

Rickie Yeager, AICP

James E. Colombo, MAYOR



CITY OF PARKERSBURG
ONE GOVERNMENT SQUARE
P.O. BOX 1627
PARKERSBURG, WV 26102
304-424-8568
FAX NO. 304-424-8507

Memorandum

TO: Sarah Goff,
FROM: Ryan Barber 
DATE: September 6, 2016
RE: *Friendship Park Enhancement Project*

- Please advertise for bid the attached **2015-2016 Friendship Park Enhancement Project**.
- Please allow for a two week ad period in the Parkersburg News and Sentinel.
- First ad should appear on September 12th, 2016.
- Second ad should appear on September 19th, 2016.
- OPTIONAL Pre-bid meeting will be held on September 20th, 2016.
- Schedule bid opening for September 26th, 2016.
- Funding will be from the Community Development Block Grant.
- There will be no fee for specifications.

cc: File

ADVERTISEMENT FOR BIDS
CITY OF PARKERSBURG
FRIENDSHIP PARK ENHANCEMENT PROJECT

Sealed bids for the City of Parkersburg Friendship Park Enhancement Project will be received by the City of Parkersburg, West Virginia in the Office of the Finance Director, First Floor of the Municipal Building, One Government Square, (PO Box 1627), Parkersburg, WV 26102 until 4:00PM local time on September 26, 2016 and then at said office publicly opened and read aloud.

The general scope of work shall include the furnishing of all materials, labor, machinery, tools, appurtenances, equipment, transportation, utility services, other special structures, and all other means necessary to construct and complete the **2015 - 2016 Friendship Park Enhancement Project**.

Bidding documents may be examined at the Office of the Finance Director, First Floor of the Municipal Building, One Government Square, (PO Box 1627), Parkersburg, WV 26102 or on the City of Parkersburg's official website under the 'Announcements' section at <http://parkersburgcity.com/wp/blog/>

A pre bid meeting will be offered on September 20th at the Friendship Park Pavilion at 10:00 am. Please note that this meeting is not required to submit a bid

Bids may not be modified or withdrawn for a period of 60 days after receipt of bids without forfeiture of bid security, not as a penalty but as liquidated damages. A five percent (5%) bid bond or certified check must accompany all bids. Not necessary if bid alternative is not selected.

Bidders on this work will be required to comply with the president's Executive order Np. 11246 and 11375 and 41 CFR 60 and "FHWA 1273", which prohibit discrimination in employing regarding race, creed, religion, color, sex, national origin, or physical disability.

Bidder must comply with the requirements for Affirmative Action and Minority Business Enterprises participation as described in the Federal Specifications insert to the contract documents. Special provision will be made by the bidder to show what portion of the bid within each division are supported by Minority Business Enterprises work. In addition, bidders may obtain, upon request, information concerning local MBE firms.

The City of Parkersburg reserves the right to waive any informality in the bid and reject any or all bids.

For more information, please contact Ryan Barber, Development Projects Administrator, City of Parkersburg (304)424-8452.

***City of Parkersburg
Friendship Park Enhancement Project
Three Rail Style Steel Fence
Park Artwork
General Landscaping***

2015-2016

Parkersburg, West Virginia



James E. Colombo, Mayor

Rickie Yeager, Development Director

City of Parkersburg Development

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INSTRUCTION TO BIDDERS

A. All proposals must be made upon the forms contained herein and the prices must be written therein, both in words and figures. The figure shall include the cost for all services, labor, materials, and equipment necessary to complete the item. The proposal must be type written or filled in with ink.

B. All proposals not in conformity with this notice may be considered informal and may be rejected. No bid will be allowed to be withdrawn for any reason whatsoever after it has been deposited with the City of Parkersburg, West Virginia. All proposals must be enclosed in a sealed envelope addressed as described in the advertisement. Each bid must be accompanied by cash, certified check of the bidder, or a bid bond prepared on the form of bid bond attached hereto, duly executed by the bidder as principal and having as surety thereon a surety company approved by the Owner, in the amount of 5% of the bid. Attorneys-in-fact who sign bonds must file with each bond a certified and effectively dated copy of their power of attorney.

C. Each bidder is required to state in his proposal, his name, place of residence, and the names of all persons financially interested with said bidder. In addition, **each bidder is required to provide his W.V. Contractor License No. and a copy of said license, as issued under provisions of West Virginia Code, Chapter 21, Article 11.** In case of a corporation, the names of other than the president and secretary need not be given. Reference shall be furnished to establish the skill and business standing of the bidder.

D. If any person contemplating submitting a bid for the proposed contract is in doubt as to the true meaning of any part of the Contract Provisions, Contract, Instructions to Bidder, or other Contract documents, he may submit to the City of Parkersburg, West Virginia, a written request for interpretation. The bidder will be responsible for its delivery at least three days prior to the scheduled bid opening. Any interpretation of the proposed documents will be made only by addendum duly issued and a copy will be sent to all persons who receive copies of contract documents. The awarding authority will not be responsible for any other explanations for interpretations of the proposed documents.

E. Sureties must be approved by the City of Parkersburg. The City may determine the forms of acceptable surety in a particular case.

F. Proposals shall be subject to the condition that provided the Director of Finance of the City of Parkersburg, West Virginia, is unable to execute the certificate of availability of funds, then the right is reserved to the City to hold bids for a period of not longer than sixty (60) days after date of opening and/or to award contracts at any time during this period.

G. Consideration will be given to various factors to determine the responsible bidder whose bid, conforming to the invitation for bids, is lowest, including but not limited to the following factors:

- (1) whether bidder maintains a permanent place of business,
- (2) suitability of bidders plant and equipment for work,

- (3) bidder's financial status,
- (4) technical experience,
- (5) past performance,
- (6) contractor integrity, and
- (7) compliance with public policy
- (8) an in-state vendor will be granted a 2% preference if the vendor has made written claim for such preference at the time the bid is submitted.

H. The following listed forms which must be used in the submission of bids are attached.

- (1) Bid Proposal.
- (2) Schedule of Prices.
- (3) Proposal Guaranty (Bid Bond).
- (4) Bidder Qualification Data.
- (5) Non-collusion Affidavit.
- (6) Corporate Officer Identification Affidavit.
- (7) Signed copy of West Virginia Contractor License.

I. Within ten (10) days after the successful bidder receives the *Notice of Award*, he shall perform the following transactions:

- (1) Sign the contract in quadruplicate.
- (2) Furnish the Performance Bond with Sureties.
- (3) Furnish the Payment Bond with Sureties.
- (4) Furnish documentary evidence of compliance with all insurance requirements.
- (5) Furnish Subcontracting Request form when subletting any portion of contract work. Contractor may not sublet more than fifty percent of total contract amount.
- (5A) Furnish documentary evidence of subcontractors' compliance with all insurance requirements.
- (6) If the successful bidder is a corporation, evidence of authority of the officer signing the contract to bind the corporation must be given by proper corporate resolution.
- (7) If the successful bidder is an out of State Corporation, a certificate from the Secretary of State shall be furnished showing that the corporation is authorized to do business in the State of West Virginia.

BIDDING DOCUMENTS
(TO BE SUBMITTED AT BID OPENING)

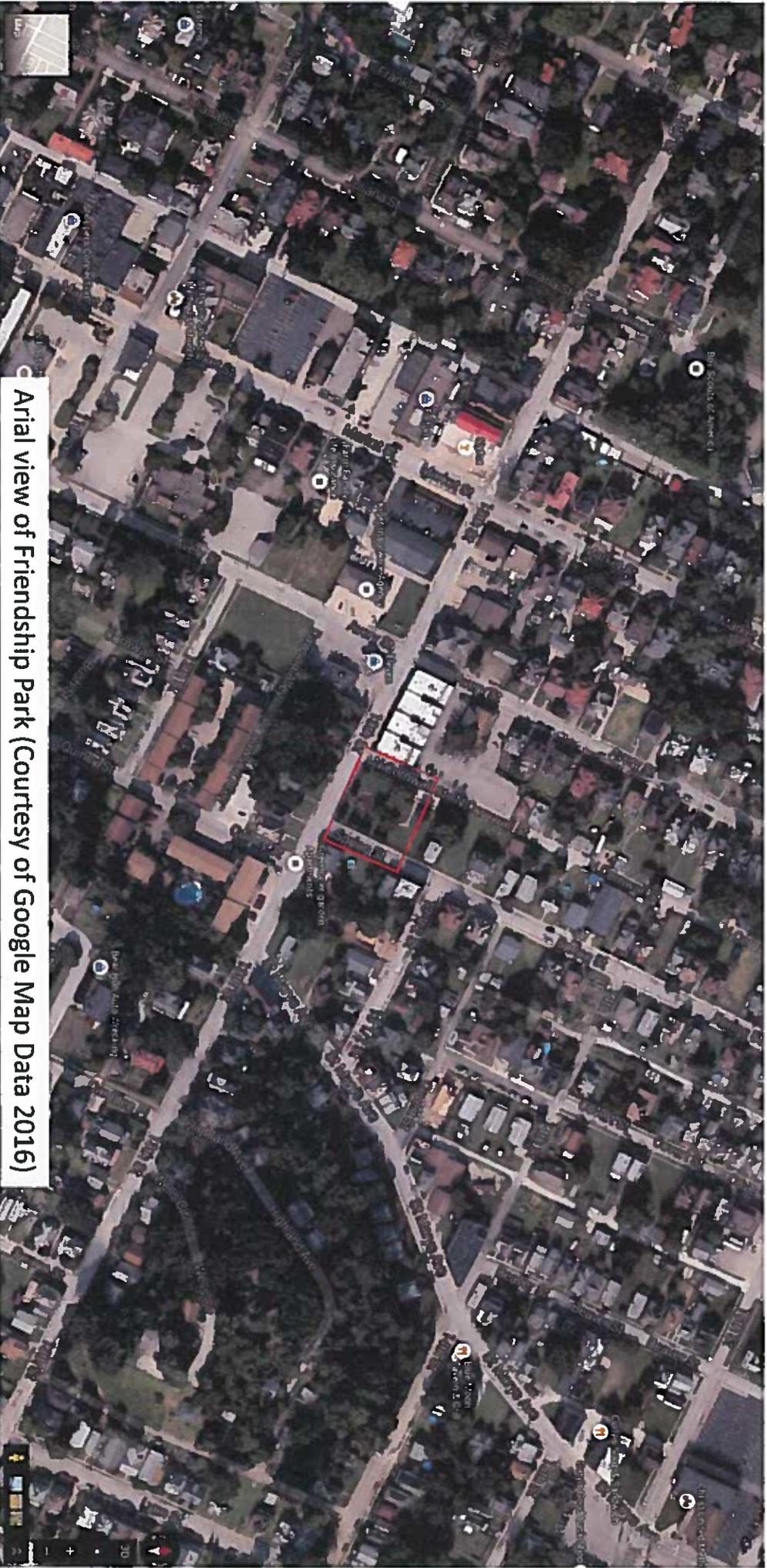
PROJECT PLAN/ FENCE, LANDSCAPE EXAMPLES
(SEE FOLLOWING SHEET)



Friendship Park Tax Map 69/166



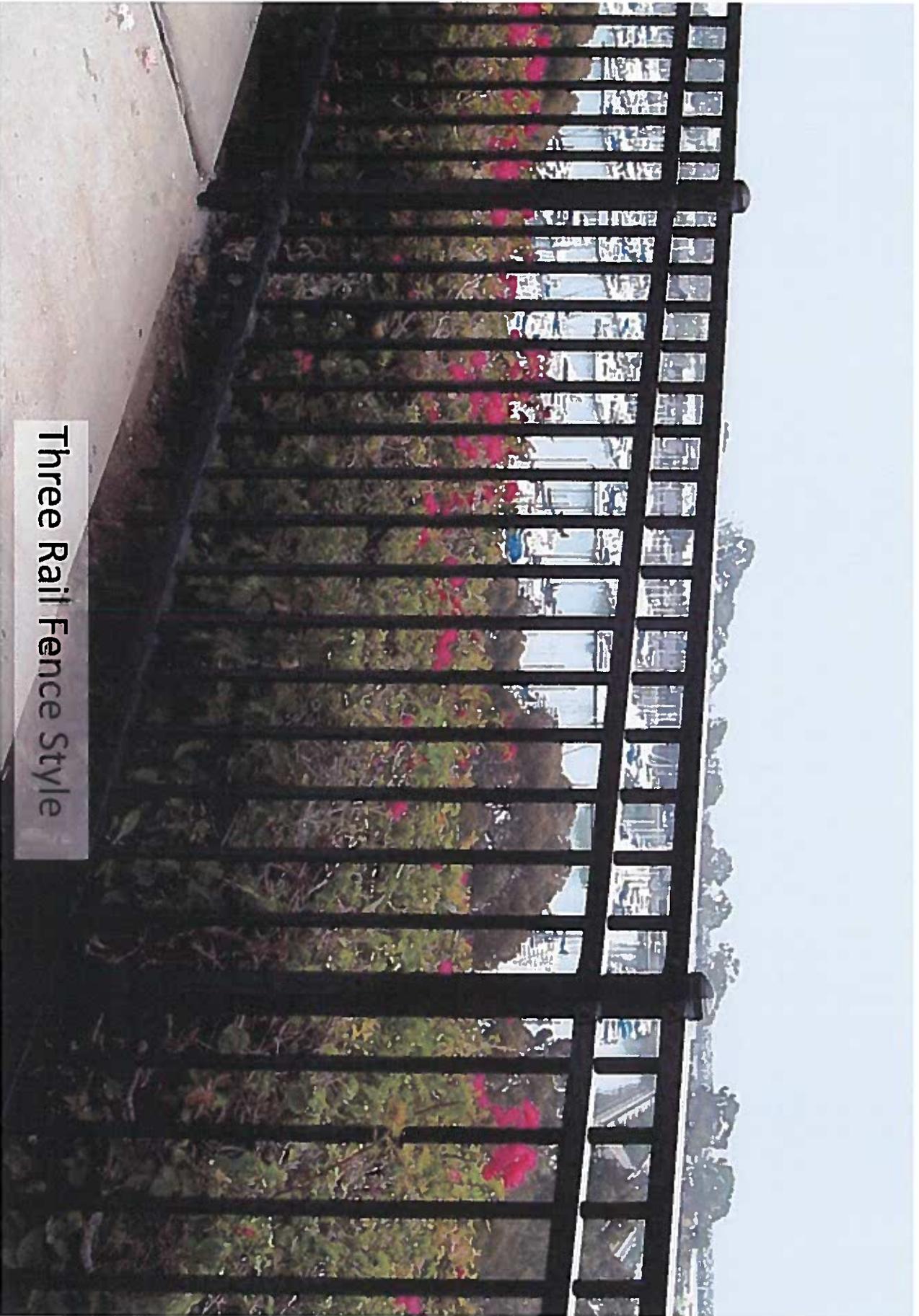
Aerial view of Friendship Park (Courtesy of Google Map Data 2016)



Aerial view of Friendship Park (Courtesy of Google Map Data 2016)



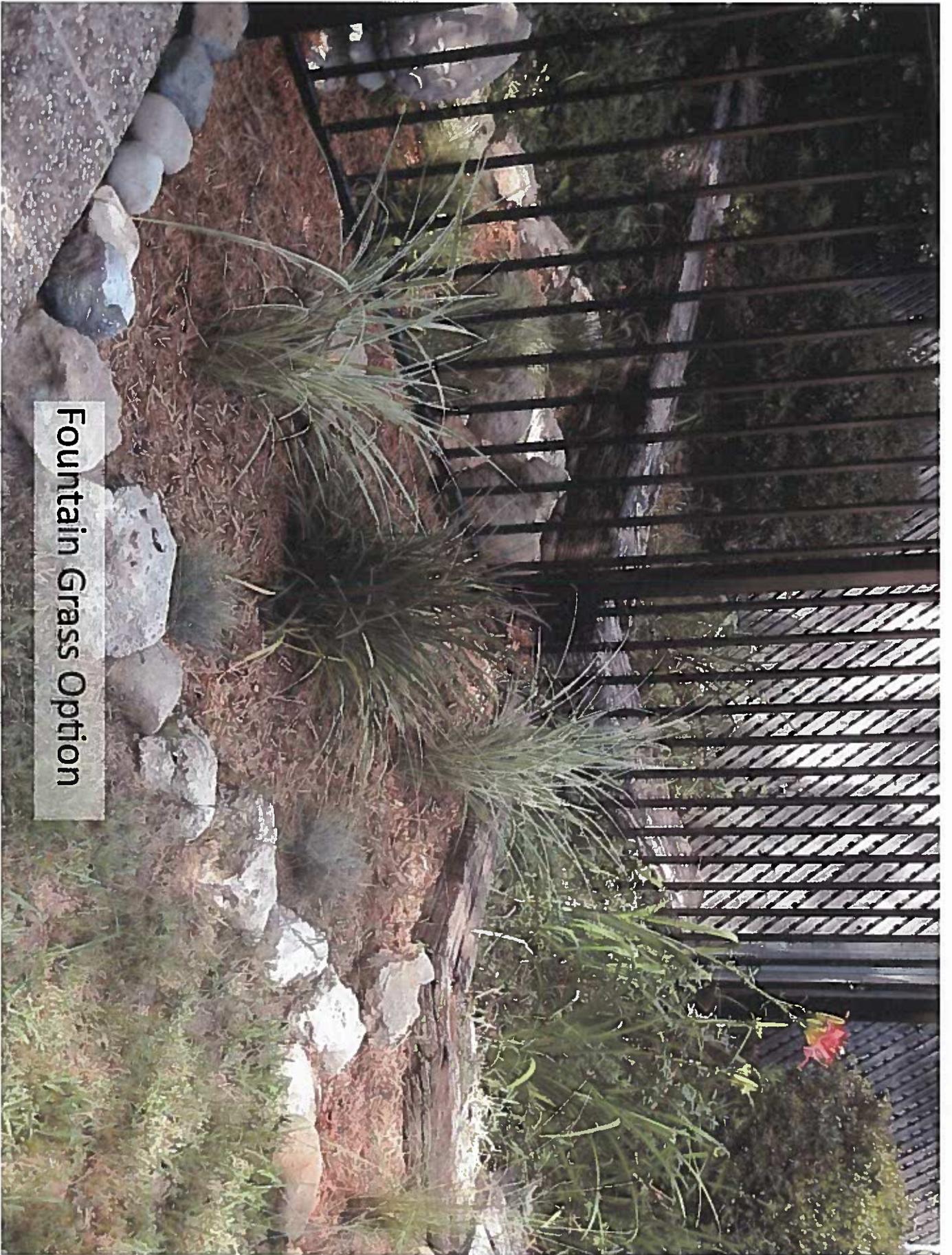
Three Rail Fence Style



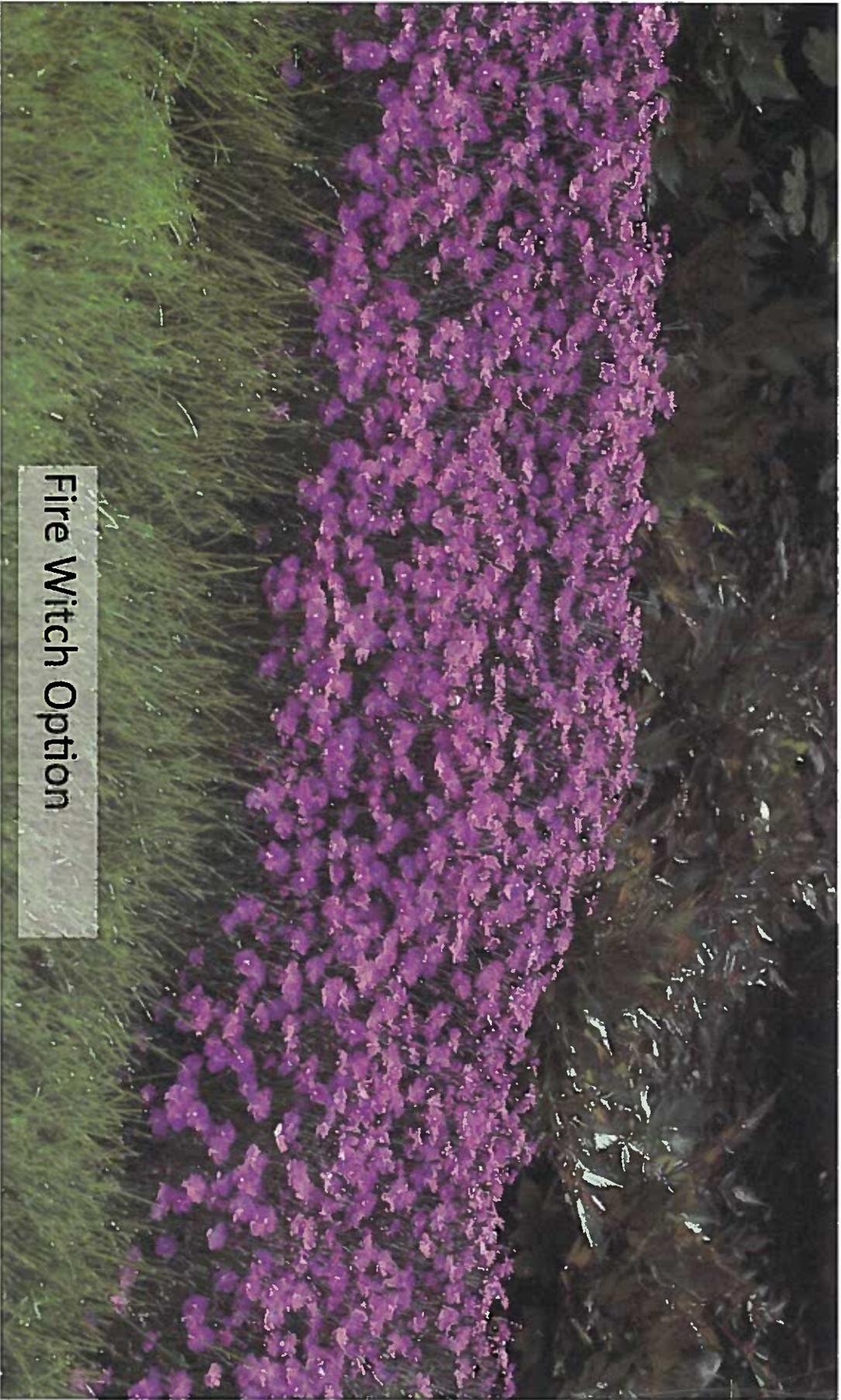
Three Rail Fence Style



Three Rail Fence Style



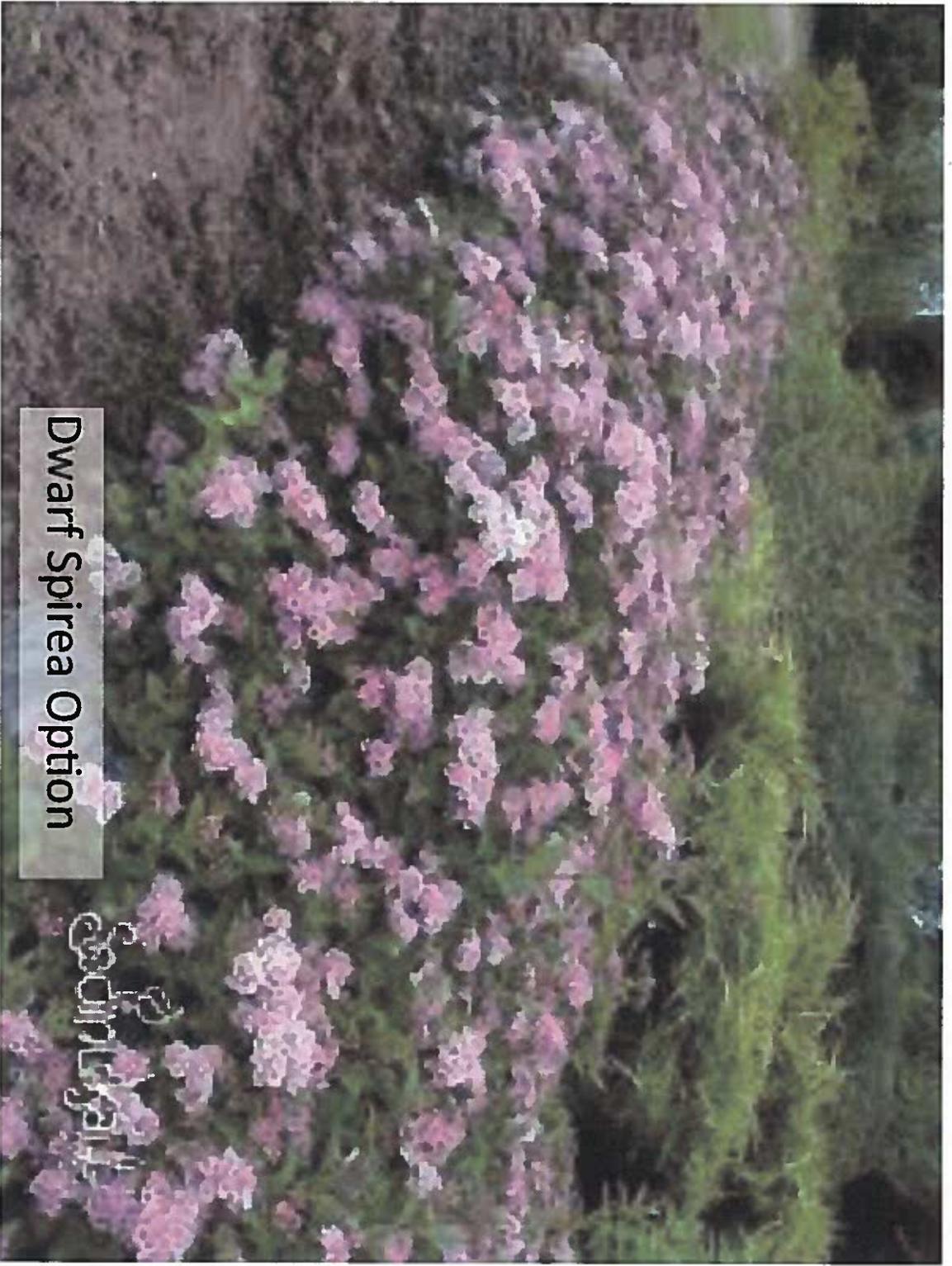
Fountain Grass Option



Fire Witch Option



Wintergreen Boxwood Option



Dwarf Spirea Option

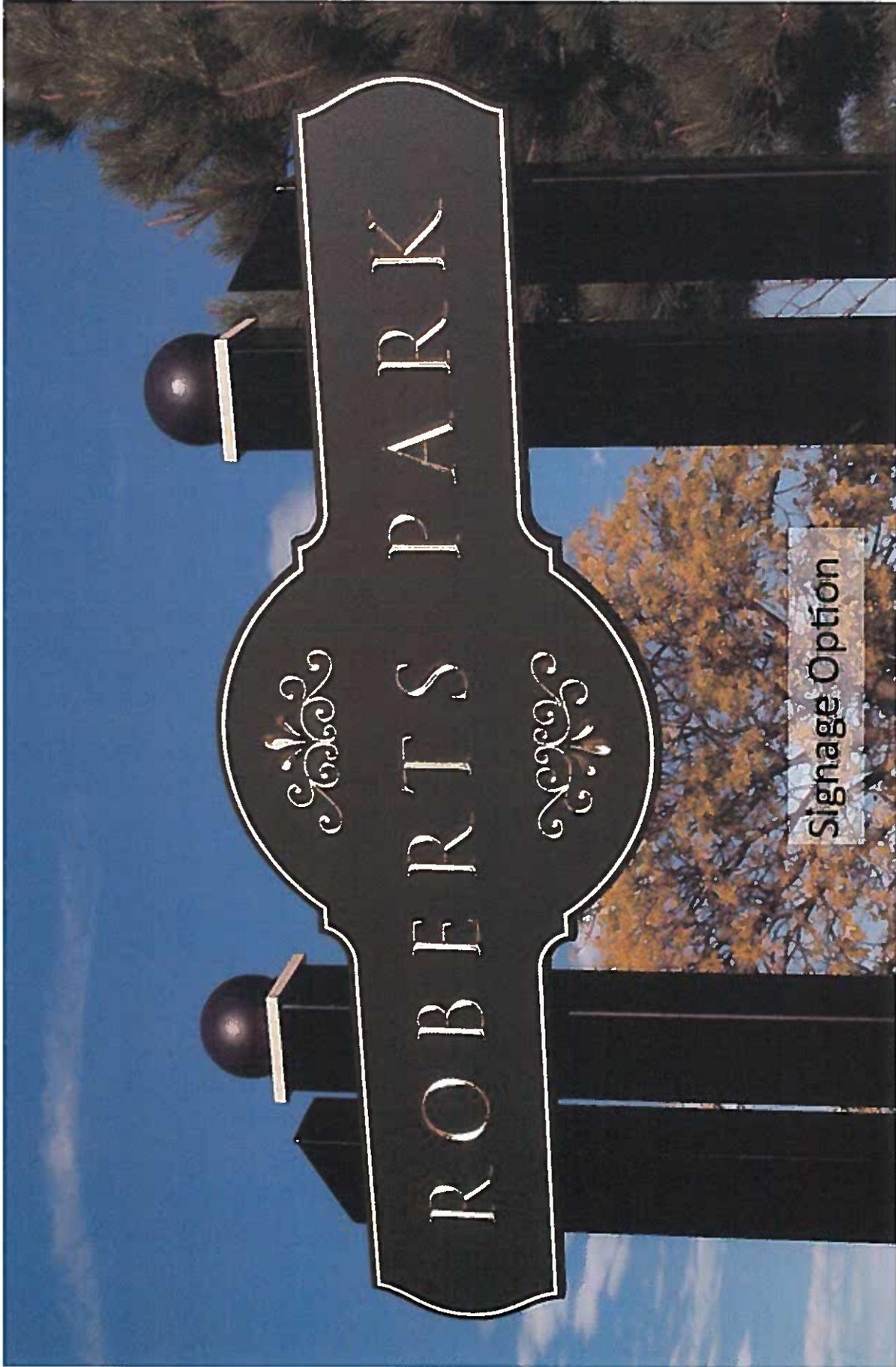
Spirea

Daylilies Option





Landscape Style Option



Signage Option



Signage Option

GENERAL NOTES AND SPECIFICATIONS

1. Governing Specifications

The **Davis-Bacon and Related Acts**, (40USC, Chapter 3, Section 276a-276a-5; and 29CFR Parts 1,3,5,6 and 7) apply to contractors and subcontractors performing on federally funded or assisted contracts in excess of \$2,000 for the construction, alteration, or repair (including painting and decorating) of public buildings or public works. Davis-Bacon Act and Related Act contractors and subcontractors must pay their laborers and mechanics employed under the contract no less than the locally prevailing wages and fringe benefits for corresponding work on similar projects in the area. The Davis-Bacon Act directs the Department of Labor to determine such locally prevailing wage rates. The Davis-Bacon Act applies to contractors and subcontractors performing work on federal or District of Columbia contracts. The Davis-Bacon Act prevailing wage provisions apply to the "Related Acts," under which federal agencies assist construction projects through grants, loans, loan guarantees, and insurance.

2. Scope of Work

The general scope of work shall include the furnishing of all materials, labor, machinery, tools, appurtenances, equipment, transportation, utility services, other special structures, and all other means necessary to construct and complete the **2015 - 2016 Friendship Park Enhancement Project**. All work shall be completed in full compliance with the Contract, and these Specifications.

The general scope of work for this project is as follows:

Installation of a three rail style fence along the perimeter of Friendship Park (City Tax Map 69, Parcel 166). Said fence should measure 4 feet high and should be of steel construction. Fence should be set back approximately three feet from the edge of the property line, as well as sidewalks, streets and alleyways. A total of three openings, two measuring 4 feet wide, one measuring 8 feet wide shall be left in the fence. This will include an opening facing Spring St. and two facing N Cornwall St. The fence openings shall be in the general location of the existing openings on said streets.

Posts are to be set approximately eight feet on center. Posts are to be set down into the ground a minimum of two feet, secure the post with concrete up within four inches of finished grade. Install three rail picket style railing similar to the attached photos. Prime all steel fence components using iron oxidizing primer. Paint all steel fence components using a high grade high gloss industrial black paint.

A pre-bid meeting will be held at the current park pavilion on September 20, 2016 at 10:00A.M.

Enhancements should begin by October 1, 2016.

Material specification as follows:

- 3" x 1/4" Wall @ Corners and Ends
- 2-1/2" X 1/8" Wall Fence Post with Cap
- 1-1/2" X 1/2" " x 1/2" X 1/8" Wall Rails
- 5/8" Solid Picket 4" O.C

Additionally, remove and dispose of sod around the general work areas. On the outside of the fence along streets and alleyways plant dianthus firewitch plant and daylilies of different color variances which are semi low profile, heat resistant and road salt friendly. Plant firewitch plant three feet apart, and day lilies four feet apart. On the inside of the fence, plant dwarf fountain grass and a few clumps of daylilies along the interior and exterior of the corner play areas of the park. Plant low profile boxwoods, spirea, and fountain grass in mixed location throughout the rest of landscape areas. Additionally, install landscape fabric beneath 3-4 inches of hardwood mulch. Peat moss and potting soil should be added to plants and shrubs accordingly. Refer to the attached stock landscape design images

As a point of reference, the minimum list of material specifications are as follows:

- 85 pots Dianthus Firewitch
- 110 1 Gal. Daylilies
- 30 Dwarf fountain grass
- 85 Winter green boxwoods
- 22 Dwarf spirea
- Hardwood mulch (3-4 inches deep)
- Landscape fabric
- Peat moss
- Potting soil

A landscape design is mandatory to submit a complete bid proposal.

BID ALTERNATE:

Additionally, to increase the park's visibility and enhance the user's experience, the City desires to incorporate public art into the project. The public art shall be family/park friendly, and geared toward children. The public art shall be installed along the outside of the fence along the streets and alleyways, and along the inside of the fence on the portion of property that abuts a residential lot (City Tax 69, Parcel 165). (Please see Parcel Map attached to this document). The new fence shall also display the name of the park visible to pedestrians and motorists traveling along Thirteenth Street. This feature can be incorporated into the public art requirement or be accomplished with appropriate signage. Additionally, please find attached a list of sample images of park signage and appropriate forms of park artwork. Potential bidders are not limited to these designs or templates. Bidders are encouraged to use their creativity and interact with the community for their input.

3. Utilities

- a. Contractor shall contact Miss Utility at least 48 hours before any construction begins.
- b. The contractor shall take all necessary precautions not to damage existing utilities in the project area. If utility lines are damaged and/or service is interrupted, the contractor will be responsible for the immediate repair of the affected areas.
- c. Contractor shall coordinate with the project engineer to have any utility components (valves, hydrants, etc.) adjusted at the appropriate time. The contractor is responsible for the location of all utility components.

4. Property Access

- a. Contractor shall maintain vehicular access to affected properties during the construction of this project.
- b. Contractor shall inform affected property owners that access to their property will be closed at least one working day before restricting driveways either verbally or in writing if verbal notification was not possible. Contractor shall also make an attempt to verbally notify property owners immediately before closing access to their properties.
- c. Any construction that restricts access to affected properties shall be continuous until access is restored.

5. Erosion and Sediment Control

- a. Contractor will be responsible for providing erosion, sediment, and pollution control in accordance with the laws and regulations of the State of West Virginia. No separate payment will be made for this work.

6. Verification of Quantities

- a. The quantities appearing in the proposal form are approximate only and are prepared for the comparison of bids. The submission of a bid is considered prima facie evidence that the bidder made examination of project documents, and has judged for and satisfied themselves as to the character, quality, and quantity of work to be performed and material required to be furnished under the contract. If upon completion of the project the actual quantities show increase or decrease, the unit bid price shall prevail.
- b. The contractor is responsible for verification of all plan quantities prior to ordering materials and/or performing work on the various bid items.

7. Drainage

- a. The contractor shall maintain adequate storm drainage in work areas at all times during construction. No additional payment will be made for this work.

8. Working Hours

- a. The contractor shall work on the project site only between the hours of 8:00 AM and 6:00 PM.

9. Seed and Mulch

- a. Contractor shall seed and mulch all disturbed earth so that new growth is consistent with surrounding grass/landscape

10. Traffic Control

- a. The contractor shall provide adequate vehicular and pedestrian traffic control in all work areas at all times. Traffic control devices and methods shall be in accordance with the WVDOH manual titled Traffic Control for Street and Highway Construction and Maintenance Operations, November 1994.

SCHEDULE OF PRICES

Friendship Park Enhancement Project

ITEM	UNIT	UNIT PRICE IN WORDS	PROPOSAL TOTAL AMOUNT	
			DOLLARS	CENTS
Three Rail Style Fence	Lump Sum			
Landscaping	Lump Sum			
TOTAL (Fence/Landscaping)				
BID ALTERNATE Public Art	Lump Sum			
TOTAL				

BID PROPOSAL

BIDDER'S NAME _____

W.V. CONTRACT LICENSE NO. _____

ADDRESS _____ DATE _____

PHONE NO. _____

Proposal of _____

(hereinafter called "Bidder") a corporation, organized and existing under the laws of the State of a partnership, or an individual doing business as _____. To the City of Parkersburg, West Virginia (hereinafter called "Owner").

Ladies & Gentlemen:

The Bidder, in compliance with your invitation for bids for the **2015 - 2016 Friendship Park Enhancement Project** having examined the plans and specifications with related documents and the site of the proposed work, and being familiar with all of the conditions surrounding the construction of the proposed project including the availability of materials and labor, hereby proposes to furnish all labor, materials, equipment, and supplies, and to complete the project in accordance with the contract documents, within the time set forth therein, and at the prices stated below. These prices are to cover all expenses incurred in performing the work required under the contract documents, of which this proposal is a part.

Bidder hereby agrees to commence work under this contract on or before a date to be specified in written "Notice to Proceed" from the Owner. Work should be scheduled to begin by October 1, 2016 and not to exceed **THIRTY (30) days** to fully complete the project as stipulated in the Special Conditions. Bidder further agrees to pay as liquidated damages as provided for in Section 3 of the Special Conditions.

Bidder acknowledges receipt of the following addendum:

PROPOSAL GUARANTY (BID BOND)

KNOW ALL MEN BY THESE PRESENTS: THAT _____
_____, as principal, and _____
_____ as sureties, are held and firmly
bound to the City of Parkersburg, West Virginia, in the sum of _____
_____ 5% of the total bid as _____
_____ shown in the proposal Dollars,
for the payment of which, well and truly to be made, we do hereby severally bind ourselves, our heirs, executors,
and administrators firmly by theses presents.

THE CONDITION OF THIS OBLIGATION is such that, WHEREAS the said
_____ has made the proposal indicated, written and stated
on the proceeding pages hereof, for **2015 - 2016 Friendship Park Enhancement Project.**

NOW, if the said proposal shall be accepted, and if the undersigned signed shall on being notified thereof,
enter into a contract with the said City of Parkersburg, West Virginia, to perform the work in said proposal
provided for, and in the manner for the prices therein named, and shall give bond for the faithful performance
thereof to the satisfaction of the City of Parkersburg, West Virginia, with an approved surety company, in the
total amount of the bid as shown in the proposal, and in accordance with the terms and provisions of said
contract, then this undertaking shall be void; otherwise to remain in full force and effect.

PRINCIPAL _____
ADDRESS _____

SURETY _____
ADDRESS _____

Countersigned:

**IMPORTANT - Surety companies executing BONDS must appear on the Treasury Department's most
current list (Circular 570 as amended) and be authorized to transact business in the state where the project is
located.**

NON-COLLUSION AFFIDAVIT

STATE OF WEST VIRGINIA)

) SS:

COUNTY OF WOOD)

Bid Identification 2015 - 2016 Friendship Park Enhancement Project

Contractor _____ Being first duly sworn, deposes and says that he is _____ (Title) of

_____, the party making the foregoing bid; that such bid is not made in the interest of or on behalf of any undisclosed person, partnership, company association, organization or corporation; that such bid is genuine and not collusive or sham; that said bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly, sought by agreement, communication or conference with anyone to fix the bid price of said bidder or of any other bidder, or to fix any overhead, profit, or cost element of such bid price, or that of any other bidder, or to secure any advantage against the public body awarding the contract or anyone interested in the proposed contract; that all statements contained in such bid are true; and, further, that said bidder has not, directly or indirectly submitted his bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid and will not pay any fee in connection herewith, to any corporation, partnership, company, association, organization, bid, depository, or to any member or agent thereof, or to any other individual except to such person or persons as have a partnership or other financial interest with said bidder in his general business.

By _____
(Title)

Subscribed and sworn to bid for this _____
day of _____, 2016.

SEAL

Notary Public

My commission expires _____

CORPORATE OFFICER IDENTIFICATION AFFIDAVIT

(To be filled in and executed if the Contractor is a Corporation)

STATE OF WEST VIRGINIA)

) SS:

COUNTY OF WOOD)

_____, being duly sworn, deposes and says that he is
_____, (Title), of _____
_____, a corporation, organized and existing under and by virtue of the laws of the State of
West Virginia and having its principal office at _____,
(Street Address)

_____, _____, _____
(City) (County) (State & Zip)

Affiant further says that he is familiar with the records, minutes and by-laws of
_____ and is duly authorized to sign the
(Name of Corporation)

contract for the **2015 - 2016 Friendship Park Renovation Project** for said Corporation by virtue of:

(State whether a provision of by-laws or a resolution of the board of directors. If by resolution, give date of
adoption.)

Subscribed and sworn to me this _____ day of
_____, 2016.

(Notary Public)

My commission expires: _____

CONTRACT DOCUMENTS-
TO BE SUBMITTED IN QUADRUPLICATE UPON NOTICE OF AWARD

PERFORMANCE (CONTRACT) BOND

KNOW ALL PERSONS BY THESE PRESENTS: that

(Name of contractor)

(Address of contractor)

a _____, hereinafter called Principal, and
(Corporation, Partnership, or Individual)

(Name of Surety)

(Address of Surety)

hereinafter called Surety, are held and firmly bound unto the

City of Parkersburg

(Name of Owner)

P.O. Box 1627 Parkersburg, WV 26102

(Address of Owner)

hereinafter called Owner, in the total aggregate penal sum of

_____, () in lawful money of
the United States, for the payment of which sum well and truly made, we bind ourselves, our heirs, executors,
administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the principal entered into a certain
contract with the OWNER, dated the , a copy of which is hereto attached and a part thereof for the construction
of the **2015 – 2016 Friendship Park Enhancement Project**.

NOW, THEREFORE, if the principal shall well, truly, and faithfully perform its duties, all the undertakings, covenants, terms, conditions, and agreements of said contract during the original term thereof, and any extensions thereof which may be granted by the OWNER with or without notice to the SURETY and during the one year guaranty period and if the PRINCIPAL shall satisfy all claims and demands incurred under such contract, and shall fully indemnify and save harmless the OWNER from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the OWNER all outlay and expense which the OWNER may incur in making good any default, then this obligation shall be void, otherwise to remain in full force and effect.

PROVIDED, FURTHER, that the said SURETY, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or work to be performed thereunder or the SPECIFICATIONS accompanying same shall in any way affect its obligation on this BOND, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the WORK or to the SPECIFICATIONS. PROVIDED, FURTHER, that it is expressly agreed that the BOND shall be deemed amended automatically and immediately, without formal and separate amendments hereto, upon amendment to the Contract not increasing the contract price more than twenty percent, so as to bind the PRINCIPAL and the SURETY to the full and faithful performance of the CONTRACT as so amended. The term "Amendment", wherever used in the BOND, and whether referring to this BOND, the Contract or the Loan Documents shall include any alteration, addition, extension, or modification of any character whatsoever.

PROVIDED, FURTHER, that no final settlement between the OWNER and the PRINCIPAL shall abridge the right of the other beneficiary hereunder, whose claim may be unsatisfied. The OWNER is the only beneficiary hereunder.

IN WITNESS WHEREOF, this instrument is executed in 4 counterparts, each one of which shall be deemed an original, this the _____ day of _____, 2016.

ATTEST:

(Principal)

(Principal Secretary)

(SEAL)

By _____

(Address)

(Witness as to Principal)

(Address)

(Surety)

ATTEST:

(Attorney-in-Fact)

BY _____
(Witness to Surety)

(Address)

If CONTRACTOR is partnership, all partners should execute BOND. **IMPORTANT: Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the state where the project is located.**

STATE OF _____, COUNTY OF _____

I, _____, a Notary Public in and for the County and State aforesaid, do certify that _____, who signed the writing above, bearing the date the _____ day of _____, 2016, for _____ has this day acknowledged the said writing

(Corporation-Principal)

to be the act and deed of said corporation.

Given under my hand this _____ day of _____, 2016.

My Commission expires: _____

(Notary Public)

STATE OF _____, COUNTY OF _____

I, _____, a Notary Public in and for the County and State aforesaid, do certify that _____ who signed the writing above, bearing date the _____ day of _____, 2016, as Attorney-in-Fact for _____

(Surety)

had this day acknowledged the same before me in my said County. Given under my hand this _____ day of _____, 2016.

My Commission expires: _____

(Notary Public)

PAYMENT BOND

KNOW ALL PERSONS BY THESE PRESENTS: that

(Contractor)

(Address of Contractor)

a _____, hereinafter called PRINCIPAL and
(Corporation, Partnership, or Individual)

(Name of Surety)

hereinafter called Surety, are held and firmly bound unto:

City of Parkersburg

(Name of Owner)

P.O. Box 1627 Parkersburg, WV 26102

(Address of Owner)

hereinafter called Owner, and unto all persons, firms, and corporations who or which may furnish labor, or who furnish materials to perform as described under the contract and to their successors and assigns in the total aggregate penal sum of _____ () in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the PRINCIPAL entered into a certain contract with the OWNER, dated the _____ day of _____, 2016, a copy of which is hereto attached and made a part hereof for the construction of the **2015 - 2016 Friendship Park Enhancement Project**

NOW, THEREFORE, if the PRINCIPAL shall promptly make payment to all persons, firms, and corporations furnishing materials for or performing labor in the prosecution of the WORK provided for in such contract and any authorized extensions or modification thereof, including all amounts due for materials, lubricants, oil, gasoline, coal and coke, repairs on machinery, equipment and tools, consumed or used in such WORK including that by a SUBCONTRACTOR, and to any mechanic or material man lien holder whether it acquires its lien by operation of State or Federal law; then this obligation shall be void, otherwise to remain in full force and effect.

PROVIDED, that beneficiaries or claimants hereunder shall be limited to the SUBCONTRACTORS, and persons, firms, and corporations having a direct contract with the PRINCIPAL or its SUBCONTRACTORS.

PROVIDED, FURTHER, that the said SURETY for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the WORK to be performed thereunder or the SPECIFICATIONS accompanying the same shall in any way affect its obligation on this BOND, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of this contract or to the WORK or to the SPECIFICATIONS.

PROVIDED, FURTHER, that no suit or action shall be commenced hereunder by any claimant: (a) Unless claimant, other than one having a direct contract with the PRINCIPAL (or with the GOVERNMENT in the event the GOVERNMENT is performing the obligations of the OWNER) shall have given written notice to any two of the following: The PRINCIPAL, OWNER, or the SURETY above named within ninety (90) days after such claimant did or performed the last of the work or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the PRINCIPAL, OWNER, or SURETY, at any place where an office is regularly maintained for the transaction of business, or served in any manner in which legal process may be served in the state in which the aforesaid project is located, save that such service need not be made by a public officer. (b) After the expiration of one (1) year following the date of which PRINCIPAL ceased work on said contract, is being understood, however, that any limitation embodied in the BOND is prohibited by any law controlling the construction hereof, such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

PROVIDED, FURTHER, that it is expressly agreed that this BOND shall be deemed amended automatically and immediately, without formal and separate amendments hereto, upon amendment to the contract not increasing the contract price more than 20 percent, so as to bind the PRINCIPAL and the SURETY to the full and faithful performance of the Contract as so amended. The term "Amendment", wherever used in this BOND, the contract or the loan documents shall include any alteration, addition, extension, or modification of any character whatsoever.

PROVIDED, FURTHER, that no final settlement between the OWNER and the CONTRACTOR shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

WITNESS WHEREOF, this instrument is executed in 4 counterparts, each of which shall be deemed an original, this the _____ day of _____, 2016.

ATTEST:

(Principal)

(Principal Secretary)

(SEAL)

By _____ (s)

(Witness as to Principal)

(Address)

(Surety)

ATTEST:

BY

(Witness to Surety)

(Attorney-in-Fact)

(Address)

If CONTRACTOR is partnership, all partners should execute BOND. **IMPORTANT: Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the state where the project is located.**

STATE OF _____,

COUNTY OF _____

I, _____, a Notary Public in and for the County and State aforesaid, do certify that _____, who signed the writing above, bearing date the _____ day of _____, 2016,

for _____ has this day acknowledged the said writing to be the act and deed of said corporation. Given under my hand this _____ day of _____, 2016.

My Commission expires: _____

(Notary Public)

STATE OF _____, COUNTY OF _____

I, _____, a Notary Public in and for the County and State aforesaid, do certify that _____ who signed the writing above, bearing date the _____ day of _____, 2016, as Attorney-in-Fact for

_____ had this day acknowledged the same before me in my said County. Given under my hand this _____ day of _____, 2016.

My Commission expires: _____

(Notary Public)

CONTRACT

THIS AGREEMENT, made this _____ day of _____, 2016, by and between the CITY OF PARKERSBURG, herein called "Owner" acting herein through the Mayor, and

STRIKE OUT (a corporation) (a partnership)

Inapplicable (an individual doing business as) _____

_____ of _____, County of _____ the State of _____, hereinafter called "Contractor".

Witnesseth: That for and in consideration of the payments and hereinafter mentioned, to be made and performed by the OWNER, the CONTRACTOR hereby agrees with the OWNER to commence and complete the construction described as follows: **2015 - 2016 Friendship Park Enhancement Project** for the sum of _____, (_____) and all extra work in connection therewith, under the terms as stated in the Special Conditions of the Contract; and at his (it's or their) own proper cost or expenses to furnish all the supplies, machinery, equipment, tools, superintendents, labor, insurance, and other accessories and services necessary to complete the said project in accordance with the conditions and prices stated in the Schedule of Quantities, Special Conditions of the Contract, the plans, which include all maps, plats, blue prints, and other drawings and printed or written explanatory matter thereof, the specifications and contract documents, all of which are made a part hereof and collectively evidence and constitute the contract.

Bidder hereby agrees to commence work under this contract on or before a date to be specified in written "Notice to Proceed" from the Owner. Work should be scheduled to begin on October 1, 2016 and not to exceed **THIRTY (30)** calendar days thereafter. The CONTRACTOR further agrees to pay liquidated damages as provided for in Section 3 of the Special Conditions.

The OWNER agrees to pay the CONTRACTOR in current funds for the performance of the contract, subject to additions and deductions, as provided for in the Special Conditions of the Contract, and to make payments on account thereof as provided in Paragraph 17, "Payments to Contractor", of the Special Conditions.

IN WITNESS WHEREOF, the parties to the presents have executed this contract in four (4) counterparts, each of which shall be deemed an original, in the year and day first above mentioned.

(Seal)

CITY OF PARKERSBURG

ATTEST:

By: _____

(Mayor)

(City Clerk)

(Witness)

(Seal)

(Secretary)

By _____

(Company Officer), (Title)

(Witness)

(Contractor)

(Address)

NOTE: If the Contractor is a corporation, Secretary of the OWNER should attest.

CERTIFICATE OF FUNDS

2015 - 2016 Friendship Park Enhancement Project

I, _____, hereby certify that I am the qualified and acting fiscal officer of the City of Parkersburg, West Virginia, and that the amount of money to wit,

_____, (_____),
required to meet the cost of the attached Contract between the City of Parkersburg, West Virginia, and has been lawfully appropriated for the purpose of said Contract and the money so appropriated is on deposit or in the process of collection, to the credit of the appropriate fund free from any encumbrances.

These funds are to be drawn from the City of Parkersburg's Community Development Block Grant

_____, 2016

Fiscal Officer

SPECIAL CONDITIONS

2.1. GENERAL SCOPE OF WORK

The general scope of work shall include the furnishing of all materials, labor, machinery, tools, appurtenances, equipment, transportation, utility services, other special structures, and all other means necessary to construct and complete the **2015 - 2016 Friendship Park Enhancement Project**. All work shall be completed in full compliance with the Contract, and these Specifications.

The general scope of work for this project is as follows:

Installation of a three rail style fence along the perimeter of Friendship Park (City Tax Map 69, Parcel 166). Said fence should measure 4 feet high and should be of steel construction. Fence should be set back approximately three feet from the edge of the property line, as well as sidewalks, streets and alleyways. A total of three openings, two measuring 4 feet wide, one measuring 8 feet wide shall be left in the fence. This will include an opening facing Spring St. and two facing N Cornwall St. The fence openings shall be in the general location of the existing openings on said streets.

Posts are to be set approximately eight feet on center. Posts are to be set down into the ground a minimum of two feet, secure the post with concrete up within four inches of finished grade. Install three rail picket style railing similar to the attached photos. Prime all steel fence components using iron oxidizing primer. Paint all steel fence components using a high grade high gloss industrial black paint.

A pre-bid meeting will be held at the current park pavilion on September 20, 2016 at 10:00A.M. Enhancements should begin by October 1, 2016.

Material specification as follows:

- 3" x 1/4" Wall @ Corners and Ends
- 2-1/2" X 1/8" Wall Fence Post with Cap
- 1-1/2" X 1/2" x 1/2" X 1/8" Wall Rails
- 5/8" Solid Picket 4" O.C

Additionally, remove and dispose of sod around the general work areas. On the outside of the fence along streets and alleyways plant dianthus firewitch plant and daylilies of different color variances which are semi low profile, heat resistant and road salt friendly. Plant firewitch plant three feet apart, and day lilies four feet apart. On the inside of the fence, plant dwarf fountain grass and a few clumps of daylilies along the interior and exterior of the corner play areas of the park. Plant low profile boxwoods, spirea, and fountain grass in mixed location throughout the rest of landscape areas. Additionally, install landscape fabric beneath 3-4 inches of

hardwood mulch. Peat moss and potting soil should be added to plants and shrubs accordingly. Refer to the attached stock landscape design images

As a point of reference, the minimum list of material specifications are as follows:

- 85 pots Dianthus Firewitch
- 110 1 Gal. Daylilies
- 30 Dwarf fountain grass
- 85 Winter green boxwoods
- 22 Dwarf spirea
- Hardwood mulch (3-4 inches deep)
- Landscape fabric
- Peat moss
- Potting soil

A landscape design is mandatory to submit a complete bid proposal.

BID ALTERNATE:

Additionally, to increase the park's visibility and enhance the user's experience, the City desires to incorporate public art into the project. The public art shall be family/park friendly, and geared toward children. The public art shall be installed along the outside of the fence along the streets and alleyways, and along the inside of the fence on the portion of property that abuts a residential lot (City Tax 69, Parcel 165). (Please see Parcel Map attached to this document). The new fence shall also display the name of the park visible to pedestrians and motorists traveling along Thirteenth Street. This feature can be incorporated into the public art requirement or be accomplished with appropriate signage. Additionally, please find attached a list of sample images of park signage and appropriate forms of park artwork. Potential bidders are not limited to these designs or templates. Bidders are encouraged to use their creativity and interact with the community for their input.

2.2. TIME OF COMPLETION

Bidder hereby agrees to commence work under this contract on or before a date to be specified in written "Notice to Proceed" from the Owner. Work should be scheduled to begin on **October 1, 2016** and not to exceed **THIRTY (30)** calendar days to fully complete the project as stipulated in the Special Conditions. Bidder further agrees to pay as liquidated damages as provided for in Section 3 of the Special Conditions.

2.3. LIQUIDATED DAMAGES

It is hereby understood and mutually agreed, by and between the Contractor and the Owner, that the date of beginning and the time for completion as specified in the Contract of the work to be done hereunder are **ESSENTIAL CONDITIONS** of this Contract; and it is further mutually understood and agreed that the work embraced in this Contract shall be commenced on a date to be specified in the "Notice to Proceed" not to exceed 14 days from signing contract. The Contractor agrees that said work shall be prosecuted regularly, diligently, and

uninterrupted at such rate of progress as will insure full completion thereof within the time specified. It is expressly understood and agreed, by and between the Contractor and the Owner, that the time for the completion of the work described herein is a reasonable time for the completion for the same, taking in consideration the average climatic range and usual industrial conditions prevailing in this locality. It is further agreed that any work which is to be performed during weekends, holidays, before 7:00 a.m. or after 7:00 p.m. Monday through Friday must have written approval of the City Engineer. If the said Contractor shall neglect, fail or refuse to complete this work within the time herein specified, or any proper extension thereof granted by the Owner, then the Contractor does hereby agree, as a part consideration for the awarding of this Contract, not as a penalty but as liquidated damages for such breach of Contract as hereinafter set forth, for each and every calendar day that the Contractor shall be in default after the time stipulated in the Contract for completing the work.

The said amount is fixed and agreed upon by and between the Contractor and the Owner because of the impracticality and extreme difficulty of fixing and ascertaining the actual damages the Owner would in such event sustain, and said amount is agreed to be the amount of damages which the Owner would sustain and the amount shall be retained from time to time by the Owner from current estimates.

It is further agreed that time is of the essence of each and every portion of this Contract and of the specifications wherein a definite and certain length of time is fixed for the performance of any act whatsoever; and where under the Contract an additional time is allowed for the completion of any work, the new time limit by such extension shall be of the essence of this Contract. Provided, that the Contractor shall not be charged with liquidated damages or any excess cost when the OWNER determines that the CONTRACTOR is without fault and the CONTRACTOR'S reasons for the time extension are acceptable to the OWNER; Provided, further, that the CONTRACTOR shall not be charged with liquidated damages or any excess cost when the delay in the completion of work is due:

- (a) To any preference, priority, or allocation order duly issued by the Government;
- (b) The unforeseeable cause beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, or of the public enemy, acts of the Owner, acts of another Contractor in the performance of a contract with the Owner, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and severe weather; and
- (c) To any delays of the Subcontractors or suppliers occasioned by any of the causes specified in subsections (a) and (b) of this article:

Provided, further, that the Contractor shall, within ten (10) days from the beginning of such delay, unless the Owner shall grant a further period of time prior to the date of final settlement of the Contract, notify the Owner, in writing, of the causes of the delay, who shall ascertain the facts and extent of the delay and notify the Contractor within a reasonable time of its decision in the matter. The Contractor and his Sureties shall be liable for and shall pay to the City the liquidated damages based upon the following table :

Liquidated Damages Per Calendar Day	Total Estimated Cost of Project
\$ 120.00	\$0.00-----25,000.00
150.00	25,000.01-----100,000.00
290.00	100,000.01-----500,000.00
490.00	500,000.01-----1,000,000.00
840.00	1,000,000.01-----2,000,000.00
1,390.00	2,000,000.01-----5,000,000.00
2,220.00	5,000,000.01-----10,000,000.00
3,870.00	10,000,000.01-----or above

2.4. LEGAL REGULATIONS AND RESPONSIBILITIES

A. The Contractor warrants that he is familiar with, and hereby agrees at all times to observe and comply with all Federal and State laws, and all Municipal Ordinances and Regulations which in any way or manner affect the conduct of the work. He shall indemnify and save harmless the City, its officers, agents, and servants against any claim or liability arising from or based on the violation of any such law, ordinance or regulation, either by the Contractor, his agents, or employees, or arising from or based on the negligence of the Contractor, his agents, servants, or employees.

B. The City reserves the right to annul this Contract at any time upon receiving evidence of the Contractor's failure to comply with any such laws, ordinances, or regulations.

C. If any provisions of these specifications are not in accordance with legal requirements, the latter shall govern.

D. The Contractor shall procure all permits and licenses, pay all charges and fees, give all notice necessary and incidental to the due and lawful prosecution of the work.

E. Except as otherwise specifically stated in the Contract documents and Technical Specifications, the Contractor shall provide and pay for all labor, tools, equipment, water, light, heat, power, transportation scheduling, superintendence, temporary construction of every nature, charge, levies, fees or other expenses and all of the services and facilities of every nature whatsoever necessary for the performance of the Contract, and to deliver all improvements embraced in this Contract complete in every respect within the specified time.

The Contractor shall indemnify, keep and save harmless the City from all liabilities, judgments, costs, damages, and expenses, which in any way may come against the City by reason of the use of any patented or copyrighted article, machinery, equipment, design, device, or process furnished or used in the performance of the work.

F. The Contractor shall establish a local field headquarters after the Contract has been executed and maintain the same until the Contract has been completed. Before starting work, the Contractor shall designate in writing, an authorized representative who shall have complete authority to represent and to act for the Contractor, said authorized representatives shall be present at all times, at the site of the work while work on the project is actually in progress.

G. The Contractor shall avoid any encroachment on the premises of adjacent properties and shall be held responsible for any and all damages outside the limits of construction indicated in the scope of work. Any such damage shall be satisfactorily replaced and/or repaired by the Contractor at no cost to the City.

H. Should it appear that the work to be done or any of the matters relating thereto are not sufficiently detailed or explained in these Specifications or Drawings, the Contractor shall make written application to the Development Office for such further written explanation as may be necessary. Should the Contractor not request such explanation, any related work or construction shall be solely at the risk and responsibility of the Contractor. The costs of any replacement or corrective measure required shall be borne by the Contractor.

2.5. ANNULMENT OF CONTRACT

A. In the event the Contractor or any subcontractor fails to execute the work in accordance with the Contract, fails to furnish the necessary equipment, fails to complete the work within the time named in the Contract, or if any official or employee of the Owner shall become interested in the Contract or in furnishing supplies or performing work thereunder, or if the provisions of the contract are otherwise violated, then, in any such case, upon ten (10) days' notice to the Contractor and his Surety, stating the reason for the Owner's intention to terminate the Contract, the Owner shall have the right to annul and terminate the Contract.

B. Unless within ten (10) days after service of said notice the violation shall cease or satisfactory arrangements shall have been made for its correction, the Contract, upon expiration of the said ten (10) days shall cease and be terminated.

C. The action of the Owner in the termination of the Contract shall be final and conclusive, and the Contractor shall not be entitled to claim or receive any damage for not being allowed to continue.

D. After termination of the Contract, the Surety shall have the right to take over and complete the work in strict accordance with all provisions of the original Contract. The Surety shall notify the Owner in writing within ten (10) days after the termination of the contract its intent to take over the work and shall begin the completion thereof within twenty (20) days of the termination of the Contract.

E. If the Surety does not take over the Contract as stated above, then the Owner shall cause the work to be completed under a second contract let pursuant to law. If the cost of work due under the second Contract exceeds what it would have cost under the original Contract, the increased cost shall be paid from any money due the Contractor under the Contract, and if that is not sufficient then the increased cost shall be paid by the Contractor and/or his surety. They also shall pay all cost and expense of reletting the work and all damages resulting from non-completion of the work within the Contract time. If, when the work is completed it is found that there is any money due the Contractor, it will be paid to him; but no money shall be paid to the Contractor under the Contract after it has been terminated, until the work has been completed and accepted and all claims and suits resulting therefrom have been settled.

2.6. TERMINATION OF CONTRACT FOR CONVENIENCE OF THE OWNER

The performance of work under this Contract may be terminated by the Owner in whole, or from time to time in part whenever the Owner shall determine that such termination is in the best interest of the Owner. Any such termination shall be affected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of work under the Contract is terminated and the date upon which such termination becomes effective.

When contracts, or any portion thereof, are terminated before completion of all items of work in the Contract, payment will be made for the actual number of units or items of work completed at the contract unit price, or as mutually agreed for items of work partially completed or not started. No claim for loss of anticipated profits will be considered.

Reimbursement for organization of the work, when not otherwise included in the Contract, and moving equipment to and from the job will be considered where the volume of work completed is too small to compensate the Contractor for these expenses under the Contract unit prices, the intent being that an equitable settlement will be made with the Contractor.

Acceptable materials, obtained by the Contractor for the work, that have been inspected, tested, and accepted by the Development Office, and that are not incorporated in the work may, at the option of the Owner, be purchased from the Contractor at actual cost as shown by receipted bills and actual cost records at such point of delivery as may be designated by the Superintendent.

Termination of a Contract or a portion thereof shall not relieve the Contractor of responsibilities for the completed work, nor shall it relieve his surety of its obligation for and concerning any just claims arising out of work performed.

2.7. FAILURE TO EXECUTE CONTRACT

If the Contractor fails to execute the Contract and file an acceptable Bond and other Contract papers within the ten (10) day period as stipulated, it shall be considered sufficient reason for the annulment of the award and forfeiture of the Proposal Guaranty to the Owner, not as a penalty but as liquidated damages. Award may then be made to the next lowest bidder or the work may be re-advertised as the Owner may decide.

2.8. SUBLETTING OR ASSIGNING

The Contractor shall not assign or transfer this Contract or sublet any part thereof, or assign any of the moneys payable under this Contract without first securing the written consent of both the Owner and the Surety upon the Contractor's Bond (see SUBCONTRACTING REQUEST form). Any attempted assignment or subletting without consent shall be null and void. All work for CONTRACTOR by a Subcontractor will be pursuant to an appropriate agreement between CONTRACTOR and the Subcontractor which specifically binds the Subcontractor to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer. Copies of all subcontracts consented to shall be filed with the Owner. The Contractor shall not assign, transfer, or sublet more than fifty percent of the Contract work.

Assigning or subletting the whole or any portion of this Contract shall not operate to release the Contractor or his bondsmen hereunder from any of the Contract obligations. An individual, firm, partnership, or corporation supplying materials only for the work shall not be considered a subcontractor.

All subcontracts submitted by the prime contractor to the City shall require all subcontractors to take affirmative steps to assure that small and minority businesses are utilized when possible as sources of supplies, equipment, construction and services, such affirmative steps shall include the following:

- (1) Including qualified small and minority businesses on solicitation lists.
- (2) Assuring that small and minority businesses are solicited whenever they are potential sources.
- (3) When economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum small and minority business participation.
- (4) Where the requirement permits, establishing delivery schedules which will encourage participation by small and minority business.
- (5) Using the services and assistance of the Small Business Administration, the Office of Minority Business Enterprise of the Department of Commerce and the Community Services Administration as required.
- (6) If any subcontracts are to be let, requiring the prime contractor to take the affirmative steps in 1 through 5 above.

2.9. DELAYS DUE TO INJUNCTIONS, ETC.

Any delay in the execution of the work under this Contract imposed by injunction or order of court through no fault, neglect, or wrongful act or omission of the Contractor, shall operate to extend the time herein fixed for the completion of the part or parts of the work so obstructed, for the length of time the obstruction continues and no longer, but no damages shall be claimed by or allowed the Contractor for any such delay.

2.10. DAMAGES TO EXISTING UTILITIES

The CONTRACTOR shall be responsible for locating all active, underground utilities., the CONTRACTOR shall be required to determine in his own way the obstructions and difficulties to be encountered in the prosecution of the work under this contract, and any additional expense incurred on account of such obstructions and difficulties shall be included in the unit prices bid for the several items of work.

The proposed layout is designed to fit the project site. If during construction it is found that the proposed improvements will adversely impact or disrupt existing utilities, the Development Department and City Engineer reserves the right to redesign the proposed layout and appurtenances, increasing the Contract quantities as required with no additional or separate compensation other than the contract unit prices for the respective items actually placed. Should the Contractor actually sever or rupture any utility of any nature, then he shall inform the office of the City Engineer immediately so that appropriate measures may be taken to restore service to same. The Contractor shall not assume authority to repair or replace any damage whatsoever to any utility as this will be the sole responsibility of the affected utility. The affected utility will make all repairs for damage that may be caused by the Contractor and shall bill the Contractor for costs incurred.

The Contractor will therefore be held responsible to pay for any or all damages to subsurface or overhead utilities of whatsoever nature and will save harmless the City of Parkersburg from any claims arising out of such damage.

2.11. REMOVAL OF DEBRIS, CLEANING, ETC

The Contractor shall daily or as directed by the Development Department or City Engineer during the progress of the work, remove and legally dispose of all surplus excavated material and debris, and keep the project area and public rights-of-way reasonably clear and clean. The Contractor shall also be required daily, to remove by water or whatever means necessary from the pavement, sidewalk, or curbs any mud or debris accumulated, so as to maintain a neat and orderly appearance. The contractor shall provide for the disposal of excavated material not suitable for backfill. The contractor shall supply the Owner's representative with documentation of the contractor's agreement with the property owner(s) for disposal of excess material. The site for disposing of the surplus material and debris will be approved by the City Engineer. The Contractor shall not assume authority to operate any water valves, fire hydrants, or other facilities of this nature without the written permission of the City Engineer. Upon request by the

Contractor, the City Engineer shall make the necessary arrangements with the Water Department for the Contractor to use these facilities, providing however the Contractor agrees to pay the Water Department for the use of same.

2.12. INSPECTION, SAMPLES, CERTIFICATES, AND TESTS

The Contractor shall give the Development Department and Engineer timely notice of readiness of the work for all required inspections, tests or approvals. If any law, ordinance, rule, regulation, code, or order of any public body having jurisdiction requires any work (or part thereof) to specifically be inspected, tested, or approved, Contractor shall assume full responsibility therefor, pay all costs in connection therewith and furnish Engineer with the required certificates of inspection, testing or approval. Contractor shall also be responsible for and pay all costs in connection with any inspection, testing, or certificates required in connection with Owner's or Engineer's acceptance of a manufacturer, fabricator, supplier or distributor of materials proposed to be incorporated in the Work. The Contractor shall furnish the Engineer with the results of all required tests.

All inspections, tests, or approvals other than those required by law, ordinance, rule, regulation, code or order of any public body having jurisdiction shall be performed by a testing laboratory, approved by Engineer, in accordance with ASTM E329.

If any work that is to be inspected, tested or approved is covered without written concurrence of Engineer, it must, if requested by Engineer, be uncovered for observation. Such uncovering shall be at Contractor's expense unless Contractor has given Engineer timely notice of Contractor's intention to cover such Work and Engineer has not acted with reasonable promptness in response to such notice.

Neither observations by Engineer nor inspections, tests, or approvals by others shall relieve Contractor from his obligations to perform the Work in accordance with the Contract Documents.

If any Work is covered contrary to the written request of Engineer, it must, if requested by Engineer, be uncovered for Engineer's observation and replaced at Contractor's expense. If Engineer considers it necessary or advisable that covered work be observed by Engineer or inspected or tested by others, Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection or testing as Engineer may require, that portion of Work in question, furnishing all necessary labor, material and equipment. If it is found that such work is defective, Contractor shall bear all the expenses of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction, including compensation for additional professional services, and an appropriate deductive change order shall be issued. If, however, such work is not found to be defective, Contractor shall be allowed an increase in the Contract price or an extension of the Contract time, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, and reconstruction if he makes a claim therefor as provided in Section 19.2.13. **COMMUNICATIONS**

a) All notices, demands, requests, questions, instructions, approvals, proposals, and claims must be in writing.

b) Any notice or demand upon the Contractor shall be sufficiently given if directed to the office of the Contractor stated on the signature page of the Agreement or at such other office as the Contractor may from time to time designate in writing to the City or if deposited in the United States mail in a sealed, postage-prepaid envelope, or delivered with charges prepaid to any telegraph company for transmission, in each case addressed to such office.

c) All papers required to be delivered to the City shall, unless otherwise specified in writing to the Contractor, be delivered to the City and any notice to or demand upon the City shall be sufficiently given if so delivered, or if deposited in the United States mail in a sealed postage-prepaid envelope or delivered with charges prepaid to any telegraph company for transmission to the City at such address, or to such other representatives the City may subsequently specify in writing to the Contractor for such purpose.

d) Any such notice shall be deemed to have given as of the time of actual delivery or (in the case of mailing) when the same should have been received in due course of post, or in the case of telegrams, at the time of actual receipt as the case may be.

e) All communications with the City, either written or verbal, will be addressed to the City Engineer of the City of Parkersburg.

2.14. ENGINEER'S RESPONSIBILITY AND AUTHORITY

The Engineer shall perform the following work and assume certain authorities during the life of this Contract:

a) The work shall be subject at all times to the inspection of the Engineer or his authorized assistants, who shall have free access to every facility at all times for inspecting the materials and work. This inspection shall not in any way guarantee the acceptance of the Contractor's work. The presence of the Engineer or his authorized assistants shall not lessen the responsibility of the Contractor in any way.

b) The Engineer may approve or disapprove any materials or equipment used by the Contractor. If the Engineer disapproves any material or method of construction, the Contractor will have to resolve the differences with the Engineer before proceeding with the work.

c) Any doubt as to the meaning of the Technical Specifications and/or drawings, or any obscurity as to the wording or intent of them will be explained by the Engineer. All directions and explanations required or necessary to complete, explain, or make definite any section of the Specifications and/or Drawings and give them due effect will be given by the Engineer in writing, whose decision thereon will be final.

d) The Engineer will have authority to reject materials and suspend work in case of any dispute which may arise between the Engineer and the Contractor due to defective materials or substandard performance of work until the question or questions at issue can be referred to and decided by the City Engineer.

e) The Engineer shall lay in the field at least two (2) each, bench marks and reference points for the Contractor's use in the layout and construction of lines in accordance with the plans and specifications.

2.15. FINAL INSPECTION

When all work embraced by this Contract has been entirely completed and the final cleaning up has been performed, the Contractor will inform the City of said completion in writing and the Development Department and City Engineer or their designated representative will make an inspection of the site. Any work remaining to be completed or remedied shall be so completed or remedied by the Contractor immediately upon being notified by the City Engineer. The Contractor shall again notify the Development Department and Engineer in writing that the required work is completed whereupon the work shall be re-inspected as stated above.

2.16. ACCEPTANCE OF WORK

Upon satisfactory completion of the work specified in this Contract, the City of Parkersburg will formally accept it and payment will be made according to the Contract.

2.17. PAYMENTS TO CONTRACTOR

a) Not more than thirty (30) days after approval of invoice the City of Parkersburg shall make a progress payment to the contractor on the basis of a duly certified and approved estimate of the work performed during the preceding period under this Contract, the City shall retain ten (10) percent of the amount of each estimate. The ten (10) percent retainage shall be released upon final acceptance by the City. Estimates may be withheld or reduced at any time, if, in the opinion of the Owner, the work is not proceeding in accordance with the provisions of this Contract; provided, further that payment of any estimate shall not constitute acceptance of the work done and no work shall be deemed accepted until formal acceptance is made by the Owner upon completion of all the work covered by this Contract.

b) The Contractor agrees that he will indemnify and save the City harmless from all claims growing out of the lawful demands of the subcontractors, laborers, workmen, furnishers of machinery and parts thereof, equipment, and all supplies incurred in the furtherance of all performance of this Contract. The Contractor at the City's request, shall furnish satisfactory evidence that all obligations of the nature herein above designated have been paid, discharged or waived.

c) Upon final acceptance of the project and upon receipt of a release of final settlement from the West Virginia State Tax Department's Accounting Division and the City's B & O Tax Auditor indicating that the Contractor and all subcontractors have paid state and local taxes with respect to the contract work, final payment will be made upon receipt of a waiver of claims to the CITY for claims growing out of the lawful demands of the subcontractors, laborers, workmen, and equipment and material suppliers in the furtherance of the performance of this Contract, or satisfactory evidence of payment for all of the above, or ninety-one (91) days after acceptance.

2.18. WARRANTY

The Contractor shall guarantee all equipment furnished and work performed for a period of fifteen (15) years from the date of Substantial Completion. The Contractor warrants and guarantees for a period of fifteen years from the date of Substantial Completion of the improvement that it is free from all defects due to faulty materials or workmanship, and the Contractor shall promptly make corrections as may be necessary by reason of such defects. The Owner will give notice of observed defects with reasonable promptness. In the event that the Contractor should fail to make repairs, adjustments, or other work which may be made necessary by such defects, the Owner may do so and charge the Contractor the cost thereby incurred. The Contract Bond shall remain in full force and effect through the guarantee period.

2.19. INSURANCE

The Contractor shall not commence work under this Contract until he has obtained all the insurance required under this paragraph and such insurance has been approved by the City, nor shall the Contractor allow any subcontractor to commence work on his subcontract until the insurance required of the subcontractor has been so obtained and approved.

a) Compensation Insurance

The Contractor shall procure and shall maintain during the life of this Contract Workmen's Compensation Insurance as required by applicable State or territorial law for all of his employees to be engaged in work at the site of the project under this Contract and, in case of any such work sublet, the Contractor shall require the subcontractor similarly to provide Workmen's Compensation Insurance for all of the latter's employees to be engaged in such work unless such employees are covered by the protection afforded by the Contractor's Workmen's Compensation Insurance. In case any class of employees engaged in hazardous work on the project under this Contract is not protected under the Workmen's Compensation Statute, the Contractor shall provide and shall cause each subcontractor to provide adequate employer's liability insurance for the protection of such of his employees as are not otherwise protected.

b) CONTRACTOR'S PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE AND VEHICLE LIABILITY INSURANCE:

The Contractor shall procure and shall maintain during the life of this Contract, Contractor's Public Liability Insurance, Contractor's Property Damage Insurance and Vehicle Liability Insurance in the amounts specified below:

1. Contractor's Public Liability Insurance in an amount not less than Five Hundred Thousand (\$500,000.00) Dollars for injuries, including wrongful death, of any one person, and subject to the same limit for each person in an amount not less than One Million (\$1,000,000.00) Dollars on account of each accident.

2. Property Damage Insurance in an amount not less than One Hundred Thousand (\$100,000.00) Dollars on account of any one accident; with an aggregate property damage coverage of not less than Five Hundred Thousand (\$500,000.00) Dollars for two or more accidents as a result of work operations included in this project.

3. Vehicle Liability Insurance in an amount not less than Five Hundred Thousand (\$500,000.00) Dollars for death of or injury to any one person, and One Million (\$1,000,000.00) Dollars for death of or injury to two or more persons in any one accident, and Ten Thousand (\$10,000.00) Dollars for property damage resulting from any one accident.

c) Subcontractor's Public Liability and Property Damage Insurance and Vehicle Liability Insurance:

The Contractor shall either (1) require each of his subcontractors to produce and to maintain during the life of his subcontract, Subcontractor's Public Liability and Property Damage Insurance and Vehicle Liability Insurance of the type and in the amounts specified in subparagraph (b) hereof, or, (2) insure the activities of his policy, specified in subparagraph (b) hereof.

d) Scope of Insurance and Special Hazards: The insurance required under subparagraphs (b) and (c) hereof shall provide adequate protection for the Contractor and his subcontractors, respectively, against any damage claims which may arise from operations under this contract, whether such operations be by the insured or by anyone directly or indirectly employed by him and, also against any of the special hazards which may be encountered in the performance of this contract.

Insurance to be acceptable, must not be subject to change or cancellation in less than thirty (30) days after receipt of notice by the City. Prior to initiation of construction on each Contract or subcontract, the resident agent of the Contractor's insurance company shall deliver to the City a duly executed certificate showing the names of the insured, the insurer, and the policy numbers. The certificate shall show at least the minimum coverage mentioned above and shall state that there will be no change in or cancellation of said insurance until thirty (30) days after the resident agent delivers notice to the Owner of intent to cancel or modify the policy. If any part of this Contract is sublet, the Contractor is responsible for the part sublet being adequately covered by insurance herein above described.

2.20. CHANGES IN THE WORK

Should it be deemed necessary in the execution of the work, by reason of any conditions or circumstances arising or discovered after the making of the Contract or to make any minor alterations necessary for the stability, safety, economy, or betterment of the work, or when such alterations increase or decrease the quantities of the work specified, or change the location thereof to an extent not unreasonably affecting the conditions of the work and involving no classes of work other than those called for by this Contract, the Contractor shall request approval for such changes or alterations from the Engineer prior to performing such changes or alterations. Upon written order from the Development Department or Engineer, to that effect, make such minor alterations. If such extra work or materials incurred in performing changes or alterations is not approved in writing by the Development Department and Engineer before such change or alteration is performed, the Contractor shall not be entitled to be compensated for any labor or materials used for the performance of such change or alteration, unless such work was in response to an emergency endangering life or property. If such minor alterations diminish the quantity of work to be done, no claim for damages or for anticipated profits in the work that may be dispensed with shall thereby accrue to the Contractor, and the value of the work dispensed with will not be included in any payments made to the Contractor.

The Owner, without invalidating the Contract, may order extra work at the same locations or make changes by altering, adding to or deducting from the work. All such work shall be executed under the conditions of the original Contract, except that any claim for extension of time caused thereby shall be adjusted at the time of ordering such change. Except in an emergency endangering life or property, no such extra work or change shall be made unless in pursuance of a written order from the Owner supported by an appropriate certificate as to funds, and no claim for any charge for material or labor in addition to the Contract sum shall be valid unless so ordered.

Adjustments, if any, in the amounts to be paid to the Contractor by reason of any such minor variations, extra work or changes shall be determined by one or more of the following methods:

- (a) By such applicable unit prices, if any, as are set forth in the Contract; or
- (b) If no such unit prices are so set forth, then by a lump sum mutually agreed upon by the Engineer and the Contractor.

2.21. CLAIM FOR EXTRA WORK

If the contractor claims that any instructions by drawings or otherwise involve extra cost under this Contract, he shall give the Engineer and Development Department written notice thereof before proceeding to perform the work or as soon as possible thereafter, except in emergency endangering life or property, and then the procedure shall then be as provided for changes in the work. No such claim shall be valid unless so made. Payments for extra work, after approval by the Engineer and Owner, will be made in accordance with the provisions of Section 19 "CHANGES IN THE WORK".

2.22. SUPPLEMENTARY AGREEMENT

Where extra work, or changes in the work, estimated to amount to more than fifteen percent (15%) of the original Contract is encountered, such extra work shall be covered by a modification of the Contract in the form of a Supplementary Agreement which shall set forth the nature of modification, the items and quantities involved, and the prices which have been agreed upon. The Supplementary Agreement shall be signed by both parties to the Contract and shall be subject to all the terms, conditions, and provisions of the original Contract.

2.24. PLANS AND SPECIFICATIONS

All work done and materials furnished under this Contract shall be in accordance with the Drawings, the Special Conditions, and the Technical Specifications outlined in the scope of work.

2.25. DEFINITIONS

A. Wherever in these Specifications the following abbreviations are used, it shall have the meaning here given:

1. "City" - City of Parkersburg, West Virginia.
2. "Engineer" - City Engineer of the City of Parkersburg, or his authorized representative.
3. "Inspector" - An authorized representative of the City of Parkersburg.

4. "Proposal" - Contract Documents
5. "Standard Drawings" - Drawings
6. "Calendar Day" - Every day shown on the calendar.

2.26. EQUIPMENT

Before the Contract is awarded, the Contractor must convince the City that he will use sufficient equipment to complete the work within the Contract time.

2.27. TECHNICAL SPECIFICATIONS

The **Davis-Bacon and Related Acts**, (40USC, Chapter 3, Section 276a-276a-5; and 29CFR Parts 1,3,5,6 and 7) apply to contractors and subcontractors performing on federally funded or assisted contracts in excess of \$2,000 for the construction, alteration, or repair (including painting and decorating) of public buildings or public works. Davis-Bacon Act and Related Act contractors and subcontractors must pay their laborers and mechanics employed under the contract no less than the locally prevailing wages and fringe benefits for corresponding work on similar projects in the area. The Davis-Bacon Act directs the Department of Labor to determine such locally prevailing wage rates. The Davis-Bacon Act applies to contractors and subcontractors performing work on federal or District of Columbia contracts. The Davis-Bacon Act prevailing wage provisions apply to the "Related Acts," under which federal agencies assist construction projects through grants, loans, loan guarantees, and insurance.

In case of conflict between the Construction Specifications and the West Virginia Department of Highway Standard Specifications referenced above, the Construction Specifications shall govern. Plans will govern over Specifications; Special Conditions will govern over Specifications and Plans.

2.28. SPECIAL PROVISIONS

Special Provisions are additions and revisions to the Standard and Supplemental Specifications covering conditions peculiar to this project.

MAINTENANCE OF TRAFFIC

Control and protection of traffic through the work areas shall be in accordance with a plan submitted by the contractor and approved by the engineer. The traffic route shall be kept as smooth as possible and safe for accepted speeds.

The approved traffic control plan is considered the plan to be followed by the contractor, however, should the contractor desire to adopt another traffic control plan during construction, this alternate scenario shall be submitted to the engineer in advance of the commencement of work in the affected areas.

The contractor shall be responsible for maintaining traffic within each construction site through which traffic passes. This shall include furnishing and installing signs, traffic barriers, flaggers, barricades and/or drums in

order to insure the safety of vehicles, pedestrians, and construction workers. All traffic devices shall be in conformance with the latest edition of the Manual on Traffic Control Devices of Streets and Highways.2.29.

2.29. EQUAL OPPORTUNITY PROVISIONS

During the performance of this Contract, the contractor agrees as follows:

(1) The contractor shall not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting for the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations and advertisements for employees placed on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, or national origin.

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or worker's representative of the contractor's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations or orders, this contract may be canceled or terminated in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The contractor will provide the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issue pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a

subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

2.30. MINIMUM WAGE RATES

The **Davis-Bacon and Related Acts**, (40USC, Chapter 3, Section 276a-276a-5; and 29CFR Parts 1,3,5,6 and 7) apply to contractors and subcontractors performing on federally funded or assisted contracts in excess of \$2,000 for the construction, alteration, or repair (including painting and decorating) of public buildings or public works. Davis-Bacon Act and Related Act contractors and subcontractors must pay their laborers and mechanics employed under the contract no less than the locally prevailing wages and fringe benefits for corresponding work on similar projects in the area. The Davis-Bacon Act directs the Department of Labor to determine such locally prevailing wage rates. The Davis-Bacon Act applies to contractors and subcontractors performing work on federal or District of Columbia contracts. The Davis-Bacon Act prevailing wage provisions apply to the "Related Acts," under which federal agencies assist construction projects through grants, loans, loan guarantees, and insurance

The following minimum wages will prevail under this contract:

PROVISIONS AND PROCEDURES PERTAINING TO EMPLOYMENT OPPORTUNITIES FOR BUSINESS AND LOWER INCOME PERSONS IN CONNECTION WITH FEDERAL ASSISTED PROJECTS IN COMPLIANCE WITH SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968

2.31. FEDERAL LABOR STANDARDS PROVISIONS

The Project or Program to which the construction work covered by this contract pertains is being assisted by the United States of America and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such Federal assistance. A.1.(i) Minimum Wages. All laborers and mechanics employed and working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalent thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR Part 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. (ii)(a) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in accordance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(b) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30 day period that additional time is necessary.

(Approved by the Office of Management and Budget under OMB control number 1215-0140).

(c) In the event the contractor, laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30 day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140).

(d) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(b) or (c) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis- Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.(Approved by the Office of Management and Budget under OMB control number 1215-0140).

2. Withholding. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same by the same prime contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the contractor, disburse such amounts withheld for and on account of the contractor or subcontractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon contracts.

3.(i) Payrolls and basic records. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers and mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB control number 1215-0140 and 1215-0017.)

(ii)(a) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, to transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR Part 5.5(a)(3)(i). This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, D.C. 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. (Approved by the Office of Management and Budget under OMB control number 1215-0149.)

(b) Each payroll submitted shall be accompanied by a "Statement of Compliance" signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under 29 CFR 5.5(a)(3)(i) and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, trainee, and apprentice) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(c) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph A.3(ii)(b) of this section.

(d) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph A.3.(i) of this section available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR Part 5.12.

4.(i) Apprentices and trainees. Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws an approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the specified wage rate in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In addition, any

trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

5. Compliance with Copeland Act requirements. The contractor shall comply with requirements of 29 CFR Part 3 which are incorporated by reference in this contract.

6. Subcontracts. The contractor or subcontractor will insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as HUD or its designee may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR Part 5.5.

7. Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act Requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning within this clause include disputes between the contractor (or any of its subcontractors) and HUD or its designee, and the U.S. Department of Labor, or the employees or their representatives.

10.(i) Certification of Eligibility. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1010, Title 18, U.S.C., "Federal Housing Administration Transactions", provides in part: "Whoever, for the purpose of...influencing in any way the action of such Administration ...makes, utters or publishes any statement, knowing the same to be false, shall be fined not more than \$5,000 or imprisoned not more than two years, or both."

11. Complaints, Proceedings, or Testimony by Employees. No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this contract are applicable shall be discharged or in any other manner discriminated against by the contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this contract to his employer.

B. Contract Work Hours and Safety Standards Act. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of eight hours in any calendar day or in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of eight hours in any calendar day or in excess of forty hours in such workweek, whichever is greater.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (1) of this paragraph, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of eight hours or in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in subparagraph (1) of this paragraph.

(3) Withholding for unpaid wages and liquidated damages. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contract, or any other Federally assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided for in the clause set forth in subparagraph (2) of this paragraph.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraphs (1) through (4) of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subparagraphs (1) through (4) of this paragraph.

C. Health and Safety

(1) No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

(2) The contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 (formerly Part 1518) and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act (Public Law 91-54, 83 Stat. 96).

(3) The contractor shall include the provisions of this article in every subcontract so that such provisions will be binding on each subcontractor. The contractor shall take such action with respect to any subcontract as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

(4) The Contractor and subcontractors performing work under this contract, if in excess of \$100,000, and any subcontract in excess of \$100,000 shall be required to comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 USC 1857(h)), Section 508 of the Clean Water Act (33 USC 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15).

Section 4.1 Purpose and Scope

The regulation set forth in this part contain the procedure established by the Secretary of Housing and Urban Development for carrying out the responsibilities under Section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u.

Section 4.2 Definitions

"Section 3 covered project" means any nonexempt project assisted by any program administered by the Secretary in which loans, grants, subsidies, or other financial assistance are provided in aid of housing, urban planning, development, redevelopment or renewal, public or community facilities, and new community development, except as provided under Title 24, Page 135, Section 135.5, paragraph (M).

Section 4.3 Assurance of Compliance

Every contractor and subcontractor shall incorporate, or cause to be incorporated, in all contracts for work in connection with a Section 3 covered project, the following clause:

A. The work to be performed under this contract is on a project assisted under a program providing Federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the area of the project.

B. The parties to this contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 29 CFR, and all applicable rules and orders of the Department issued thereunder prior to the execution of this contract. The parties to this contract certify and agree that they are under no contractual or other disability which would prevent them from complying with the requirements.

C. The contractor will send to each labor organization or representative of workers with which he has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or worker's representative of his commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

D. The contractor will include this Section 3 clause in every subcontract for work in connection with this project and will, at the direction of the applicant for or recipient of federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR. The contractor will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

E. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR, and all applicable rules and orders of the Department issued thereunder prior to the execution of the contract, shall be a condition of the Federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance,

its successors, and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its contractors and subcontractors, its successors, and assigns, to those sanctions specified by the grant or loan agreement or contract through which Federal assistance is provided, and to such sanctions as are specified by 24 CFR, 135.

Section 4.4 Bidding Procedures

Prior to the signing of the contract, the contractor will provide a preliminary statement of work force needs (skilled, semi-skilled, unskilled labor and trainees by category) where known; where not known, such information shall be supplied prior to the signing of any contract between the contractor and subcontractors.

A. Trainees

- (1) The contractor or subcontractor shall fulfill his obligation to utilize lower income project area residents as trainees to the greatest extent feasible by:
- (2) Utilizing the maximum number of persons in the various training categories in all phases of the work to be performed under the Section 3 covered project, and
- (3) Filling all vacant training positions with lower income project area residents except for those training positions which remain unfulfilled after a good faith effort has been made.

B. Residents as Employees

Each contractor and subcontractor shall fulfill his obligation to utilize lower income project area residents as employees to the greatest extent feasible by:

- (1) Identifying the number of positions in the various occupational categories including skilled, seem-skilled, and unskilled labor needed to perform each phase of the Section 3 covered project.
- (2) Identifying the number of positions currently occupied by regular, permanent employees.
- (3) Identifying the positions not currently occupied by regular, permanent employees.
- (4) Establishing the positions identified in paragraph (3) of this part, a goal which is consistent with this subpart within each occupational category of the number of positions to be filled by lower income residents of the Section 3 covered project area

C. Utilization of Businesses

Each contractor and subcontractor undertaking work on a Section 3 covered project shall assure that to the greatest extent feasible, contracts for work to be performed in connection with the project are awarded to business concerns located within the Section 3 covered project area or business concerns owned in substantial part by persons residing in the Section 3 covered area.

Section 4.5 Good Faith Effort

Each contractor and subcontractor seeking to establish that a good faith effort, as required by Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C., 1701u, has been made to fill all training positions with lower income area residents; and fill all employment positions identified in Section 4.4, paragraph B, subparagraphs (3) and (4) shall:

- A. Attempt to recruit from the appropriate areas the necessary number of lower income residents through local advertising media, signs placed at the proposed site and community organizations and public and

private institutions operating within or serving the project area, such as State Employment Office and Opportunities Industrialization Center (OIC).

B. Maintain a list of lower income area residents who have applied either on their own or on referral from any source, and employ such person if otherwise eligible and/or qualified and if a vacancy exists. If no vacancies exist, the eligibility and/or qualifications of the applicant shall be considered and listed for the first available opening.

C. Any contractor or subcontractor which fills vacant apprentice and trainee positions and/or employment positions, identified in subparagraph B above, but more specifically identified in Section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u, Part 135, Section 135.4, Section 135.55, in his organization immediately prior to undertaking work pursuant to a Section 3 covered contract shall set forth evidence acceptable to the Secretary that its actions were not an attempt to circumvent these regulations.

Section 4.6 Affirmative Action Plan

A. An Affirmative Action Plan pursuant to a Section 3 covered contract shall:

(1) Set forth the approximate number and estimated dollar value of contracts to be awarded to eligible businesses and entrepreneurs within each category over the duration of this contract.

(2) Ensure that the appropriate business concerns are notified of pending contractual opportunities either personally or locally through locally utilized media.

B. Good Faith Effort. Each contractor and subcontractor seeking to establish that a good faith effort has been made shall, as a minimum, attempt to recruit from the appropriate areas the necessary eligible business concerns through:

(1) Local advertising.

(2) Signs placed at the site.

(3) Community organizations, public and private institutions operating or serving within the project area such as P.A.C., O.I.C., and any other equivalent organization.

Section 4.7 Certificate of Compliance

The contractor shall execute the Certificate of Compliance and cause all subcontractors undertaking work in connection with this contract to furnish the same.