

**CONTRACT BY AND BETWEEN
CITY OF DENTON, TEXAS AND HICKORY & RAIL VENTURES, LLC
(CONTRACT 6571)**

THIS CONTRACT is made and entered into this date _____, by and between Hickory & Rail Ventures, LLC, a corporation, whose address is 608 E. Hickory St., Suite 128, Denton, TX 76205, by and through its authorized agent Marshall Culpepper, hereinafter referred to as "Contractor," and the **CITY OF DENTON, TEXAS**, a home rule municipal corporation, hereinafter referred to as "City," to be effective upon approval of the Denton City Council and subsequent execution of this Contract by the Denton City Manager or his duly authorized designee.

WHEREAS, the City seeks to drive new business creation and job growth by fostering a sustainable startup community for entrepreneurs primarily in early-stage tech and tech-enabled businesses; and

WHEREAS, to achieve this public purpose, the City leased a commercial space of approximately 9,000 square feet at 608 East Hickory, Denton, Texas 76201 from Rail Yard Partners, Ltd. ("Stoke Denton"); and

WHEREAS, the City desires that Contractor provide management services for Stoke Denton as indicated herein;

NOW THEREFORE, for and in consideration of the covenants and agreements contained herein, and for the mutual benefits to be obtained hereby, the parties agree as follows:

SCOPE OF SERVICES

Contractor shall provide management services in accordance with the City's document RFP 6571- Management Services of the Stoke Denton Entrepreneur Center, a copy of which is on file at the office of Purchasing Agent and incorporated herein for all purposes. The Contract consists of this written agreement and the following items which are attached hereto and incorporated herein by reference:

- (a) Special Terms and Conditions (**Exhibit "A"**);
- (b) Request for Proposal (**Exhibit "B" on File at the Office of the Purchasing Agent**);
- (c) City of Denton Standard Terms and Conditions (**Exhibit "C"**);
- (d) Insurance Requirements (**Exhibit "D"**);
- (e) Certificate of Interested Parties Electronic Filing (**Exhibit "E"**);
- (f) Contractor's Proposal. (**Exhibit "F"**).

These documents make up the Contract documents and what is called for by one shall be as binding as if called for by all. In the event of an inconsistency or conflict in any of the provisions of the Contract documents, the inconsistency or conflict shall be resolved by giving precedence first to the written agreement then to the contract documents in the order in which they are listed

above. These documents shall be referred to collectively as "Contract Documents."

IN WITNESS WHEREOF, the parties of these presents have executed this agreement in the year and day first above written.

CONTRACTOR
HICKORY & RAIL VENTURES, LLC

BY: _____
AUTHORIZED SIGNATURE

Date: _____

Name: _____

Title: _____

PHONE NUMBER

EMAIL ADDRESS

TEXAS ETHICS COMMISSION
CERTIFICATE NUMBER

CITY OF DENTON, TEXAS

ATTEST:
JENNIFER WALTERS, CITY SECRETARY

BY: _____
TODD HILEMAN
CITY MANAGER

BY: _____

Date: _____

APPROVED AS TO LEGAL FORM:
AARON LEAL, CITY ATTORNEY

BY: _____

Exhibit A

Special Terms and Conditions for Management Services

I. Scope of Work. The City hereby authorizes and engages the Contractor as its agent to manage certain operations of Stoke Denton as detailed below. The Contractor hereby accepts such engagement subject to the terms of the Contract Documents. The Contractor hereby agrees to the following in accordance with this Contract:

A. Definitions:

Technology (Tech) Company: A type of business that focuses primarily on the development and manufacturing of technology. Tech companies build hardware, software, algorithms and platforms.

Tech-Enabled Company: Businesses that leverage technology. Tech-enabled companies use tech tools to perform or enhance their core businesses.

B. Contractor Duties.

1. Provide daily co-working space management which includes but is not limited to providing staffing, managing member onboarding and exits, providing member support and customer service and invoicing and payments, causing the space to be maintained and in good repair, renting conference rooms and event space, providing a helpdesk with coordination of the City's Information Technology Department, and providing access to Stoke Denton after normal work hours.
2. Handle programming and events, including but not limited to providing educational and networking opportunities and events for members and the public.
3. Market and recruit potential members to the space through the stokedenton.com website, social media, and other promotional and outreach activities.
4. Create and implement a mentor/advisor network by securing a roster of diverse mentors and advisors and making them available to members for advising, networking, and other applicable activities.
5. Create and implement a funding and investor network to offer members access to capital investment. Such funds and investment must not be offered directly by Contractor or its affiliate(s). The City will not be responsible for any investor networking nor any violation of the federal or state securities laws as a result of such networking. Contractor will provide any investor network notice that a reference to any particular start up for investment or security is not a recommendation to buy, sell, or hold such investment or security or make other investment decisions and does not address the suitability of any investment or security. The Contractor shall not act as a fiduciary in providing this service.
6. Develop community partnerships by creating and maintaining relationships with entities in the City's startup, business, education, nonprofit, and governmental

communities to provide value to members and identify opportunities for collaboration.

7. Provide a monthly financial report to the City that shows an accounting of all income and expenses associated with the operation of Stoke Denton.
8. Maintain the financial capacity to successfully perform services under this Contract.

C. City Duties. The City agrees to do the following in its discretion and as is allowed under the City's budget processes:

1. The City will provide the leased space at Stoke Denton located at 608 East Hickory, Suite 128, Denton, Texas to the Contractor for the operation of Stoke Denton at the City's cost except as otherwise detailed herein for the term of the City's current Commercial Lease Agreement with Rail Yard Partners, Ltd which terminates on February 28, 2021. The City's costs will not cover operation of Stoke Denton but lease of the physical space. The City will require a sublease to be executed between Contractor and City in order to operate in the space. Any such sublease will be by separate document between City and Contractor and the rent for the same will begin, if the Contract is renewed, in December 2018 and will be set at a specified rate as indicated in the separate agreement for sublease which must be executed and returned to the City within fifteen (15) calendar days from the contract award. The City may, in its discretion, provide additional minor operational cost support as negotiated between the parties. At the end of the City's commercial lease for the space and if the Contract is renewed for that period of time, the parties intend that Contractor will negotiate with the owner of the property at Stoke Denton for a new lease for the space by February 2021. The City does not intend to renew its Commercial Lease Agreement with Rail Yard Partners, Ltd.
2. The City will allow the Contractor to use the furniture, fixtures, and equipment ("FFE") currently in place at Stoke Denton. The FFE will not be considered the personal property of the Contractor or any member of Denton Stoke, and ownership of the FFE will remain with the City of Denton throughout the term of this Contract and thereafter. The Contractor will be liable for any damage to the FFE during the term of this Contract.
3. The City will allow the Contractor to use the branding, logos, program markers, URL addresses, websites and other marketing materials owned by the City only during the performance of the services under this Contract. All intellectual property that is created by, owned, or otherwise paid for by the City as a work for hire shall be the property of the City and will not belong to the Contractor or be converted for the Contractor's personal use. Any right to use the City's intellectual property herein will terminate upon termination of this Contract. In the event of termination, Contractor agrees to relinquish all such property and return it to the City.

II. Program Costs. The Contractor will be allowed to charge and keep all membership fees collected from members of Stoke Denton in order to operate the space, pay for personnel, supplies, and cover future portions of the sublease as detailed in a separate sublease document. Such membership fees must be approved by the Director of Economic Development for the City of Denton. The Contractor further agrees to the following costs:

Dec 2017--\$100/mo budget for marketing at Contract Execution.

Jun 2018 – Increase to \$500/mo budget for marketing.

July 2018 – Hire a full-time Community Coordinator

Dec 2018 – Hire a part-time Marketing Director, increase marketing budget to \$750/mo.

Jul 2019 – Increase marketing budget to \$1,500/mo.

Dec 2019 – Transition Marketing Director to full time

Feb 2018—Capital improvement expenditures of \$29,000 over a three-year period to include the installation of ceiling insulation to eliminate echo and sound travel in the common work area and provide better sound isolation between the conference rooms that share a wall and the new layouts of the common area.

III. Contract Term and Termination. The Contract term will be for an initial one (1) year period, effective from the date of the award as determined by the City of Denton Purchasing Department. The City will have the option to renew the Contract for additional one-year period(s) at its discretion but in no event shall the Contract extend beyond the February 28, 2021 lease termination. The Contract may be terminated by the City with thirty (30) days written notice to the Contractor; provided that, in the event of nonrenewal due to the City not allotting or appropriating sufficient funds for the renewed fiscal year, the City may terminate this Contract without notice. The following conditions will be grounds for automatic termination without notice during the term of the Contract: (1) Failure to meet the metrics and deliverables as stated herein; (2) Stoke Denton is destroyed by casualty; (3) Stoke Denton is taken by eminent domain either in whole or in part; (4) Contractor applies for, consents to, or is involuntarily subjected to receivership, trustee, or liquidator of all or substantially all of its assets; (5) Contractor files for bankruptcy or becomes otherwise insolvent; (6) Contractor fails to provide or maintain insurance for the Stoke Denton operation; and (7) any other cause allowed under the City of Denton's Standard Terms and Conditions in Exhibit C.

IV. Deliverables and Performance Metrics. The Contractor must produce the following deliverables and metrics:

A. Members

a. Metrics

- i. Number of active memberships
- ii. Percentage of tech or tech-enabled members
- iii. Member satisfaction

b. Deliverables

- i. Monthly report provided to the City's Director of Economic Development detailing the number, type, and company name of active memberships, the percentage of tech or tech-enabled members, and the results of the monthly member satisfaction survey.

B. Marketing

a. Metrics

- i. Number of regional startup and tech event sponsorships
- ii. Number of blog posts/content creation regarding Denton's startup community
- iii. Active daily use of Stoke social media

b. Deliverables

- i. Comprehensive annual marketing plan provided to the City's Director of Economic Development by January 1, 2018, detailing how the Contractor will actively market Stoke to entrepreneurs, startups, tech companies, and remote workers within a 50-mile radius.
- ii. Monthly report provided to the City's Director of Economic Development detailing the number of event sponsorships, number of blog posts, and pages views, reach, post engagements, impressions, or other appropriate data of social media activity

C. Programming/Events

a. Metrics

- i. Number of educational events/programs held at Stoke per month
- ii. Number of startup/tech events held at Stoke per month
- iii. Number of mentor session available/used per month

b. Deliverables

- i. Monthly report provided to the City's Director of Economic Development detailing the number of educational events/program, number of startup/tech events, and number of mentor session available/used

D. Partnerships

a. Metrics

- i. Number of active partnerships with entities in Denton's startup, business, education, nonprofit, and governmental communities

b. Deliverables

- i. Monthly report provided to the City's Director of Economic Development detailing Stoke partnership activities with University of North Texas, TechMill, Brand Accelerant, Denton Angels, and other relevant entities

E. Additional Reporting

- a. Monthly financial information: The Contractor will provide to the City's Director of Economic Development monthly profit and loss statements for Stoke Denton operations and the data required under Sec. I.B.7 above.
- b. Comprehensive annual report: The Contractor will provide to the City's Director of Economic Development no later than November 1, 2018, an annual comprehensive outputs and outcomes report summarizing metrics in categories A-D above, along with information such as Stoke Member Company financial or employment growth, capital funding success, exits, and other relevant indicators of member business health and growth. The outputs and outcomes data in the comprehensive annual report will be used to define metrics and deliverables in future contracts.

V. Special Events. Liquor may be allowed only at special events catered by third part(ies), so long as the third-party caterer carries Liquor Liability Insurance, or "Dram Shop" insurance, in sufficient amounts as determined by the City of Denton.

VI. Insurance. Contractor shall provide Insurance in accordance with the City's Standard Terms and Conditions. The Contractor must add the City as an additional insured on policies required under this Contract. Moreover, the Contractor shall assume all risks in connection with the adequacy of any insurance or self-insurance program and waives any claim against the City for any liability, costs or expenses arising out of any uninsured claim, in part or in full, or any nature whatsoever. The Contractor shall provide the City with a copy of the Certificate of Insurance showing compliance with this section within a reasonable time after the effective date of this Contract.

VII. INDEMNITY. CONTRACTOR AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND THE CITY, ITS OFFICERS, OFFICIALS, AGENTS, EMPLOYEES, AND REPRESENTATIVES FROM AND AGAINST ANY AND ALL CLAIMS OR SUITS FOR INJURIES, DAMAGE, LOSSES AND EXPENSES INCLUDING BUT NOT LIMITED TO REASONABLE ATTORNEY'S FEES, OR LIABILITY OF WHATEVER KIND OR CHARACTER, ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE BY THE CONTRACTOR OR THE CITY OF THE DUTIES UNDER THIS AGREEMENT, INCLUDING ALL SUCH CLAIMS OR CAUSES OF ACTION BASED UPON COMMON, CONSTITUTIONAL, OR STATUTORY LAW, OR BASED IN WHOLE OR IN PART UPON ALLEGATIONS OF NEGLIGENT OR INTENTIONAL ACTS OF THE CITY, ITS OFFICERS, EMPLOYEES, AGENTS, SUBCONTRACTORS, LICENSEES AND INVITEES, OR OF THE CONTRACTOR, ITS DIRECTORS, EMPLOYEES, AGENTS AND REPRESENTATIVES, OR CLAIMS OF ANY PAST OR FUTURE LIFE/SAFETY CODE VIOLATIONS, OR ANY REQUIREMENT OR AWARD RELATING TO COURSE OF EMPLOYMENT, WORKING CODNITIONS, WAGES, AND/OR COMPENSATION OF EMPLOYEES OR FORMER EMPLOYEES AT STOKE DENTON INCLUDING VIOLATIONS OF ANY STATE, LOCAL, OR FEDERAL EMPLOYEMNT OR OTHER LAW WHETHER COMMON LAW OR STATUTORY, AND INJURY TO PERSONS AND DAMAGE TO PROPERTY OR BUSINESS BY REASON OF ANY CAUSE WHATSOEVER IN AND ABOUT STOKE DENTON OR ELSEWHERE, UNLESS SUCH INJURY OR DAMAGE IS CAUSED BY THE CITY'S WILLFUL MISCONDUCT OR BREACH OF AGREEMENT. ANY INDEMNIFICATION SHALL APPLY REGARDLESS OF WHETHER OR NOT SAID CLAIM, DAMAGE, LOSS OR EXPENSE IS COVERED BY INSRUANCE AS HEREIN PROVIDED. IN THE EVENT THAT A CLAIM IS ASSERTED AGAINST EITHER PARTY OR BOTH, CONTRACTOR MUST PROVIDE THE CITY WITH A COPY OF SUCH CLAIM WITHIN A REASONABLE TIME FROM RECEIPT.

VIII. Independent Contractor Status. The Contractor is an independent contractor, and nothing in this Contract, shall be construed or implied to create any partnership, join venture, agency, franchise, sales representative, or employment relationship between the parties. Neither party is an agent or representative of the other or is authorized to make any warranties or assume or create

any other obligations on behalf of the other.

IX. Compliance. Contractor must make all reasonable efforts to comply with all Federal, State, and Local laws, rules, regulations, requirements, orders, notices, determinations, and ordinances of the City of Denton, including without limitation, the state and local liquor authorities, and the requirements of any insurance companies covering any of the risks against which Stoke Denton is insured.

Exhibit C

Standard Purchase Terms and Conditions

These standard Terms and Conditions and the Terms and Conditions, Specifications, Drawings and other requirements included in the City of Denton's contract are applicable to contracts/purchase orders issued by the City of Denton hereinafter referred to as the City or Buyer and the Seller or respondent herein after referred to as Contractor or Supplier. Any deviations must be in writing and signed by a representative of the City's Procurement Department and the Supplier. No Terms and Conditions contained in the seller's proposal response, invoice or statement shall serve to modify the terms set forth herein. If there is a conflict between the provisions on the face of the contract/purchase order these written provisions will take precedence.

The Contractor agrees that the contract shall be governed by the following terms and conditions, unless exceptions are duly noted and fully negotiated. Unless otherwise specified in the contract, Sections 3, 4, 5, 6, 7, 8, 20, 21, and 36 shall apply only to a solicitation to purchase goods, and sections 9, 10, 11, 22 and 32 shall apply only to a solicitation to purchase services to be performed principally at the City's premises or on public rights-of-way.

1. CONTRACTOR'S OBLIGATIONS. The Contractor shall fully and timely provide all deliverables described in the Solicitation and in the Contractor's Offer in strict accordance with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations.

2. EFFECTIVE DATE/TERM. Unless otherwise specified in the Solicitation, this Contract shall be effective as of the date the contract is signed by the City, and shall continue in effect until all obligations are performed in accordance with the Contract.

3. CONTRACTOR TO PACKAGE DELIVERABLES: The Contractor will package deliverables in accordance with good commercial practice and shall include a packing list showing the description of each item, the quantity and unit price unless otherwise provided in the Specifications or Supplemental Terms and Conditions, each shipping container shall be clearly and permanently marked as follows: (a) The Contractor's name and address, (b) the City's name, address and purchase order or purchase release number and the price agreement number if applicable, (c) Container number and total number of containers, e.g. box 1 of 4 boxes, and (d) the number of the container bearing the packing list. The Contractor shall bear cost of packaging. Deliverables shall be suitably packed to secure lowest transportation costs and to conform to all the requirements of common carriers and any applicable specification. The City's count or weight shall be final and conclusive on shipments not accompanied by packing lists.

4. SHIPMENT UNDER RESERVATION PROHIBITED: The Contractor is not authorized to ship the deliverables under reservation and no tender of a bill of lading will operate as a tender of deliverables.

5. TITLE & RISK OF LOSS: Title to and risk of loss of the deliverables shall pass to the City only when the City actually receives and accepts the deliverables.

6. DELIVERY TERMS AND TRANSPORTATION CHARGES: Deliverables shall be shipped F.O.B. point of delivery unless otherwise specified in the Supplemental Terms and Conditions. Unless otherwise stated in the Offer, the Contractor's price shall be deemed to include all delivery and transportation charges. The City shall have the right to designate what method of transportation shall be used to ship the deliverables. The place of delivery shall be that set forth the purchase order.

7. RIGHT OF INSPECTION AND REJECTION: The City expressly reserves all rights under law, including, but not limited to the Uniform Commercial Code, to inspect the deliverables at delivery before accepting them, and to reject defective or non-conforming deliverables. If the City has the right to inspect the Contractor's, or the Contractor's Subcontractor's, facilities, or the deliverables at the Contractor's, or the Contractor's Subcontractor's, premises, the Contractor shall furnish, or cause to be furnished, without additional charge, all reasonable facilities and assistance to the City to facilitate such inspection.

8. NO REPLACEMENT OF DEFECTIVE TENDER: Every tender or delivery of deliverables must fully comply with all provisions of the Contract as to time of delivery, quality, and quantity. Any non-complying tender shall constitute a breach and the Contractor shall not have the right to substitute a conforming tender; provided, where the time for performance has not yet expired, the Contractor may notify the City of the intention to cure and may then make a conforming tender within the time allotted in the contract.

9. PLACE AND CONDITION OF WORK: The City shall provide the Contractor access to the sites where the Contractor is to perform the services as required in order for the Contractor to perform the services in a timely and efficient manner, in accordance with and subject to the applicable security laws, rules, and regulations. The Contractor acknowledges that it has satisfied itself as to the nature of the City's service requirements and specifications, the location and essential characteristics of the work sites, the quality and quantity of materials, equipment, labor and facilities necessary to perform the services, and any other condition or state of fact which could in any way affect performance of the Contractor's obligations under the contract. The Contractor hereby releases and holds the City harmless from and against any liability or claim for damages of any kind or nature if the actual site or service conditions differ from expected conditions.

The contractor shall, at all times, exercise reasonable precautions for the safety of their employees, City Staff, participants and others on or near the City's facilities.

10. WORKFORCE

A. The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Contract.

B. The Contractor, its employees, subcontractors, and subcontractor's employees may not while engaged in participating or responding to a solicitation or while in the course and scope of delivering goods or services under a City of Denton contract or on the City's property .

i. use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the contract; or

ii. use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.

C. If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.

Immigration: The Contractor represents and warrants that it shall comply with the requirements of the Immigration Reform and Control Act of 1986 and 1990 regarding employment verification and retention of verification forms for any individuals hired on or after November 6, 1986, who will perform any labor or services under the Contract and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA") enacted on September 30, 1996.

11. COMPLIANCE WITH HEALTH, SAFETY, AND ENVIRONMENTAL REGULATIONS: The Contractor, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. The Contractor shall indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Contractor's obligations under this paragraph.

Environmental Protection: The Respondent shall be in compliance with all applicable standards, orders, or regulations issued pursuant to the mandates of the Clean Air Act (42 U.S.C. §7401 *et seq.*) and the Federal Water Pollution Control Act, as amended, (33 U.S.C. §1251 *et seq.*).

12. INVOICES:

A. The Contractor shall submit separate invoices in duplicate on each purchase order or purchase release after each delivery. If partial shipments or deliveries are authorized by the City, a separate invoice must be sent for each shipment or delivery made.

B. Proper Invoices must include a unique invoice number, the purchase order or delivery order number and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department. Invoices shall be itemized and transportation charges, if any, shall be listed separately. A copy of the bill of lading and the freight waybill, when applicable, shall be attached to the invoice. The Contractor's name, remittance address and, if applicable, the tax identification number on the invoice must exactly match the information in the Vendor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice.

C. Invoices for labor shall include a copy of all time-sheets with trade labor rate and deliverables order number clearly identified. Invoices shall also include a tabulation of work-hours at the appropriate rates and grouped by work order number. Time billed for labor shall be limited to hours actually worked at the work site.

D. Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all Subcontract and other authorized expenses at actual cost without markup.

E. Federal excise taxes, State taxes, or City sales taxes must not be included in the invoiced amount.

The City will furnish a tax exemption certificate upon request.

13. PAYMENT:

A. All proper invoices need to be sent to Accounts Payable. Approved invoices will be paid within thirty (30) calendar days of the City's receipt of the deliverables or of the invoice being received in Accounts Payable, whichever is later.

B. If payment is not timely made, (per paragraph A); interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.

C. If partial shipments or deliveries are authorized by the City, the Contractor will be paid for the partial shipment or delivery, as stated above, provided that the invoice matches the shipment or delivery.

D. The City may withhold or set off the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of:

- i. delivery of defective or non-conforming deliverables by the Contractor;
- ii. third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;
- iii. failure of the Contractor to pay Subcontractors, or for labor, materials or equipment;
- iv. damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;
- v. reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or damages for the anticipated delay;
- vi. failure of the Contractor to submit proper invoices with purchase order number, with all required attachments and supporting documentation; or
- vii. failure of the Contractor to comply with any material provision of the Contract Documents.

E. Notice is hereby given that any awarded firm who is in arrears to the City of Denton for delinquent taxes, the City may offset indebtedness owed the City through payment withholding.

F. Payment will be made by check unless the parties mutually agree to payment by credit card or electronic transfer of funds. The Contractor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by credit card or electronic funds transfer.

G. The awarding or continuation of this contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds Appropriated and available for this contract. The absence of Appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not Appropriated or available and any deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate Appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any Appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of none or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.

14. TRAVEL EXPENSES: All travel, lodging and per diem expenses in connection with the Contract shall be paid by the Contractor, unless otherwise stated in the contract terms. During the term of this contract, the contractor shall bill and the City shall reimburse contractor for all reasonable and approved out of pocket expenses which are incurred in the connection with the

performance of duties hereunder. Notwithstanding the foregoing, expenses for the time spent by the contractor in traveling to and from City facilities shall not be reimbursed, unless otherwise negotiated.

15. FINAL PAYMENT AND CLOSE-OUT:

A. If a DBE/MBE/WBE Program Plan is agreed to and the Contractor has identified Subcontractors, the Contractor is required to submit a Contract Close-Out MBE/WBE Compliance Report to the Purchasing Manager no later than the 15th calendar day after completion of all work under the contract. Final payment, retainage, or both may be withheld if the Contractor is not in compliance with the requirements as accepted by the City.

B. The making and acceptance of final payment will constitute:

i. a waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Contractor to comply with the Contract or the terms of any warranty specified herein, (4) arising from the Contractor's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and ii. a waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

16. SPECIAL TOOLS & TEST EQUIPMENT: If the price stated on the Offer includes the cost of any special tooling or special test equipment fabricated or required by the Contractor for the purpose of filling this order, such special tooling equipment and any process sheets related thereto shall become the property of the City and shall be identified by the Contractor as such.

17. RIGHT TO AUDIT:

A. The City shall have the right to audit and make copies of the books, records and computations pertaining to the Contract. The Contractor shall retain such books, records, documents and other evidence pertaining to the Contract period and five years thereafter, except if an audit is in progress or audit findings are yet unresolved, in which case records shall be kept until all audit tasks are completed and resolved. These books, records, documents and other evidence shall be available, within ten (10) business days of written request. Further, the Contractor shall also require all Subcontractors, material suppliers, and other payees to retain all books, records, documents and other evidence pertaining to the Contract, and to allow the City similar access to those documents. All books and records will be made available within a 50 mile radius of the City of Denton. The cost of the audit will be borne by the City unless the audit reveals an overpayment of 1% or greater. If an overpayment of 1% or greater occurs, the reasonable cost of the audit, including any travel costs, must be borne by the Contractor which must be payable within five (5) business days of receipt of an invoice.

B. Failure to comply with the provisions of this section shall be a material breach of the Contract and shall constitute, in the City's sole discretion, grounds for termination thereof. Each of the terms "books", "records", "documents" and "other evidence", as used above, shall be construed to include drafts and electronic files, even if such drafts or electronic files are subsequently used to generate or prepare a final printed document.

18. SUBCONTRACTORS:

A. If the Contractor identified Subcontractors in a DBE/MBE/WBE agreed to Plan, the Contractor shall comply with all requirements approved by the City. The Contractor shall not initially employ

any Subcontractor except as provided in the Contractor's Plan. The Contractor shall not substitute any Subcontractor identified in the Plan, unless the substitute has been accepted by the City in writing. No acceptance by the City of any Subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly Subcontract Awards and Expenditures Report to the Procurement Manager, no later than the tenth calendar day of each month.

B. Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract between the Contractor and Subcontractor. The terms of the subcontract may not conflict with the terms of the

Contract, and shall contain provisions that:

- i. require that all deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract;
- ii. prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;
- iii. require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its invoice or application for payment to the City in accordance with the terms of the Contract;
- iv. require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and
- v. require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.

C. The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontractor any contractual relationship between the City and any such Subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.

D. The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor not later than ten (10) calendar days after receipt of payment from the City.

19. WARRANTY-PRICE:

A. The Contractor warrants the prices quoted in the Offer are no higher than the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.

B. The Contractor certifies that the prices in the Offer have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.

C. In addition to any other remedy available, the City may deduct from any amounts owed to the Contractor, or otherwise recover, any amounts paid for items in excess of the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.

20. WARRANTY – TITLE: The Contractor warrants that it has good and indefeasible title to all deliverables furnished under the Contract, and that the deliverables are free and clear of all liens,

claims, security interests and encumbrances. The Contractor shall indemnify and hold the City harmless from and against all adverse title claims to the deliverables.

21. WARRANTY – DELIVERABLES: The Contractor warrants and represents that all deliverables sold the City under the Contract shall be free from defects in design, workmanship or manufacture, and conform in all material respects to the specifications, drawings, and descriptions in the Solicitation, to any samples furnished by the Contractor, to the terms, covenants and conditions of the Contract, and to all applicable State, Federal or local laws, rules, and regulations, and industry codes and standards. Unless otherwise stated in the Solicitation, the deliverables shall be new or recycled merchandise, and not used or reconditioned.

A. Recycled deliverables shall be clearly identified as such.

B. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law; and any attempt to do so shall be without force or effect.

C. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the date of acceptance of the deliverables or from the date of acceptance of any replacement deliverables. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand either repair the non-conforming deliverables, or replace the non-conforming deliverables with fully conforming deliverables, at the City's option and at no additional cost to the City. All costs incidental to such repair or replacement, including but not limited to, any packaging and shipping costs shall be borne exclusively by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this section.

D. If the Contractor is unable or unwilling to repair or replace defective or non-conforming deliverables as required by the City, then in addition to any other available remedy, the City may reduce the quantity of deliverables it may be required to purchase under the Contract from the Contractor, and purchase conforming deliverables from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such deliverables from another source.

E. If the Contractor is not the manufacturer, and the deliverables are covered by a separate manufacturer's warranty, the Contractor shall transfer and assign such manufacturer's warranty to the City. If for any reason the manufacturer's warranty cannot be fully transferred to the City, the Contractor shall assist and cooperate with the City to the fullest extent to enforce such manufacturer's warranty for the benefit of the City.

22. WARRANTY – SERVICES: The Contractor warrants and represents that all services to be provided the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.

A. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.

B. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the Acceptance Date. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery

of the breach warranty, but failure to give timely notice shall not impair the City's rights under this section.

C. If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be required to purchase under the Contract from the Contractor, and purchase conforming services from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.

23. ACCEPTANCE OF INCOMPLETE OR NON-CONFORMING DELIVERABLES: If, instead of requiring immediate correction or removal and replacement of defective or non-conforming deliverables, the City prefers to accept it, the City may do so. The Contractor shall pay all claims, costs, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming deliverables. If any such acceptance occurs prior to final payment, the City may deduct such amounts as are necessary to compensate the City for the diminished value of the defective or non-conforming deliverables. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor.

24. RIGHT TO ASSURANCE: Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.

25. STOP WORK NOTICE: The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.

26. DEFAULT: The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under Paragraph 24, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or deliverable required to be submitted by the Contractor to the City.

27. TERMINATION FOR CAUSE: In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. Additionally, in the event of a default by the

Contractor, the City may remove the Contractor from the City's vendor list for three (3) years and any Offer submitted by the Contractor may be disqualified for up to three (3) years. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.

28. TERMINATION WITHOUT CAUSE: The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (30) calendar days' prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.

29. FRAUD: Fraudulent statements by the Contractor on any Offer or in any report or deliverable required to be submitted by the Contractor to the City shall be grounds for the termination of the Contract for cause by the City and may result in legal action.

30. DELAYS:

A. The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified in paragraph 49. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.

B. Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such Party. In the event of default or delay in contract performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

31. INDEMNITY:

A. Definitions:

- i. "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all reasonable costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for: (1) damage to or loss of the property of any person (including, but not limited to the City, the Contractor, their respective agents, officers, employees and subcontractors; the officers, agents, and employees of such subcontractors; and third parties); and/or (2) death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the City, the Contractor, the Contractor's subcontractors, and third parties), ii. "Fault" shall include the sale of defective or non-conforming deliverables, negligence, willful misconduct or a breach of any legally imposed

strict liability standard.

B. THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.

32. INSURANCE: The following insurance requirements are applicable, in addition to the specific insurance requirements detailed in **Appendix A** for services only. The successful firm shall procure and maintain insurance of the types and in the minimum amounts acceptable to the City of Denton. The insurance shall be written by a company licensed to do business in the State of Texas and satisfactory to the City of Denton.

A. General Requirements:

- i. The Contractor shall at a minimum carry insurance in the types and amounts indicated and agreed to, as submitted to the City and approved by the City within the procurement process, for the duration of the Contract, including extension options and hold over periods, and during any warranty period.
- ii. The Contractor shall provide Certificates of Insurance with the coverage's and endorsements required to the City as verification of coverage prior to contract execution and within fourteen (14) calendar days after written request from the City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award. The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or hold over period is exercised, as verification of continuing coverage.
- iii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.
- iv. The Contractor must submit certificates of insurance to the City for all subcontractors prior to the subcontractors commencing work on the project.
- v. The Contractor's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of **A- VII or better**. The City will accept workers' compensation coverage written by the Texas Workers' Compensation Insurance Fund.
- vi. All endorsements naming the City as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall contain the

solicitation number and the following information:

City of Denton
Materials Management Department
901B Texas Street
Denton, Texas 76209

vii. The “other” insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.

viii. If insurance policies are not written for amounts agreed to with the City, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.

ix. The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.

x. The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.

xi. The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.

xii. The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance.

xiii. The Contractor shall endeavor to provide the City thirty (30) calendar days’ written notice of erosion of the aggregate limits below occurrence limits for all applicable coverage’s indicated within the Contract.

xiv. The insurance coverage’s specified in within the solicitation and requirements are required minimums and are not intended to limit the responsibility or liability of the Contractor.

B. Specific Coverage Requirements: Specific insurance requirements are contained in the solicitation instrument.

33. **CLAIMS:** If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse affect on the Contractor’s ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Denton City Attorney. Personal delivery to the City Attorney shall be to City Hall, 215 East McKinney Street, Denton, Texas 76201.

34. **NOTICES:** Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the Contractor shall be sent to the address specified in the Contractor's Offer, or at such other address as a party may notify the other in writing. Notices to the City shall be addressed to the City at 901B Texas Street, Denton, Texas 76209 and marked to the attention of the Purchasing Manager.

35. **RIGHTS TO BID, PROPOSAL AND CONTRACTUAL MATERIAL:** All material submitted by the Contractor to the City shall become property of the City upon receipt. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, and Texas Government Code.

36. **NO WARRANTY BY CITY AGAINST INFRINGEMENTS:** The Contractor represents and warrants to the City that: (i) the Contractor shall provide the City good and indefeasible title to the deliverables and (ii) the deliverables supplied by the Contractor in accordance with the specifications in the Contract will not infringe, directly or contributorily, any patent, trademark, copyright, trade secret, or any other intellectual property right of any kind of any third party; that no claims have been made by any person or entity with respect to the ownership or operation of the deliverables and the Contractor does not know of any valid basis for any such claims. The Contractor shall, at its sole expense, defend, indemnify, and hold the City harmless from and against all liability, damages, and costs (including court costs and reasonable fees of attorneys and other professionals) arising out of or resulting from: (i) any claim that the City's exercise anywhere in the world of the rights associated with the City's ownership, and if applicable, license rights, and its use of the deliverables infringes the intellectual property rights of any third party; or (ii) the Contractor's breach of any of Contractor's representations or warranties stated in this Contract. In the event of any such claim, the City shall have the right to monitor such claim or at its option engage its own separate counsel to act as co-counsel on the City's behalf. Further, Contractor agrees that the City's specifications regarding the deliverables shall in no way diminish Contractor's warranties or obligations under this paragraph and the City makes no warranty that the production, development, or delivery of such deliverables will not impact such warranties of Contractor.

37. **CONFIDENTIALITY:** In order to provide the deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not

expressly permitted under this Agreement, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

38. OWNERSHIP AND USE OF DELIVERABLES: The City shall own all rights, titles, and interests throughout the world in and to the deliverables.

A. Patents. As to any patentable subject matter contained in the deliverables, the Contractor agrees to disclose such patentable subject matter to the City. Further, if requested by the City, the Contractor agrees to assign and, if necessary, cause each of its employees to assign the entire right, title, and interest to specific inventions under such patentable subject matter to the City and to execute, acknowledge, and deliver and, if necessary, cause each of its employees to execute, acknowledge, and deliver an assignment of letters patent, in a form to be reasonably approved by the City, to the City upon request by the City.

B. Copyrights. As to any deliverables containing copyrightable subject matter, the Contractor agrees that upon their creation, such deliverables shall be considered as work made-for-hire by the Contractor for the City and the City shall own all copyrights in and to such deliverables, provided however, that nothing in this Paragraph 38 shall negate the City's sole or joint ownership of any such deliverables arising by virtue of the City's sole or joint authorship of such deliverables. Should by operation of law, such deliverables not be considered works made-for-hire, the Contractor hereby assigns to the City (and agrees to cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver an assignment to the City of) all worldwide right, title, and interest in and to such deliverables. With respect to such work made-for-hire, the Contractor agrees to execute, acknowledge, and deliver and cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver a work-made-for-hire agreement, in a form to be reasonably approved by the City, to the City upon delivery of such deliverables to the City or at such other time as the City may request.

C. Additional Assignments. The Contractor further agrees to, and if applicable, cause each of its employees to, execute, acknowledge, and deliver all applications, specifications, oaths, assignments, and all other instruments which the City might reasonably deem necessary in order to apply for and obtain copyright protection, mask work registration, trademark registration and/or protection, letters patent, or any similar rights in any and all countries and in order to assign and convey to the City, its successors, assigns and nominees, the sole and exclusive right, title, and interest in and to the deliverables. The Contractor's obligations to execute, acknowledge, and deliver (or cause to be executed, acknowledged, and delivered) instruments or papers such as those described in this Paragraph 38 a., b., and c. shall continue after the termination of this Contract with respect to such deliverables. In the event the City should not seek to obtain copyright protection, mask work registration or patent protection for any of the deliverables, but should desire to keep the same secret, the Contractor agrees to treat the same as Confidential Information under the terms of Paragraph 37 above.

39. PUBLICATIONS: All published material and written reports submitted under the Contract must be originally developed material unless otherwise specifically provided in the Contract. When material not originally developed is included in a report in any form, the source shall be

identified.

40. **ADVERTISING:** The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.

41. **NO CONTINGENT FEES:** The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

42. **GRATUITIES:** The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City of Denton with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.

43. **PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS:** No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City. The Contractor shall complete and submit the City's Conflict of Interest Questionnaire.

44. **INDEPENDENT CONTRACTOR:** The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City of Denton, Texas for the purposes of income tax, withholding, social security taxes, vacation or sick leave benefits, worker's compensation, or any other City employee benefit. The City shall not have supervision and control of the Contractor or any employee of the Contractor, and it is expressly understood that Contractor shall perform the services hereunder according to the attached specifications at the general direction of the City Manager of the City of Denton, Texas, or his designee under this agreement. The contractor is expressly free to advertise and perform services for other parties while performing services for the City.

45. **ASSIGNMENT-DELEGATION:** The Contract shall be binding upon and ensure to the

benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there are no third party beneficiaries to the Contract.

46. **WAIVER:** No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.

47. **MODIFICATIONS:** The Contract can be modified or amended only by a writing signed by both parties. No pre-printed or similar terms on any the Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.

48. **INTERPRETATION:** The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

49. **DISPUTE RESOLUTION:**

A. If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

B. If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option; the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract

interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Denton County Alternative Dispute Resolution Program (DCAP). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

50. JURISDICTION AND VENUE: The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Denton County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.

51. INVALIDITY: The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.

52. HOLIDAYS: The following holidays are observed by the City:

New Year's Day (observed)
MLK Day
Memorial Day
4th of July
Labor Day
Thanksgiving Day
Day After Thanksgiving
Christmas Eve (observed)
Christmas Day (observed)
New Year's Day (observed)

If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday. Normal hours of operation shall be between 8:00 am and 4:00 pm, Monday through Friday, excluding City of Denton Holidays. Any scheduled deliveries or work performance not within the normal hours of operation **must be approved** by the City Manager of Denton, Texas or his authorized designee.

53. SURVIVABILITY OF OBLIGATIONS: All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.

54. NON-SUSPENSION OR DEBARMENT CERTIFICATION:

The City of Denton is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Denton Contracts. By accepting a Contract with the City, the Vendor certifies that its firm and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Denton.

55. EQUAL OPPORTUNITY

A. Equal Employment Opportunity: No Offeror, or Offeror's agent, shall engage in any discriminatory employment practice. No person shall, on the grounds of race, sex, sexual orientation, age, disability, creed, color, genetic testing, or national origin, be refused the benefits of, or be otherwise subjected to discrimination under any activities resulting from this RFQ.

B. Americans with Disabilities Act (ADA) Compliance: No Offeror, or Offeror's agent, shall engage in any discriminatory employment practice against individuals with disabilities as defined in the ADA.

56. BUY AMERICAN ACT-SUPPLIES (Applicable to certain federally funded requirements)

The following federally funded requirements are applicable. A. Definitions. As used in this paragraph –

i. "Component" means an article, material, or supply incorporated directly into an end product.

ii. "Cost of components" means -

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

iii. "Domestic end product" means-

(1) An unmanufactured end product mined or produced in the United States; or

(2) An end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

iv. "End product" means those articles, materials, and supplies to be acquired under the contract for public use.

v. "Foreign end product" means an end product other than a domestic end product.

vi. "United States" means the 50 States, the District of Columbia, and outlying areas.

B. The Buy American Act (41 U.S.C. 10a - 10d) provides a preference for domestic end products for supplies acquired for use in the United States.

C. The City does not maintain a list of foreign articles that will be treated as domestic for this Contract; but will consider for approval foreign articles as domestic for this product if the articles are on a list approved by another Governmental Agency. The Offeror shall submit documentation with their Offer demonstrating that the article is on an approved Governmental list.

D. The Contractor shall deliver only domestic end products except to the extent that it specified delivery of foreign end products in the provision of the Solicitation entitled "Buy American Act Certificate".

57. RIGHT TO INFORMATION: The City of Denton reserves the right to use any and all information presented in any response to this contract, whether amended or not, except as prohibited by law. Selection or rejection of the submittal does not affect this right.

58. LICENSE FEES OR TAXES: Provided the solicitation requires an awarded contractor or supplier to be licensed by the State of Texas, any and all fees and taxes are the responsibility of the respondent.

59. PREVAILING WAGE RATES: The contractor shall comply with prevailing wage rates as defined by the United States Department of Labor Davis-Bacon Wage Determination at <http://www.dol.gov/whd/contracts/dbra.htm> and at the Wage Determinations website www.wdol.gov for Denton County, Texas (WD-2509).

60. COMPLIANCE WITH ALL STATE, FEDERAL, AND LOCAL LAWS: The contractor or supplier shall comply with all State, Federal, and Local laws and requirements. The Respondent must comply with all applicable laws at all times, including, without limitation, the following: (i) §36.02 of the Texas Penal Code, which prohibits bribery; (ii) §36.09 of the Texas Penal Code, which prohibits the offering or conferring of benefits to public servants. The Respondent shall give all notices and comply with all laws and regulations applicable to furnishing and performance of the Contract.

61. FEDERAL, STATE, AND LOCAL REQUIREMENTS: Respondent shall demonstrate on-site compliance with the Federal Tax Reform Act of 1986, Section 1706, amending Section 530 of the Revenue Act of 1978, dealing with issuance of Form W-2's to common law employees. Respondent is responsible for both federal and State unemployment insurance coverage and standard Workers' Compensation insurance coverage. Respondent shall ensure compliance with all federal and State tax laws and withholding requirements. The City of Denton shall not be liable to Respondent or its employees for any Unemployment or Workers' Compensation coverage, or federal or State withholding requirements. Contractor shall indemnify the City of Denton and shall pay all costs, penalties, or losses resulting from Respondent's omission or breach of this Section.

62. DRUG FREE WORKPLACE: The contractor shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (Public Law 100-690, Title V, Subtitle D; 41 U.S.C. 701 ET SEQ.) and maintain a drug-free work environment; and the final rule, government-wide requirements for drug-free work place (grants), issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 280, Subpart F) to implement the provisions of the Drug-Free Work Place Act of 1988 is incorporated by reference and the contractor shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.

63. RESPONDENT LIABILITY FOR DAMAGE TO GOVERNMENT PROPERTY: The Respondent shall be liable for all damages to government-owned, leased, or occupied property and equipment caused by the Respondent and its employees, agents, subcontractors, and suppliers, including any delivery or cartage company, in connection with any performance pursuant to the

Contract. The Respondent shall notify the City of Denton Procurement Manager in writing of any such damage within one (1) calendar day.

64. FORCE MAJEURE: The City of Denton, any Customer, and the Respondent shall not be responsible for performance under the Contract should it be prevented from performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributable to the fault or negligence of the City of Denton. In the event of an occurrence under this Section, the Respondent will be excused from any further performance or observance of the requirements so affected for as long as such circumstances prevail and the Respondent continues to use commercially reasonable efforts to recommence performance or observance whenever and to whatever extent possible without delay. The Respondent shall immediately notify the City of Denton Procurement Manager by telephone (to be confirmed in writing within five (5) calendar days of the inception of such occurrence) and describe at a reasonable level of detail the circumstances causing the non-performance or delay in performance.

65. NON-WAIVER OF RIGHTS: Failure of a Party to require performance by another Party under the Contract will not affect the right of such Party to require performance in the future. No delay, failure, or waiver of either Party's exercise or partial exercise of any right or remedy under the Contract shall operate to limit, impair, preclude, cancel, waive or otherwise affect such right or remedy. A waiver by a Party of any breach of any term of the Contract will not be construed as a waiver of any continuing or succeeding breach.

66. NO WAIVER OF SOVEREIGN IMMUNITY: The Parties expressly agree that no provision of the Contract is in any way intended to constitute a waiver by the City of Denton of any immunities from suit or from liability that the City of Denton may have by operation of law.

67. RECORDS RETENTION: The Respondent shall retain all financial records, supporting documents, statistical records, and any other records or books relating to the performances called for in the Contract. The Respondent shall retain all such records for a period of four (4) years after the expiration of the Contract, or until the CPA or State Auditor's Office is satisfied that all audit and litigation matters are resolved, whichever period is longer. The Respondent shall grant access to all books, records and documents pertinent to the Contract to the CPA, the State Auditor of Texas, and any federal governmental entity that has authority to review records due to federal funds being spent under the Contract.

Should a conflict arise between any of the contract documents, it shall be resolved with the following order of precedence (if applicable). In any event, the final negotiated contract shall take precedence over any and all contract documents to the extent of such conflict.

- 1. Final negotiated contract**
- 2. RFP/Bid documents**
- 3. City's standard terms and conditions**
- 4. Purchase order**
- 5. Supplier terms and conditions**

Exhibit D
INSURANCE REQUIREMENTS AND
WORKERS' COMPENSATION REQUIREMENTS

Upon contract execution, all insurance requirements shall become contractual obligations, which the successful contractor shall have a duty to maintain throughout the course of this contract.

STANDARD PROVISIONS:

Without limiting any of the other obligations or liabilities of the Contractor, the Contractor shall provide and maintain until the contracted work has been completed and accepted by the City of Denton, Owner, the minimum insurance coverage as indicated hereinafter.

Contractor shall file with the Purchasing Department satisfactory certificates of insurance including any applicable addendum or endorsements, containing the contract number and title of the project. Contractor may, upon written request to the Purchasing Department, ask for clarification of any insurance requirements at any time; however, Contractor shall not commence any work or deliver any material until he or she receives notification that the contract has been accepted, approved, and signed by the City of Denton.

All insurance policies proposed or obtained in satisfaction of these requirements shall comply with the following general specifications, and shall be maintained in compliance with these general specifications throughout the duration of the Contract, or longer, if so noted:

- Each policy shall be issued by a company authorized to do business in the State of Texas with an A.M. Best Company rating of at least **A or better**.
- Any deductibles or self-insured retentions shall be declared in the proposal. If requested by the City, the insurer shall reduce or eliminate such deductibles or self-insured retentions with respect to the City, its officials, agents, employees and volunteers; or, the contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- Liability policies shall be endorsed to provide the following:
 - Name as Additional Insured the City of Denton, its Officials, Agents, Employees and volunteers.
 - That such insurance is primary to any other insurance available to the Additional Insured with respect to claims covered under the policy and that this insurance applies separately to each insured against whom claim is made or suit is brought. The inclusion of more than one insured shall not operate to increase the insurer's limit of liability.
 - Provide a Waiver of Subrogation in favor of the City of Denton, its officials, agents, employees, and volunteers.

- ***Cancellation: City requires 30 day written notice should any of the policies described on the certificate be cancelled or materially changed before the expiration date.***
- Should any of the required insurance be provided under a claims made form, Contractor shall maintain such coverage continuously throughout the term of this contract and, without lapse, for a period of three years beyond the contract expiration, such that occurrences arising during the contract term which give rise to claims made after expiration of the contract shall be covered.
- Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit providing for claims investigation or legal defense costs to be included in the general annual aggregate limit, the Contractor shall either double the occurrence limits or obtain Owners and Contractors Protective Liability Insurance.
- Should any required insurance lapse during the contract term, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this contract, effective as of the lapse date. If insurance is not reinstated, City may, at its sole option, terminate this agreement effective on the date of the lapse.

SPECIFIC ADDITIONAL INSURANCE REQUIREMENTS:

All insurance policies proposed or obtained in satisfaction of this Contract shall additionally comply with the following marked specifications, and shall be maintained in compliance with these additional specifications throughout the duration of the Contract, or longer, if so noted:

[X] A. General Liability Insurance:

General Liability insurance with combined single limits of not less than **\$1,000,000.00** shall be provided and maintained by the Contractor. The policy shall be written on an occurrence basis either in a single policy or in a combination of underlying and umbrella or excess policies.

If the Commercial General Liability form (ISO Form CG 0001 current edition) is used:

- Coverage A shall include premises, operations, products, and completed operations, independent contractors, contractual liability covering this contract and broad form property damage coverage.
- Coverage B shall include personal injury.
- Coverage C, medical payments, is not required.

If the Comprehensive General Liability form (ISO Form GL 0002 Current Edition and ISO Form GL 0404) is used, it shall include at least:

- Bodily injury and Property Damage Liability for premises, operations, products and completed operations, independent contractors and property damage

resulting from explosion, collapse or underground (XCU) exposures.

- Broad form contractual liability (preferably by endorsement) covering this contract, personal injury liability and broad form property damage liability.

[X] **Automobile Liability Insurance:**

Contractor shall provide Commercial Automobile Liability insurance with Combined Single Limits (CSL) of not less than \$500,000 either in a single policy or in a combination of basic and umbrella or excess policies. The policy will include bodily injury and property damage liability arising out of the operation, maintenance and use of all automobiles and mobile equipment used in conjunction with this contract.

Satisfaction of the above requirement shall be in the form of a policy endorsement for:

- any auto, or
- all owned hired and non-owned autos.

[X] **Workers' Compensation Insurance**

Contractor shall purchase and maintain Workers' Compensation insurance which, in addition to meeting the minimum statutory requirements for issuance of such insurance, has Employer's Liability limits of at least \$100,000 for each accident, \$100,000 per each employee, and a \$500,000 policy limit for occupational disease. The City need not be named as an "Additional Insured" but the insurer shall agree to waive all rights of subrogation against the City, its officials, agents, employees and volunteers for any work performed for the City by the Named Insured. For building or construction projects, the Contractor shall comply with the provisions of Attachment 1 in accordance with §406.096 of the Texas Labor Code and rule 28TAC 110.110 of the Texas Workers' Compensation Commission (TWCC).

[] **Owner's and Contractor's Protective Liability Insurance**

The Contractor shall obtain, pay for and maintain at all times during the prosecution of the work under this contract, an Owner's and Contractor's Protective Liability insurance policy naming the City as insured for property damage and bodily injury which may arise in the prosecution of the work or Contractor's operations under this contract. Coverage shall be on an "occurrence" basis and the policy shall be issued by the same insurance company that carries the Contractor's liability insurance. Policy limits will be at least \$500,000.00 combined bodily injury and property damage per occurrence with a \$1,000,000.00 aggregate.

[] **Fire Damage Legal Liability Insurance**

Coverage is required if Broad form General Liability is not provided or is unavailable to the contractor or if a contractor leases or rents a portion of a City building. Limits of not less than _____ each occurrence are required.

[] **Professional Liability Insurance**

Professional liability insurance with limits not less than **\$1,000,000.00** per claim with respect to negligent acts, errors or omissions in connection with professional services is required under this Agreement.

[] **Builders' Risk Insurance**

Builders' Risk Insurance, on an All-Risk form for 100% of the completed value shall be provided. Such policy shall include as "Named Insured" the City of Denton and all subcontractors as their interests may appear.

[] **Environmental Liability Insurance**

Environmental liability insurance for \$1,000,000 to cover all hazards contemplated by this contract.

[] **Riggers Insurance**

The Contractor shall provide coverage for Rigger's Liability. Said coverage may be provided by a Rigger's Liability endorsement on the existing CGL coverage; through and Installation Floater covering rigging contractors; or through ISO form IH 00 91 12 11, Rigger's Liability Coverage form. Said coverage shall mirror the limits provided by the CGL coverage

[] **Commercial Crime**

Provides coverage for the theft or disappearance of cash or checks, robbery inside/outside the premises, burglary of the premises, and employee fidelity. The employee fidelity portion of this coverage should be written on a "blanket" basis to cover all employees, including new hires. This type insurance should be required if the contractor has access to City funds. Limits of not less than \$_____ each occurrence are required.

[] **Additional Insurance**

Other insurance may be required on an individual basis for extra hazardous contracts and specific service agreements. If such additional insurance is required for a specific contract, that requirement will be described in the "Specific Conditions" of the contract specifications.

ATTACHMENT 1

[X] **Workers' Compensation Coverage for Building or Construction Projects for Governmental Entities**

A. Definitions:

Certificate of coverage ("certificate")-A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

Duration of the project - includes the time from the beginning of the work on the project until the contractor's/person's work on the project has been completed and accepted by the governmental entity.

Persons providing services on the project ("subcontractor" in §406.096) - includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

- B. The contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any overage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the Contractor providing services on the project, for the duration of the project.
- C. The Contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.
- D. If the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project, the contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.
- E. The contractor shall obtain from each person providing services on a project,

and provide to the governmental entity:

1. a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and
 2. no later than seven days after receipt by the contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.
- F. The contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.
- G. The contractor shall notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.
- H. The contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.
- I. The contractor shall contractually require each person with whom it contracts to provide services on a project, to:
1. provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;
 2. provide to the contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;
 3. provide the contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 4. obtain from each other person with whom it contracts, and provide to the contractor:

- a. a certificate of coverage, prior to the other person beginning work on the project; and
 - b. a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
- 5. retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
- 6. notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
- 7. Contractually require each person with whom it contracts, to perform as required by paragraphs (1) - (7), with the certificates of coverage to be provided to the person for whom they are providing services.
- J. By signing this contract or providing or causing to be provided a certificate of coverage, the contractor is representing to the governmental entity that all employees of the contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.
- K. The contractor's failure to comply with any of these provisions is a breach of contract by the contractor which entitles the governmental entity to declare the contract void if the contractor does not remedy the breach within ten days after receipt of notice of breach from the governmental entity.

Exhibit E
Certificate of Interested Parties Electronic Filing

In 2015, the Texas Legislature adopted House Bill 1295, which added section 2252.908 of the Government Code. The law states that the City may not enter into this contract unless the Contractor submits a disclosure of interested parties (Form 1295) to the City at the time the Contractor submits the signed contract. The Texas Ethics Commission has adopted rules requiring the business entity to file Form 1295 electronically with the Commission.

Contractor will be required to furnish an original notarized Certificate of Interest Parties before the contract is awarded, in accordance with Government Code 2252.908.

The contractor shall:

1. Log onto the State Ethics Commission Website at :
https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm
2. Register utilizing the tutorial provided by the State
3. Print a copy of the completed Form 1295
4. Enter the Certificate Number on page 2 of this contract.
5. Sign and notarize the Form 1295
6. Email the notarized form to purchasing@cityofdenton.com with the contract number in the subject line. (EX: Contract 1234 – Form 1295)

The City must acknowledge the receipt of the filed Form 1295 not later than the 30th day after Council award. Once a Form 1295 is acknowledged, it will be posted to the Texas Ethics Commission's website within seven business days.

Hickory & Rail Ventures, LLC
608 E. Hickory Street, Suite 128
Denton, Texas 76205

**In response to the City of Denton
RFP 6571**

**Hickory & Rail Ventures, LLC Proposal for the:
Management Services of the Stoke Denton
Entrepreneur Center**

Contact Information

Marshall Culpepper

Phone: 940-448-0080

Email: marshall@hickoryrail.com

Website: <http://www.hickoryrail.com>

Solicitation Checklist

Check when Completed	Task to be Completed by Respondent
x	Review Exhibit 2 – General Provisions and Terms and Conditions
x	Review Exhibit 3 – Scope of Work/Technical Specifications
x	Review Exhibit 4 – Technical Drawings and Plans (if applicable)
x	Cover sheet
x	Solicitation number
x	Solicitation name
x	Firm name
x	Firm address
x	Contact name
x	Contact phone
N/A	Contact fax
x	Website address
x	Contact email address
x	Solicitation Checklist
x	Attachment A- Business Overview Questionnaire
x	Document how firm meets minimum qualifications (Section 3)
x	Detail to support evaluation criteria

x	Attachment B – Exception Form
x	Attachment D – Reference Form
x	Attachment E – Conflict of Interest Questionnaire Form – with signature
x	Attachment F – Acknowledgment
x	Acknowledgment of Addenda
x	Pro forma (Attachment A, question 30)
x	W-9 (Attachment A, question 30)
N/A	Three (3) years of financial statements – audited is preferred (Attachment A, question 30)
	Submission signed by authorized officer, in the order specified below
	<u>Hard Copy Submission:</u> If submitting a hard copy, the City requires one (1) original and three (3) copies, with the pricing sheet submitted electronically <u>in excel</u> or emailed <u>in excel</u> to Ebids@cityofdenton.com with the Solicitation # and name in the subject line.
	<u>Electronic Submission:</u> If submitting an electronic proposal only, email to Ebids@cityofdenton.com with the Solicitation # and name in the subject line. The pricing sheet (Exhibit 1) must be <u>in excel</u> format.

~~ATTACHMENT A~~ **BUSINESS OVERVIEW QUESTIONNAIRE
AND FORMS**

1. **Contract Information (for formal contracting purposes):**

The following information will be used to write a contract, should your firm be selected for award.

- Firm's Legal Name: Hickory & Rail Ventures, LLC
- Address: 608 E Hickory St, Suite 128, Denton, TX, 76205
- Agent Authorized to sign contract (Name): Marshall Culpepper
- Agent's email address: marshall@hickoryrail.com

2. **Subsidiary of:**

N/A

3. **Organization Class (circle):**

Partnership

Corporation

Individual

Association

4. **Tax Payer ID#:**

82-2752973

5. **Date Established:**

09/08/2017

6. **Historically Underutilized Business:**

No

7. **Does your company have an established physical presence in the State of Texas, or the City of Denton?**

Yes, in the City of Denton

8. **Please provide a detailed listing of all products and/or services that your company provides.**

- a. Management services for an entrepreneurial co-working space
- b. Access to investors and mentors for early stage, highly scalable startups
- c. Programming to support the creation and growth of early stage businesses

9. **Has your company filed or been named in any litigation involving your company and the Owner on a contract within the last five years under your current company name or any other company name? If so provide details of the issues and resolution if available. Include lawsuits where Owner was involved. (Notice: Failure to disclose this information during proposal submission, and later discovered, may result in contract termination at the Owner's option.)**
No

10. **Have you ever defaulted on or failed to complete a contract under your current company name or any other company name?**
No

11. **Have you ever had a contract terminated by the Owner?**
No

12. **Has your company implemented an Employee Health and Safety Program compliant with 29 CFR 1910 "General Industry Standards" and/or 29 CFR 1926 "General Construction Standards" as they apply to your Company's customary activities?**

http://www.osha.gov/pls/oshaweb/owasrch.search_form?p_doc_type=STANDARDS&p_toc_level=1&p_keyvalue=1926

Yes

13. **Resident/Non-Resident Bidder Determination:**
Texas Government Code Section 2252.002: Non-resident bidders. Texas law prohibits cities and other governmental units from awarding contracts to a non-resident firm unless the amount of such a bid is lower than the lowest bid by a Texas resident by the amount the Texas resident would be required to underbid in the non-resident bidders' state. In order to make this determination, please provide the name, address and phone number of:

- a. **Responding firms principle place of business:**
608 E Hickory St. Suite 128, Denton, TX 76205
- b. **Company's majority owner principle place of business:**
608 E Hickory St. Suite 128, Denton, TX 76205

- c. Ultimate Parent Company's principle place of business:
N/A

14. **Provide details to support the evaluation criteria, including proposed concept and vision, operational and financial feasibility, experience and references, and overall cost to the city.**

Hickory & Rail Ventures proposes a simple, low cost management structure that lowers the City's obligation toward the lease and operations of Stoke over the next 3 years. This forces our management company to survive on its own merits, itself becoming a sustainable business that does not require subsidies from the City.

Vision for Denton

Our vision for Denton is a thriving startup community where entrepreneurs have access to talent, education, capital, and a community of other entrepreneurs they can look to for support. We aim to transform our unique town into the defining startup ecosystem of our region.

Our inspiration and blueprint for manifesting the Denton we want can be found in the pages of Brad Feld's excellent book, [Startup Communities](#) -- derived from his success of building TechStars in the startup hub Boulder, Colorado, a city with roughly the same number of people, schools, and proximity to a major city as Denton.

In the modern startup economy, technology plays a very important role because of its ability to reach unheard of scale with relatively little capital. While we believe technology startups will play a central role in Denton's startup ecosystem, we also recognize that startups in many fields are changing the world in ways no one could have predicted, and welcome any kind of startup that has the attributes of high capital efficiency and scalability.

Vision for Stoke

We believe Stoke will be the first of many places that entrepreneurs in our city can call home, and it is imperative that we both build density while also prioritizing startups that have a potential for high returns to our community.

As our capacity fills, and non-startup, non-tech members cycle out, we will turn away members that don't fit the mold of:

1. Startups and entrepreneurs with highly impactful business models
2. For-profit, vision-driven organizations with a mix of high business and social impact (B-corps)

3. Tech-enabled small businesses that support an average employee salary over \$50,000 per year
4. Remote workers of startups, or tech-enabled companies
5. Accelerators, Incubators, Investors, Mentors, and others vital to supporting the startup ecosystem

Team



Marshall Culpepper
Owner

Marshall is a software engineer with 20 years of experience building open source software and high-growth technology companies.

Marshall has been early in several technology startups including JBoss (acq. by RedHat), Appcelerator (acq. by Axway), Spire, and is now CEO and Co-founder of Denton-based Kubos, a satellite software company.

Marshall is highly involved in Denton's startup community. As the first President and co-founder of the non-profit TechMill, Marshall launched Denton's first co-working space, and organized several tech-focused events.

<https://www.linkedin.com/in/marshallculpepper/>



Heather Gregory
Executive Director

Heather Gregory is a community organizer and entrepreneur with a background in nonprofit management, small business operations, marketing, event planning, program development, and design.

Heather served as the Director of Stoke from January 2017-September 2017. Prior to that she was the Community Coordinator and then Director of SCRAP Denton, a Project Manager at a full-service marketing agency, and the creator and owner of a food cart in Portland, Oregon.

She is founder and organizer of Denton's Mini Maker Faire which had its first event in 2015. Heather has a BS in Architecture from the University of Texas in Austin and lives in Gainesville with her husband and their daughter.

<https://www.linkedin.com/in/heather-gregory-5304939/>

Our proposal

The heart of our thesis is that the management company behind Stoke should lead by example. That is to say, as a business teaching others how to start and grow businesses, it should itself be a growing, and sustainable business. To do this, our proposal focuses on 3 key areas:

1. Decreasing the City's obligations by paying for staff directly from revenue generated from the Space.
2. Increasing the value that Stoke provides to its members, resulting in increasing revenue.
3. Being ready to take over ownership of the commercial lease at the end of the current lease

Decreasing the City's obligation

Hickory & Rail Ventures will begin saving the City money by paying staff directly from membership revenue, which immediately removes the City's obligation to hire an Executive Director.

Starting in the 2nd year, H&RV will also pay a portion of rent and utilities to the City to further decrease the City's costs. These changes will be a forcing function of sustainability, while leaving enough room for capital re-investment in the space, and setting H&RV up to completely take over the commercial lease by February 2021.

Projected City Stoke Revenue & Expenditures w/ H&RV Management

<u>Revenues</u>	2017 - 2018 Estimate	2018 - 2019 Estimate	2019 - 2020 Estimate	Final 3 mo Estimate
Rental income to City	\$ -	\$ 12,000.00	\$ 12,000.00	\$ 3,000.00
Utilities income to City	\$ -	\$ -	\$ 12,000.00	\$ 3,000.00
Subtotal Revenues	\$ -	\$ 12,000.00	\$ 24,000.00	\$ 6,000.00
<u>Expenditures</u>				
Building Rent	\$ (156,962.00)	\$ (162,455.67)	\$ (168,141.62)	\$ (42,035.40)
Utilities	\$ (25,000.00)	\$ (27,500.00)	\$ (30,000.00)	\$ (7,500.00)
Rental Space Improvements	\$ -	\$ -	\$ -	\$ -
Personnel Payment	\$ -	\$ -	\$ -	\$ -
Branding/Marketing	\$ -	\$ -	\$ -	\$ -
Other	\$ (7,000.00)	\$ (7,000.00)	\$ (7,000.00)	\$ (7,000.00)
Subtotal Expenditures	\$ (188,962.00)	\$ (196,955.67)	\$ (205,141.62)	\$ (56,535.40)
Net Revenue (Expenditures)	\$ (188,962.00)	\$ (184,955.67)	\$ (181,141.62)	\$ (50,535.40)

Cost projections and Savings for the City

We based the figures in this table on the provided Stoke Denton 2017-2018 budget, and made the following assumptions and changes:

- We removed the budgeted \$65,000 director salary since that will be paid from membership revenue.
- We removed H&RV payment of Rental Income in 2018, to help us get off the ground.
- We projected increases in Building Rent by 3.5% per year, and Utilities \$2,500 per year starting with the City's budget from 2017-2018.
- We added \$1,000 per month in payments from H&RV to the City starting in Dec 2018 [total \$12,000], and \$2,000 per month in payments to the City starting in Dec 2019 and lasting until the end of the lease [total \$30,000]

These figures will vary based on actual rent and utilities, but give a good rough estimate.

To summarize the cost savings to the City over previous management in each time period:

- Between Dec 2017 – Nov 2018: \$ 55,000.00

- Between Dec 2018 – Nov 2019: \$ 65,000.00
- Between Dec 2019 – Feb 2021: \$ 88,500.00 [Final 15 months]
- Total: H&RV projections show savings to the City of **\$208,500.00** in salary, rent, and utility obligations over the next 3 years of the Stoke lease compared to the previous management agreement.

Increasing Stoke's Value and Revenue

H&RV will increase the overall value Stoke brings to entrepreneurs by:

1. Adding a budget for capital improvements to Stoke.
2. A marketing plan that includes a monthly budget
3. New programming partnerships that generate more interest, and provide additional sources of revenue.

With these changes, a focus on Events, and a conservative growth estimate that builds to near 100% capacity by the end of the lease, H&RV will be well positioned to take over Stoke's commercial lease altogether in February 2021.

Capital Improvements to Stoke

Over the next 3 years, H&RV has budgeted \$29,000 toward improvements in the space that will improve the overall experience and draw more people in. At the time of writing, we are currently assessing various projects and cost proposals, but a few of the projects we intend to take on include:

- Install ceiling insulation to eliminate echo and sound travel in the common work area.
- Better sound isolation between the conference rooms that share a wall.
- New layouts of the common area that separate the space visually.

Marketing

H&RV will actively market Stoke to entrepreneurs, startups, tech companies, and remote workers within a 50 mile radius. We have seen evidence that Denton's startup community will grow from both within (ReadyRosie, Kubos), and from startups moving to Denton (upventur, Flyp), and we want to support both.

While word of mouth and customer satisfaction are highly important to our success, we will invest heavily in marketing to ensure Stoke is pulling in the best and brightest in our region with:

- Regional startup & tech event sponsorships such as Denton Startup Weekend, Bootstrap Denton, and Dallas Startup Week.
- Blog content / thought leadership around Denton's startup community.

- Targeted online ad campaigns.
- Active daily use of Social media.
- Search Engine Optimization on the Stoke website.

Our Marketing budget will also be supported by a Marketing Director that is hired part time initially, transitioning to FTE by 2020. The broad timeline for our Marketing funding is as follows:

- Dec 2017 [Contract Execution] - \$100/mo at Contract Execution
- Jun 2018 – Increase to \$500/mo budget
- Dec 2018 – Hire a part-time Marketing Director, increase to \$750/mo budget
- Jul 2019 – Increase marketing budget to \$1,500/mo
- Dec 2019 – Transition to FTE Marketing Director w/ \$1,500/mo budget

Programming Partnerships

Helping entrepreneurs and increasing startup density in Denton starts with great programming. As part of this proposal, we are bringing partnerships with 4 Denton organizations that will incubate, fund, and support Denton startups with unique programming, and are exclusively supporting Hickory & Rail Ventures:

1. **University of North Texas:** Denton's largest university will offer extended-learning entrepreneurship and digital design curriculum and certificates inside of Stoke, bringing the first of its kind partnership between Denton's Startup Community, and UNT.
2. **TechMill:** The original force for startup and tech community organizing in Denton has emerged as a crucial component of Stoke, with innovative tech education and startup events like Bootstrap Denton. TechMill will continue to organize events at Stoke, and has committed to organizing more events with additional funding from H&RV.
3. **Brand Accelerant:** An incubator, advisor network, and funding network for entrepreneurs with a history of supporting entrepreneurs. Brand Accelerant will have a membership and offer its resources to all Stoke members.
4. **Denton Angels:** A new angel investor network focused on investing in early stage Denton area startups with investments ranging from \$25,000 - \$150,000. Denton Angels Executive Director Peggy Healey will be a Stoke member, and will hold their monthly "Forum" event where entrepreneurs will be meet investors from the network.

In addition to these partnerships, H&RV plans to hire a full-time Community Coordinator in July 2018 that will add a day-to-day resource for our members and Events, allowing the Executive Director to focus on marketing and business development.

15. **Provide details on how firm meets the minimum qualifications stated in this Main document Section 3.**

- a. **The details must be completed on this form, and shall not point to another document in the respondent's proposal.**
- b. **Sign below and return form with final submission.**

Experience

Both members of our team have experience running and managing entrepreneurial co-working spaces:

- Marshall created TechMill, Denton's first co-working space, and has organized several community events over the last 10 years including Denton Jelly, OpenHack, LittleDOCC, and Bootstrap Denton. Marshall has also been involved in technology startups his entire career, with experience in raising venture capital.
- Heather served as the Director of Stoke from January 2017-September 2017. Prior to that she was the Community Coordinator and then Director of SCRAP Denton, a Project Manager at a full-service marketing agency, and the creator and owner of a food cart in Portland, Oregon.

Notable recent press written about Marshall and Heather:

- <https://www.dallasnews.com/business/business/2014/06/07/denton-startup-supporters-launch-nonprofit-tech-mill>
- <https://www.bizjournals.com/dallas/news/2014/11/18/techmill-why-we-partnered-with-square-205-for-new.html>
- <http://blog.semilshah.com/2017/04/08/the-story-behind-my-investment-in-kubos/>
- <http://www.satellitetoday.com/newspace/2017/07/18/kubos-unveils-operating-system-small-spacecraft/>
- <http://www.dentonrc.com/entertainment/denton-time/2014/12/24/new-space-opens-up-possibilities>
- <http://www.dentonrc.com/news/news/2016/10/08/the-joy-of-creation>
- <http://www.dentonrc.com/news/news/2017/01/14/creative-fuel>

References

1. Ellen Ryfle – Owner @ Banter Denton
eryfle@gmail.com
(940) 594-2524
2. Paul Echols – CEO @ Square 205
paul@square205.com
(214) 616-625
3. Patrick Peters – EVP, GM of Programming @ Fourth Wall Media
patrickepeters@gmail.com
(214) 215-7759
4. Cindy Tysinger – CEO @ GSATi
ctysinger@gsati.com
469.287.6771;4408
5. Glen Farris – VP Marketing @ VERUS
gfarris@v-re.com
+1 (940) 300-6743
6. Kyle Taylor – President @ TechMill
kyletaylored@gmail.com
+1 (940) 231-4998

Texas Secretary of State Certificate of Filing

Corporations Section
P.O.Box 13697
Austin, Texas 78711-3697



Rolando B. Pablos
Secretary of State

Office of the Secretary of State

CERTIFICATE OF FILING OF

Hickory & Rail Ventures, LLC
File Number: 802809059

The undersigned, as Secretary of State of Texas, hereby certifies that a Certificate of Formation for the above named Domestic Limited Liability Company (LLC) has been received in this office and has been found to conform to the applicable provisions of law.

ACCORDINGLY, the undersigned, as Secretary of State, and by virtue of the authority vested in the secretary by law, hereby issues this certificate evidencing filing effective on the date shown below.

The issuance of this certificate does not authorize the use of a name in this state in violation of the rights of another under the federal Trademark Act of 1946, the Texas trademark law, the Assumed Business or Professional Name Act, or the common law.

Dated: 09/08/2017

Effective: 09/08/2017


A handwritten signature in black ink, appearing to be "R. Pablos".

Rolando B. Pablos
Secretary of State

Phone: (512) 463-5555
Prepared by: Tiffany Garcia

Come visit us on the internet at <http://www.sos.state.tx.us/>
Fax: (512) 463-5709
TID: 10306

Dial: 7-1-1 for Relay Services
Document: 760555450002

Secretary of State P.O. Box 13697 Austin, TX 78711-3697 FAX: 512/463-5709 Filing Fee: \$300	 Certificate of Formation Limited Liability Company	Filed in the Office of the Secretary of State of Texas Filing #: 802809059 09/08/2017 Document #: 760555450002 Image Generated Electronically for Web Filing
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Article 1 - Entity Name and Type

The filing entity being formed is a limited liability company. The name of the entity is:

Hickory & Rail Ventures, LLC

Article 2 - Registered Agent and Registered Office

☒ A. The initial registered agent is an organization (cannot be company named above) by the name of:
United States Corporation Agents, Inc.

OR

☐ B. The initial registered agent is an individual resident of the state whose name is set forth below:

C. The business address of the registered agent and the registered office address is:

Street Address:
9900 Spectrum Drive Austin TX 78717

Consent of Registered Agent

☐ A. A copy of the consent of registered agent is attached.

OR

☒ B. The consent of the registered agent is maintained by the entity.

Article 3 - Governing Authority

☐ A. The limited liability company is to be managed by managers.

OR

☒ B. The limited liability company will not have managers. Management of the company is reserved to the members. The names and addresses of the governing persons are set forth below:

Managing Member 1: Marshall Culpepper	Title: Managing Member
Address: 608 E. Hickory St., Suite 128 Denton TX, USA 76205	

Article 4 - Purpose

The purpose for which the company is organized is for the transaction of any and all lawful business for which limited liability companies may be organized under the Texas Business Organizations Code.

Supplemental Provisions / Information

[The attached addendum, if any, is incorporated herein by reference.]

Organizer

The name and address of the organizer are set forth below.

Cheyenne Moseley **101 N. Brand Blvd., 11th Floor, Glendale, CA 91203**

Effectiveness of Filing

☒ A. This document becomes effective when the document is filed by the secretary of state.

OR

☐ B. This document becomes effective at a later date, which is not more than ninety (90) days from the date of its signing. The delayed effective date is:

Execution

The undersigned affirms that the person designated as registered agent has consented to the appointment. The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized under the provisions of law governing the entity to execute the filing instrument.

Cheyenne Moseley

Signature of Organizer

FILING OFFICE COPY

I certify that our firm meets the minimum qualifications as stated in this Main document,
Section 3.



Signature

Hickory & Rail Ventures, LLC
Company

09/25/2017
Date

~~ATTACHMENT A~~ (Continued)
SUPPLEMENTAL QUESTIONNAIRE

16. What is your company's vision for Stoke and the role it plays in Denton's startup community?

Our vision for Denton is a thriving startup community where entrepreneurs have access to talent, education, capital, and a community of other entrepreneurs they can look to for support. We aim to transform our unique town into the defining startup ecosystem of our region.

Our inspiration and blueprint for manifesting the Denton we want can be found in the pages of Brad Feld's excellent book, [Startup Communities](#) -- derived from his success of building TechStars in the startup hub Boulder, Colorado, a city with roughly the same number of people, schools, and proximity to a major city as Denton.

In the modern startup economy, technology plays a very important role because of its ability to reach unheard of scale with relatively little capital. While we believe technology startups will play a central role in Denton's startup ecosystem, we also recognize that startups in many fields are changing the world in ways no one could have predicted, and welcome any kind of startup that has the attributes of high capital efficiency and scalability.

We believe Stoke will be the first of many places that entrepreneurs in our city can call home, and it is imperative that we both build density while also prioritizing startups that have a potential for high returns to our community.

As our capacity fills, and non-startup, non-tech members cycle out, we will turn away members that don't fit the mold of:

1. Startups and entrepreneurs with highly impactful business models
2. For-profit, vision-driven organizations with a mix of high business and social impact (B-corps)
3. Tech-enabled small businesses that support an average employee salary over \$50,000 per year
4. Remote workers of startups, or tech-enabled companies
5. Accelerators, Incubators, Investors, Mentors, and others vital to supporting the startup ecosystem

17. What is your company's philosophical approach to its operations (corporate mission and vision)?

To increase the density of tech and startups in Denton, creating a positive feedback loop that starts with the University and ends with startup exits.

18. How does your company's concept for Stoke support the City's economic development goals?

- By attracting more startups and tech companies with high paying, 21st century jobs to Denton
- Through our partnerships, by funding startups with investment capital

19. What is your company's plan to ensure Stokes self-sustainability after the City's current lease term ends on Feb. 28, 2021?

Our plan is to heavily invest in marketing, capital improvements, and expanded staff to attract more members to the space. Coupled with our new programming partnerships and access to capital, we expect to save enough money over the next 3 years to take over the commercial lease completely by the end of the current lease term.

20. Detail your company's prior and current involvement in Denton's startup community.

Our company is new, but our team has deep roots in the Denton Startup Community:

Marshall:

- Co-founder & 1st President of TechMill
- Opened first Co-working space in Denton
- Founder and original organizer of the Denton Jelly, LittleDOCC, and Bootstrap Denton community events
- Co-founded Kubos, satellite software startup in downtown Denton with 3 Denton co-founders
- Actively mentors UNT students and Denton entrepreneurs about writing software and building their startup

Heather:

- Served as Community Coordinator and Director of SCRAP Denton
- Served as the Director of Stoke from January 2017-September 2017.
- Worked at local digital marketing agency Produce Results as a Project Manager
- Founder and organizer of Denton's Mini Maker Faire

21. What sets your company apart from others that provide similar services?

We represent the Denton Startup Community. See the attached letters of support from our partners, current, and new Stoke members for a sample of the kind of support we have been able to get from the community in just a few weeks.

22. Provide any additional information that your company believes will be helpful to the City in evaluating your company's ability to provide the services requested in this RFP.

N/A

23. Describe in detail your company's plan to transition Stoke from City management to your company's management.

We look forward to working with City staff to define a transition plan that offloads the City's management obligation completely.

Much of the details of this transition plan will depend on more details from the City.

24. List all the services your company is proposing to provide at the onsite center.

1. All day-to-day operations

- Membership tours and new member orientation
- Invoicing / payments
- Conference room scheduling for members
- Member support and communications (Slack)
- Restocking materials, supplies, coffee, snacks, etc.
- Maintenance and regular cleanup
- Member helpdesk and coordination with City IT

2. Marketing

- Social Media [Twitter, Facebook, Instagram, etc]
- Sponsorship & speaking at regional startup events
- Write regular blog content
- SEO / online advertisement

3. Programming / Events

- Management of tables, chairs, and other resources for events
- Access and management of the Space after normal work hours
- Event space scheduling

25. Explain the business model that is being proposed, including the financial impact and/or benefit to the current Stoke members, staffing model, commitment to a tech- and tech-enabled membership base, impact to the current City budget, term of deal (unless it is an assignment).

H&RV will be directly responsible for making the space sustainable through membership, event, and sponsorship revenue. This calls for a more aggressive marketing and staffing model than used by previous management.

In addition to an Executive Director, H&RV will hire a Community Coordinator and Marketing Director over the next few years, to begin increasing value and marketing the space more effectively. By the end of the lease, H&RV will have 3 full-time employees.

Our commitment is to highly scalable businesses and high paying tech and tech-enabled jobs, and we will focus on marketing to and prioritizing members that fit the bill as outlined previously

26. How will your company measure the outcomes and success of the overall program? Describe the process for how performance metrics will be established and communicated to the City.

As a co-working management company, we view our measurable business metrics as the following:

- Number of active memberships
- Number of startup and tech related events held in our space
- Percentage of our membership base that fits the “tech-enabled” profile, starting with a minimum of 50%, increasing to 55% in Year 2, and 60% in Year 3.

We will measure membership numbers through Cobot, a publicly available co-working member management platform that we will use in our day-to-day operations.

We will measure the percentage of members that fit the “tech-enabled” profile using the definitions of “tech” or “tech-enabled” provided by the City of Denton in the first addendum to RFP 6571.

27. Describe how member satisfaction with the provided services will be measured. How often will member satisfaction be measured? Describe the process for how member satisfaction results will be communicated to the City.

We will measure member satisfaction once a month with automated surveys using SurveyMonkey and our community Slack.

It should be noted that we view member satisfaction as critical to our member retention and long-term success, and are happy to report these as part of our overall metrics to the City.

28. Qualifications and experience of the contractor, including:

- a. Primary line of business;
 - i. Co-working management services
- b. Organizational size;

- i. 2
- c. Structure and history of the organization;
 - i. SM-LLC, new for the purposes of this RFP
- d. Is your company owned by, partly owned by, held by private equity interests? If so, please describe in detail;
 - i. No, just a single individual owner
- e. Disclose all partners and Board of Directors (full names);
 - i. Marshall Culpepper – Managing (and sole) Member
- f. Experience in the provision of the services requested in this RFP
 - i. Approx. 2 years
- g. Percentage of the company’s total business in the area of similar operation and management;
 - i. N/A (this is a new business)
- h. The location of the office that will service the City’s account; and
 - i. 608 E Hickory St. Suite 128 Denton TX 76205
- i. Name and experience of the person that will be assigned to the City’s account;
 - i. Marshall Culpepper
- j. Location of any resources available to center staff.
 - i. n/a

29. Qualifications (including relevant professional designations and descriptions) and experience of the personnel who will be directly assigned to carry out the services described in this RFP.

No relevant professional designations (see relevant experience mentioned previously)

30. Please provide the following documents as attachments:

- a) Pro forma**
- b) Submit IRS Form W-9**

- c) Three (3) years for financial statements (income statement and balance sheet). The City prefers audited statements if available. If these documents are not available, please note the exception on Attachment B. Additional documentation may be required at the City's discretion.**

See attached

31. Indicate the overall cost to the City per month under your company's proposal.

Based on our 3 year projection, the average monthly cost to the City over the remainder of the current lease is \$15,418.31.

32. Indicate all payment terms and conditions.

H&RV only requires that the City continue to pay the commercial lease and utilities to the landlord, while H&RV collects membership, sponsorship, and programming revenue, and a minimum 1 year contract to give us time to establish growth in the space.

Depending on the best situation for the City, H&RV can invoice and collect fees directly, or the City can collect fees, and H&RV will invoice the City.

33. Confirm that there is no relationship of consanguinity between the principals of your firm and any City Council Member or City official or employee that would result in that member or employee having an interest in a public contract or otherwise violate the states ethics or public contracting laws.

Hickory & Rail Ventures, LLC is a Single-Member Limited Liability Company, whose sole Managing Member, Marshall Culpepper, has no familial relationship with any City Council Member, City official, or City employee.

In the interest of transparency, H&RV Employee Heather Gregory is the daughter of Denton City Council Member Dalton Gregory (see our disclosure in the Conflict of Interest Questionnaire).

34. Provide a statement describing your company's equal employment opportunity policy.

It is fundamental to Hickory & Rail Ventures success to make employee diversity a business priority, with a commitment to equal opportunity.

Business activities such as hiring, promotion, and compensation of employees, are conducted without regard to race, color, national origin, ancestry, sex, sexual orientation, gender identity or expression, religion, age, pregnancy, disability, work-related injury, covered veteran status,

political ideology, genetic information, marital status, or any other factor that the law protects from employment discrimination.

Every manager at Hickory & Rail Ventures is expected to abide by our policy, and all applicable laws on this subject, and to uphold our commitment to workforce diversity.

~~ATTACHMENT B~~ EXCEPTIONS/CLARIFICATIONS

Any exceptions or clarifications taken to this solicitation (**including terms and conditions in Exhibit 2, the General Provisions and Terms and Conditions**) must be itemized on the lines below. Additional pages may be added as needed. If there are no exceptions or clarifications, please sign where indicated at the bottom of the page.

Item # Description

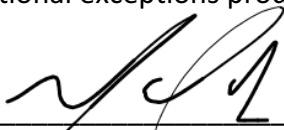
_____ 1 We have not had adequate time to acquire a certificate of insurance but will be able to secure and provide adequate insurance by the date we begin operations on December 1, 2017

_____ 2 _____ Hickory & Rail Ventures, LLC is a new entity formed specifically to respond to this proposal, and has no financial history to provide

_____ 3 We acknowledge Heather Gregory's relationship to Councilman Dalton Gregory, but also believe due to her track record building community in Stoke that she is the best person to lead.

_____ 4 _____ Our experience in running co-working spaces is limited to independent spaces, not government-funded management

The above exceptions and clarifications (and any additional pages identified) are the ONLY exceptions/clarifications to the specifications, General Provisions and Terms and Conditions in Exhibit 2, and sample contract to this solicitation. I understand that the City may not accept additional exceptions produced after final submission of this proposal.



Signature

Hickory & Rail Ventures, LLC

Company

10 / 02 / 2017

Date

~~ATTACHMENT A~~ **REFERENCES**

Please list three (3) references for the services requested. The City prefers references from governmental entities, particularly municipalities of similar size.

REFERENCE ONE

GOVERNMENT/COMPANY NAME: Banter Denton

LOCATION: 219 W. Oak, Denton, TX 76201_____

CONTACT PERSON AND TITLE: Ellen Ryfle_____

TELEPHONE NUMBER: (940) 594-2524_____

SCOPE OF WORK: Co-working Management_____

CONTRACT PERIOD: 06/2014 – 11/2014_____

REFERENCE TWO

GOVERNMENT/COMPANY NAME: Square 205

LOCATION: 210 S Elm, Denton TX 76201_____

CONTACT PERSON AND TITLE: Paul Echols_____

TELEPHONE NUMBER: (214) 616-6253_____

SCOPE OF WORK: Co-working management_____

CONTRACT PERIOD: 11/2014 – 3/2015_____

REFERENCE THREE

GOVERNMENT/COMPANY NAME: GSATi

LOCATION: 100 W. Oak Street, #200, Denton, Texas 76201_____

CONTACT PERSON AND TITLE: Cindy Tysinger_____

TELEPHONE NUMBER: 469.287.6771;4408_____

SCOPE OF WORK: Co-working Management_____

CONFLICT OF INTEREST QUESTIONNAIRE -

FORM CIQ

For vendor or other person doing business with local governmental entity

This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local government entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

1 Name of vendor who has a business relationship with local governmental entity.
Hickory & Rail Ventures, LLC

2 ☐ Check this box if you are filing an update to a previously filed questionnaire.

(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

3 Name of local government officer about whom the information in this section is being disclosed.

Dalton Gregory

Name of Officer

This section, (item 3 including subparts A, B, C & D), must be completed for each officer with whom the vendor has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the vendor?
☐ Yes ☒ No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?
☐ Yes ☒ No

C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of one percent or more?
☐ Yes ☒ No

D. Describe each employment or business and family relationship with the local government officer named in this section.

Our Executive Director, Heather Gregory, is City Councilman Dalton Gregory's daughter

4 ☐ I have no Conflict of Interest to disclose.

5 _____ 09/25/2017

Signature of vendor doing business with the governmental entity

Date

CONTRACT PERIOD: 3/2015 – 06/2016 _____

~~ATTACHMENT F~~ ACKNOWLEDGEMENT XXXXXXXXXX

The undersigned agrees this submission becomes the property of the City of Denton after the official opening.

The undersigned affirms he has familiarized himself with the specification, drawings, exhibits and other documents; the local conditions under which the work is to be performed; satisfied himself of the conditions of delivery, handling and storage of materials and equipment; and all other matters that will be required for the work before submitting a response.

The undersigned agrees, if this submission is accepted, to furnish any and all items/services upon which prices are offered, at the price(s) and upon the terms and conditions contained in the specification. The period for acceptance of this submission will be 120 calendar days unless a different period is noted.

The undersigned affirms that they are duly authorized to execute this contract, that this submission has not been prepared in collusion with any other respondent, nor any employee of the City of Denton, and that the contents of this submission have not been communicated to any other respondent or to any employee of the City of Denton prior to the acceptance of this submission.

Respondent hereby assigns to the City any and all claims for overcharges associated with this contract which arise under the antitrust laws of the United States, 15 USCA Section 1 et seq., and which arise under the antitrust laws of the State of Texas, Tex. Bus. & Com. Code, Section 15.01, et seq.

The undersigned affirms that they have read and do understand the specifications, all exhibits and attachments contained in this solicitation package.

The undersigned agrees that the solicitation package posted on the website are the official specifications and shall not alter the electronic copy of the specifications and/or pricing sheet (Exhibit 1), without clearly identifying changes.

The undersigned understands they will be responsible for monitoring the City of Denton Purchasing Website at: <http://www.cityofdenton.com/index.aspx?page=397> to ensure they have downloaded and signed all addendum(s) required for submission with their response.

I certify that I have made no willful misrepresentations in this submission, nor have I withheld information in my statements and answers to questions. I am aware that the information given by me in this submission will be investigated, with my full permission, and that any misrepresentations or omissions may cause my submission to be rejected.

Acknowledge receipt of following addenda to the solicitation:

Addendum No 1 Dated 9/26/2017

Received 9/27/2017

Addendum No 2 Dated _____

Received _____

Addendum No 3 Dated _____

Received _____

NAME AND ADDRESS OF COMPANY:

Hickory & Rail Ventures, LLC

608 E Hickory St Suite 128

Denton, TX 76205

Tel. No. 940-448-0080

Email. marshall@hickoryrail.com

AUTHORIZED REPRESENTATIVE:

Signature 

Date 10 / 02 / 2017

Name Marshall Culpepper

Title Owner

Fax No. N/A

Supplemental Information provided via email October 18, 2017

1. The City estimates it has \$132,000 in capital expenditures (fiber, AV, security, and furniture/fixtures) on Stoke that are left to be depreciated over the remaining term of the lease. Will the respondent address their ability to mitigate these costs for the City?

These expenditures were not originally listed in the RFP, and as such we have not had enough time to incorporate them as a consideration into our overall financial plan. Is it possible that we could get an itemized list of capital expenditures and their remaining depreciation? Our general intention will be to buy the City out of any remaining expenditures / obligations at the end of the current 5 year lease, but we'd like to understand the full scope of the commitment before agreeing to anything.

2. On page 21 of the response, the respondent addresses the percentage of the membership base that fits the tech/tech enabled profile as 50% Year 1, 55% Year 2, and 60% Year 3. This likely will be unacceptably low to the City Council. Will the respondent revise these numbers?

These estimates were based on Stoke membership percentages that were calculated in September before City management took over the space. According to the latest numbers, we would be happy to revise these to 60% for Year 1, 65% for Year 2, and 70% for Year 3.

It should also be noted that while we intend to measure tech/tech enabled membership percentage, we don't intend it to be used as a metric of success, because our ultimate goal is to become a sustainable business that can take this space off the City's hands after the end of the current lease.

3. On pages 9 and 10 of the response, the respondent projects costs and savings to the City under the proposal. Will the respondent clarify the assumptions related to membership numbers, membership rates, and/or other sources of revenue that they used to determine their ability to decrease the City's rent and utility obligations over the next 3 years of the lease?

If you look at the 3 years of pro-forma financials that were provided, there are roll ups of each kind of membership in the spreadsheet that show our assumptions month-to-month for how the space will grow. Painting with a broad brush, our assumptions:

* We will maintain enough membership revenue from current members to pay the salary of our Executive Director, Heather Gregory, so that the City can stop paying the \$65,000 salary altogether

* We looked at conservative membership growth estimates from the last year of Stoke's opening and projected them forward over the next 3 years with an emphasis on dedicated and co-working desks, with an aim to be over 100% capacity (since many desks are shared) by the end of the 3 year lease.

* We will also actively seek out new revenue sources in the form of sponsorships for Events and access to Stoke members (see sponsorship assumptions and pricing in the Pro-forma financials).

Both the rental and utilities obligations will come from these increases in revenue

4. Also on pages 9 and 10, the respondent outlines projected cost savings to the City. Will the respondent confirm the projected cost savings to the City?

These projected savings are based on the latest budget released from the City that assumes the City will take on the salary of the Director as originally stated in it's agreement with the DEC. When comparing our plan to the management agreement of the DEC, our estimate is Hickory & Rail Ventures will save the City

over \$200,000. Please see the table on Page 9 which covers the assumptions built into these projections, as we don't currently have the City budget for 2018-2019 or 2019-2020.