furnishing and Installing Pavestone ADA Truncated Dome Concrete Paver, Running Bond Pattern, 2-3/8" Thickness, Bellows Brown Color complete in place, the sum of _____ <u>Thirty Four</u> Dollars and <u>Zero</u> Cents per Square Foot	34.00	3,808.00



# EXHIBIT A

## EXHIBIT C

### BASE BID

ITEM NO.	APPROX QUANT.	UNIT	DESCRIPTION OF ITEMS BID PRICE WRITTEN IN WORDS	UNIT PRICE	TOTAL PRICE
29	<del>46</del> 607	L.F.	For Furnishing, Laying and Compacting Short Term Asphalt Pavement Trench Repair complete in place, the sum of _____ Taxable _____ Dollars and Zero Cents per Linear Foot	20.00	12,140.00
30	16	EA.	For Furnishing and Installing Type 11 ReflectORIZED Blue Pav't Markers for Hydrants complete in place, the sum of _____ Twenty Seven _____ Dollars and Zero Cents per Each	27.00	432.00
31	2,087	L.F.	For Removal and Disposal of Existing Water Main complete in place, the sum of _____ Eighteen _____ Dollars and Zero Cents per Linear Foot	18.00	37,566.00
32	704	L.F.	For Removal and Disposal of Existing Water Service complete in place, the sum of _____ Fourteen _____ Dollars and Zero Cents per Linear Foot	14.00	9,856.00
33	19	EA.	For Removal and Salvage of Existing Water Valves complete in place, the sum of _____ Three Hundred _____ Dollars and Zero Cents per Each	300.00	5,700.00

# EXHIBIT A

## EXHIBIT C

### BASE BID

ITEM NO.	APPROX. QUANT.	UNIT	DESCRIPTION OF ITEMS BID PRICE WRITTEN IN WORDS	UNIT PRICE	TOTAL PRICE
34	11	EA.	For Removal and Salvaging of Existing Fire Hydrant Assembly complete in place, the sum of _____ <u>Five Hundred</u> Dollars and <u>Zero</u> Cents per Each	500. <sup>00</sup>	5,500. <sup>00</sup>
35	5	EA.	For Relocation of Exist Water Meter complete in place, the sum of _____ <u>One Hundred</u> Dollars and <u>Zero</u> Cents per Each	100. <sup>00</sup>	500. <sup>00</sup>
36	29	EA.	For Cutting and Plugging of Existing Water Main complete in place, the sum of _____ <u>Four Hundred</u> Dollars and <u>Zero</u> Cents per Each	400. <sup>00</sup>	11,600. <sup>00</sup>
37	2,800	L.F.	For Furnishing and Placing of Grout Fill in Abandoned Water Main complete in place, the sum of _____ <u>Seven</u> Dollars and <u>Zero</u> Cents per Linear Foot	7. <sup>00</sup>	19,600. <sup>00</sup>
38	8	EA.	For Removal of Existing Water Valve Cap and Grout Filling of Abandoned Water Valve Box complete in place, the sum of _____ <u>Two Hundred</u> Dollars and <u>Zero</u> Cents per Each	200. <sup>00</sup>	1,600. <sup>00</sup>

# EXHIBIT A

## EXHIBIT C

### BASE BID

ITEM NO.	APPROX QUANT.	UNIT	DESCRIPTION OF ITEMS BID PRICE WRITTEN IN WORDS	UNIT PRICE	TOTAL PRICE
39	15	EA.	For Connection to Existing Water Main complete in place, the sum of _____ <u>Two Thousand</u> Dollars and <u>Zero</u> Cents per Each	2,000.00	30,000.00
40	15	EA.	For Connection to Existing Water Service complete in place, the sum of _____ <u>Five Hundred</u> Dollars and <u>Zero</u> Cents per Each	500.00	7,500.00
41	2,203	L.F.	For Furnishing and Installing 12-Inch PVC Water Pipe by Open Cut with Std. Embedment complete in place, the sum of _____ <u>Eighty Five</u> Dollars and <u>Zero</u> Cents per Linear Foot	85.00	187,255.00
42	137	L.F.	For Furnishing and Installing 12-Inch Ductile Iron Water Pipe by Open Cut with Std. Embedment complete in place, the sum of _____ <u>Three Hundred Ten</u> Dollars and <u>Zero</u> Cents per Linear Foot	310.00	42,470.00
43	2,478	L.F.	For Furnishing and Installing 8-Inch PVC Water Pipe by Open Cut with Std. Embedment complete in place, the sum of _____ <u>Seventy</u> Dollars and <u>Zero</u> Cents per Linear Foot	70.00	173,460.00



# EXHIBIT A

## EXHIBIT C

### BASE BID

ITEM NO.	APPROX. QUANT.	UNIT	DESCRIPTION OF ITEMS BID PRICE WRITTEN IN WORDS	UNIT PRICE	TOTAL PRICE
44	299	L.F.	For Furnishing and Installing 6-Inch PVC Water Pipe by Open Cut with Std. Embedment complete in place, the sum of _____ and <u>Seventy</u> Dollars and <u>Zero</u> Cents per Linear Foot	70.00	20,930.00
45	20	L.F.	For Furnishing and Installing 4" PVC Water Pipe by Open Cut with Std. Embedment complete in place, the sum of _____ and <u>Sixty Five</u> Dollars and <u>Zero</u> Cents per Linear Foot	65.00	1,300.00
46	237	L.F.	For Furnishing and Installing 2" Water Pipe by Open Cut with Std. Embedment complete in place, the sum of _____ and <u>Forty</u> Dollars and <u>Zero</u> Cents per Linear Foot	40.00	9,480.00
47	50	L.F.	For Furnishing and Installing 1" Water Pipe by Open Cut with Std. Embedment complete in place, the sum of _____ and <u>Thirty Six</u> Dollars and <u>Zero</u> Cents per Linear Foot	36.00	1,800.00
48	28	EA.	For Furnishing and Installing 12-Inch Gate Valve Complete w/ Valve Box, Extension, Collar, Debris Cap and Cover complete in place, the sum of _____ and <u>Two thousand Five Hundred</u> Dollars and <u>Zero</u> Cents per Each	2,500.00	70,000.00

# EXHIBIT A

## EXHIBIT C

### BASE BID

ITEM NO.	APPROX QUANT.	UNIT	DESCRIPTION OF ITEMS BID PRICE WRITTEN IN WORDS	UNIT PRICE	TOTAL PRICE
49	40	EA.	For Furnishing and Installing 8-Inch Gate Valve Complete w/ Valve Box, Extension, Collar, Debris Cap and Cover complete in place, the sum of _____ <u>One Thousand Six Hundred</u> Dollars and <u>Zero</u> Cents per Each	1,600.00	64,000.00
50	21	EA.	For Furnishing and Installing 6-Inch Gate Valve Complete w/ Valve Box, Extension, Collar, Debris Cap and Cover complete in place, the sum of _____ <u>One Thousand One Hundred</u> Dollars and <u>Zero</u> Cents per Each	1,100.00	23,100.00
51	2	EA.	For Furnishing and Installing 4-Inch Gate Valve Complete w/ Valve Box, Extension, Collar, Debris Cap and Cover complete in place, the sum of _____ <u>Nine Hundred</u> Dollars and <u>Zero</u> Cents per Each	900.00	1,800.00
52	16	EA.	For Furnishing and Installing Fire Hydrant Assembly, Complete in Place complete in place, the sum of _____ <u>Three thousand Five Hundred</u> Dollars and <u>Zero</u> Cents per Each	3,500.00	56,000.00
53	10.90	TONS	For Furnishing and Installing Ductile Iron Full Bodied Mechanical Joint Type Fittings w/ Restraining Glands for Water Pipe complete in place, the sum of _____ <u>Eleven Thousand</u> Dollars and <u>Zero</u> Cents per Ton	11,000.00	119,900.00

# EXHIBIT A

## EXHIBIT C

### BASE BID

ITEM NO.	APPROX. QUANT.	UNIT	DESCRIPTION OF ITEMS BID PRICE WRITTEN IN WORDS	UNIT PRICE	TOTAL PRICE
54	21	EA.	For Furnishing and Installing 2" Water Service Tap complete in place, the sum of _____ <u>Five Hundred</u> Dollars and <u>Zero</u> Cents per Each	500. <sup>00</sup>	10,500. <sup>00</sup>
55	3	EA.	For Furnishing and Installing 1" Water Service Tap complete in place, the sum of _____ <u>Three Hundred</u> Dollars and <u>Zero</u> Cents per Each	300. <sup>00</sup>	900. <sup>00</sup>
56	22	EA.	For Furnishing and Installing Meter Box complete in place, the sum of _____ <u>Seven Hundred</u> Dollars and <u>Zero</u> Cents per Each	700. <sup>00</sup>	15,400. <sup>00</sup>
57	91	EA.	For Final Adjustment of Existing Water Valves to Finish Grade complete in place, the sum of _____ <u>One Hundred</u> Dollars and <u>Zero</u> Cents per Each	100. <sup>00</sup>	9,100. <sup>00</sup>
58	1	L.S.	For Preparing, Furnishing, Installing and Maintaining Trench Safety System for Water Improvements complete in place, the sum of _____ <u>Seven thousand</u> Dollars and <u>Zero</u> Cents per Lump Sum	7,000. <sup>00</sup>	7,000. <sup>00</sup>



# EXHIBIT A

## EXHIBIT C

### BASE BID

ITEM NO.	APPROX. QUANT.	UNIT	DESCRIPTION OF ITEMS BID PRICE WRITTEN IN WORDS	UNIT PRICE	TOTAL PRICE
59	5	EA.	For Abandonment of Existing Sanitary Sewer Manhole complete in place, the sum of _____ <u>Two thousand</u> Dollars and <u>zero</u> Cents per Each	2,000.00	10,000.00
60	379	L.F.	For Removal and Disposal of Existing Sanitary Sewer Main complete in place, the sum of _____ <u>Eighteen</u> Dollars and <u>zero</u> Cents per Linear Foot	18.00	6,822.00
61	62	L.F.	For Removal and Disposal of Existing Sanitary Sewer Service complete in place, the sum of _____ <u>Seventeen</u> Dollars and <u>zero</u> Cents per Linear Foot	17.00	1,054.00
62	536	L.F.	For Removal and Disposal of Existing Sanitary Sewer Force Main Pipe complete in place, the sum of _____ <u>Two</u> Dollars and <u>zero</u> Cents per Linear Foot	2.00	1,072.00
63	1	EA.	For Removal and Disposal of Existing Sanitary Sewer Cleanouts complete in place, the sum of _____ <u>Two hundred</u> Dollars and <u>zero</u> Cents per Each	200.00	200.00

# EXHIBIT A

## EXHIBIT C

### BASE BID

ITEM NO.	APPROX. QUANT.	UNIT	DESCRIPTION OF ITEMS BID PRICE WRITTEN IN WORDS	UNIT PRICE	TOTAL PRICE
64	3	EA.	For Removal and Disposal of Existing Bollards complete in place, the sum of _____ <u>One Hundred Fifty</u> Dollars and <u>Zero</u> Cents per Each	150.00	450.00
65	10	EA.	For Cutting and Plugging of Existing Sanitary Sewer Main complete in place, the sum of _____ <u>One thousand six hundred</u> Dollars and <u>Zero</u> Cents per Each	1,600.00	16,000.00
66	1,466	L.F.	For Furnishing and Placing Grout Filling in Abandoned Sanitary Sewer Main complete in place, the sum of _____ <u>Seven</u> Dollars and <u>Zero</u> Cents per Linear Foot	7.00	10,262.00
67	3	EA.	For Connection to Existing Sanitary Sewer Main complete in place, the sum of _____ <u>Five hundred</u> Dollars and <u>Zero</u> Cents per Each	500.00	1,500.00
68	2	EA.	For Connection to Existing Sanitary Sewer Service complete in place, the sum of _____ <u>Five hundred</u> Dollars and <u>Zero</u> Cents per Each	500.00	1,000.00

# EXHIBIT A

## EXHIBIT C

### BASE BID

ITEM NO.	APPROX QUANT.	UNIT	DESCRIPTION OF ITEMS BID PRICE WRITTEN IN WORDS	UNIT PRICE	TOTAL PRICE
69	1,767	L.F.	For Furnishing and Installing 8-Inch PVC Sanitary Sewer Main by Open Cut with Std. Embedment complete in place, the sum of _____ <u>Eighty Five</u> Dollars and <u>Zero</u> Cents per Linear Foot	85.00	150,195.00
70	180	L.F.	For Furnishing and Installing 8-Inch Ductile Iron Sanitary Sewer Main by Open Cut with Std. Embedment complete in place, the sum of _____ <u>One Hundred Sixty Seven</u> Dollars and <u>Zero</u> Cents per Linear Foot	167.00	30,060.00
71	98	L.F.	For Furnishing and Installing 6-Inch PVC Sanitary Sewer Main by Open Cut with Std. Embedment complete in place, the sum of _____ <u>Seventy Five</u> Dollars and <u>Zero</u> Cents per Linear Foot	75.00	7,350.00
72	11	EA.	For Furnishing and Installing Sanitary Sewer Lateral Cleanouts complete in place, the sum of _____ <u>One thousand</u> Dollars and <u>Zero</u> Cents per Each	1,000.00	11,000.00
73	1	EA.	For Constructing Standard 4' Diameter Sanitary Sewer Manhole to 6' Depth with Standard Frame and Cover, over Existing Sewer Main complete in place, the sum of _____ <u>Eight thousand</u> Dollars and <u>Zero</u> Cents per Each	8,000.00	8,000.00

# EXHIBIT A

## EXHIBIT C

### BASE BID

ITEM NO.	APPROX QUANT.	UNIT	DESCRIPTION OF ITEMS BID PRICE WRITTEN IN WORDS	UNIT PRICE	TOTAL PRICE
74	12	EA.	For Constructing Standard 4' Diameter Sanitary Sewer Manhole to 6' Depth with Standard Frame and Cover complete in place, the sum of _____ <u>Four thousand Five hundred</u> Dollars and <u>Zero</u> Cents per Each	4,500.00	54,000.00
75	29	V.F.	For Extra Depth for Standard 4' Diameter Manhole in Excess of 6' Depth complete in place, the sum of _____ <u>Two hundred fourteen</u> Dollars and <u>Zero</u> Cents per Vertical Foot	214.00	6,206.00
76	81	L.F.	For Furnishing and Placing Cement Stabilized Sand Backfill around Manholes (12" Minimum Width on water main side only) complete in place, the sum of _____ <u>Four hundred Forty</u> Dollars and <u>Zero</u> Cents per Linear Foot	<del>35,640.00</del> 440.00	35,640.00
77	13	EA.	For Final Adjustment of Sanitary Sewer Manholes to Finish Grade complete in place, the sum of _____ <u>Three hundred</u> Dollars and <u>Zero</u> Cents per Each	300.00	3,900.00
78	1,947	L.F.	For TV Inspection of Sanitary Sewer System complete in place, the sum of _____ <u>Three</u> Dollars and <u>Zero</u> Cents per Linear Foot	3.00	5,841.00



# EXHIBIT A

## EXHIBIT C

### BASE BID

ITEM NO.	APPROX QUANT.	UNIT	DESCRIPTION OF ITEMS BID PRICE WRITTEN IN WORDS	UNIT PRICE	TOTAL PRICE
79	1	L.S.	For Preparing, Furnishing, Installing and Maintaining Trench Safety System for Sanitary Sewer Improvements complete in place, the sum of _____ <u>For thousand</u> Dollars and <u>Zero</u> Cents per Lump Sum	10,000.00	10,000.00
80	136	L.F.	For Furnishing and Installation of (2) - 4" Electrical Conduit by Open Cut complete in place, the sum of _____ <u>Forty Six</u> Dollars and <u>Zero</u> Cents per Linear Foot	46.00	6,256.00
81	28,300	S.F.	For Furnishing and Installing Hydromulch Seeding (NCTCOG Item 3.10 "Seeding") of all Disturbed Areas. complete in place, the sum of _____ <u>One</u> Dollars and <u>Zero</u> Cents per Square Foot	1.00	28,300.00
82	524	C.Y.	For Furnishing and Placement of Topsoil to a depth of 6" on all Disturbed Areas. complete in place, the sum of _____ <u>Forty</u> Dollars and <u>Zero</u> Cents per Cubic Yard	40.00	20,960.00
83	42	L.F.	For Furnishing and Installing 24-inch Wide White Solid Thermoplastic Pavement Marking (Stop Bar). complete in place, the sum of _____ <u>Fifty</u> Dollars and <u>Zero</u> Cents per Linear Feet	50.00	2,100.00

# EXHIBIT A

## EXHIBIT C

### BASE BID

ITEM NO.	APPROX QUANT.	UNIT	DESCRIPTION OF ITEMS BID PRICE WRITTEN IN WORDS	UNIT PRICE	TOTAL PRICE
84	18	Each	For Furnishing and Installing Type II-CR-4 ReflectORIZED Pavement Marker.  complete in place, the sum of _____ <u>Sixty</u> Dollars and <u>Zero</u> Cents per Each	7.00	126.00
85	90	Each	For Furnishing and Installing Type W-4 White Pavement Marker.  complete in place, the sum of _____ <u>Sixty</u> Dollars and <u>Zero</u> Cents per Each	7.00	630.00
86	1	L.S.	For Furnishing all Labor and Materials necessary to Repair the Existing Irrigation Systems along Marsh Lane from Westgate Lane (South Limits of Project) to Spring Valley Road. complete in place, the sum of _____ <u>Thirteen thousand</u> Dollars and <u>Zero</u> Cents per Lump Sum	13,000.00	13,000.00
87	1	L.S.	For Furnishing all Labor and Materials necessary to Repair the Existing Irrigation Systems along Marsh Lane from Spring Valley Road to Sidney Drive (North Limits of Project). complete in place, the sum of _____ <u>Seventeen thousand</u> Dollars and <u>Zero</u> Cents per Lump Sum	17,000.00	17,000.00
TOTAL AMOUNT OF BASE BID (Items 1 Through 87)					2,349,453.00

# EXHIBIT A

## EXHIBIT C

### VITRUVIAN PARK PUBLIC INFRASTRUCTURE - BLOC

#### BID SCHEDULE SUMMARY

<u>Bid Schedule &amp; Description</u>	<u>Total Amount Materials &amp; Services</u>
---------------------------------------	--

TOTAL AMOUNT OF BASE BID (Items 1 through 81)

\$ 2,349,453.00

WRITTEN IN WORDS:

Two Million Three Hundred Forty Nine Thousand Four  
Hundred Fifty Three dollars and Zero Cents

#### NOTES:

1. All items, labor, materials, equipment, facilities, incidentals, and work required for construction of the project are to be provided and installed by the Contractor as part of the project and payment for the cost of such shall be included in the price bid.
2. Prices must be shown in words and figures for each item listed in this proposal. In the event of discrepancy, the words shall control.
3. It is understood that the Bid Security shall be collected and retained by the Owner as liquidated damages in the event a contract is made by the Owner based on this proposal within ninety (90) calendar days after receiving bids and the undersigned fails to execute the contract.
4. Materials, which are "tax exempt", are those items which are physically incorporated into the facilities constructed for the Town of Addison, as set forth in the Special Provisions. Materials include, but are not limited to purchased items such as water pipe, sanitary sewer pipe, storm drain pipe, etc. Services, which are "not tax exempt", are those items which are used by the Contractor but are not physically incorporated into the Town of Addison's facility and/or items which are consumed by construction, as set forth in the Special Provisions. Services include, but are not limited to, items such as supplies, tools, skill and labor, the purchase, rental or lease of equipment, etc.

Edgardo M. Hernandez  
Name of Person Signing Bid

[Signature]  
Signature of Person Signing Bid

P.O. Box 600861 Dallas, TX 75360  
Address

214-390-2846  
Telephone No. Fax No.

46-0730116  
Bidder's Tax I.D. No. or Employer No.

# **EXHIBIT A**

## **EXHIBIT D TO ASSIGNMENT AND CONSTRUCTION SERVICES AGREEMENT**

### **ARTICLE 1 CONSTRUCTION MANAGER'S RESPONSIBILITIES**

#### **1.1 CONSTRUCTION MANAGER'S SERVICES**

1.1.1 The Construction Manager's services consist of those services performed by the Construction Manager, Construction Manager's employees and Construction Manager's consultants pursuant to this Agreement.

1.1.2 The Construction Manager's services shall be provided in conjunction with the services of an Engineer (as defined in the Agreement).

1.1.3 The Construction Manager shall provide sufficient organization, personnel and management to carry out the requirements of this Agreement in an expeditious and economical manner consistent with the interests of the City and shall remain in regular communication with the City to ensure the Work is completed in a manner satisfactory to the City.

### **ARTICLE 2 SCOPE OF CONSTRUCTION MANAGER'S BASIC SERVICES**

#### **2.1 PRE-CONSTRUCTION PHASE**

2.1.1 The Construction Manager shall obtain insurance certificates, bonds and any other relevant documents from the Contractor, in forms acceptable to the City, and in obtaining building permits and special permits for permanent improvements, except for permits required to be obtained directly by the various Contractor. The Construction Manager shall verify that the City has paid applicable fees and assessments. The Construction Manager shall assist the City in connection with the City's responsibility for filing documents required for the approvals of governmental authorities having jurisdiction over the construction of the Current Public Improvements (sometimes referred to herein as the "Project").

#### **2.2 CONSTRUCTION PHASE - ADMINISTRATION OF THE CONSTRUCTION CONTRACT**

2.2.1 The Construction Phase will commence with the award of the Construction Contract and will end 30 days after final payment to the Contractor is due.

2.2.2 The Construction Manager shall provide administration of the Construction Contract in cooperation with the Engineer.



# EXHIBIT A

2.2.3 The Construction Manager shall provide administrative, management and related services to coordinate scheduled activities and responsibilities of the Contractor and with those of the Construction Manager, the City and the Engineer, to endeavor to manage the Project in accordance with the latest approved estimate of construction costs, any Project schedule (approved by the City), and the Construction Contract and related documents.

2.2.4 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress and scheduling. The Construction Manager shall prepare and promptly distribute minutes to the City, Engineer and Contractor. The Construction Manager shall conduct a pre-construction conference for the entire construction team to establish job site practices and guidelines, including, but not limited to, establishing job site work rules; safety and security procedures; developing a detailed phasing and relocation strategy; establishing traffic flow patterns, including planning the means of egress, traffic control and work hours; planning storage and staging areas, including equipment placement, job office location, and utility availability.

2.2.5 Utilizing the construction schedule(s) provided by the Contractor, the Construction Manager shall update the Project construction schedule incorporating the activities of the Contractor on the Project, including activity sequences and durations, allocation of labor and materials, processing of shop drawings, product data and samples, and delivery of products requiring long lead time and procurement. The Project construction schedule shall include the City's occupancy requirements showing portions of the Project having occupancy priority. The Construction Manager shall update and reissue the Project construction schedule as required to show current conditions. If an update indicates that the previously approved Project construction schedule may not be met, the Construction Manager shall recommend corrective action to the City and Engineer.

2.2.6 Consistent with the various bidding documents, and utilizing information from the Contractor, the Construction Manager shall coordinate the sequence of construction and assignment of space in areas where the Contractor is performing Work. The Construction Manager shall ensure proper provisions for safety, temporary protection, pedestrian flow and ongoing building use. The Construction Manager shall oversee scheduling and expediting, quality assurance, daily work schedule management, communications among trade contractors and consultants, document control and contract compliance, and shall perform at least twice-weekly job observation (and more often as the City may request).

2.2.7 The Construction Manager shall use its best efforts to obtain prompt performance of the terms, conditions, and provisions of the Construction Contract by and from the Contractor.

2.2.8 The Construction Manager shall monitor the approved estimate of the cost of construction. The Construction Manager shall show actual costs for activities in progress and estimates for uncompleted tasks by way of comparison with such approved estimate.

2.2.9 The Construction Manager shall manage the overall Project budget, control changes, develop cash flow reports and forecasts for the Project and advise the City and Engineer as to variances between actual and budgeted or estimated costs.

## EXHIBIT A

2.2.10 The Construction Manager shall maintain accounting records on authorized Work performed under unit costs, additional Work performed on the basis of actual costs of labor and materials, and other Work requiring accounting records.

2.2.11 The Construction Manager shall develop and implement procedures for the review and processing of applications by Contractor for progress and final payments.

2.2.11.1 Based on the Construction Manager's observations and evaluations of each Contractor's application for payment, the Construction Manager shall review and approve each such application.

2.2.11.2 The Construction Manager shall prepare a project application for payment based on the Contractor's certificates for payment.

2.2.11.3 The Construction Manager's approval of payment shall constitute a representation to the City, based on the Construction Manager's determinations and observations at the Project site and on the data comprising the Contractor's applications for payment, that, to the best of the Construction Manager's knowledge, information and belief, the Work has progressed to the point indicated and the quality of the Work has been completed in accordance with the Construction Contract and related documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to minor deviations from the Construction Contract and related documents correctable prior to completion and to specific qualifications expressed by the Construction Manager. The issuance of a certificate for payment shall further constitute a representation that the Contractor is entitled to payment in the amount certified.

2.2.11.4 The issuance of a Certificate for Payment shall not be a representation that the Construction Manager has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences for the Contractor's own Work, or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the City to substantiate the Contractor's right to payment or (4) ascertained how or for what purpose the Contractor has used money previously paid.

2.2.12 The Construction Manager shall review the safety programs developed by each of the Contractor(s) for purposes of coordinating the safety programs with those of any other contractors. The Construction Manager's responsibilities for coordination of safety programs shall not extend to direct control over or charge of the acts or omissions of the Contractor, subcontractors, agents or employees of the Contractor or subcontractors, or any other persons performing portions of the Work and not directly employed by or on behalf of the Construction Manager.

2.2.13 The Construction Manager shall determine in general that the Work of the Contractor is being performed in accordance with the requirements of the Contract Documents, including confirming that the Engineer has inspected the work of the Contractor to guard the City against, and shall notify the City of, any defects or deficiencies in the Work. The Construction Manager shall also endeavor to guard the City against defects and deficiencies in the Work. As appropriate, the Construction Manager shall have authority, upon written authorization from the City, to require



# EXHIBIT A

additional inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. The Construction Manager, in consultation with the Engineer, may reject Work which does not conform to the requirements of the Contract Documents.

2.2.14 The Construction Manager shall schedule and coordinate the sequence of construction in accordance with the Contract Documents and the latest approved Project construction schedule

2.2.15 With respect to each Contractor's own Work, the Construction Manager shall not have control over or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work of each of the Contractor, since these are solely the Contractor's responsibility under the Contract for Construction. The Construction Manager shall not be responsible for a Contractor's failure to carry out the Work in accordance with the respective Contract Documents. The Construction Manager shall not have control over or charge of acts or omissions of the Contractor, subcontractors, or their agents or employees, or any other persons performing portions of the Work not directly employed by the Construction Manager.

2.2.16 The Construction Manager shall transmit to the Engineer requests for interpretations of the meaning and intent of the Drawings and Specifications, and assist in the resolution of questions that may arise.

2.2.17 The Construction Manager shall review requests for changes, assist in negotiating Contractor' proposals, submit recommendations to the Engineer and City, and, if they are accepted, prepare Change Orders and Construction Change Directives which incorporate the Engineer's modifications to the Construction Contract and related documents.

2.2.18 The Construction Manager shall assist the Engineer in the review, evaluation and documentation of any claims.

2.2.19 The Construction Manager shall receive certificates of insurance from the Contractor and forward them to the City with a copy to the Engineer.

2.2.20 In collaboration with the Engineer, the Construction Manager shall establish and implement procedures for expediting the processing and approval of shop drawings, product data, samples, proposed substitutions, design modification, and other submittals. The Construction Manager shall review all shop drawings, product data, samples, proposed substitutions, design modifications, and other submittals from the Contractor. The Construction Manager shall coordinate submittals with information contained in related documents and transmit to the Engineer those which have been approved by the Construction Manager. The Construction Manager's actions shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the City or Contractor.

2.2.21 The Construction Manager shall record the progress of the Project. The Construction Manager shall submit written progress reports to the City and Engineer including information on each Contractor and each Contractor's Work, as well as the entire Project, showing percentages of completion. For each visit by the Construction Manager to the Project site, the Construction

# EXHIBIT A

Manager shall keep a log containing a record of weather, each Contractor's Work on the site, number of workers, identification of equipment, Work accomplished problems encountered, and other similar relevant information pertaining to the construction of the Current Public Improvements.

2.2.22 The Construction Manager shall maintain at the Project site one record copy of all contracts, drawings, specifications, addenda, change orders and other modifications, in good order and marked currently to record changes and selections made during construction, and in addition, approved shop drawings, product data, samples and similar required submittals. The Construction Manager shall maintain records, in duplicate, of principal building layout lines, elevations of the bottom of footings, floor levels and key site elevations certified by a qualified surveyor or professional engineer. The Construction Manager shall make all such records available to the Engineer and upon completion of the Project shall deliver them to the City.

2.2.23 The Construction Manager shall arrange for the delivery, storage, protection and security of City-purchased materials, systems and equipment that are a part of the Project until such items are incorporated into the Project.

2.2.24 With the Engineer and the City's personnel, the Construction Manager shall observe the Contractor's final testing and start-up of utilities, operational systems and equipment.

2.2.25 When the Construction Manager considers the Contractor's Work and services or a designated portion thereof substantially complete, the Construction Manager shall, jointly with the Contractor, prepare for the Engineer a list of incomplete or unsatisfactory items and a schedule for their completion. The Construction Manager shall assist the Engineer in conducting inspections to determine whether the Work or designated portion thereof is substantially complete.

2.2.26 The Construction Manager shall coordinate and monitor the correction and completion of the Work by the Contractor. Following issuance of a certificate of substantial completion of the Work or a designated portion thereof, the Construction Manager shall evaluate the completion of the Work of the Contractor and make recommendations to the Engineer when Work is ready for final inspection. The Construction Manager shall assist the Engineer in conducting final inspections.

2.2.27 The Construction Manager shall secure and transmit to the Engineer, or to such other appropriate person as City may direct, all required lien waivers, releases, bonds, affidavits, warranties and similar submittals required by the Contract Documents for delivery to the City and deliver all keys, manuals, record drawings and maintenance stocks to the City. The Construction Manager shall forward to the Engineer a final Project application for payment upon compliance with the requirements of the Construction Contract and related documents.

## ARTICLE 3 DISPUTE RESOLUTION

3.1 Claims, disputes or other matters in question between the parties to this Agreement arising out of or relating to this Agreement or breach thereof shall be submitted to nonbinding mediation, as a first step in seeking a resolution of the same. The dispute shall be mediated by a mutually



## **EXHIBIT A**

acceptable third-party to be chosen by the disputing parties within thirty (30) days after written notice by one of them requesting mediation. The disputing parties shall share the costs of the mediation equally. By mutual agreement the parties may postpone mediation until each has completed some specified but limited discovery about the dispute. By mutual agreement, the parties may use a nonbinding form of dispute resolution other than mediation. Any nonbinding dispute resolution process conducted under this Article shall be confidential within the meaning of Sections 154.053 and 154.073 of the Texas Civil Practice and Remedies Code and any successor statute thereto. If neither a negotiated settlement or mediated resolution is obtained within the time periods provided by this Article, the parties may pursue any available legal or equitable remedy.

3.2 Any request for mediation or another form of nonbinding dispute resolution shall be filed in writing with the other party within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for mediation or other form of nonbinding dispute resolution be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statutes of limitations.

3.3 No mediation or other form of nonbinding dispute resolution process arising out of or relating to this Agreement shall include, by consolidation, joinder or in any other manner, an additional person or entity not a party to this Agreement, except by written consent containing a specific reference to this Agreement signed by the City, Construction Manager, and any other person or entity sought to be joined. Consent to mediation or other form of nonbinding dispute resolution involving an additional person or entity shall not constitute consent to mediation or other form of nonbinding dispute resolution of any claim dispute or other matter in question not described in the written consent or with a person or entity not named or described therein.

### **ARTICLE 4 MISCELLANEOUS PROVISIONS**

4.1 As a condition of this Agreement, Construction Manager covenants that Construction Manager will take all necessary actions to insure that, in connection with any work under this contract, Construction Manager, its employees, consultants and agents will not discriminate in the treatment or employment of any person or group of persons on the ground of race, color, religion, national origin, sex or disability in any manner prohibited by applicable law.

4.2 All reports, documents and materials prepared by Construction Manager under this Agreement shall be the sole property of the City. Construction Manager may retain a copy of such reports, documents, and materials.