K15-1027

Bond Number: 1834481

CONTRACT

BETWEEN

THE CITY OF NEW ORLEANS

AND

WALLACE C. DRENNAN, INCORPORATED

CITY PROJECT NO. DPW-2000-B01
BID PROPOSAL NO. 500C-01858

GRAVIER STREET
(S. GALVEZ ST. – S. BROAD ST.)

THIS CONTRACT (the "Contract") is made and entered into this 27 day of Oct., 2015, by and between the **CITY OF NEW ORLEANS,** represented by **MITCHELL J. LANDRIEU, MAYOR** (the "City"), and **WALLACE C. DRENNAN, INC.,** represented by **WALLACE C. DRENNAN, III, PRESIDENT** (the "Contractor").

WHEREAS, on June 12, 2015the City issued Invitation to Bid No. 500C-01858 "DPW-2000-B01, Gravier Street (S. Galvez St. – S. Broad St.)", supplemented by Addendum No. 1 dated July 13, 2015, Addendum No. 2 dated July 17, 2015, Addendum No. 3 dated July 27, 2015, Addendum No. 4 dated July 31, 2015, Addendum No. 5 dated August 3, 2015, Addendum No. 6 dated August 7, 2015, (collectively, the "Invitation to Bid"), seeking a contractor to provide roadway improvements as provided in the Invitation to Bid (the "Project"); and

WHEREAS, the Contractor submitted a bid dated August 13, 2015 (the "Contractor's Bid") in response to the City's ITB; and

WHEREAS, the City tabulated the responsive bids and identified the Contractor to receive the Contract to perform the Project.

NOW THEREFORE, the City grants and confirms to the Contractor the Contract to perform the Project in strict accordance with the Invitation to Bid and the Contractor's Bid, and the City and the Contractor, for good and valuable consideration, agree as follows:

1. **Obligations of the Contractor.**

The Contractor will perform all obligations of the Contractor, and be subject to all terms and conditions set forth in this Contract and in the following documents that are incorporated fully into this Contract by reference: the Invitation to Bid; the Contractor's Bid; and all documents, plans drawings, and specifications incorporated or referenced in the Invitation to Bid and the Contractor's Bid, including without limitation the Special Specifications and the City's General Specifications for Street Paving (1999 ed. (rev. 10/1/2001)).

2. **Obligations of the City.**

The City will pay the Contractor at the rates set forth in the Contractor's Bid for the satisfactory performance of this Contract and will perform all obligations of the City and be subject to all terms and conditions set forth in this Contract and any incorporated documents.

3. Obligations of the Surety.

The Hanover Insurance Company (the "Surety") intervenes in this Contract and binds itself as surety for: (1) the faithful performance of all work required of the Contractor by this Contract in the full sum of **FOUR MILLION THREE HUNDRED EIGHTY-EIGHT THOUSAND SIXTY-EIGHT AND 00/100 DOLLARS ($4,388,068.00)** and (2) the full payment by the Contractor of all payments to be made by the Contractor under this Contract in the full sum of **FOUR MILLION THREE HUNDRED EIGHTY-EIGHT THOUSAND SIXTY-EIGHT AND 00/100 DOLLARS ($4,388,068.00).** Each of these bonds is to be considered separate and distinct, and no payment made by the Surety under either bond shall in any way reduce the obligations of the Surety under the other.

The Surety represents and warrants that it has fully read and understands the terms of the Contract between the City and the Contractor, including all incorporated documents.

The Surety's bonds shall remain in full force and effect, and shall survive the termination of this Contract, but shall be null and void if the Contractor: (a) well and faithfully performs all and each of the obligations assumed by the Contractor in this Contract; (b) promptly pays all wages of laborers, workmen, or mechanics to be employed by the Contractor for all work done or labor performed by the Contractor or by any sub-contractors; or furnished to sub-contractors, and used in the construction, erection, alteration, performance or repairs of the work required by the Contract; (c) promptly pays for all materials or supplies furnished to the Contractor, or by any subcontractor, or to any subcontractor, for the use in machines used in the construction, erection, alteration, performance or repair of the work required by the Contract; (d) fully secures and protects the City, its legal successor(s) and representatives, from all loss or expense of any kind, including premises, including all court costs and attorneys' fees, made necessary or arising from the failure, refusal, or neglect of the Contractor to comply with all of the obligations assumed by it; and (e) promptly delivers all the work required by the Contract to the City, free from any and all claims, liens, and expenses.

The obligations of the Surety will not be affected in any way by any modifications, omissions, or additions in or to the terms of this Contract, the plans or specifications, or in the manner and mode of payment.

4. Ownership Interest Disclosure. The Contractor will provide a sworn affidavit listing all natural or artificial persons with an ownership interest in the Contractor and stating that no other person holds an ownership interest in the Contractor via a counter letter. For the purposes hereof, an "ownership interest" shall not be deemed to include ownership of stock in a publicly traded corporation or ownership of an interest in a mutual fund or trust that holds an interest in a publicly traded corporation. If the Contractor fails to submit the required affidavits, the City may, after thirty (30) days' written notice to the Contractor take such action as may be necessary to cause the suspension of any further payments until such the required affidavits are submitted.

5. DBE Program Compliance. The Contractor will use its best efforts to fully and completely carry out the applicable requirements of the City's Disadvantaged Business Enterprise ("DBE") Program in the award and administration of this Agreement, including without limitation all reporting requirements and specific DBE participation goals. The Contractor's failure to carry out these requirements, as determined in good faith by the DBE Compliance Officer, shall be deemed a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as set forth in the City's Policy Memorandum for the DBE Program.

The Contractor will to provide written reports to the City's Director of Supplier Diversity on all expenditures made to achieve compliance with the DBE participation goals for this Agreement. The report shall, at a minimum, include the following:

a. The name and business address of each DBE involved in the contract;

b. A description of the work performed and/or the product or service supplied by each DBE;

c. The date and amount of each expenditure made to a DBE; and

d. Such other information as may assist the DBE Compliance Officer in determining the Contractor's compliance with the DBE Program and the status of any DBE performing any portion of the contract.

The Contractor will grant DBE Compliance Officer reasonable access to its books and records for purposes of verifying compliance with the DBE Program.

If the City terminates this Agreement in connection with any misrepresentation of the Contractor's DBE status, the Contractor may be disqualified from contracting with or participating in any contracts with the City.

6. <u>Convicted Felon Statement</u>. The Contractor swears that it complies with City Code § 2-8(c). No Contractor principal, member, or officer has, within the preceding five years, been convicted of, or pled guilty to, a felony under state or federal statutes for embezzlement, theft of public funds, bribery, or falsification or destruction of public records.

7. <u>Non-Solicitation Statement</u>. The Contractor swears that it has not employed or retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Contract. The Contractor has not paid or agreed to pay any person, other than a bona fide employee working for it, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from this Contract.

The Remainder of This Page Has Intentionally Been Left Blank

IN WITNESS WHEREOF, the parties hereto have made and executed this Contract effective the day and year first written above:

CITY OF NEW ORLEANS

BY: ______________________________

MITCHELL J. LANDRIEU, MAYOR 10/27/15

FORM AND LEGALITY APPROVED:
LAW DEPARTMENT

By: ______________________________
Printed Name: ______________________________

WALLACE C. DRENNAN, INCORPORATED

BY: ______________________________

WALLACE C. DRENNAN, III, PRESIDENT

72-0521173

TAX I.D. NO.

THE HANOVER INSURANCE COMPANY

BY: ______________________________

MELANIE STERN
ATTORNEY-IN-FACT

THE HANOVER INSURANCE COMPANY
MASSACHUSETTS BAY INSURANCE COMPANY
CITIZENS INSURANCE COMPANY OF AMERICA

POWERS OF ATTORNEY
CERTIFIED COPY

KNOW ALL MEN BY THESE PRESENTS: That THE HANOVER INSURANCE COMPANY and MASSACHUSETTS BAY INSURANCE COMPANY, both being corporations organized and existing under the laws of the State of New Hampshire, and CITIZENS INSURANCE COMPANY OF AMERICA, a corporation organized and existing under the laws of the State of Michigan, do hereby constitute and appoint

Stephen L. Cory, Pamela K. Tucker, Jill K. Tucker and/or Melanie Stern

of **Metairie, LA** and each is a true and lawful Attorney(s)-in-fact to sign, execute, seal, acknowledge and deliver for, and on its behalf, and as its act and deed any place within the United States, or, if the following line be filled in, only within the area therein designated

any and all bonds, recognizances, undertakings, contracts of indemnity or other writings obligatory in the nature thereof, as follows:

Any such obligations in the United States, not to exceed Forty Million and No/100 ($40,000,000) in any single instance

and said companies hereby ratify and confirm all and whatsoever said Attorney(s)-in-fact may lawfully do in the premises by virtue of these presents. These appointments are made under and by authority of the following Resolution passed by the Board of Directors of said Companies which resolutions are still in effect:

"RESOLVED, That the President or any Vice President, in conjunction with any Vice President, be and they are hereby authorized and empowered to appoint Attorneys-in-fact of the Company, in its name and as its acts, to execute and acknowledge for and on its behalf as Surety any and all bonds, recognizances, contracts of indemnity, waivers of citation and all other writings obligatory in the nature thereof, with power to attach thereto the seal of the Company. Any such writings so executed by such Attorneys-in-fact shall be as binding upon the Company as if they had been duly executed and acknowledged by the regularly elected officers of the Company in their own proper persons." (Adopted October 7, 1981 - The Hanover Insurance Company; Adopted April 14, 1982 - Massachusetts Bay Insurance Company; Adopted September 7, 2001 - Citizens Insurance Company of America)

IN WITNESS WHEREOF, THE HANOVER INSURANCE COMPANY, MASSACHUSETTS BAY INSURANCE COMPANY and CITIZENS INSURANCE COMPANY OF AMERICA have caused these presents to be sealed with their respective corporate seals, duly attested by two Vice Presidents, this **4th** day of **November 2011**.

THE HANOVER INSURANCE COMPANY
MASSACHUSETTS BAY INSURANCE COMPANY
CITIZENS INSURANCE COMPANY OF AMERICA

Robert Thomas, Vice President

Mark Fitzgerald, Vice President

THE COMMONWEALTH OF MASSACHUSETTS)
COUNTY OF WORCESTER) ss.

On this **4th** day of **November 2011** before me came the above named Vice Presidents of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America, to me personally known to be the individuals and officers described herein, and acknowledged that the seals affixed to the preceding instrument are the corporate seals of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America, respectively, and that the said corporate seals and their signatures as officers were duly affixed and subscribed to said instrument by the authority and direction of said Corporations.

BARBARA A. GARLICK
Notary Public
Commonwealth of Massachusetts
My Commission Expires Sept. 21, 2018

Barbara A. Garlick, Notary Public
My Commission Expires September 21, 2018

I, the undersigned Vice President of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America, hereby certify that the above and foregoing is a full, true and correct copy of the Original Power of Attorney issued by said Companies, and do hereby further certify that the said Powers of Attorney are still in force and effect.

This Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America.

"RESOLVED, That any and all Powers of Attorney and Certified Copies of such Powers of Attorney and certification in respect thereto, granted and executed by the President or any Vice President in conjunction with any Vice President of the Company, shall be binding on the Company to the same extent as if all signatures therein were manually affixed, even though one or more of any such signatures thereon may be facsimile." (Adopted October 7, 1981 - The Hanover Insurance Company; Adopted April 14, 1982 - Massachusetts Bay Insurance Company; Adopted September 7, 2001 - Citizens Insurance Company of America)

GIVEN under my hand and the seals of said Companies, at Worcester, Massachusetts, this day of 20 15 .

THE HANOVER INSURANCE COMPANY
MASSACHUSETTS BAY INSURANCE COMPANY
CITIZENS INSURANCE COMPANY OF AMERICA

Glenn Margosian, Vice President

CERTIFIED COPY OF
EXCERPT OF MINUTES OF A SPECIAL MEETING
OF THE BOARD OF DIRECTORS OF
WALLACE C. DRENNAN, INC.

Held on October 12, 2006
1500 Nine Mile Point Road
Westwego, LA

I, Becky Speyrer, Assistant Secretary of Wallace C. Drennan, Inc., do hereby certify the following to be a true and correct excerpt of the minutes of the meeting of the Directors of the Corporation held on October 12, 2006; and that the following RESOLUTIONS passed at that meeting are still in full force and effect:

* * *

"...it was further RESOLVED that the President, Wallace C. Drennan, III, be authorized to act for Wallace C. Drennan, Inc., in all phases of the operations of its business, to sign all contracts, bid applications and bids, to manage the business of the corporation, to make loans, execute banking resolutions, sign checks, deposit and withdraw funds, execute payment and performance bonds, make purchase of vehicles, equipment, materials and supplies for the corporation; to sell vehicles, equipment materials and supplies of the corporation; or lease or purchase movable or immovable property and improvements on behalf of the corporation; to hire and fire employees; to manage and oversee construction jobs; to estimate and submit bids; to procure advertising packets, bid packages and other documents necessary to formulate bids for construction work; to manage and oversee the maintenance, scheduling and uses of equipment within the corporation; to direct, manage and supervise labor and construction work; generally, without limitation, to sign all documents and perform all acts necessary for the conducting of the operation and business of Wallace C. Drennan, Inc., as its President; and also the President should have general and specific powers on behalf of the corporation to carry out and work with the Assistant Secretary of the corporation in carrying out the banking business of the corporation; to deposit and withdraw funds; to make loans, to sign checks in accordance with the banking resolution contained hereinbelow; to execute mortgages or chattel mortgages, or documents pursuant to the Uniform Commercial Code as necessary to purchase equipment, materials or property; to execute all necessary banking documents, banking resolutions, loan documents, drafts, continuing guaranties, or other banking documents; and generally to perform any act and execute any document necessary to carry out the banking and financial business of Wallace C. Drennan, Inc., in cooperation with the duties and responsibilities of the Assistant Secretary of the corporation."

*   *   *

Westwego, Louisiana

Becky Speyrer

Becky Speyrer
Assistant Secretary

CERTIFICATE

I, the undersigned President of Wallace C. Drennan, Inc., do certify that the above and foregoing resolution was unanimously adopted at a meeting of the Board of Directors of the Said Corporation held on October 12, 2006, and that the same is in full force and effect this date.

IN TESTIMONY WHEREOF, I have hereunto set my hand and the seal of said corporation this _______ day of ______________________, 2015.

Wallace C. Drennan

Wallace C. Drennan, ~~III~~
President

1340 Poydras Street, 4th Floor
New Orleans, Louisiana 70112

Telephone (504) 407-0005

Chelsey Richard Napoleon
Chief Deputy Clerk

Land Records Division

Hon. Dale N. Atkins

Clerk of Court and Ex-Officio Recorder

Parish of Orleans

DOCUMENT RECORDATION INFORMATION

Instrument Number: 2015-52498

Recording Date: 12/9/2015 01:49:11 PM

Document Type: CONTRACT

Addtl Titles Doc Types:

Mortgage Instrument Number: 1205671

Filed by: CITY OF NEW ORLEANS
N/A

,

THIS PAGE IS RECORDED AS PART OF YOUR DOCUMENT AND SHOULD BE RETAINED WITH ANY COPIES.