

## CONTRACT

THIS CONTRACT is made this 6th day of February, 2008, in the County of San Bernardino, State of California, by and between the **City of Colton**, hereinafter called City, and **West Tek, Inc.**, hereinafter called Contractor. The City and the Contractor for the considerations stated herein agree as follows:

**ARTICLE 1. SCOPE OF WORK.** The Contractor shall perform all Work within the time stipulated the Contract and shall provide all labor, materials, equipment, tools, utility services, and transportation to complete all of the Work required in strict compliance with the Contract Documents as specified in Article 5 below for the following Project:

### FUEL TANK REPLACEMENT PROJECT

The Contractor and its surety shall be liable to the City for any damages arising as a result of the Contractor's failure to comply with this obligation.

**ARTICLE 2. TIME FOR COMPLETION.** The Work shall be commenced on the date stated in the City's Notice to Proceed. The Contractor shall complete all Work required by the Contract Documents within **One Hundred Twenty (120) Calendar days** from the commencement date stated in the Notice to Proceed. By its signature hereunder, Contractor agrees the time for completion set forth above is adequate and reasonable to complete the Work.

**ARTICLE 3. CONTRACT PRICE.** The City shall pay to the Contractor as full compensation for the performance of the Contract, subject to any additions or deductions as provided in the Contract Documents, and including all applicable taxes and costs, the sum of **One Hundred Seventy Five Thousand Dollars (\$175,000.00)**. Payment shall be made as set forth in the General Conditions.

**ARTICLE 4. LIQUIDATED DAMAGES.** In accordance with Government Code section 53069.85, it is agreed that the Contractor will pay the City the sum of **\$500.00** for each and every calendar day of delay beyond the time prescribed in the Contract Documents for finishing the Work, as Liquidated Damages and not as a penalty or forfeiture. In the event this is not paid, the Contractor agrees the City may deduct that amount from any money due or that may become due the Contractor under the Contract. This Article does not exclude recovery of other damages specified in the Contract Documents.

**ARTICLE 5. COMPONENT PARTS OF THE CONTRACT.** The "Contract Documents" include the following:

- Notice Inviting Bids
- Instructions to Bidders
- Contractor's Bid Forms
- Contractor's Certificate Regarding Workers' Compensation
- Bid Bond
- Designation of Subcontractors
- Information Required of Bidders

CONTRACT

Non-Collusion Affidavit form  
Contract  
Performance Bond  
Payment (Labor and Materials) Bond  
General Conditions  
Special Provisions (or Special Conditions)  
Technical Specifications  
Green Book Standard Specifications (Sections 1-9 Excluded)  
Addendum I, II, III, and IV  
Plans and Contract Drawings  
Approved and fully executed change orders  
Any other documents contained in or incorporated into the Contract

The Contactor shall complete the Work in strict accordance with all of the Contract Documents.

All of the Contract Documents are intended to be complementary. Work required by one of the Contract Documents and not by others shall be done as if required by all. This Contract shall supersede any prior agreement of the parties.

**ARTICLE 6. PROVISIONS REQUIRED BY LAW.** Each and every provision of law required to be included in these Contract Documents shall be deemed to be included in these Contract Documents. The Contractor shall comply with all requirements of applicable federal, state and local laws, rules and regulations, including, but not limited to, the provisions of the California Labor Code and California Public Contract Code which are applicable to this Project.

**ARTICLE 7. INDEMNIFICATION.** Contractor shall provide indemnification as set forth in the General Conditions.

**ARTICLE 8. PREVAILING WAGES.** Contractor shall be required to pay the prevailing rate of wages in accordance with the Labor Code which such rates shall be made available at Public Works Department or may be obtained online at <http://www.dir.ca.gov/dlsr>. and which must be posted at the job site. If the Work involves federal funds or otherwise requires compliance with the Davis-Bacon Fair Labor Standards Act, the Contractor and all its subcontractors shall comply with the higher of the state or federal prevailing wage rates.

IN WITNESS WHEREOF, this Contract has been duly executed by the above-named parties, on the day and year above written.

**CITY OF COLTON**

**By:**

\_\_\_\_\_  
Signature

Kelly Chastain  
Name

Mayor  
Title

**Attest:**

\_\_\_\_\_  
City Clerk

**Recommended By:**

\_\_\_\_\_  
Signature

Best Best & Krieger LLP  
Name

City Attorney  
Title

**Risk Management:**

\_\_\_\_\_

**WEST TEK, INC.**

**By:**

\_\_\_\_\_  
Signature

Mark Kunze  
Name

President  
Title

863268 A  
License Number

## CITY OF COLTON

### NOTICE INVITING BIDS

The City of Colton, Public Works Department ("City") will receive sealed bids for the FUEL TANK REPLACEMENT PROJECT at the office of the CITY CLERK (located at 650 North La Cadena Drive, Colton, California, 92324), no later than *January 10, 2008, 3:00 P.M., Thursday*, at which time or thereafter said bids will be opened and read aloud. Bids received after this time will be returned unopened. Bids shall be valid for 60 calendar days after the bid opening date.

Bids must be submitted on the City's Bid Forms. Bids must be prepared on the approved Bid forms and in the manner prescribed in the Instructions to Bidders. Bids must be submitted in a sealed envelope which is plainly marked on the outside with the following: **"ATTN.: SEALED BID FOR FUEL TANK REPLACEMENT PROJECT. DO NOT OPEN WITH REGULAR MAIL.**

Bidders may obtain a copy of the Contract Documents starting on December 18, 2007 from Orange County Blueprint, Inc located at: 200 N. "D" Street, San Bernardino, CA 92410 (Telephone No. 909 381-6535). The plans can be ordered from [www.ocbinc.com](http://www.ocbinc.com) via the PlanWell system The City will also make the Contract Documents available for review at one or more plan rooms.

Bids must be accompanied by cash, a certified or cashier's check, or a Bid Bond in favor of the City in an amount not less than ten percent (10%) of the submitted Total Bid Price.

A **non-mandatory** Pre-Bid Conference will be held at the Corporate Yard Conference Room, 160 S. 10<sup>th</sup> Street, Colton, CA 92324 on the following date(s) and time(s): *December 27, 2007, Thursday, at 9:00 A.M.*

WORK: The work is located on the Corporate Yard of the City of Colton, consists of Construction of 12,000 gallon-aboveground storage fuel tank (to be divided into two compartments, 8,000 gallons for gasoline and 4,000 gallons for diesel) and the tank's foundation (design to be provided by the contractor) and 4-inch thick concrete pad. It shall also include the installation of fuel dispensers, fuel ports, piping's, and furnishing of all materials, equipment, tools, labor and incidentals as required by the contract documents, specifications and shown on plan.

Each bid shall be accompanied by the security referred to in the Contract Documents, the non-collusion affidavit, the list of proposed subcontractors, and all additional documentation required by the Instructions to Bidders.

The successful bidder will be required to furnish the City with a Performance Bond equal to 100% of the successful bid, and a Payment (Labor and Materials) Bond equal to 100% of the successful bid, prior to execution of the Contract. All bonds are to be secured from a surety that

### NOTICE INVITING BIDS

meets all of the State of California bonding requirements, as defined in Code of Civil Procedure Section 995.120, and is admitted by the State of California.

Pursuant to Public Contract Code Section 22300, the successful bidder may substitute certain securities for funds withheld by City to ensure his performance under the Contract.

The Director of Industrial Relations has determined the general prevailing rate of per diem wages in the locality in which this work is to be performed for each craft or type of worker needed to execute the Contract which will be awarded to the successful bidder, copies of which are on file and will be made available to any interested party upon request at Public Works Department of City of Colton or online at <http://www.dir.ca.gov/dlsr>. A copy of these rates shall be posted by the successful bidder at the job site. The successful bidder and all subcontractor(s) shall comply with all applicable Labor Code provisions, which include, but are not limited to the payment of not less than the required prevailing rates to all workers employed by them in the execution of the Contract, the employment of apprentices, the hours of labor and the debarment of contractors and subcontractors. The Work involves federal funds and requires compliance with the Davis-Bacon Fair Labor Standards Act, the Contractor and all its subcontractors shall comply with the higher of the state or federal prevailing wage rates.

Each bidder shall be a licensed contractor pursuant to the Business and Professions Code and shall be licensed in the following appropriate classification of contractor's license, for the work bid upon, and must maintain the license throughout the duration of the Contract: Bidders shall possess a **Class "A"** California Contractor's license in order to perform the Work of this Project or a letter from California **Contractor's Licensing Board** outlining the combination of various licenses necessary to perform all the work at the time the bid is submitted to the City.

Pursuant to Public Contract Code Section 3400(b), if the City has made any findings designating certain materials, products, things, or services by specific brand or trade name, such findings and the materials, products, things, or services and their specific brand or trade names will be set forth in the Special Conditions.

Award of Contract: The City shall award the Contract for the Project to the lowest responsive, responsible bidder as determined from the base bid alone by the City. The City reserves the right to reject any or all bids or to waive any irregularities or informalities in any bids or in the bidding process.

For further information, contact Victor Ortiz, Public Works Department @ (909) 370-5065, or by FAX @ (909) 370-5072, or by E-mail [vortiz@ci.colton.ca.us](mailto:vortiz@ci.colton.ca.us)

#### 4. **INSPECTION OF SITE; PRE-BID CONFERENCE AND SITE WALK**

Each prospective bidder is responsible for fully acquainting itself with the conditions of the Project Site (which may include more than one site), as well as those relating to the construction and labor of the Project, to fully understand the facilities, difficulties and restrictions which may impact the cost or effort required to complete the Project. To this end, a Pre-Bid Conference and Site Walk will be held on the date(s) and time(s) indicated in the Notice Inviting Bids.

#### 5. **ADDENDA**

The City reserves the right to revise the Contract Documents prior to the bid opening date. Revisions, if any, shall be made by written Addenda. All addenda issued by the City shall be included in the bid and made part of the Contract Documents. Pursuant to Public Contract Code Section 4104.5, if the City issues an Addendum which includes material changes to the Project less than 72 hours prior to the deadline for submission of bids, the City will extend the deadline for submission of bids. The City may determine, in its sole discretion, whether an Addendum warrants postponement of the bid submission date. Each prospective bidder shall provide City a name, address and facsimile number to which Addenda may be sent, as well as a telephone number by which the City can contact the bidder. Copies of Addenda will be furnished by facsimile, first class mail, express mail or other proper means of delivery without charge to all parties who have obtained a copy of the Contract Documents and provided such current information. Please Note: Bidders are responsible for ensuring that they have received any and all Addenda. To this end, each bidder should contact the **Public Works Department** to verify that he has received all Addenda issued, if any, prior to the bid opening.

#### 6. **ALTERNATE BIDS**

If alternate bid items are called for in the Contract Documents, the lowest bid will be determined on the basis of the base bid only. However, the City may choose to award the contract on the basis of the base bid alone or the base bid and any alternate or combination of alternates. The time required for completion of the alternate bid items has been factored into the Contract duration and no additional Contract time will be awarded for any of the alternate bid items. The City may elect to include one or more of the alternate bid items, or to otherwise remove certain work from the Project scope of work, accordingly each Bidder must ensure that each bid item contains a proportionate share of profit, overhead and other costs or expenses which will be incurred by the Bidder.

#### 7. **COMPLETION OF BID FORMS**

Bids shall only be prepared using copies of the Bid Forms which are included in the Contract Documents. The use of substitute bid forms other than clear and correct photocopies of those provided by the City will not be permitted. Bids shall be executed by an authorized signatory as described in these Instructions to Bidders. In addition, Bidders shall fill in all blank spaces (including inserting "N/A" where applicable) and initial all interlineations, alterations, or erasures to the Bid Forms. Bidders shall neither delete, modify, nor supplement the printed matter on the Bid Forms nor make substitutions thereon. USE OF BLACK OR BLUE INK,

INDELIBLE PENCIL OR A TYPEWRITER IS REQUIRED. Deviations in the bid form may result in the bid being deemed non-responsive.

#### **8. MODIFICATIONS OF BIDS**

Each Bidder shall submit its Bid in strict conformity with the requirements of the Contract Documents. Unauthorized additions, modifications, revisions, conditions, limitations, exclusions or provisions attached to a Bid may render it non-responsive and may cause its rejection. Bidders shall neither delete, modify, nor supplement the printed matter on the Bid Forms, nor make substitutions thereon. Oral, telephonic and electronic modifications will not be considered, unless the Notice Inviting Bids authorizes the submission of electronic bids and modifications thereto and such modifications are made in accordance with the Notice Inviting Bids.

#### **9. DESIGNATION OF SUBCONTRACTORS**

Pursuant to State law, the Bidders must designate the name and location of each subcontractor who will perform work or render services for the Bidder in an amount that exceeds one-half of one percent (1/2%) of the Bidder's Total Bid Price or \$10,000, as well as the portion of work each such subcontractor will perform on the form provided herein by the City. No additional time will be provided to bidders to submit any of the requested information in the Designation of Subcontractor form.

#### **10. LICENSING REQUIREMENTS**

Pursuant to Section 7028.15 of the Business and Professions Code and Section 3300 of the Public Contract Code, all bidders must possess proper licenses for performance of this Contract. Subcontractors must possess the appropriate licenses for each specialty subcontracted. Pursuant to Section 7028.5 of the Business and Professions Code, the City shall consider any bid submitted by a contractor not currently licensed in accordance with state law and pursuant to the requirements found in the Contract Documents to be non-responsive, and the City shall reject the Bid. The City shall have the right to request, and Bidders shall provide within five (5) calendar days, evidence satisfactory to the City of all valid license(s) currently held by that Bidder and each of the Bidder's subcontractors, before awarding the Contract. Please also note that, pursuant to Public Contract Code Section 20676, sellers of "mined material" must be on an approved list of sellers published pursuant to Public Resources Code Section 2717(b) in order to supply mined material for this Contract.

#### **11. SIGNING OF BIDS**

All Bids submitted shall be executed by the Bidder or its authorized representative. Bidders may be asked to provide evidence in the form of an authenticated resolution of its Board of Directors or a Power of Attorney evidencing the capacity of the person signing the Bid to bind the Bidder to each Bid and to any Contract arising therefrom.

If a Bidder is a joint venture or partnership, it may be asked to submit an authenticated Power of Attorney executed by each joint venturer or partner appointing and designating one of the joint venturers or partners as a management sponsor to execute the Bid on behalf of Bidder. Only that joint venturer or partner shall execute the Bid. The Power of Attorney shall also: (1) authorize

### **INSTRUCTIONS TO BIDDERS**

that particular joint venturer or partner to act for and bind Bidder in all matters relating to the Bid; and (2) provide that each venturer or partner shall be jointly and severally liable for any and all of the duties and obligations of Bidder assumed under the Bid and under any Contract arising therefrom. The Bid shall be executed by the designated joint venturer or partner on behalf of the joint venture or partnership in its legal name.

**12. BID GUARANTEE (BOND)**

Each bid shall be accompanied by: (a) cash; (b) a certified check made payable to the City; (c) a cashier's check made payable to the City; or (d) a bid bond payable to the City executed by the bidder as principal and surety as obligor in an amount not less than 10% of the maximum amount of the bid. Personal sureties and unregistered surety companies are unacceptable. The surety insurer shall be California admitted surety insurer, as defined in Code of Civil Procedure Section 995.120. The cash, check or bid bond shall be given as a guarantee that the bidder shall execute the Contract if it be awarded to the bidder, shall provide the payment and performance bonds and insurance certificates and endorsements as required herein within ten (10) calendar days after notification of the award of the Contract to the bidder. Failure to provide the required documents may result in forfeiture of the bidder's bid deposit or bond to the City and the City may award the Contract to the next lowest responsive, responsible bidder, or may call for new bids.

**13. SUBMISSION OF SEALED BIDS**

Once the Bid and supporting documents have been completed and signed as set forth herein, they shall be placed, along with the Bid Guarantee and other required materials in an envelope, sealed, addressed and delivered or mailed, postage prepaid to the City at the place and to the attention of the person indicated in the Notice Inviting Bids. No oral or telephonic bids will be considered. No forms transmitted via the internet, e-mail, facsimile, or any other electronic means will be considered unless specifically authorized by City as provided herein. The envelope shall also contain the following in the lower left-hand corner thereof:

**Bid of \_\_\_\_\_ (Bidder's Name)  
for the FUEL TANK REPLACEMENT PROJECT**

Only where expressly permitted in the Notice Inviting Bids, may Bidders submit their bids via electronic transmission pursuant to Public Contract Code Sections 1600 and 1601. The acceptable method(s) of electronic transmission shall be stated in the Notice Inviting Bids. City reserves the right to not accept electronically transmitted bids where not specifically authorized in the Notice Inviting Bids, and may reject any bid not strictly complying with City's designated methods for delivery.

**DELIVERY AND OPENING OF BIDS**

Bids will be received by the City at the address shown in the Notice Inviting Bids up to the date and time shown therein. The City will leave unopened any Bid received after the specified date and time, and any such unopened Bid will be returned to the Bidder. It is the Bidder's sole responsibility to ensure that its Bid is received as specified. Bids may be submitted earlier than the dates(s) and time(s) indicated.

**INSTRUCTIONS TO BIDDERS**

Bids will be opened at the date and time stated in the Notice Inviting Bids, and the amount of each Bid will be read aloud and recorded. All Bidders may, if they desire, attend the opening of Bids. The City may in its sole discretion, elect to postpone the opening of the submitted Bids. City reserves the right to reject any or all Bids and to waive any informality or irregularity in any Bid. In the event of a discrepancy between the written amount of the Bid Price and the numerical amount of the Bid Price, the written amount shall govern.

**14. WITHDRAWAL OF BID**

Prior to bid opening, a Bid may be withdrawn by the Bidder only by means of a written request signed by the Bidder or its properly authorized representative.

**15. BASIS OF AWARD; BALANCED BIDS**

The City shall award the Contract to the lowest responsive, responsible Bidder submitting a responsive Bid. The City may reject any Bid which, in its opinion when compared to other bids received or to the City's internal estimates, does not accurately reflect the cost to perform the Work. The City may reject as non-responsive any bid which unevenly weights or allocates costs, including but not limited to overhead and profit to one or more particular bid items.

**16. DISQUALIFICATION OF BIDDERS; INTEREST IN MORE THAN ONE BID**

No bidder shall be allowed to make, submit or be interested in more than one bid. However, a person, firm, corporation or other entity that has submitted a subproposal to a bidder, or that has quoted prices of materials to a bidder, is not thereby disqualified from submitting a subproposal or quoting prices to other bidders submitting a bid to the City. No person, firm, corporation, or other entity may submit subproposal to a bidder, or quote prices of materials to a bidder, when also submitting a prime bid on the same Project.

**17. INSURANCE REQUIREMENTS**

The successful bidder shall procure the insurance in the form and in the amount specified in the Contract Documents.

**18. AWARD PROCESS**

Once all Bids are opened and reviewed to determine the lowest responsive and responsible Bidder, the City Council may award the contract. The apparent successful Bidder should begin to prepare the following documents: (1) the Performance Bond; (2) the Payment (Labor and Materials) Bond; and (3) the required insurance certificates and endorsements. Once the City notifies the Bidder of the award, the Bidder will have ten (10) consecutive calendar days from the date of this notification to execute the Contract and supply the City with all of the required documents and certifications. Regardless whether the Bidder supplies the required documents and certifications in a timely manner, the Contract time will begin to run ten (10) calendar days from the date of the notification. Once the City receives all of the properly drafted and executed documents and certifications from the Bidder, the City shall issue a Notice to Proceed to that Bidder.

## 19. **FILING OF BID PROTESTS**

Bidders may file a “protest” of a Bid with the City’s **City Engineer**. In order for a Bidder’s protest to be considered valid, the protest must:

- A. Be filed in writing within five (5) calendar days after the bid opening date;
- B. Clearly identify the specific irregularity or accusation;
- C. Clearly identify the specific City staff determination or recommendation being protested;
- D. Specify, in detail, the grounds of the protest and the facts supporting the protest; and
- E. Include all relevant, supporting documentation with the protest at time of filing.

If the protest does not comply with each of these requirements, it will be rejected as invalid.

If the protest is valid, the City’s **City Engineer**, or other designated City staff member, shall review the basis of the protest and all relevant information. The **City Engineer** will provide a written decision to the protestor. The protestor may then appeal the decision of the **City Engineer** to the **City Manager**.

## 20. **WORKERS COMPENSATION**

Each bidder shall submit the Contractor’s Certificate Regarding Workers’ Compensation form.

## 21. **SUBSTITUTION OF SECURITY**

The Contract Documents call for monthly progress payments based upon the percentage of the work completed. The City will retain ten percent (10%) of each progress payment as provided by the Contract Documents. At the request and expense of the successful Bidder, the City will substitute securities for the amount so retained in accordance with Public Contract Code Section 22300.

## 22. **PREVAILING WAGES**

The City has obtained from the Director of the Department of Industrial Relations the general prevailing rate of per diem wages in the locality in which this work is to be performed for each craft or type of worker needed to execute the Contract. These rates are on file and available at Public Works Department or may be obtained online at <http://www.dir.ca.gov/dlsr>. Bidders are advised that a copy of these rates must be posted by the successful Bidder at the job site(s). If the Work involves federal funds or otherwise requires compliance with the Davis-Bacon Fair Labor Standards Act, the Contractor and all its subcontractors shall comply with the higher of the state or federal prevailing wage rates.

**23. DEBARMENT OF CONTRACTORS AND SUBCONTRACTORS**

In accordance with the provisions of the Labor Code, contractors or subcontractors may not perform work on a public works project with a subcontractor who is ineligible to perform work on a public project pursuant to Section 1777.1 or Section 1777.7 of the Labor Code. Any contract on a public works project entered into between a contractor and a debarred subcontractor is void as a matter of law. A debarred subcontractor may not receive any public money for performing work as a subcontractor on a public works contract. Any public money that is paid to a debarred subcontractor by the Contractor for the Project shall be returned to the City. The Contractor shall be responsible for the payment of wages to workers of a debarred subcontractor who has been allowed to work on the Project.

**24. PERFORMANCE BOND AND PAYMENT (LABOR AND MATERIALS) BOND REQUIREMENTS**

Within the time specified in the Contract Documents, the Bidder to whom a Contract is awarded shall deliver to the City four identical counterparts of the Performance Bond and Payment (Labor and Materials) Bond in the form supplied by the City and included in the Contract Documents. Failure to do so may, in the sole discretion of City, result in the forfeiture of the Bid Guarantee. The surety supplying the bond must be an admitted surety insurer, as defined in Code of Civil Procedure Section 995.120, authorized to do business as such in the State of California and satisfactory to the City. The Performance Bond and the Payment (Labor and Materials) Bond shall be for one hundred percent (100%) of the Total Bid Price.

**25. REQUEST FOR SUBSTITUTIONS**

The successful bidder shall comply with the substitution request provisions set forth in the Special Conditions, including any deadlines for substitution requests **which may occur prior to the bid opening date.**

**26. SALES AND OTHER APPLICABLE TAXES, PERMITS, LICENSES AND FEES**

Contractor and its subcontractors performing work under this Contract will be required to pay California sales tax and other applicable taxes, and to pay for permits, licenses and fees required by the agencies with authority in the jurisdiction in which the work will be located, unless otherwise expressly provided by the Contract Documents.

**27. EXECUTION OF CONTRACT**

As required herein the Bidder to whom an award is made shall execute the Contract in the amount determined by the Contract Documents. The City may require appropriate evidence that the persons executing the Contract are duly empowered to do so.

**END OF INSTRUCTIONS TO BIDDERS**

**INSTRUCTIONS TO BIDDERS**

## BID SCHEDULE

*Time of completion : 90 working days*

Item No	Description	Qty	Unit	Unit Price	Total
1	Mobilization	1	L.S.		₱ 5,800.00
2	Construction of fuel storage tank(12,000 gallons capacity: gasoline=8,000 gal; diesel=4,000 gal) and installation of fuel dispensers, fuel ports, piping's, accessories, etc.	1	L.S.		₱ 87,600.00
3	Foundation (design and construction)	1	L.S.		₱ 29,900.00
4	Installation of 4-in thick concrete pad (includes removal of existing asphalt/concrete paving, backfill, recompaction, asphalt resurfacing, and 12" concrete berm)	1	L.S.		₱ 43,900.00
5	4" Dia. (min) concrete filled steel guard post	1	L.S.	300.00	₱ 7,800.00
<b>TOTAL BID PRICE=</b>					<b>₱ 175,000.00</b>

**TOTAL BID PRICE IN WORDS:**

ONE HUNDRED SEVENTY FIVE THOUSAND ₱ <sup>00</sup>/100 —

In case of discrepancy between the unit price and the item cost set forth for a unit basis item, the unit price shall prevail and, shall be utilized as the basis for determining the lowest responsive, responsible bidder. However, if the amount set forth as a unit price is ambiguous, unintelligible or uncertain for any cause, or is omitted, or is the same amount as the entry in the "Item Cost" column, then the amount set forth in the "Item Cost" column for the item shall prevail and shall be divided by the estimated quantity for the item and the price thus obtained shall be the unit price. Final payment shall be determined by the Engineer from measured quantities of work performed based upon the unit price.

**BID SCHEDULE**

In case of discrepancy between the written price and the numerical price, the written price shall prevail.

The undersigned agrees that this Bid Form constitutes a firm offer to the City which cannot be withdrawn for the number of calendar days indicated in the Notice Inviting Bids from and after the bid opening, or until a Contract for the Work is fully executed by the City and a third party, whichever is earlier.

**BID FORM**

**NAME OF BIDDER:** WEST TEK, INC.

The undersigned, hereby declare that we have carefully examined the location of the proposed Work, and have read and examined the Contract Documents, including all plans, specifications, and all addenda, if any, for the following Project:

**FUEL TANK REPLACEMENT PROJECT**

We hereby propose to furnish all labor, materials, equipment, tools, transportation, and services, and to discharge all duties and obligations necessary and required to perform and complete the Project for the following TOTAL BID PRICE:

The Contract duration shall commence on the date stated in the City's Notice to Proceed, and shall be completed by the Contractor in the time specified in the Contract Documents. In no case shall the Contractor commence construction prior to the date stated in the City's Notice to Proceed.

Bidder certifies that it is licensed in accordance with the law providing for the registration of Contractors, License No. 863268, Expiration Date \_\_\_\_\_, class of license A. If the bidder is a joint venture, each member of the joint venture must include the above information.

The undersigned acknowledges receipt, understanding and full consideration of the following addenda to the Contract Documents.

Addenda No. 1


Addenda No. 2

Addenda No. 3

1. Attached is the required bid security in the amount of not less than 10% of the Total Bid Price.
2. Attached is the fully executed Non-Collusion Affidavit form.
3. Attached is the completed Designation of Subcontractors form.
4. Attached is the completed Bidder Information Form.
5. Attached is the completed Contractor's Certificate Regarding Workers' Compensation form.
6. Bidder acknowledges and understands that, pursuant to Public Contract Code Section 20676, sellers of "mined material" must be on an approved list of sellers published pursuant to Public Resources Code Section 2717(b) in order to supply mined material for this Contract.

I hereby certify under penalty of perjury under the laws of the State of California, that all of the information submitted in connection with this Bid and all of the representations made herein are true and correct.

Name of Bidder WEST TEK, INC.

Signature 

Name and Title MARK KUNZE / PRESIDENT

Dated 1-22-08

**BID SCHEDULE**

**BID BOND**

The makers of this bond are, West Tek, Inc., as Principal, and Western Surety Company, as Surety and are held and firmly bound unto the City of Colton, hereinafter called the City, in the penal sum of TEN PERCENT (10%) OF THE TOTAL BID PRICE of the Principal submitted to CITY for the work described below, for the payment of which sum in lawful money of the United States, 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 has submitted the accompanying bid dated January 22, 2008, for **FUEL TANK REPLACEMENT PROJECT**.

If the Principal does not withdraw its bid within the time specified in the Contract Documents; and if the Principal is awarded the Contract and provides all documents to the City as required by the Contract Documents; then this obligation shall be null and void. Otherwise, this bond will remain in full force and effect.

Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract Documents shall in affect its obligation under this bond, and Surety does hereby waive notice of any such changes.

In the event a lawsuit is brought upon this bond by the City and judgment is recovered, the Surety shall pay all litigation expenses incurred by the City in such suit, including reasonable attorneys' fees, court costs, expert witness fees and expenses.

IN WITNESS WHEREOF, the above-bound parties have executed this instrument under their several seals this 22nd day of January, 2008, the name and corporate seal of each corporation.

(Corporate Seal)

West Tek, Inc.  
Principal

By \_\_\_\_\_  
Title \_\_\_\_\_  
Western Surety Company

(Corporate Seal)

Surety  
By Scott T. Ries  
Attorney-in-Fact

(Attach Attorney-in-Fact Certificate)

Title Scott T. Ries

STATE OF CALIFORNIA )  
 )  
CITY OF \_\_\_\_\_ )

ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, in the year 2007, before me, \_\_\_\_\_, a Notary Public in and for said state, personally appeared \_\_\_\_\_, known to me to be the person whose name is subscribed to the within instrument as the Attorney-In-Fact of the (Surety) acknowledged to me that he subscribed the name of the \_\_\_\_\_ (Surety) thereto and his own name as Attorney-In-Fact.

\_\_\_\_\_  
Notary Public in and for said State

(SEAL)

Commission expires: \_\_\_\_\_

NOTE: A copy of the Power-of-Attorney to local representatives of the bonding company must be attached hereto.

**BID BOND**

# Western Surety Company

## POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

Know All Men By These Presents, That WESTERN SURETY COMPANY, a South Dakota corporation, is a duly organized and existing corporation having its principal office in the City of Sioux Falls, and State of South Dakota, and that it does by virtue of the signature and seal herein affixed hereby make, constitute and appoint

**Scott T Ries, Sharon E Ries, Individually**

of Escondido, CA, its true and lawful Attorney(s)-in-Fact with full power and authority hereby conferred to sign, seal and execute for and on its behalf bonds, undertakings and other obligatory instruments of similar nature

**- In Unlimited Amounts -**

and to bind it thereby as fully and to the same extent as if such instruments were signed by a duly authorized officer of the corporation and all the acts of said Attorney, pursuant to the authority hereby given, are hereby ratified and confirmed.

This Power of Attorney is made and executed pursuant to and by authority of the By-Law printed on the reverse hereof, duly adopted, as indicated, by the shareholders of the corporation.

In Witness Whereof, WESTERN SURETY COMPANY has caused these presents to be signed by its Senior Vice President and its corporate seal to be hereto affixed on this 28th day of November, 2007.



WESTERN SURETY COMPANY

Paul T. Bruflat, Senior Vice President

State of South Dakota }  
County of Minnehaha } ss

On this 28th day of November, 2007, before me personally came Paul T. Bruflat, to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Sioux Falls, State of South Dakota; that he is the Senior Vice President of WESTERN SURETY COMPANY described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed pursuant to authority given by the Board of Directors of said corporation and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said corporation.

My commission expires  
November 30, 2012



D. Krell, Notary Public

### CERTIFICATE

I, L. Nelson, Assistant Secretary of WESTERN SURETY COMPANY do hereby certify that the Power of Attorney hereinabove set forth is still in force, and further certify that the By-Law of the corporation printed on the reverse hereof is still in force. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said corporation this 22nd day of January, 2008.



WESTERN SURETY COMPANY

L. Nelson, Assistant Secretary

# California Acknowledgment Form

State of California }  
County of San Diego } ss.

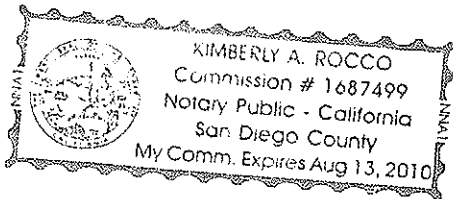
On January 22, 2008 before me, Kimberly A. Rocco, Notary Public  
personally appeared Scott T. Ries

who proved to me on the basis of satisfactory evidence to be the person~~(s)~~ whose name~~(s)~~ is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity~~(ies)~~, and that by his/~~her/their~~ signature~~(s)~~ on the instrument the person~~(s)~~, or the entity upon behalf of which the person~~(s)~~ acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Seal




[Handwritten Signature]  
Signature of Notary

## Notes

Please provide information about the document that this form is attached to.  
\*\*\*This is not required under California State notary public law.\*\*\*

Attorney in Fact for Surety Company

DATE: January 8, 2008  
FROM:  VICTOR ORTIZ  
ENGINEERING MANAGER  
TO: ALL PLAN HOLDERS

**ADDENDUM I**  
**PUBLIC WORKS DEPARTMENT**  
**FUEL TANK REPLACEMENT PROJECT**  
**IN THE CITY OF COLTON**  
**EFFECTIVE January 8, 2008**

As of January 8, 2008, the following modification shall be incorporated into the existing Contract Documents and Specifications for the **FUEL TANK REPLACEMENT PROJECT IN THE CITY COLTON:**

- Bid submittal and Bid opening shall be moved to **JANUARY 23, 2008 at 3:00PM**


If you have any questions, please contact **John Jefferson**, Public Works Department @ **(909) 514-4213**, or by e-mail [jjefferson@ci.colton.ca.us](mailto:jjefferson@ci.colton.ca.us). Thank you.

End of Addendum I

**A SIGNED COPY OF THIS ADDENDUM MUST BE INCLUDED IN YOUR BID PROPOSAL**

**BID SET**


  
\_\_\_\_\_  
Contractor's Signature of Acknowledgment

DATE: January 15, 2008  
FROM:  VICTOR ORTIZ  
ENGINEERING MANAGER  
TO: ALL PLAN HOLDERS

**ADDENDUM II**  
**PUBLIC WORKS DEPARTMENT**  
**FUEL TANK REPLACEMENT PROJECT**  
**IN THE CITY OF COLTON**  
**EFFECTIVE January 15, 2008**

As of January 15, 2008, the following modification shall be incorporated into the existing Contract Documents and Specifications for the **FUEL TANK REPLACEMENT PROJECT IN THE CITY COLTON**:

- The drawing issued "FUEL TANK REPLACEMENT PLAN" was approved by San Bernardino County Fire Dept. for construction purposes (see attached footing design calculation). The approved tank material is Enviro-Vault EV-CC Series but contractors can provide any approved equal. If the contractor desires to supply tank with different design from the approved plan, it is the contractor's responsibility to provide the tank design and secure the permit from the county at his own cost.
- The existing electrical panel will be used. The contractor shall be responsible for connection to the existing panel. The location of the existing electrical panel is shown on the attached sketch.
- The fire extinguishers shall be 10 lb in size, ABC (dry chemical) in type, 4A60BC in rating with wall mounts.
- The scale of the plan on sheet two (2) is *not to scale (NTS)*.
- The 2" drain pipe penetrating the new 8" curb doesn't have any type of valve on it. The 2" drain holes should be spaced 10' apart.
- The 1.50% slope away from the tank pad on all sides is concrete with minimum thickness of 4".
- The contractor shall provide Enviro-Vault EC-CC series tank or an approved equal cylindrical tank.
- The berm height is 8", made of concrete and shall be constructed per attached sketch.

DATE: January 16, 2008  
FROM:  VICTOR ORTIZ  
ENGINEERING MANAGER  
TO: ALL PLAN HOLDERS

**ADDENDUM III**  
**PUBLIC WORKS DEPARTMENT**  
**FUEL TANK REPLACEMENT PROJECT**  
**IN THE CITY OF COLTON**  
**EFFECTIVE January 16, 2008**

As of January 16, 2008, the following modification shall be incorporated into the existing Contract Documents and Specifications for the ***FUEL TANK REPLACEMENT PROJECT IN THE CITY COLTON***:

- Engineered electrical drawings shall be part of contractor's scope and any fee associated with permitting will be paid by the City.

If you have any questions, please contact Victor Ortiz, Public Works Department at phone number (909) 370-5065, or by FAX at (909) 370-5072, or by E-mail at [vortiz@ci.colton.ca.us](mailto:vortiz@ci.colton.ca.us).

Thank you.  
End of Addendum III


A SIGNED COPY OF THIS ADDENDUM MUST BE INCLUDED IN YOUR BID PROPOSAL

**BID SET**

  
Contractor's Signature of Acknowledgment

Jan 24 06 06:47a Mark Kunitze 0194091914 p.2

DATE: January 17, 2008

FROM:  VICTOR ORTIZ  
ENGINEERING MANAGER

TO: ALL PLAN HOLDERS

**ADDENDUM IV**  
**PUBLIC WORKS DEPARTMENT**  
**FUEL TANK REPLACEMENT PROJECT**  
**IN THE CITY OF COLTON**  
**EFFECTIVE January 17, 2008**

As of January 17, 2008, the following modification shall be incorporated into the existing Contract Documents and Specifications for the **FUEL TANK REPLACEMENT PROJECT IN THE CITY COLTON**:

- The length of the concrete berm is approximately Two Hundred Ten Linear Feet (210'). The total area of the concrete pad is One Thousand Two Hundred Fifty square feet (1250). This includes the area of the tank foundation.
- The manufacturer of the existing fuel management system is Gasboy Series 1000.
- The existing fuel management system is not wireless and it requires communication cable to connect to existing fuel management system.
- The contractor shall provide a fuel monitoring system (level gauge) mounted on the tank.
- Drain valves are required in the 2" diameter drain pipe mounted on 8" concrete berm. This supercedes the valve provision in the fifth bullet of Addendum II.
- Relocation of existing water and air dispensers are not a part of this project.

If you have any questions, please contact Victor Ortiz, Public Works Department at phone number (909) 370-5065, or by FAX at (909) 370-5072, or by E-mail at [vortiz@ci.colton.ca.us](mailto:vortiz@ci.colton.ca.us).

Thank you.  
End of Addendum IV

**A SIGNED COPY OF THIS ADDENDUM MUST BE INCLUDED IN YOUR BID PROPOSAL**

**BID SET**

  
Contractor's Signature of Acknowledgment

## INFORMATION REQUIRED OF BIDDERS

### A. INFORMATION ABOUT BIDDER

[\*\*Indicate not applicable ("N/A") where appropriate.\*\*]

NOTE: Where Bidder is a joint venture, pages shall be duplicated and information provided for all parties to the joint venture.

- 1.0 Name of Bidder: WEST TEK, INC.
- 2.0 Type, if Entity: CORPORATION
- 3.0 Bidder Address: 8757 VISTA DEL ORO WAY  
SPRING VALLEY CA 91977
- (619) 469-1914 (619) 342-6458  
Facsimile Number Telephone Number
- 4.0 How many years has Bidder's organization been in business as a Contractor?  
2.5 YRS
- 5.0 How many years has Bidder's organization been in business under its present name? 1 YR
- 5.1 Under what other or former names has Bidder's organization operated?: WEST TEK
- 6.0 If Bidder's organization is a corporation, answer the following:
- 6.1 Date of Incorporation: JAN, 2007
- 6.2 State of Incorporation: CALIFORNIA
- 6.3 President's Name: MARK KUNZE
- 6.4 Vice-President's Name(s): MARLENE KUNZE
- 6.5 Secretary's Name: MARK KUNZE
- 6.6 Treasurer's Name: MARK KUNZE

## INFORMATION REQUIRED OF BIDDERS

7.0 If an individual or a partnership, answer the following:

7.1 Date of Organization: \_\_\_\_\_

7.2 Name and address of all partners (state whether general or limited partnership):  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

8.0 If other than a corporation or partnership, describe organization and name principals:  
\_\_\_\_\_  
\_\_\_\_\_

9.0 List other states in which Bidder's organization is legally qualified to do business.  
\_\_\_\_\_  
N/A  
\_\_\_\_\_

10.0 What type of work does the Bidder normally perform with its own forces?

EXCAVATION, CONCRETE, FUEL TANK INSTALLATIONS (Above & Below)  
Re-pipe fuel LINES,  
\_\_\_\_\_

11.0 Has Bidder ever failed to complete any work awarded to it? If so, note when, where, and why:

NO  
\_\_\_\_\_  
\_\_\_\_\_

12.0 Within the last five years, has any officer or partner of Bidder's organization ever been an officer or partner of another organization when it failed to complete a contract? If so, attach a separate sheet of explanation:

NO  
\_\_\_\_\_  
\_\_\_\_\_

### INFORMATION REQUIRED OF BIDDERS

14.0 List Trade References:

BATA PUMP - RAUL FARFAN

15.0 List Bank References (Bank and Branch Address):

WELLS FARGO

5500 GROSSMONT CENTER DRIVE

LA MESA CA 91942

16.0 Name of Bonding Company and Name and Address of Agent:

WESTERN SURETY COMPANY

SCOTT RIES - RIES BONDING SERVICES

(619) 606-5982

**CONTRACTOR'S CERTIFICATE REGARDING  
WORKERS' COMPENSATION**

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this Contract.

Name of Bidder WEST TEK, INC.

Signature 

Name MARK KUNZE

Title PRESIDENT

Dated 1-22-08

**CONTRACTOR'S CERTIFICATE REGARDING  
WORKERS' COMPENSATION**

***Additional Bidder's Statements:***

If the Bidder feels that there is additional information which has not been included in the questionnaire above, and which would contribute to the qualification review, it may add that information in a statement here or on an attached sheet, appropriately marked:

N/A  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**E. VERIFICATION AND EXECUTION**

These Bid Forms shall be executed only by a duly authorized official of the Bidder:

I declare under penalty of perjury under the laws of the State of California that the foregoing information is true and correct:

Name of Bidder WEST TEK, INC.

Signature 

Name MARK KUNZE

Title PRESIDENT

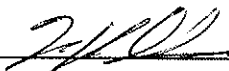
Dated 1 - 22 - 08

NON-COLLUSION AFFIDAVIT

I, MARK KUNZE, being first duly sworn, deposes and says that he is PRESIDENT of WEST TEK, INC. the party making the attached bid; that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the 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 colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and, further, that the bidder has not, directly or indirectly, submitted his or her 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 to any corporation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Name of Bidder WEST TEK, INC.

Signature 

Name MARK KUNZE

Title PRESIDENT

Dated 1-22-08

**DESIGNATION OF SUBCONTRACTORS**

In compliance with the Subletting and Subcontracting Fair Practices Act of the Public Contract Code of the State of California, each bidder shall set forth below: (a) the name and the location of the place of business and (b) the portion of the work which will be done by each subcontractor who will perform work or labor or render service to the Contractor in or about the construction of the work in an amount in excess of one-half of one percent (1/2%) of the Contractor's Total Bid Price. Notwithstanding the foregoing, if the work involves streets and highways, then the Contractor shall list each subcontractor who will perform work or labor or render service to Contractor in or about the work in an amount in excess of one-half of one percent (1/2%) of the Contractor's Total Bid Price or \$10,000, whichever is greater. No additional time shall be granted to provide the below requested information.

If no subcontractor is specified, for a portion of the work, or if more than one subcontractor is specified for the same portion of Work, to be performed under the Contract in excess of one-half of one percent (1/2%) of the Contractor's Total Bid Price or \$10,000, whichever is greater if the work involves streets or highways, then the Contractor shall be deemed to have agreed that it is fully qualified to perform that Work, and that it shall perform that portion itself.

Portion of Work	Subcontractor	Location of Business
DEMO	BIG K CONCRETE CORING & CUTTING	SUNDLAND CA

Name of Bidder WEST TEK, INC.

Signature 

Name and Title MARK KUNZE / PRESIDENT

Dated 1-22-08

**DESIGNATION OF SUBCONTRACTORS**



**D. EXPERIENCE AND TECHNICAL QUALIFICATIONS QUESTIONNAIRE**

**Personnel:**

The Bidder shall identify the key personnel to be assigned to this project in a management, construction supervision or engineering capacity.

1. List each person's job title, name and percent of time to be allocated to this project:

JOHN KUNZE - 50 %

MIKE ARCHIBALD - 100 %

FRANK REAL - 75 %

2. Summarize each person's specialized education:

JOHN KUNZE - Pipefitter, Installer

MIKE ARCHIBALD - Pipefitter, Super-intendant

FRANK REAL - FORMING, LAYOUT, GRADING & CONCRETE

3. List each person's years of construction experience relevant to the project:

JOHN KUNZE - 30 YRS AS A UST/AST INSTALLER

MIKE ARCHIBALD - 20 YRS AS A PIPEFITTER

FRANK REAL - 30 YRS FORMING, LAYOUT, GRADING, CONCRETE

4. Summarize such experience:

PERSONNEL ON SITE WILL HAVE EXPERIENCED CREW

TO PERFORM THEIR WORK,

Bidder agrees that personnel named in this Bid will remain on this Project until completion of all relevant Work, unless substituted by personnel of equivalent experience and qualifications approved in advance by the City.



**PERFORMANCE BOND**

KNOW ALL PERSONS BY THESE PRESENTS:

THAT WHEREAS, City of Colton (hereinafter referred to as "City") has awarded to West Tek, Inc., (hereinafter referred to as the "Contractor") an agreement for Corporate Yard Fuel tank Replacement Project (hereinafter referred to as the "Project").

WHEREAS, the work to be performed by the Contractor is more particularly set forth in the Contract Documents for the Project dated 12/17/2007, (hereinafter referred to as "Contract Documents"), the terms and conditions of which are expressly incorporated herein by reference; and

WHEREAS, the Contractor is required by said Contract Documents to perform the terms thereof and to furnish a bond for the faithful performance of said Contract Documents.

NOW, THEREFORE, we, \_\_\_\_\_, the undersigned Contractor and \_\_\_\_\_ as Surety, a corporation organized and duly authorized to transact business under the laws of the State of California, are held and firmly bound unto the City in the sum of \_\_\_\_\_ DOLLARS, (\$\_\_\_\_\_), said sum being not less than one hundred percent (100%) of the total amount of the Contract, for which amount well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that, if the Contractor, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the Contract Documents and any alteration thereof made as therein provided, on its part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their intent and meaning; and shall faithfully fulfill all obligations including the one-year guarantee of all materials and workmanship; and shall indemnify and save harmless the City, its officers and agents, as stipulated in said Contract Documents, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a part of the obligation secured hereby and in addition to the face amount specified therefore, there shall be included costs and reasonable expenses and fees including reasonable attorney's fees, incurred by City in enforcing such obligation.

As a condition precedent to the satisfactory completion of the Contract Documents, unless otherwise provided for in the Contract Documents, the above obligation shall hold good for a period of one (1) year after the acceptance of the work by City, during which time if Contractor shall fail to make full, complete, and satisfactory repair and replacements and totally protect the City from loss or damage resulting from or caused by defective materials or faulty workmanship. The obligations of Surety hereunder shall continue so long as any obligation of Contractor remains. Nothing herein shall limit the City's rights or the Contractor or Surety's obligations under the Contract, law or equity, including, but not limited to, California Code of Civil Procedure section 337.15.

**PERFORMANCE BOND**

Whenever Contractor shall be, and is declared by the City to be, in default under the Contract Documents, the Surety shall remedy the default pursuant to the Contract Documents, or shall promptly, at the City's option:

- (1) Take over and complete the Project in accordance with all terms and conditions in the Contract Documents; or
- (2) Obtain a bid or bids for completing the Project in accordance with all terms and conditions in the Contract Documents and upon determination by Surety of the lowest responsive and responsible bidder, arrange for a Contract between such bidder, the Surety and the City, and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Contractor by the City under the Contract and any modification thereto, less any amount previously paid by the City to the Contractor and any other set offs pursuant to the Contract Documents.
- (3) Permit the City to complete the Project in any manner consistent with California law and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Contractor by the City under the Contract and any modification thereto, less any amount previously paid by the City to the Contractor and any other set offs pursuant to the Contract Documents.

Surety expressly agrees that the City may reject any contractor or subcontractor which may be proposed by Surety in fulfillment of its obligations in the event of default by the Contractor.

Surety shall not utilize Contractor in completing the Project nor shall Surety accept a bid from Contractor for completion of the Project if the CITY, when declaring the Contractor in default, notifies Surety of the City's objection to Contractor's further participation in the completion of the Project.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract Documents or to the Project to be performed thereunder shall in any way affect its obligations 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 Documents or to the Project.

[Remainder of Page Left Intentionally Blank.]

IN WITNESS WHEREOF, we have hereunto set our hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
CONTRACTOR/PRINCIPAL

\_\_\_\_\_  
Name

By \_\_\_\_\_

SURETY:

By: \_\_\_\_\_

Attorney-In-Fact

The rate of premium on this bond is \_\_\_\_\_ per thousand. The total amount of premium charges, \$\_\_\_\_\_.  
(The above must be filled in by corporate attorney.)

THIS IS A REQUIRED FORM

Any claims under this bond may be addressed to:

(Name and Address of Surety)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Name and Address of Agent or Representative for service of process in California, if different from above)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Telephone number of Surety and Agent or Representative for service of process in California)

\_\_\_\_\_

STATE OF CALIFORNIA )  
 ) ss.  
CITY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, in the year 2007, before me,  
\_\_\_\_\_, a Notary Public in and for said state, personally appeared  
\_\_\_\_\_, known to me to be the person whose name is  
subscribed to the within instrument as the Attorney-In-Fact of the (Surety) acknowledged to me  
that he subscribed the name of the \_\_\_\_\_ (Surety) thereto and his  
own name as Attorney-In-Fact.

\_\_\_\_\_  
Notary Public in and for said State

(SEAL)

Commission expires: \_\_\_\_\_

NOTE: A copy of the Power-of-Attorney to local representatives of the bonding company must  
be attached hereto.

**PAYMENT BOND (LABOR AND MATERIALS)**

KNOW ALL MEN BY THESE PRESENTS That

WHEREAS, the City of Colton (hereinafter designated as the "City"), by action taken or a resolution passed February 5, 2008 has awarded to West Tek, Inc. hereinafter designated as the "Principal," a contract for the work described as follows: Corporate Yard Fuel tank Replacement Project (the "Project"); and

WHEREAS, said Principal is required to furnish a bond in connection with said contract; providing that if said Principal or any of its Subcontractors shall fail to pay for any materials, provisions, provender, equipment, or other supplies used in, upon, for or about the performance of the work contracted to be done, or for any work or labor done thereon of any kind, or for amounts due under the Unemployment Insurance Code or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of said Principal and its Subcontractors with respect to such work or labor the Surety on this bond will pay for the same to the extent hereinafter set forth.

NOW THEREFORE, we, the Principal and \_\_\_\_\_ as Surety, are held and firmly bound unto the City in the penal sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) lawful money of the United States of America, 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 if said Principal, his or its subcontractors, heirs, executors, administrators, successors or assigns, shall fail to pay any of the persons named in Section 3181 of the Civil Code, fail to pay for any materials, provisions or other supplies, used in, upon, for or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or amounts due under the Unemployment Insurance Code with respect to work or labor performed under the contract, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department or Franchise Tax Board from the wages of employees of the contractor and his subcontractors pursuant to Section 18663 of the Revenue and Taxation Code, with respect to such work and labor the Surety or Sureties will pay for the same, in an amount not exceeding the sum herein above specified, and also, in case suit is brought upon this bond, all litigation expenses incurred by the City in such suit, including reasonable attorneys' fees, court costs, expert witness fees and investigation expenses.

This bond shall inure to the benefit of any of the persons named in Section 3181 of the Civil Code so as to give a right of action to such persons or their assigns in any suit brought upon this bond.

It is further stipulated and agreed that the Surety on this bond shall not be exonerated or released from the obligation of this bond by any change, extension of time for performance, addition, alteration or modification in, to, or of any contract, plans, specifications, or agreement pertaining or relating to any scheme or work of improvement herein above described, or pertaining or

**PAYMENT (LABOR AND MATERIALS) BOND**

relating to the furnishing of labor, materials, or equipment therefore, nor by any change or modification of any terms of payment or extension of the time for any payment pertaining or relating to any scheme or work of improvement herein above described, nor by any rescission or attempted rescission or attempted rescission of the contract, agreement or bond, nor by any conditions precedent or subsequent in the bond attempting to limit the right of recovery of claimants otherwise entitled to recover under any such contract or agreement or under the bond, nor by any fraud practiced by any person other than the claimant seeking to recover on the bond and that this bond be construed most strongly against the Surety and in favor of all persons for whose benefit such bond is given, and under no circumstances shall Surety be released from liability to those for whose benefit such bond has been given, by reason of any breach of contract between the owner or City and original contractor or on the part of any obligee named in such bond, but the sole conditions of recovery shall be that claimant is a person described in Section 3110 or 3112 of the Civil Code, and has not been paid the full amount of his claim and that Surety does hereby waive notice of any such change, extension of time, addition, alteration or modification herein mentioned.

IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed unoriginal thereof, have been duly executed by the Principal and Surety above named, on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ the name and corporate seal of each corporate party being hereto affixed and these presents duly signed b its undersigned representative pursuant to authority of its governing body.

(Corporate Seal of Principal,  
if corporation)

\_\_\_\_\_  
Principal (Property Name of Contractor)

By \_\_\_\_\_  
(Signature of Contractor)

(Seal of Surety)

\_\_\_\_\_  
Surety

By \_\_\_\_\_  
Attorney in Fact

(Attached Attorney-In-Fact  
Certificate and Required  
Acknowledgements)

\*Note: Appropriate Notary Acknowledgments of Execution by Contractor and +surety and a power of Attorney MUST BE ATTACHED.