

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE CITY MANAGER TO EXECUTE A CONSTRUCTION MANAGER AT RISK CONTRACT WITH ARCHER WESTERN CONSTRUCTION, LLC, FOR PRE-CONSTRUCTION SERVICES OF THE RAY ROBERTS WATER TREATMENT PLANT EXPANSION PROJECT FOR THE WATER UTILITIES DEPARTMENT; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (RFP 8590 – AWARDED TO ARCHER WESTERN CONSTRUCTION, LLC, IN THE NOT-TO-EXCEED AMOUNT OF \$1,500,000.00).

WHEREAS, the City has solicited, received, and evaluated competitive proposals for pre-construction services of the Ray Roberts Water Treatment Plant Expansion Project for the Water Utilities Department; and

WHEREAS, the City Manager, or a designated employee, has received, reviewed, and recommended that the herein described proposals are the most advantageous to the City considering the relative importance of price and the other evaluation factors included in the request for proposals; and

WHEREAS, this procurement was undertaken as part of the City’s governmental function; and

WHEREAS, the City Council has provided in the City Budget for the appropriation of funds to be used for the purchase of the materials, equipment, supplies, or services approved and accepted herein; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The items in the following numbered request for proposal for materials, equipment, supplies, or services shown in the “Request Proposals” on file in the office of the Purchasing Agent, are hereby accepted and approved as being the most advantageous to the City considering the relative importance of price and the other evaluation factors included in the request for proposals.

<u>RFP NUMBER</u>	<u>CONTRACTOR</u>	<u>AMOUNT</u>
8590	Archer Western Construction, LLC	\$1,500,000.00

SECTION 2. That by the acceptance and approval of the above numbered items of the submitted proposals, the City accepts the offer of the persons submitting the proposals for such items and agrees to purchase the materials, equipment, supplies, or services in accordance with the terms, specifications, standards, quantities, and for the specified sums contained in the Proposal Invitations, Proposals, and related documents.

SECTION 3. That should the City and person submitting approved and accepted items wish to enter into a formal written agreement as a result of the acceptance, approval, and awarding of the proposals, the City Manager, or their designated representative, is hereby authorized to execute the written contract which shall be attached hereto; provided that the written contract is in accordance with the terms, conditions, specifications, standards, quantities, and specified sums contained in the Proposal and related documents herein approved and accepted.

SECTION 4. The City Council of the City of Denton hereby expressly delegates the authority to take any actions that may be required or permitted to be performed by the City of Denton under this ordinance to the City Manager of the City of Denton, or their designee.

SECTION 5. By the acceptance and approval of the above enumerated bids, the City Council hereby authorizes the expenditure of funds therefor in the amount and in accordance with the approved bids.

SECTION 6. This ordinance shall become effective immediately upon its passage and approval.

The motion to approve this ordinance was made by _____ and seconded by _____. This ordinance was passed and approved by the following vote [___ - ___]:

	Aye	Nay	Abstain	Absent
Mayor Gerard Hudspeth:	_____	_____	_____	_____
Vicki Byrd, District 1:	_____	_____	_____	_____
Brian Beck, District 2:	_____	_____	_____	_____
Suzi Rumohr, District 3:	_____	_____	_____	_____
Joe Holland, District 4:	_____	_____	_____	_____
Brandon Chase McGee, At Large Place 5:	_____	_____	_____	_____
Jill Jester, At Large Place 6:	_____	_____	_____	_____

PASSED AND APPROVED this the _____ day of _____, 2025.

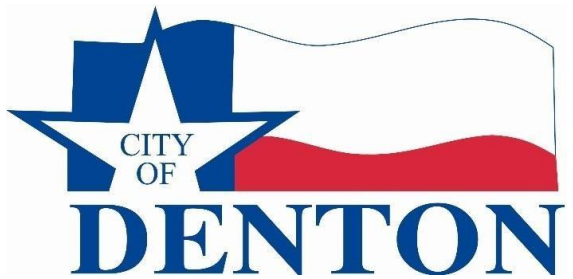
GERARD HUDSPETH, MAYOR

ATTEST:
INGRID REX, INTERIM CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: Leah Bush
Marcella Lunn



Docusign City Council Transmittal Coversheet

RFP	8590
File Name	CMAR RRWTP Expansion Project
Purchasing Contact	Erica Garcia
City Council Target Date	
Piggy Back Option	Not Applicable
Contract Expiration	
Ordinance	

Initial

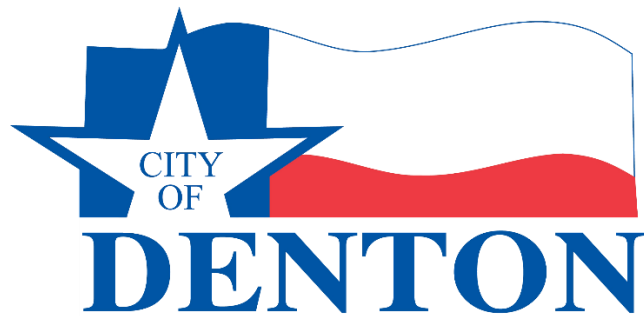
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CITY OF DENTON, TEXAS

**CONSTRUCTION MANAGER AT RISK FOR RAY ROBERTS WATER TREATMENT PLANT
EXPANSION**

**CONSTRUCTION MANAGER AT RISK
PRECONSTRUCTION PHASE SERVICES**

CONTRACT NO. 8590

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**CONSTRUCTION MANAGER AT RISK FOR RAY ROBERTS WATER TREATMENT PLANT EXPANSION
PROJECT**

CONSTRUCTION MANAGER AT RISK DESIGN PHASE SERVICES

CONTRACT NO. 8590

THIS CONTRACT, made and entered into this by and between City of Denton, Texas, hereinafter designated the "CITY" and **Archer Western Construction, LLC** hereinafter designated the "CONSTRUCTION MANAGER AT RISK" or "CM@Risk."

RECITALS

- A. The City Manager of the City of Denton, Texas, or an appointed designee, is authorized and empowered by provisions of the City Charter to execute contracts for professional services and construction services.
- B. The City intends to construct **Lake Ray Roberts Water Treatment Plant Expansion** as described in Exhibit A attached, hereinafter referred to as the "Project".
- C. To undertake the design of said Project the City has entered into a contract with **Freese and Nichols, Inc.** hereinafter referred to as the "Design Professional."
- D. The CM@Risk has represented to the City the ability to provide design phase services and to construct the Project.
- E. Based on this representation, the City intends to enter into a contract with the CM@Risk for the design phase services identified in this contract. At the end of the design phase, at the City's discretion, the City may enter into a separate construction contract with the CM@Risk for construction phase services.

AGREEMENT

NOW THEREFORE, for and in consideration of the mutual covenants and considerations hereinafter contained, it is agreed by and between the City and the CM@Risk as follows:

ARTICLE 1 – TERMS AND DEFINITIONS

Addenda - Written or graphic instruments issued prior to the submittal of the GMP Proposal(s), which clarify, correct or change the GMP Proposal(s) requirements.

Agreement (also known as the Contract) – This written document signed by the City and CM@Risk covering the Design Phase of the Project, and including other documents itemized and referenced in or attached to and made part of this Contract. Notwithstanding the above, the Construction Phase Agreement is not made a part of this Contract.

Alternate Systems Evaluations – Alternatives for design, means and methods or other scope considerations that are evaluated using value engineering principles and have the potential to reduce both first cost and operational costs while still delivering a quality and functional Project that meets City requirements.

Application for Payment – See definition for Payment Request.

Architect—The qualified, licensed person, firm or corporation who furnishes architectural services required for the Project.

Change Order (Amendment) - A written instrument issued after execution of the Contract Documents signed by the City and CM@Risk, stating their agreement upon all of the following: the addition, deletion or revision in the scope of services or Deliverables; the amount of the adjustment to the Contract Amount (if any); the extent of the adjustment to the Contract Time (if any); and/or modifications of other contract terms.

City (Owner) - The City of Denton, a municipal corporation, with whom CM@Risk has entered into this Contract and for whom the services are to be provided pursuant to said Contract. Regulatory activities handled by the City of Denton Development Services, Fire, Engineering, Facilities, Municipal Electric and Planning Departments or any other City department are not subject to the responsibilities of the City under this Agreement.

City's Designated Project Manager – The City of Denton representative who is designated as project manager for the Project.

Contract - Refers to this Agreement when used elsewhere in the Contract Documents.

Contract Documents - Refers to, without limitation, this Agreement, the Drawings and Specifications, Proposal Requests, formal Requests for Information, and other information as so defined elsewhere, or any documents that may be referenced and/or incorporated by reference into this Agreement, the Drawings and Specifications, Proposal Requests, or formal Requests for Information.

Construction Contract Time(s) - The number of days or the dates, as may be increased or decreased during the course of the

Project, related to the construction phase that as stated in Construction Documents applies to achievement of Substantial Completion of the Work.

Construction Documents – The plans, specifications and drawings prepared by the Design Professional after correcting for permit review requirements.

Construction Fee – The CM@Risk's administrative costs, home office overhead, and profit, whether at the CM@Risk's principal or branch offices, and other off-site costs.

Construction Manager at Risk (CM@Risk) – The firm, corporation, or other approved legal entity with whom the City has entered into this Contract.

Construction Management Plan – Formal documentation prepared and maintained by the CM@Risk describing the scope, process, sequence and duration of the activities to accomplish the Work within the Contract Time including but not limited to those items set forth in Section 2.2.

Construction Phase Agreement – The proposed Owner-CM@Risk Agreement to be used during construction, as mutually agreed to be modified before its use. It is provided for reference only, and is not made a part of this Contract.

Contingency, Preconstruction – A fund to cover cost growth during the Project before Notice to Proceed for Construction driven by discovery of scope items unknown at the outset of design; requirements of Authorities Having Jurisdiction (AHJs) over the Project; or similar changes during the Design Phase. When used, the amount of the Preconstruction Contingency will be negotiated as a separate line item in each GMP Proposal.

Contingency, Marketplace Risk – A fund to cover the costs of cost escalation, supply chain interruptions, and buyout decisions made for the City's benefit that may experience more marketplace uncertainty during the course of the Project. When used, the amount of the Marketplace Risk Contingency will be negotiated as a separate line item in each GMP Proposal.

Contingency, CM@Risk's – A fund to cover cost growth during the Project used at the discretion of the CM@Risk usually for costs that result from Project circumstances. The amount of the CM@Risk's Contingency will be negotiated as a separate line item in each GMP Proposal.

Contingency, Owner's – A fund to cover cost growth during the Project used at the discretion of the City usually for costs that result from City directed changes or unforeseen site conditions. The amount of the Owner's Contingency will be set by the City and will be in addition to the project costs included in the CM@Risk's GMP Proposal.

Contract Amount – The cost for services for this Contract as identified in Article 4.

Contract Documents – means the following items and documents in descending order of precedence executed by the City and the CM@Risk: (i) all written modifications, amendments and Change Orders; (ii) this Agreement, including all exhibits and attachments; (iii) Construction Documents; (iv) GMP Plans and Specifications.

Contract Time(s) – The number of days or the dates stated in this Agreement to: (i) achieve Milestones, if any; (ii) achieve Substantial Completion; and (iii) complete the Work so that it is ready for final payment as evidenced by Architect's or Engineer's written recommendation of final payment.

Control Estimate – Also referred to as a baseline cost model, an estimate provided by the CM@Risk on the basis of the design provided, typically at a major design deliverable, that serves as the basis for decision making about design progress and design requirements to the next major design deliverable.

Cost of the Work – The direct costs or stipulated rates necessarily incurred by the CM@Risk in the proper performance of the Work. The Cost of the Work shall include direct labor costs, subcontract costs, costs of materials and equipment incorporated in the completed construction, costs of other materials and equipment, temporary facilities, building permit fees (if not paid for by City), materials testing, General Conditions Costs, and related items. The Cost of the Work shall not include the CM@Risk's Construction Fee.

Critical Path Schedule – The sequence of activities from the start of the Work to the Substantial Completion of the Project. Any delay in the completion of these activities will extend the Substantial Completion date.

Day – Calendar day unless otherwise specifically noted in the Contract Documents.

Deliverables – The work products prepared by the CM@Risk in performing the scope of work described in this Contract. Some of the major deliverables to be prepared and provided by the CM@Risk during the design phase may include but are not limited to: Construction Management Plan, Project Schedule, Schedule of Values, alternative system evaluations, procurement strategies and plans, cost estimates, construction market surveys, cash flow projections, GMP Proposals, Subcontractor procurement plan, Statement of Proposed MBE/WBE Utilization, Subcontractor agreements, Subcontractor bid packages, Supplier agreements, and others as indicated in this Contract or required by the Project Team.

Design Documents - Design Documents are representations, in any medium of expression now known or later developed, of the

tangible and intangible creative work performed by the Design Professional and their consultants under their respective professional services agreements. Design Documents may include, without limitation, the basis of design documents, studies, surveys, models, sketches, Drawings, Specifications, the Project Manual and other similar materials.

Design Professional – The qualified, licensed person, firm or corporation who furnishes design and/or construction administration services required for the Project. The Design Professional may be the Engineer or the Architect for the Project, or other such similar licensed professional or firm.

Drawings (Plans) – Documents, which visually represent the scope, extent and character of the Work to be furnished and performed by the CM@Risk during the construction phase and which have been prepared or approved by the Design Professional and the City. Includes Drawings that have reached a sufficient stage of completion and released by the Design Professional solely for the purposes of review and/or use in performing constructability or biddability reviews and in preparing cost estimates (e.g. conceptual design Drawings, preliminary design Drawings, detailed design Drawings at 30%, 60%, 90% or 100% or schematic, design development, construction documents), but “*not for construction*”. Shop Drawings are not Drawings as so defined.

Engineer —The qualified, licensed person, firm or corporation who furnishes engineering services required for the Project.

Float - The number of Days by which an activity can be delayed without lengthening the Critical Path and extending the Substantial Completion date.

General Conditions Costs – Includes but is not limited to the types of costs identified Exhibit Y - General Conditions Costs in the Construction Phase Agreement.

Guaranteed Maximum Price (GMP) – The sum of the maximum Cost of the Work, the CM@Risk's Construction Fee, and CM@Risk Contingency.

GMP Plans and Specifications – The plans and specifications provided pursuant to paragraph 2.6.5 upon which the Guaranteed Maximum Price Proposal is based.

Guaranteed Maximum Price (GMP) Proposal - The offer or proposal of the CM@Risk submitted on the prescribed form setting forth the GMP prices for the entire Work or portions of the Work to be performed during the construction phase. The GMP Proposal(s) are to be developed pursuant to Article 2 of this Contract.

Laws and Regulations - Any and all applicable laws, rules, regulations, ordinances, codes and orders of any and all governmental bodies, agencies, authorities and courts having jurisdiction.

Milestones - A principal event in the performance of the Work that the Contract requires CM@Risk to achieve by an intermediate completion date, or by a time prior to Substantial Completion of all the Work.

Notice of Intent to Award — The written notice by City to a respondent to the City's solicitation of the Project of City's intent to accept a certain respondent's proposal.

Notice to Proceed (NTP) Letter - A written notice given by City to the CM@Risk fixing the date on which the CM@Risk will start to perform the CM@Risk's obligations under this Contract.

Owner Activities – Activities required by the City staff, City vendors or other resources under the direct or indirect control of the City required for successful completion of the Project.

Payment Request (also known as an Application for Payment) - The form that is accepted by the City and used by the CM@Risk in requesting progress payments or final payment and which will include such supporting documentation as is required by the Contract Documents and or the City.

Project - The complete and operational asset needed by the City, of which this Work is a part. The Work to be completed in the execution of this Contract as described in the Recitals above and Exhibit "A" attached is a key component of the Project, and its timely completion is essential to its operation.

Project Budget - The amount budgeted by the City for the Project, and which contains within it the budget for the Work of this Contract.

Project Schedule - A schedule, prepared and maintained by CM@Risk, describing the sequence and duration of the activities comprising the CM@Risk's plan to accomplish the Work within the Contract Times.

Project Team – Design phase services team consisting of the Design Professional, CM@Risk, City's Project Manager, City's Client Department representatives and other stakeholders who are responsible for making decisions regarding the Project.

Related Parties – For purposes of this Agreement, the term "Related Party" shall mean any party or entity related to or affiliated with the CM@Risk or in which the CM@Risk has direct or indirect ownership or control, including without limitation: (1) a parent, subsidiary, affiliate, or other entity having common ownership of, or sharing common management with, the Construction Manager; (2) any entity in which any stockholder in, or officer, director, partner or employee of, the CM@Risk or holds any entity owned by

the Construction Manager has any direct or indirect interest in; (3) any party with an excess of ten percent (10%) interest in the CM@Risk in the aggregate; (4) any entity which has the right to control the business or affairs of the CM@Risk; or (5) any person, or any member of the immediate family of any person, who has the right to control the business or affairs of the CM@Risk.

Schedule of Values (SOV) – Document specified in the construction phase Contract, which divides the Contract Price into pay items, such that the sum of all pay items equals the Contract Price for the construction phase Work, or for any portion of the Work having a separate specified Contract Price. All contingencies that are to be utilized during the Construction Phase Agreement shall receive a separate line item and shall be tracked throughout the Project. The SOV may or may not be output from the Project Schedule depending on whether the Project Schedule is cost-loaded or not.

Submittals - All drawings, diagrams, schedules, samples, and other materials specifically prepared for the Work by the CM@Risk or a Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work. Submittals are not Contract Documents.

Site – The land or premises on which the Project is located.

Specifications - The part(s) of the Contract Documents for the construction phase consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto.

Subconsultant - A person, firm or corporation having a contract with the CM@Risk at any tier to furnish services required as its independent professional associate or consultant with respect to the Project.

Subcontractor - An individual or firm having a direct contract with the CM@Risk or any other individual or firm having a contract with the aforesaid contractors at any tier, who undertakes to perform a part of the design phase services or construction phase Work at the site for which the CM@Risk is responsible. Subcontractors will be selected through the Subcontractor bid process described in paragraph 2.7 of this Contract.

Substantial Completion - When the Work, or an agreed upon portion of the Work, is sufficiently complete so that City can occupy and use the Project or a portion thereof for its intended purposes. This may include, but is not limited to: (i) approval by City Fire Marshall and local, state and other authorities having jurisdiction, unless such approval is not granted for reasons beyond CM@Risk's responsibility or control; (ii) all systems in place, functional, and displayed to the City or its representative; (iii) all materials and equipment installed; (iv) all systems reviewed and accepted by the Design Professional and City; (v) draft O&M manuals and record documents reviewed and accepted by the Design Professional and City; (vi) City operation and maintenance training complete and documented, if any; (vii) landscaping and site work; (viii) final cleaning; and (ix) other requirements that are specified in the Construction Contract. These generic conditions of Substantial Completion will be customized in the Owner-CM@R Construction Phase Agreement as mutually agreed to be applicable to the specific scope of the Work in that Contract. Those conditions of Substantial Completion that do not apply to a specific GMP will be listed in the Notice to Proceed letter pursuant to that Construction Phase contract.

Supplier – A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with CM@Risk or with any Subcontractor to furnish materials or equipment to be incorporated in the construction phase Work by CM@Risk or any Subcontractor.

Work – The entire completed construction or the various separately identifiable parts thereof, required to be furnished during the construction phase. Work includes and is the result of performing or furnishing labor, services and furnishing and incorporating materials, resources and equipment into the construction, and performing or furnishing services and documents as required by the Contract Documents for the construction phase.

ARTICLE 2 – BASIC DESIGN PHASE SERVICES

2.1 GENERAL

- 2.1.1 The CM@Risk, to further the interests of the City, will perform the services required by, and in accordance with this Contract, to the satisfaction of the City's Designated Project Manager, exercising the degree of care, skill and judgment a professional construction manager performing similar services in Denton, Texas would exercise at such time, under similar conditions. The CM@Risk will, at all times, perform the required services consistent with sound and generally accepted construction management and construction contracting practice. The services being provided under this Contract will not alter any real property owned by the City.
- 2.1.2 Program Evaluation: As a participating member of the Project Team, the CM@Risk will provide to the City and Design Professional a written evaluation of the Project and Project Budget, with recommendations as to the appropriateness of each.
- 2.1.3 Project Meetings: The CM@Risk will attend Project Team meetings which may include, but are not limited to, regular Project management meetings, Project workshops, special Project meetings, construction document rolling reviews and partnering sessions.

- 2.1.4 The CM@Risk will provide design phase services described herein, in a proactive manner and consistent with the intent of the most current Drawings and Specifications. The CM@Risk will promptly notify the City in writing whenever the CM@Risk determines that any Drawings or Specifications are inappropriate for the Project and/or cause changes in the scope of Work requiring an adjustment in the cost estimate, Project Schedule, GMP Proposals and/or in the Contract Time for the Work, to the extent such are established.
- 2.1.5 The CM@Risk, when requested by the City, will attend, make presentations, and participate as may be appropriate in public agency and or community meetings, germane to the Project. The CM@Risk will provide drawings, schedule diagrams, budget charts and other materials describing the Project, when their use is required or apropos in any such public agency meetings.

2.2 CONSTRUCTION MANAGEMENT PLAN

- 2.2.1 The CM@Risk will prepare a Construction Management Plan (CMP), which shall include the CM@Risk's professional opinions concerning: (a) safety and logistics planning and associated training requirements; (b) Project Milestone dates and the Project Schedule, including the broad sequencing of the design and construction of the Project; (c) investigations, if any, to be undertaken to ascertain subsurface conditions and physical conditions of existing surface and subsurface facilities and underground utilities; (d) alternate strategies for fast-tracking and/or phasing the construction; (e) the number of separate subagreements to be awarded to Subcontractors and Suppliers for the Project construction; (f) permitting strategy; (g) construction quality control; (h) a commissioning program; (i) the cost management plan, control estimates, schedule of values, and basis of the model; (j) information management systems; and, (k) a matrix summarizing each Project Team member's responsibilities and roles.
- 2.2.2 The CM@Risk may add detail to its previous version of the CMP to keep it current throughout the design phase, so that the CMP is ready for implementation at the start of the construction phase. The update/revisions may take into account (a) revisions in Drawings and Specifications; (b) the results of any additional investigatory reports of subsurface conditions, drawings of physical conditions of existing surface and subsurface facilities and documents depicting underground utilities placement and physical condition, whether obtained by the City, Design Professional, or the CM@Risk; (c) unresolved permitting issues, and significant issues, if any, pertaining to the acquisition of land and right of way; (d) the fast-tracking if any of the construction, or other chosen construction delivery methods; (e) the requisite number of separate bidding documents to be advertised; (f) the status of the procurement of long-lead time equipment (if any) and/or materials; and (g) funding issues identified by the City.

2.3 PROJECT SCHEDULE AW in collaboration with the EOR will develop a schedule during pre-con to capture pre-con/design phase milestones, procurement activities, and City of Denton internal processes. This schedule will include an allotment of time for construction of the project based on the CMAR's construction phase expertise. As construction plans are developed this schedule will be updated to reflect the CMAR's planned construction phase timeline. If the overall schedule changes due to pre-con activities taking longer than initially anticipated the final completion date will be amended based on the current construction schedule at the time of the GMP.

- 2.3.1 The fundamental purpose of the "Project Schedule" is to identify, plan, coordinate, and record the tasks and activities to be performed by all of the Project Team members and then for the Project Team to utilize that Deliverable as a basis for managing and monitoring all member's compliance with the schedule requirements of the Project. Each Project Team member is responsible for its compliance with the Project Schedule requirements. The CM@Risk will, however, develop and maintain the "Project Schedule" on behalf of and to be used by the Project Team based on input from the other Project Team members. The Project Schedule will be consistent with the most recent revised/updated CMP. The Project Schedule will use the Critical Path Method (CPM) technique, unless required otherwise, in writing by the City. The CM@Risk will use scheduling software to develop the Project Schedule that is acceptable to the City. The Project Schedule shall be presented in graphical and tabular reports as agreed upon by the Project Team. If Project phasing as described below is required, the Project Schedule will indicate milestone dates for the phases once determined.
- 2.3.2 The Project Schedule shall include a Critical Path Method (CPM) diagram schedule that shall show the sequence of activities, the interdependence of each activity and indicate the Critical Path.
 - 2.3.2.1 The CPM diagram schedule shall be in Days and indicate duration, earliest and latest start and finish dates for all activities, and total Float times for all activities except critical activities. The CPM diagram shall be presented in a time scaled graphical format for the Project as a whole.
 - 2.3.2.2 The CPM diagram schedule shall indicate all relationships between activities, with no constraints (only schedule logic) driving dates and the Critical Path.
 - 2.3.2.3 The activities making up the schedule shall be in sufficient detail to assure that adequate planning has been done for proper execution of the Work and such that it provides an appropriate basis for monitoring and evaluating the progress of the Work. Further, activities shall be included for, without limitation, any and all City franchised or private utilities required to be temporarily or permanently demolished, relocated or installed; design, procurement, furnishing and installing of equipment, information technology systems, security systems, furnishings, and other City improvements (whether installed by the CM@Risk or the City) required for the Work to be completely functional as intended. These Owner Activities will be shown in the schedule with the appropriate precursor and successor activities necessary for monitoring

and evaluating the progress of the Owner Activities

- 2.3.2.4 The CPM diagram schedule shall be based upon activities which would coincide with the schedule of values, but the Project Schedule is not required to be cost-loaded.
- 2.3.2.5 The CPM diagram schedule shall show all submittals associated with each work activity and the review time for each submittal.
- 2.3.2.6 The schedule shall show Milestones, including Milestones for all City-furnished information, utilities and improvements when those Milestones are interrelated with the CM@Risk activities.
- 2.3.2.7 The schedule shall include a critical path activity that reflects anticipated weather delays during the performance of the contract. The duration shall reflect the average climatic range and usual industrial conditions prevailing in the locality of the site. Weather data shall be based on information provided by the National Weather Services or other approved source.
- 2.3.3 The Project Schedule shall consider the City's and the other stakeholders' occupancy requirements showing portions of the Project having occupancy priority, and Contract Time.
- 2.3.4 Float time shall be as prescribed below:
 - 2.3.4.1 The total Float within the overall schedule, is not for the exclusive use of either the City or the CM@Risk, but is jointly owned by both and is a resource available to and shared by both parties as needed to meet contract milestones and the Project completion date.
 - 2.3.4.2 The CM@Risk shall not sequester shared Float through such strategies as extending activity duration estimates to consume available Float, using preferential logic, or using extensive crew/resource sequencing, etc. Since Float time within the schedule is jointly owned, no time extensions will be granted nor delay damages paid until a delay occurs which extends the Work beyond the Substantial Completion date.
 - 2.3.4.3 Since Float time within the schedule is jointly owned, it is acknowledged that City-caused delays on the Project may be offset by City-caused time savings (i.e., critical path submittals returned in less time than allowed by the contract, approval of substitution requests and credit changes which result in savings of time to the CM@Risk, etc.). In such an event, the CM@Risk shall not be entitled to receive a time extension or delay damages until all City-caused time savings are exceeded, and the Substantial Completion date is also exceeded.
- 2.3.5 The Project Schedule will be updated and maintained by the CM@Risk throughout the design phase such that it will not require major changes at the start of the construction phase to incorporate the CM@Risk's plan for the performance of the construction phase Work. The CM@Risk will provide updates and/or revisions to the Project Schedule for use by the Project Team, whenever required, but no less often than at the monthly Project Team meetings. The CM@Risk will include with such submittals a narrative describing its analysis of the progress achieved to-date vs. that planned, any concerns regarding delays or potential delays, and any recommendations regarding mitigating actions.
- 2.3.6 Project Phasing: If phased construction is deemed appropriate and the City and Design Professional approve, the CM@Risk will review the design and make recommendations regarding the phased issuance of Construction Documents to facilitate phased construction of the Work, with the objective of reducing the Project Schedule and/or Cost of the Work. The CM@Risk will take into consideration such factors as natural and practical lines of work severability, sequencing effectiveness, access and availability constraints, total time for completion, construction market conditions, labor and materials availability, and any other factors pertinent to saving time and cost.

2.4 DESIGN DOCUMENT REVIEWS

- 2.4.1 The CM@Risk will evaluate periodically the availability of labor, materials/equipment, building systems, cost-sensitive aspects of the design; and other factors that may impact the cost estimate, GMP Proposals and/or the Project Schedule.
- 2.4.2 The CM@Risk will recommend, in conjunction with the Project Team, those additional observations and testing of existing improvements; as well as environmental, surface and subsurface investigations that, in its professional opinion, are required to provide the necessary information for the CM@Risk to construct the Project. Before initiating construction operations, the CM@Risk may request additional investigations in their GMP Proposal to improve the adequacy and completeness of the existing improvements and site condition information and data made available with the Construction Documents.
- 2.4.3 The CM@Risk will meet with the Project Team as required to review designs during their development. The CM@Risk will familiarize itself with the evolving documents through the various design phases. The CM@Risk will proactively advise the Project Team and make recommendations on factors related to construction costs, and concerns pertaining to the feasibility and practicality of any proposed means and methods, selected materials, equipment and building systems, and, labor and material availability. The CM@Risk will furthermore maintain a project decision and trend log as design develops and advise the Project Team on proposed site improvements, excavation and foundation considerations, as well as concerns that exist with respect to coordination of the Drawings and Specifications. The CM@Risk will recommend cost effective alternatives.

- 2.4.4 The CM@Risk will routinely conduct constructability and biddability reviews of the Drawings and Specifications as necessary to satisfy the needs of the Project Team. The reviews will attempt to identify all discrepancies and inconsistencies in the Construction Documents especially those related to clarity, consistency, and coordination of Work of Subcontractors and Suppliers.
- 2.4.4.1 Constructability Reviews: The CM@Risk will evaluate whether (a) the Drawings and Specifications are configured to enable efficient construction; (b) design elements are standardized; (c) construction efficiency is properly considered in the Drawings and Specifications; (d) module/preassembly design are prepared to facilitate fabrication, transport and installation; (e) the design promotes accessibility of personnel, material and equipment and facilitates construction under adverse weather conditions; (f) sequences of Work required by or inferable from the Drawings and Specifications are practicable; and (g) the design has taken into consideration efficiency issues concerning access and entrance to the site, laydown, and storage of materials, staging of site facilities, construction parking, and other similar pertinent issues.
- 2.4.4.2 Biddability Reviews: The CM@Risk will check cross-references and complementary Drawings and sections within the Specifications, and in general evaluate whether (a) the Drawings and Specifications are sufficiently clear and detailed to minimize ambiguity and to reduce scope interpretation discrepancies; (b) named materials and equipment are commercially available and are performing well or otherwise, in similar installations; (c) Specifications include alternatives in the event a requirement cannot be met in the field; and (d) in its professional opinion, the Project is likely to be subject to differing site conditions.
- 2.4.4.3 The results of the reviews will be provided to the City in formal, written reports clearly identifying all discovered discrepancies and inconsistencies in the Drawings and Specifications with notations and recommendations made on the Drawings, Specifications, and other documents. If requested by the City, the CM@Risk will meet with the City and Design Professional to discuss any findings and review reports.
- 2.4.4.4 The CM@Risk's reviews will be from a contractor's perspective, and though it will serve to reduce the number of Requests for Information (RFIs) and changes during the construction phase, responsibility for the Drawings and Specifications will remain with the Design Professional and not the CM@Risk.
- 2.4.5 Notification of Variance or Deficiency: It is the CM@Risk's responsibility to assist the Design Professional in ascertaining that, in the CM@Risk's professional opinion, the Construction Documents are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. If the CM@Risk recognizes that portions of the Construction Documents are at variance with applicable laws, statutes, ordinances, building codes, rules and regulations, it will promptly notify the Design Professional and City in writing, describing the apparent variance or deficiency. However, the Design Professional is ultimately responsible for the compliance with those laws, statutes, ordinances, building codes, rules and regulations.
- 2.4.6 Alternate Systems Evaluations: The Project Team will routinely identify and evaluate using value engineering principles any alternate systems, approaches, design changes that have the potential to reduce Project construction costs and operational costs, while still delivering a quality and functional product. If the Project Team agrees, the CM@Risk in cooperation with the Design Professional will perform a cost/benefit analysis of the alternatives and submit such in writing to the Project Team. The Project Team will decide which alternatives will be incorporated into the Project. The Design Professional will have full responsibility for the incorporation of the alternatives into the Drawings and Specifications. The CM@Risk will include the cost of the alternatives into the cost estimate and any GMP Proposals.
- 2.4.6.1 For major Alternative System Evaluations, the CM@Risk is encouraged to provide (1) a detailed description of the difference between the requirements of the current design and the proposed changes, and comparative advantages and disadvantages of each; (2) the impact of the proposal upon construction plus operational costs and the CM@Risk's schedule; (3) a list of the projects to the extent known, where the proposal was previously used in similar circumstances, and the owner's results of that experience; and (4) any other information reasonably necessary to fully evaluate the proposal.
- 2.4.6.2 One of the City's goals is an energy efficient, sustainable Project, and therefore the CM@Risk shall participate in interactive work sessions when scheduled by the Design Professional for the purpose of identifying the viable, environmentally responsible alternatives for the Work, evaluating the relative merits of each, and assisting the City with selecting the preferred alternative(s) to be incorporated into the Project.

2.5 COST ESTIMATES

- 2.5.1 CM@Risk will work with the Design Professional to provide an initial, baseline cost model/estimate for the project within forty-five (45) Days after NTP. Unless otherwise agreed by both parties, within fourteen (14) 28-42 Days after receipt of the documents for the various phases of design/milestones shown in the most current Project Schedule, the CM@Risk shall provide a complete and detailed cost estimate and a written review of the documents. Each cost estimate should include all cost categories necessary for delivery of a fully functional Project except items agreed to be furnished and installed by the City, and the Owner's Contingency included in the GMP Proposal identified in Exhibit "C" attached. This estimate will be referred to as the Control Estimate. In addition, each Control Estimate shall include the following:
- 2.5.1.1 A list of all documents used in preparation of the Control Estimate, identified by title, date and originator;

- 2.5.1.2 A list of the clarifications and assumptions made by the CM@Risk in the preparation of the Control Estimate, including assumptions made, to supplement the information provided by Design Professional and contained in the Drawings and Specifications;
- 2.5.1.3 A summary of the estimated Cost of the Work organized by trade categories or systems (as mutually agreed in advance);
- 2.5.1.4 A summary report showing variances of the current summary line item totals from those in the previous Control Estimate (if any);
- 2.5.1.5 A detailed estimate of the Cost of the Work in the same format as the previous Control Estimate (if any); and
- 2.5.1.6 A detailed report showing variances of quantities, unit costs and line item totals from the previous Control Estimate (if any).
- 2.5.2 The Design Professional and CM@Risk shall reconcile any disagreements on the estimate to arrive at an agreed Control Estimate for that phase of design. If no consensus is reached, the City will make the final determination. If any Control Estimate submitted to the City exceeds previously accepted Control Estimate, or the City's then current Project Budget, the CM@Risk shall make appropriate recommendations of methods and materials to the City and Design Professional that it can demonstrate will bring the project back in line with the Project Budget.
- 2.5.3 In between Control Estimates, the CM@Risk shall periodically provide a cost tracking report which identifies, by line item, the order of magnitude of cost impact(s) due to, without limitation, design development, value engineering, scope changes, or changes in the marketplace. It shall be the responsibility of the CM@Risk to keep the City and Design Professional informed as to the trend changes in costs relative to the most recently approved Control Estimate and the City's budget.
- 2.5.4 If requested by the City, the CM@Risk shall prepare a preliminary "cash flow" projection based upon the latest Control Estimate and the most current CM@Risk's schedule to assist the City in the financing process.

2.6 GUARANTEED MAXIMUM PRICE (GMP) PROPOSALS

2.6.1 GMP Proposal Format and Timing

- 2.6.1.1 The proposed GMP for the entire Work (or portions thereof) will be presented in a format acceptable to the City (see Exhibit "C" attached). CM@Risk must verify with the City the current Exhibit C requirements and procedures when entering into these services.
- 2.6.1.2 The City may request a GMP Proposal for all or any portion of the Project and at any time during the design phase. Any GMP Proposals submitted by the CM@Risk will be based on and consistent with the most current Control Estimate and cost tracking report at the time of the request, and include updated information for any new clarifications or new assumptions upon which the GMP Proposal(s) are based.

2.6.2 Guaranteed Maximum Price is comprised of the following not-to-exceed cost reimbursable or lump sum amounts defined below.

- 2.6.2.1 The Cost of the Work is actual costs and is a not-to-exceed, reimbursable amount.
- 2.6.2.2 Any costs which comprise the Cost of Work, which are also set forth in the Exhibit "Y" – General Conditions Costs, shall not exceed the total amount shown in aggregate therein for such expenditures. However, any single line item in General Conditions, with the sole exceptions of those included in "Weather Protection" and "Travel and Subsistence", may be exceeded if offset by the aggregate of corresponding or greater underages at other line items, and the total cost for General Conditions is not exceeded.
- 2.6.2.3 The Construction Fee is 8 % of the Cost of the Work.
- 2.6.2.4 CM@Risk's Contingency is an amount the CM@Risk may use under the following conditions: (1) at its discretion for increases in the Cost of the Work, or (2) with written approval of the City for increases in General Condition Costs. CM@Risk's Contingency is assumed to be a direct project cost so will receive all markups at the time of GMP submission. Under no circumstance is the CM@Risk's Construction Contingency to be used by the Owner for increases in the scope, quality or quantity of the Work; nor by the CM@Risk for correcting nonconforming Work; Work items discovered during the Construction Phase not to be coordinated among the Subcontractor's scope of work due to an oversight of the CM@Risk; or similar CM@Risk's errors or omissions.
- 2.6.2.5
- 2.6.2.6 Taxes, if applicable, are deemed to include all sales, use, consumer, and other taxes which are legally enacted when negotiations of the GMP were concluded, whether or not yet effective or merely scheduled to go into effect. Taxes are actual costs and are included as a Cost of the Work.

- 2.6.3 Owner's Contingency are funds to be used at the discretion of the Owner to cover any increases in Project costs that result from Owner directed changes or unforeseen site conditions. Owner's Contingency will be added to the GMP amount provided by the CM@Risk, the sum of which will be the full contract price for construction. Markups for Construction Fee and taxes will be applied by the CM@Risk at the time that Owner's Contingency is used.
- 2.6.4 GMPs are cumulative including CM@Risk Contingency. The amount of CM@Risk Contingency for each GMP amendment will be negotiated separately and shall reflect the CM@Risk's risk from that point in the project forward.
- 2.6.5 The CM@Risk will prepare its GMP in accordance with the City's request for GMP Proposal requirements based on the most current completed plans and specifications at that time. The CM@Risk shall provide a list of drawings and specifications upon which its proposed GMP is based. These documents will be identified as the GMP Plans and Specifications.
- 2.6.6 An updated/revised Project Schedule will be included with any GMP Proposal(s) that reflects the GMP Plans and Specifications. Any such Project Schedule updates/revisions will continue to comply with the requirements of paragraph 2.3.
- 2.6.7 GMP savings resulting from a lower actual project cost than anticipated by the CM@Risk remaining at the end of the project will revert to City.
- 2.6.7.1 GMP Proposal(s) Review and Approval
- 2.6.7.2 The CM@Risk will meet with the City and Design Professional to review the GMP Proposal(s) and the written statement of its basis. As part of the statement of basis, the CM@Risk shall identify and justify any costs that are significantly different than the latest cost estimate provided by the CM@Risk. In the event the City or Design Professional discovers inconsistencies or inaccuracies in the information presented, the CM@Risk will make adjustments as necessary to the GMP Proposal, its basis or both.
- 2.6.7.3 The City upon receipt of any GMP proposal from the CM@Risk, may submit the GMP Plans and Specifications to an independent third party or to the Design Professional for review and verification. The third party or Design Professional will develop an independent estimate of the Cost of the Work and review the Project Schedule for the associated scope of the GMP Proposals.
- 2.6.7.4 If the CM@Risk GMP Proposal is greater than the independent third party or Design Professional's estimate, the City may require the CM@Risk to reconfirm its GMP Proposal. The CM@Risk will accept the independent third party's or Design Professional's estimate for the Cost of Work as part of his GMP or present a report within seven days of a written request to the City identifying, explaining, and substantiating the differences. The CM@Risk may be requested to, or at its own discretion, submit a revised GMP Proposal for consideration by the City. At that time, the City may do one of the following.
 - (a) Accept the CM@Risk original or revised GMP Proposal, if within the City's budget, without comment.
 - (b) Accept the CM@Risk original or revised GMP Proposal that exceeds the City's budget and indicate in writing to the CM@Risk that the Project Budget has been increased to fund the differences.
 - (c) Reject the CM@Risk's original or revised GMP Proposal because it exceeds the City's budget, and/or the independent third parties or Design Professional's estimate, in which event, the City may terminate this Contract and/or elect to not enter into a separate contract with the CM@Risk for the construction phase associated with the scope of Work reflected in the GMP Proposal.
- 2.6.7.5 If during the review and negotiation of GMP Proposals design changes are required, the City will authorize and cause the Design Professional to revise the Construction Documents to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in the final approved GMP Proposal. Such revised Construction Documents will be furnished to the CM@Risk. The CM@Risk will promptly notify the Design Professional and City in writing if any such revised Construction Documents are inconsistent with the agreed-upon assumptions and clarifications.

2.7 MAJOR SUBCONTRACTOR AND MAJOR SUPPLIER SELECTIONS

- 2.7.1 The selection of major Subcontractors and major Suppliers may occur prior to submission of a GMP Proposal. Major Subcontractors may be selected based on qualifications or a combination of qualifications and price. Subcontractors shall not be selected based on price alone. Except as noted below, the selection of major Subcontractors/Suppliers is the responsibility of the CM@Risk. In any case, the CM@Risk is solely responsible for the performance of the selected Subcontractors/Suppliers.
- 2.7.1.1 The CM@Risk will prepare a Subcontractor/Supplier selection plan and submit the plan to the City for approval. This subcontractor selection plan shall identify those subcontractor trades anticipated to be pre-qualified by qualifications and competitive bid in accordance with Section 2.7.2 and subcontractor trades will not be pre-qualified through a formalized qualifications-based selection process (competitively bid only). The subcontractor selection plan must be consistent with the selection requirements included in this Contract and the provisions of Chapter 2269 of the Texas Government Code.
- 2.7.2 Selection by qualifications and competitive bid - The CM@Risk shall apply the subcontractor selection plan in the evaluation

of the qualifications of a Subcontractor(s) or Supplier(s) and provide the City with its process to prequalify prospective subcontractors and suppliers. All Work for major Subconsultants and major Suppliers shall then be competitively bid to the prequalified Subcontractors. Competitive bids may occur prior to or after the GMP Proposal(s).

- 2.7.2.1 The CM@Risk will develop Subcontractor and Supplier interest, submit the names of a minimum of three qualified Subcontractors or Suppliers for each trade in the Project for approval by the City and solicit bids for the various Work categories. If there are not three qualified Subcontractors/Suppliers available for a specific trade or there are extenuating circumstances warranting such, the CM@Risk may request approval by the City to submit less than three names. Without prior written notice to the City, no change in the recommended Subcontractors/Suppliers will be allowed.
- 2.7.2.2 If the City objects to any nominated Subcontractor/Supplier or to any recommended self-performed Work bidding opportunities for good reason, the CM@Risk will nominate a substitute Subcontractor/Supplier that is acceptable to the City.
- 2.7.2.3 The CM@Risk will advertise and distribute Drawings and Specifications, and when appropriate, conduct a prebid conference with prospective Subcontractors and Suppliers.
- 2.7.2.4 If the CM@Risk or a Related Party desires to self-perform certain portions of the Work, it will request to be one of the approved Subcontractor bidders for those specific bid packages. The CM@Risk's bid will be due to the City one full business day before the date and time specified for the other subcontractors' bids to be due, and then evaluated in accordance with the process identified below. If events warrant and the City concurs that in order to ensure compliance with the Project Schedule and/or cost, or if a Subcontractor is terminated the CM@Risk may self-perform Work without re-bidding the Work.
- 2.7.2.5 If after the CM@Risk having followed the stipulations in this Agreement, any of the costs to be reimbursed are contemplated to arise from a transaction between the CM@Risk and a Related Party, the CM@Risk shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the CM@Risk shall procure the Work, equipment, goods, or service, from the Related Party, as a Subcontractor. If the Owner fails to authorize the transaction in writing, the CM@Risk shall procure the Work, equipment, goods, or service from some person or entity other than a Related Party.
- 2.7.2.6 The CM@Risk shall request the pre-qualified subcontractors to provide a detailed bid for the services requested. The subcontractor bid, provided on the subcontractors' letterhead or the CM@Risk's bid form, shall contain sufficient information (i.e. assumptions, clarifications, exclusions and/or unit costs/amounts) to allow an evaluation of the reasonableness of bid costs. The CM@Risk shall receive, open, record and evaluate the bids. The apparent low bidders will be interviewed to determine the responsiveness of their proposals. In evaluating the responsiveness of bid proposals the CM@Risk, in addition to bid price, may consider the following factors: past performance on similar projects, financial soundness; qualifications and experience of personnel assigned, quality management plan, approach or understanding of the Work to be performed, and performance schedule to complete the Work. The final evaluation of Subcontractor/Supplier bids will be done with the City Representative in attendance to observe and witness the process. The CM@Risk will resolve any Subcontractor/Supplier bid withdrawal, protest or disqualification in connection with the award at no increase in the Cost of the Work.
- 2.7.2.7 Any portion of the CM@Risk's evaluation of Subcontractor and supplier bids by the CM@Risk may be attended by the Design Professional and City, at their option, and they will be given complete access to all aspects of the process. Such participation by the Design Professional and City, or their receipt of copies of Subcontractors' and suppliers' bids and proposals shall not impose any burden of review or analysis on them or relieve the CM@Risk of its sole responsibility for the CM@Risk's, Subcontractors' and suppliers' performance under this Agreement.
- 2.7.3 The CM@Risk will be required to prepare two different reports on the subcontracting process.
 - 2.7.3.1 Within fifteen Days after each major Subcontractor/Supplier bid opening process, the CM@Risk will prepare a report for the City's review and approval identifying the recommended Subcontractors/Supplier for each category of Work. The report will provide (a) the name of the recommended Subcontractor/Supplier and the amount of the Subcontractor/Supplier bid for each subagreement, (b) the sum of all recommended Subcontractor/Supplier bids received, (c) a copy of the bids received from each Subcontractor, and (d) trade work and its cost that the CM@Risk intends to self-perform, if any.
 - 2.7.3.2 Upon completion of the Subcontractor/Supplier bidding process, the CM@Risk shall submit a summary report to the City of the entire Subcontractor/Supplier selection process. The report will indicate, by bid process, all Subcontractors/Suppliers contacted to determine interest, the Subcontractors/Suppliers solicited, the bids received, and costs negotiated, and the recommended Subcontractors/Suppliers for each category of Work.
- 2.7.4 The approved Subcontractors/Suppliers will provide a Schedule of Values that reflects their final accepted bid proposal, which will be used to create the overall Project Schedule of Values.
- 2.7.5 If after receipt of sub-bids or after award of Subcontractors and Suppliers, the City objects to any nominated Subcontractor/Supplier or to any self-performed Work for good reason, the CM@Risk will nominate a substitute Subcontractor or Supplier, preferably, if such option is still available, from those who submitted Subcontractor bids for the Work affected. Once such substitute

Subcontractors and Suppliers are consented to by the City, the CM@Risk's proposed GMP for the Work or portion thereof will be correspondingly adjusted to reflect any higher or lower costs from any such substitution.

- 2.7.6 Promptly after receipt of the Notice of Intent to Award, the City will conduct a pre-award conference with the CM@Risk and other Project Team members. At the pre-award conference, the CM@Risk will (a) review the nominated slate of Subcontractors and Suppliers and discuss any concerns with or objections that the City has to any nominated Subcontractor or Supplier; (b) discuss City concerns relating to any proposed self-performed Work; (c) review the CM@Risk's proposed Contract Price for the Work during the construction phase; (d) discuss the conditions, if any, under which the City will agree to leave any portion of the remaining CM@Risk Contingency within the Contract Price for the construction phase Work; (e) resolve possible time frames for the Date of commencement of the Contract Time for the construction phase Work; (f) schedule the pre-construction conference; and (g) discuss other matters of importance.

ARTICLE 3 – PERIOD OF SERVICES

- 3.1 The design phase services described in this Contract will be performed by CM@Risk in accordance with the most current update/revised Project Schedule. Failure on the part of the CM@Risk to adhere to the Project Schedule requirements for activities for which it is responsible will be sufficient grounds for termination of this Contract by the City.
- 3.1.1 Upon failure to adhere to the approved schedule, City may provide written notice to CM@Risk that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within three days of CM@Risk's receipt of such notice.
- 3.2 If the date of performance of any obligation or the last day of any time period provided for herein should fall on a Saturday, Sunday, or holiday for the City, then said obligation will be due and owing, and said time period will expire, on the first day thereafter which is not a Saturday, Sunday or legal City holiday. Except as may otherwise be set forth herein, any performance provided for herein will be timely made if completed no later than 5:00 p.m. (Denton time) on the day of performance.

ARTICLE 4 – CONTRACT AMOUNT AND PAYMENTS

4.1 CONTRACT AMOUNT

- 4.1.1 Based on the design phase services fee proposal submitted by the CM@Risk and accepted by the City (which by reference is made a part of this Contract); the City will pay the CM@Risk a lump sum fee in the amount of **\$1,500,000**.

Total Contract Amount, not to exceed, **\$1,500,000**

4.2 PAYMENTS

- 4.2.1 Requests for monthly payments by the CM@Risk for design phase services will be submitted in a form acceptable to the City and will be accompanied by a progress report, detailed invoices and receipts, if applicable. Any requests for payment will include, as a minimum, a narrative description of the tasks accomplished during the billing period, a listing of any Deliverables submitted, and copies of any Subconsultants' requests for payment, plus similar narrative and listings of Deliverables associated with their Work. Payment for services negotiated as a lump sum shall be made in accordance with the percentage of work completed during the preceding month. Services negotiated as a not-to-exceed fee will be paid in accordance with the work effort expended on that service during the preceding month.
- 4.2.2 The fees for additional design phase services provided by the CM@Risk and any Subcontractors or Subconsultants will be based upon the hourly rate schedule included as Exhibit B, attached.
- 4.2.3 The CM@Risk will pay all sums due Subconsultants for services and reimbursable expenses within 10 calendar days after the CM@Risk has received payment for those services from the City. In no event will the City pay more than 95 percent of the Contract Amount until final acceptance of all design phase services, and award of the final approved GMP for the entire Project by City Council.
- 4.2.4 **THE CM@RISK AGREES THAT NO CHARGES OR CLAIMS FOR COSTS OR DAMAGES OF ANY TYPE WILL BE MADE BY IT FOR ANY DELAYS OR HINDRANCES BEYOND THE REASONABLE CONTROL OF THE CITY DURING THE PROGRESS OF ANY PORTION OF THE SERVICES SPECIFIED IN THIS CONTRACT. SUCH DELAYS OR HINDRANCES, IF ANY, WILL BE SOLELY COMPENSATED FOR BY AN EXTENSION OF TIME FOR SUCH REASONABLE PERIOD AS MAY BE MUTUALLY AGREED BETWEEN THE PARTIES. IT IS UNDERSTOOD AND AGREED, HOWEVER, THAT PERMITTING THE CM@RISK TO PROCEED TO COMPLETE ANY SERVICES, IN WHOLE OR IN PART AFTER THE DATE TO WHICH THE TIME OF COMPLETION MAY HAVE BEEN EXTENDED, WILL IN NO WAY ACT AS A WAIVER ON THE PART OF THE CITY OF ANY OF ITS LEGAL RIGHTS HEREIN.**
- 4.2.5 If any service(s) executed by the CM@Risk is abandoned or suspended in whole or in part, for a period of more than 180 days through no fault of the CM@Risk, the CM@Risk is to be paid for the services performed prior to the abandonment or suspension.

4.3 ADDITIONAL DESIGN PHASE SERVICES

- 4.3.1 The following additional services will be required for the successful completion of this Project. Mark- ups are not authorized and only the reimbursables specifically agreed to by parties will be reimbursed as authorized herein:
- 4.3.1.1 When authorized by the City, the CM@Risk will be entitled to reimbursement at cost for direct expenses related to its performance of design phase services.

ARTICLE 5 - CITY'S RESPONSIBILITIES

- 5.1 The City, at no cost to the CM@Risk, will furnish the following information:
- 5.1.1 One copy of data the City determines pertinent to the work. However, the CM@Risk will be responsible for searching the records and requesting information it deems reasonably required for the Project.
- 5.1.2 All available data and information pertaining to relevant policies, standards, criteria, studies, etc.
- 5.1.3 The name of the City employee or City's representative who will serve as the Project Manager during the term of this Contract. The Project Manager has the authority to administer this Contract and will monitor the CM@Risk's compliance with all terms and conditions stated herein. All requests for information from or decisions by the City on any aspect of the work or Deliverables will be directed to the Project Manager.
- 5.2 The City additionally will:
- 5.2.1 Contract separately with one or more design professionals to provide architectural and/or engineering design services for the Project. The scope of services for the Design Professional will be provided to the CM@Risk for its information. The CM@Risk will have no right, to limit or restrict any changes of such services that are otherwise mutually acceptable to the City and Design Professional.
- 5.2.2 Supply, without charge, all necessary copies of programs, reports, drawings, and specifications reasonably required by the CM@Risk except for those copies whose cost has been reimbursed by the City.
- 5.2.3 Provide the CM@Risk with adequate information in its possession or control regarding the City's requirements for the Project.
- 5.2.4 Give prompt written notice to the CM@Risk when the City becomes aware of any default or defect in the Project or non-conformance with the Drawings and Specifications, or any of the services required hereunder. Upon notice of failure to perform, the City may provide written notice to CM@Risk that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within three days of CM@Risk's receipt of such notice.
- 5.2.5 Notify the CM@Risk of changes affecting the budget allocations or schedule.
- 5.3 The City's Project Manager will have authority to approve the Project Budget and Project Schedule, and render decisions and furnish information the City's Project Manager deems appropriate to the CM@Risk.

ARTICLE 6 – CONTRACT CONDITIONS

6.1 PROJECT DOCUMENTS AND COPYRIGHTS

- 6.1.1 City Ownership of Project Documents: All work products (electronically or manually generated) including but not limited to: cost estimates, studies, design analyses, Computer Aided Drafting and Design (CADD) digital files, and other related documents which are prepared specifically in the performance of this Contract (collectively referred to as Project Documents) are to be and remain the property of the City and are to be delivered to the Project Manager before the final payment is made to the CM@Risk. Nonetheless, in the event these Projects Documents are altered, modified or adapted without the written consent of the CM@Risk, which consent the CM@Risk will not unreasonably withhold, the City agrees to hold the CM@Risk harmless to the extent permitted by law, from the legal liability arising out of and or resulting from the City's alteration, modification or adaptation of the Project Documents.
- 6.1.2 CM@Risk to Retain Copyrights: The copyrights, patents, trade secrets or other intellectual property rights associated with the ideas, concepts, techniques, inventions, processes or works of authorship developed or created by the CM@Risk, its Subconsultants or personnel, during the course of performing this Contract or arising out of the Project will belong to the CM@Risk, but will remain available for use by the City for this Project under the terms of this Contract.
- 6.1.3 License to City for Reasonable Use: The CM@Risk hereby grants, and will require its Subconsultants to grant, a license to the City, its agents, employees, and representatives for an indefinite period of time to reasonably use, make copies, and distribute as appropriate the Project Documents, works or Deliverables developed or created for the Project and this

Contract. This license will also include the making of derivative works. In the event that the derivative works require the City to alter or modify the Project Documents, then paragraph 6.1.1 applies.

- 6.1.4 Documents to Bear Seal: When applicable and required by state law, the CM@Risk and its Subconsultants will endorse by a Texas professional seal all plans, works, and Deliverables prepared by them for this Contract.

6.2 COMPLETENESS AND ACCURACY OF CM@RISK'S WORK

- 6.2.1 The CM@Risk will be responsible for the completeness and accuracy of its reviews, reports, supporting data, and other design phase Deliverables prepared or compiled pursuant to its obligations under this Contract and will at its sole own expense correct its work or Deliverables. Any damage incurred by the City as a result of additional construction cost caused by such willful or negligent errors, omissions or acts shall be chargeable to the CM@Risk to the extent that such willful or negligent errors, omissions and acts fall below the standard of care and skill that a professional CM@Risk in Denton, Texas would exercise under similar conditions. The fact that the City has accepted or approved the CM@Risk's work or Deliverables will in no way relieve the CM@Risk of any of its responsibilities under the Contract, nor does this requirement to correct the work or Deliverable constitute a waiver of any claims or damages otherwise available by law or Contract to the City. Correction of errors, omissions and acts discovered on architectural or engineering plans and specifications shall be the responsibility of the Design Professional.

6.3 ALTERATION IN CHARACTER OF WORK

- 6.3.1 In the event an alteration or modification in the character of Work or Deliverable results in a substantial change in this Contract, thereby materially increasing or decreasing the scope of services, cost of performance, or Project Schedule, the Work or Deliverable will nonetheless be performed as directed by the City. However, before any altered or modified Work begins, a Change Order or amendment will be approved and executed by the City and the CM@Risk. Such Change Order or amendment will not be effective until approved by the City.
- 6.3.2 Additions to, modifications, or deletions from the Project provided herein may be made, and the compensation to be paid to the CM@Risk may accordingly be adjusted by mutual agreement of the contracting parties.
- 6.3.3 No claim for extra work done or materials furnished by the CM@Risk will be allowed by the City except as provided herein, nor will the CM@Risk do any work or furnish any material(s) not covered by this Contract unless such work or material is first authorized in writing. Work or material(s) furnished by the CM@Risk without such prior written authorization will be the CM@Risk's sole jeopardy, cost, and expense, and the CM@Risk hereby agrees that without prior written authorization no claim for compensation for such work or materials furnished will be made.

6.4 DATA CONFIDENTIALITY

- 6.4.1 As used in the Contract, data means all information, whether written or verbal, including plans, photographs, studies, investigations, audits, analyses, samples, reports, calculations, internal memos, meeting minutes, data field notes, work product, proposals, correspondence, and any other similar documents or information prepared by or obtained by the CM@Risk in the performance of this Contract.
- 6.4.2 The parties agree that all data, including originals, images, and reproductions, prepared by, obtained by, or transmitted to the CM@Risk in connection with the CM@Risk's performance of this Contract is confidential and proprietary information belonging to the City to the extent allowed by Texas law.
- 6.4.3 The CM@Risk will not divulge data to any third party without prior written consent of the City. The CM@Risk will not use the data for any purposes except to perform the services required under this Contract. These prohibitions will not apply to the following data:
- 6.4.3.1 Data which was known to the CM@Risk prior to its performance under this Contract unless such data was acquired in connection with work performed for the City.
- 6.4.3.2 Data which was acquired by the CM@Risk in its performance under this Contract and which was disclosed to the CM@Risk by a third party, who to the best of the CM@Risk's knowledge and belief, had the legal right to make such disclosure and the CM@Risk is not otherwise required to hold such data in confidence; or
- 6.4.3.3 Data, which is required to be disclosed by the CM@Risk by virtue of law, regulation, or court, including but not limited to the Texas Public Information Act, Texas Government Code Chapter 552.
- 6.4.4 In the event the CM@Risk is required or requested to disclose data to a third party, or any other information to which the CM@Risk became privy as a result of any other contract with the City, the CM@Risk will first notify the City as set forth in this Article of the request or demand for the data. The CM@Risk will timely give the City sufficient facts, such that the City can have a meaningful opportunity to either first give its consent or take such action that the City may deem appropriate to protect such data or other information from disclosure.
- 6.4.5 The CM@Risk, unless prohibited by law, within ten calendar days after completion of services for a third party on real or personal property owned or leased by the City, will promptly deliver, as set forth in this section, a copy of all data to the

City. All data will continue to be subject to the confidentiality agreements of this Contract.

- 6.4.6 The CM@Risk assumes all liability for maintaining the confidentiality of the data in its possession and agrees to compensate the City if any of the provisions of this section are violated by the CM@Risk, its employees, agents or Subconsultants. Solely for the purposes of seeking injunctive relief, it is agreed that a breach of this section will be deemed to cause irreparable harm that justifies injunctive relief in court.

6.5 PROJECT STAFFING

- 6.5.1 Prior to the start of any work or Deliverable under this Contract, the CM@Risk will submit to the City, an organization chart for the CM@Risk staff and Subconsultants and detailed resumes of key personnel listed in its response to the City's Request for Qualifications or subsequent fee proposals (or revisions thereto), that will be involved in performing the services prescribed in the Contract. Unless, otherwise informed, the City hereby acknowledges its acceptance of such personnel to perform such services under this Contract. In the event the CM@Risk desires to change such key personnel from performing such services under this Contract, the CM@Risk will submit the qualifications of the proposed substituted personnel to the City for prior approval. Key personnel will include, but are not limited to, principal-in-charge, project manager, superintendent, project director or those persons specifically identified to perform services of cost estimating, scheduling, value engineering, and procurement planning.

- 6.5.2 The CM@Risk will maintain an adequate number of competent and qualified persons, as determined by the City, to ensure acceptable and timely completion of the scope of services described in this Contract throughout the period of those services. If the City objects, with reasonable cause, to any of the CM@Risk's staff, the CM@Risk will take prompt corrective action acceptable to the City and, if required, remove such personnel from the Project and replace with new personnel acceptable to the City.

6.6 INDEPENDENT CONTRACTOR

- 6.6.1 The CM@Risk is and will be an independent contractor and whatever measure of control the City exercises over the work or Deliverable pursuant to the Contract will be as to the results of the work only. No provision in this Contract will give or be construed to give the City the right to direct the CM@Risk as to the details of accomplishing the work or Deliverable. These results will comply with all applicable laws and ordinances.

6.7 SUBCONSULTANTS

- 6.7.1 Prior to beginning the work or Deliverable, the CM@Risk will furnish the City for approval, the names of all Subconsultants, if any, to be used on this Project. Subsequent changes are subject to the approval of the City.

6.8 TERMINATION

- 6.8.1 At the time of City Council has authorized all construction phase services for this Project, this Preconstruction Phase Contract shall terminate.
- 6.8.2 The City and the CM@Risk hereby agree to the full performance of the covenants contained herein, except that the City reserves the right, at its discretion and without cause, to terminate or abandon any or all services provided for in this Contract, or abandon any portion of the Project for which services have been performed by the CM@Risk.
- 6.8.3 In the event the City abandons any or all of the services or any part of the services as herein provided, the City will so notify the CM@Risk in writing, and the CM@Risk will immediately after receiving such notice is to discontinue advancing the Work specified under this Contract and mitigate the expenditure, if any, of costs resulting from such abandonment or termination.
- 6.8.4 The CM@Risk, upon such termination or abandonment, will promptly deliver to the City all reports, estimates and other work or Deliverable entirely or partially completed, together with all unused materials supplied by the City.
- 6.8.5 The CM@Risk will appraise the work completed and submit an appraisal to the City for evaluation. The City will have the right to inspect the CM@Risk's work or Deliverable to appraise the work completed.
- 6.8.6 The CM@Risk will receive compensation in full for services satisfactorily performed to the date of such termination and the reasonable costs and expenses attributable to such termination. The fee will be paid in accordance with Article 4 of this Contract and will be an amount mutually agreed upon by the CM@Risk and the City. If there is no mutual agreement, the final determination will be made in accordance with paragraph 6.9, "Disputes". However, in no event will the fee exceed that set forth in Article 4 or as amended in accordance with paragraph 6.3, "Alteration in Character of Work". The City will make the final payment within sixty Days after the CM@Risk has delivered the last of the partially or otherwise completed work items and the final fee has been agreed upon.

6.9 DISPUTES

- 6.9.1 In any unresolved dispute arising out of an interpretation of this Contract or the duties required therein, the final determination at the administrative level will be made by the City Manager or their designee.

6.10 WITHHOLDING PAYMENT

- 6.10.1 The City reserves the right to withhold funds from the City's progress payments up to the amount equal to the claims the City may have against the CM@Risk, until such time that a settlement on those claims has been reached.

6.11 RECORDS/AUDIT

- 6.11.1 Records of the CM@Risk's direct personnel payroll, reimbursable expenses pertaining to this Project, and records of accounts between the City and CM@Risk will be kept on a generally recognized accounting basis and shall be available for up to three years following final completion of the Project. The City, its authorized representative, and/or the appropriate federal agency, reserve the right to audit the CM@Risk's records to verify the accuracy and appropriateness of all pricing data, including data used to negotiate this Contract and any Change Orders. The City reserves the right to decrease Contract Amount and/or payments made on this Contract if, upon audit of the CM@Risk's records, the audit discloses the CM@Risk has provided false, misleading, or inaccurate cost and pricing data.
- 6.11.2 The CM@Risk will include a provision similar to paragraph 6.11.1 in all of its agreements with Subconsultants, Subcontractors, and Suppliers providing services under this Contract to ensure the City, its authorized representative, and/or the appropriate federal agency, has access to the Subconsultants', Subcontractors', and Suppliers' records to verify the accuracy of cost and pricing data. The City reserves the right to decrease Contract Amount and/or payments made on this Contract if the above provision is not included in Subconsultant, Subcontractor, and Supplier contracts, and one or more of those parties do not allow the City to audit their records to verify the accuracy and appropriateness of pricing data.

6.12 INDEMNIFICATION

CM@RISK AGREES TO INDEMNIFY AND HOLD HARMLESS THE CITY OF DENTON, ITS OFFICERS, AGENTS AND EMPLOYEES, AND ANY JURISDICTION OR AGENCY ISSUING PERMITS FOR ANY WORK INCLUDED IN THE PROJECT, THEIR OFFICIALS, OFFICERS, AGENTS AND EMPLOYEES, (HEREINAFTER REFERRED TO AS "INDEMNITEES", FROM ALL SUITS AND CLAIMS, INCLUDING ATTORNEY'S FEES AND COST OF LITIGATION, ACTIONS, LOSS, DAMAGE, EXPENSE, COST OR CLAIMS OF ANY CHARACTER OR ANY NATURE ARISING OUT OF THE WORK DONE IN FULFILLMENT OF THE TERMS OF THE CONTRACT DOCUMENTS OR ON ACCOUNT OF ANY ACT, CLAIM OR AMOUNT ARISING OR RECOVERED UNDER WORKER'S COMPENSATION LAW OR ARISING OUT OF THE FAILURE OF THE CM@RISK, ITS OFFICERS, EMPLOYEES, AGENTS, OR ITS SUBCONTRACTORS OR THE SUBCONTRACTORS' OFFICERS, EMPLOYEES OR AGENTS, TO CONFORM TO ANY STATUTES, ORDINANCES, REGULATION, LAW OR COURT DECREE. IT IS AGREED THAT THE CM@RISK WILL BE RESPONSIBLE FOR PRIMARY LOSS INVESTIGATION, DEFENSE, AND JUDGMENT COSTS WHERE THIS INDEMNIFICATION PROVISION APPLIES. IN CONSIDERATION OF THE AWARD OF THIS CONTRACT, THE CM@RISK AGREES TO WAIVE ALL RIGHTS OF SUBROGATION AGAINST THE CITY, ITS OFFICIALS, OFFICERS, AGENTS AND EMPLOYEES FOR LOSSES ARISING FROM THE WORK PERFORMED BY THE CM@RISK, ITS OFFICERS, EMPLOYEES, AGENTS, OR ITS SUBCONTRACTORS OR THE SUBCONTRACTORS' OFFICERS, EMPLOYEES OR AGENTS, OR ITS SUBCONTRACTORS FOR THE CITY. THIS INDEMNIFICATION PROVISION IS SPECIFICALLY INTENDED TO OPERATE AND BE EFFECTIVE EVEN IF IT IS ALLEGED OR PROVEN THAT ALL OR SOME OF THE DAMAGES BEING SOUGHT WERE CAUSED, IN WHOLE OR IN PART, BY ANY ACT, OMISSION OR NEGLIGENCE OF THE CITY. THIS INDEMNIFICATION PROVISION IS SPECIFICALLY INTENDED TO OPERATE AND BE EFFECTIVE EVEN IF IT IS ALLEGED OR PROVEN THAT ALL OR SOME OF THE DAMAGES BEING SOUGHT WERE CAUSED, IN WHOLE OR IN PART, BY ANY ACT, OMISSION OR NEGLIGENCE OF THE CITY.

6.13 NOTICES

- 6.13.1 Unless otherwise provided, any notice, request, instruction, or other document to be given under this Agreement by any party to any other party shall be in writing and shall be delivered in person or by courier or facsimile transmission or mailed by certified mail, postage prepaid, return receipt requested and shall be deemed given upon (a) confirmation of receipt of

a facsimile transmission, (b) confirmed delivery by hand or standard overnight mail, or (c) upon the expiration of three (3) business days after the day mailed by certified mail, as follows:

To City:	City of Denton Purchasing Manager – File 8590 901B Texas Street Denton, TX 76201
To CM@Risk	Archer Western Construction LLC Grady Hill 1411 Greenway Drive Irving, TX 75038
Copy to: Design Professional	Freese and Nichols, Inc. James Naylor 101 S. Locust St, Suite 202 Denton, TX 76201

Or to other such place and with such other copies as either Party may designate as to itself by written notice to the other Party. Rejection, any refusal to accept, or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice as of the date of such rejection, refusal, or inability to deliver.

6.14 EQUAL OPPORTUNITY/AFFIRMATIVE ACTION

- 6.14.1 The CM@Risk will comply with the provisions of this Contract, pertaining to discrimination and accepting applications or hiring employees. The CM@Risk will not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, gender, national origin, age, or disability nor otherwise commit an unfair employment practice. The CM@Risk will take affirmative action to ensure that applicants are employed, and employees are dealt with during employment, without regard to their race, color, religion, gender or national origin, age or disability. Such action will include but not be limited to the following: employment, promotion, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship as well as all other labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this Contract. The CM@Risk further agrees that this clause will be incorporated in all Subcontracts, and Subconsultants and Suppliers contracts associated with the Project and entered into by the CM@Risk.

6.15 COMPLIANCE WITH FEDERAL LAWS

- 6.15.1 The CM@Risk understands and acknowledges the applicability of the Americans With Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989 to it. The CM@Risk agrees to comply with these and all laws in performing this Contract and to permit the City to verify such compliance.

6.16 CONFLICT OF INTEREST

- 6.16.1 To evaluate and avoid potential conflicts of interest, the CM@Risk will provide written notice to the City, as set forth in this section, of any work or services performed by the CM@Risk for third parties that may involve or be associated with any real property or personal property owned or leased by the City. Such notice will be given seven business days prior to commencement of the Project by the CM@Risk for a third party, or seven business days prior to an adverse action as defined below. Written notice and disclosure will be sent to:

City of Denton
Attn: Purchasing Manager – Contract 8590
Purchasing
901B Texas Street
Denton, TX 76209

- 6.16.2 Actions considered to be adverse to the City under this Contract include but are not limited to:

- (a) Using data as defined in the Contract, acquired in connection with this Contract to assist a third party in pursuing administrative or judicial action against the City.
- (b) Testifying or providing evidence on behalf of any person in connection with an administrative or judicial action against the City; and
- (c) Using data to produce income for the CM@Risk or its employees independently of performing the services under this Contract, without the prior written consent of the City.

- 6.16.3 The CM@Risk represents that except for those persons, entities and projects previously identified in writing to the City, the services to be performed by the CM@Risk under this Contract are not expected to create an interest with any person,

entity, or third party project that is or may be adverse to the interests of the City.

- 6.16.4 The CM@Risk's failure to provide a written notice and disclosure of the information as set forth in this section will constitute a material breach of this Contract.

6.17 CONTRACTOR'S LICENSE

- 6.17.1 Prior to award of the Contract, the CM@Risk must provide to the City's Project Manager, its Contractor's License Classification and number, if any, and its Federal Tax I.D. number.

6.18 SUCCESSORS AND ASSIGNS

- 6.18.1 The City and the CM@Risk will each bind itself, and their partners, successors, assigns, and legal representatives to the other party to this Contract and to the partners, successors, assigns, and legal representatives of such other party in respect to all covenants of this Contract. Neither the City nor the CM@Risk will assign, sublet, or transfer its interest in this Contract without the written consent of the other. In no event will any contractual relation be created or be construed to be created as between any third party and the City.

6.19 FORCE MAJEURE

- 6.19 The City of Denton, the CM@Risk, and any Subcontractors shall not be responsible for performance under this 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, the CM@Risk, and any Subcontractors. In the event of an occurrence under this Section, the City of Denton, the CM@Risk, and any Subcontractors will be excused from any further performance or observance of the requirements so affected for as long as such circumstances prevail and the City of Denton, the CM@Risk, and any Subcontractors continues to use commercially reasonable efforts to recommence performance or observance whenever and to whatever extent possible without delay. The CM@Risk and any Subcontractors shall immediately notify the City of Denton Project Manager by telephone (such telephone notice to be confirmed in writing within two (2) calendar days of the inception of such occurrence). A detailed report describing at a reasonable level of detail the circumstances causing the non-performance or delay in performance shall follow not later than five (5) calendar days from the first telephone notice to the City.

6.20 COVENANT AGAINST CONTINGENT FEES

- 6.20.1 The CM@Risk warrants that no person has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, and that no member of the City Council, or any employee of the City of Denton has any interest, financially, or otherwise, in the firm. The City of Denton will in the event of the breach or violation of this warranty, have the right to annul this Contract without liability, or at its discretion to deduct from the Contract Amount or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

6.21 NON-WAIVER PROVISION

- 6.21.1 The failure of either party to enforce any of the provisions of this Contract or to require performance by the other party of any of the provisions hereof will not be construed to be a waiver of such provisions, nor will it affect the validity of this Contract or any part thereof, or the right of either party to thereafter enforce each and every provision.

6.22 JURISDICTION

- 6.22.1 This Contract will be deemed to be made under and will be construed in accordance with and governed by the laws of the State of Texas, without regard to the conflicts or choice of law provisions thereof. Under the provisions of Chapter 272 of the Texas Local Government Code, the City has waived its immunity by entering into this Contract. However, the City's sovereign immunity is waived only to the extent set forth by statute. An action to enforce any provision of this Contract or to obtain any remedy with respect hereto will be brought and tried in the State District Courts located in Denton County, Texas, and for this purpose, each party hereby expressly and irrevocably consents to the sole and exclusive jurisdiction and venue of such Court.

6.23 SURVIVAL

- 6.23.1 All warranties, representations, and indemnifications by the CM@Risk will survive the completion or termination of this Contract.

6.24 MODIFICATION

- 6.24.1 No supplement, modification, or amendment of any term of this Contract will be deemed binding or effective unless in writing and signed by the parties hereto and in conformation with provisions of this Contract, except as expressly provided herein to the contrary.

6.25 SEVERABILITY

- 6.25.1 If any provision of this Contract or the application thereof to any person or circumstance will be invalid, illegal or

unenforceable to any extent, the remainder of this Contract and the application thereof will not be affected and will be enforceable to the fullest extent permitted by law.

6.26 INTEGRATION

- 6.26.1 This Contract contains the full agreement of the parties hereto. Any prior or contemporaneous written or oral agreement between the parties regarding the subject matter hereof is merged and superseded hereby.

6.27 TIME IS OF THE ESSENCE

- 6.27.1 Time of each of the terms, covenants, and conditions of this Contract is hereby expressly made of the essence.

6.28 THIRD PARTY BENEFICIARY

- 6.28.1 This Contract will not be construed to give any rights or benefits in the Contract to anyone other than the City and the CM@Risk. All duties and responsibilities undertaken pursuant to this Contract will be for the sole and exclusive benefit of the City and the CM@Risk and not for the benefit of any other party.

6.29 COOPERATION AND FURTHER DOCUMENTATION

- 6.29.1 The CM@Risk agrees to provide the City such other duly executed documents as may be reasonably requested by the City to implement the intent of this Contract.

6.30 CONFLICT IN LANGUAGE

- 6.30.1 All work or Deliverables performed will conform to all applicable City of Denton codes, ordinances and requirements as outlined in this Contract. If there is a conflict in interpretation between provisions in this Contract and any Exhibits, the provisions in this Contract will prevail.

6.31 CITY'S RIGHT OF CANCELLATION

- 6.31.1 All parties hereto acknowledge that this Contract is subject to cancellation by the City of Denton pursuant to the provisions of Texas Local Government Code Chapters 252 and 272, Texas Government Code Chapter 2269, and the general laws of the State of Texas.

6.32 CONFIDENTIALITY OF PLANS & SPECIFICATIONS

- 6.32.1 Any plans or specifications received by the CM@Risk regarding this project are for official use only. The CM@Risk may not share them with others except as required to fulfill contract obligations with the City of Denton.

- 6.32.2 Any plans the CM@Risk generates must include the following statement in the Title Block on every page: "These plans are for Official use only and may not be shared with others except as required to fulfill the obligations of CM@Risk's contract with the City of Denton. This document must be kept secure at all times."

- 6.33 **Immigration Nationality Act.** CM@Risk shall verify the identity and employment eligibility of its employees who perform work under this Agreement, including completing the Employment Eligibility Verification Form (I-9). Upon request by City, CM@Risk shall provide City with copies of all I-9 forms and supporting eligibility documentation for each CM@Risk employee who performs work under this Agreement. CM@Risk shall adhere to all federal and state laws as well as establish appropriate procedures and controls so that no services will be performed by any CM@Risk employee who is not legally eligible to perform such services. **CM@RISK SHALL INDEMNIFY CITY AND HOLD CITY HARMLESS FROM ANY PENALTIES, LIABILITIES, OR LOSSES DUE TO VIOLATIONS OF THIS PARAGRAPH BY CM@Risk's EMPLOYEES.** City, upon written notice to CM@Risk, shall have the right to immediately terminate this Agreement for violations of this provision by CM@Risk.

- 6.34 **Prohibition on Contracts with Companies Boycotting Israel.** CM@Risk acknowledges that in accordance with Chapter 2271 of the Texas Government Code, City is prohibited from entering into a contract with a company for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the Contract. The terms "boycott Israel" and "company" shall have the meanings ascribed to those terms in Section 808.001 of the Texas Government Code. ***By signing this agreement, CM@Risk certifies that CM@Risk's signature provides written verification to the City that CM@Risk: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the agreement.*** Failure to meet or maintain the requirements under this provision will be considered a material breach.

- 6.35 **Prohibition on Contracts with Companies Boycotting Certain Energy Companies.** CM@Risk acknowledges that in accordance with Chapter 2274 of the Texas Government Code, City is prohibited from entering into a contract with a company for goods or services unless the contract contains written verification from the company that it: (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the contract. The terms "boycott energy company" and "company" shall have the meanings ascribed to those terms in Section 809.001 of the Texas Government Code. ***By signing this agreement, CM@Risk certifies that CM@Risk's signature provides written***

verification to the City that CM@Risk: (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the agreement. Failure to meet or maintain the requirements under this provision will be considered a material breach.

- 6.36 **Prohibition on Contracts with Companies Boycotting Certain Firearm Entities and Firearm Trade Associations.** CM@Risk acknowledges that in accordance with Chapter 2274 of the Texas Government Code, City is prohibited from entering into a contract with a company for goods or services unless the contract contains written verification from the company that it: (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association. The terms "discriminate against a firearm entity or firearm trade association," "firearm entity" and "firearm trade association" shall have the meanings ascribed to those terms in Chapter 2274 of the Texas Government Code. ***By signing this agreement, CM@Risk certifies that CM@Risk's signature provides written verification to the City that CM@Risk: (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association.*** Failure to meet or maintain the requirements under this provision will be considered a material breach.
- 6.37 **Prohibition on Contracts with Companies Doing Business with Iran, Sudan, or a Foreign Terrorist Organization.** Sections 2252 and 2270 of the Texas Government Code restricts CITY from contracting with companies that do business with Iran, Sudan, or a foreign terrorist organization. ***By signing this agreement, CM@Risk certifies that CM@Risk's signature provides written verification to the City that CM@Risk, pursuant to Chapters 2252 and 2270, is not ineligible to enter into this agreement and will not become ineligible to receive payments under this agreement by doing business with Iran, Sudan, or a foreign terrorist organization.*** Failure to meet or maintain the requirements under this provision will be considered a material breach.
- 6.38 **Termination Right for Contracts with Companies Doing Business with Certain Foreign-Owned Companies.** The City of Denton may terminate this Contract immediately without any further liability if the City of Denton determines, in its sole judgment, that this Contract meets the requirements under Chapter 2274, and Contractor is, or will be in the future: (i) owned by or the majority of stock or other ownership interest of the company is held or controlled by individuals who are citizens of China, Iran, North Korea, Russia, or other designated country; (ii) directly controlled by the Government of China, Iran, North Korea, Russia, or other designated country; or (iii) is headquartered in China, Iran, North Korea, Russia, or other designated country.

ARTICLE 7 – INSURANCE REQUIREMENTS

The CM@Risk, Subcontractors and Subconsultants shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the CM@Risk, its agents, representatives, employees, or Subconsultants.

The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract.

The City in no way warrants that the minimum limits contained herein are sufficient to protect the CM@Risk from liabilities that might arise out of the performance of the work under this Contract by the CM@Risk, his agents, representative, employees, or Subconsultants. CM@Risk is free to purchase such additional insurance as may be determined necessary.

7.1 MINIMUM SCOPE AND LIMITS OF INSURANCE

7.1.1 CM@Risk will provide coverage at least as broad and with limits of liability not less than those stated below.

7.1.1.1 Commercial General Liability-Occurrence Form

Policy shall include bodily injury, property damage, broad form contractual liability and XCU coverage.

General Aggregate	\$2,000,000
Products-Completed Operations Aggregate	\$1,000,000
Personal & Advertising Injury	\$1,000,000
Each Occurrence	\$1,000,000

- (a) The policy shall be endorsed to include the following additional insured language: "The City of Denton shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the CM@Risk". Policy shall contain waiver of subrogation against the City of Denton.

7.1.1.2 Automobile Liability

Bodily injury and property damage for any owned, hired, and non-owned vehicles used in the performance of this Contract.

Combined Single Limit (CSL)	\$1,000,000
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- (a) The policy shall be endorsed to include the following additional insured language: "The City of Denton shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the CM@Risk", including automobiles owned, leased or hired or borrowed by the CM@Risk".

7.1.1.3 Workers Compensation and Employers Liability

Workers Compensation	Statutory
Employers Liability	
Each Accident	\$ 100,000
Disease – Each Employee	\$ 100,000
Disease – Policy Limit	\$ 500,000

- (a) Policy shall contain waiver of subrogation against the City of Denton.

7.2 ADDITIONAL INSURANCE REQUIREMENTS

- 7.2.1 The policies shall include, or be endorsed to include, the following provisions.

- 7.2.2 On insurance policies where the City of Denton is named as additional insured, the City of Denton shall be an additional insured to the full limits of liability purchased by the CM@Risk even if those limits of liability are in excess of those required by this Contract.

- 7.2.3 The CM@Risk's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.

- 7.2.4 Coverage provided by the CM@Risk shall not be limited to the liability assumed under the indemnification provisions of this Contract.

7.2.5 PROFESSIONAL LIABILITY INSURANCE

If CONTRACTOR, SUBCONTRACTOR, or SUBCONSULTANT is a licensed or certified person who renders professional services, then Professional Liability Insurance to provide coverage against any claim which the CONTRACTOR, SUBCONTRACTOR, or SUBCONSULTANT becomes legally obligated to pay as damages arising out of the performance of professional services caused by any negligent error, omission or act with minimum limits of \$1,000,000.00 per claim, \$2,000,000.00 annual aggregate.

7.3 SUBCONSULTANT INSURANCE

- 7.3.1 CM@Risk's certificate(s) shall include all subcontractors as additional insureds under its policies or subconsultants shall maintain separate insurance as determined by the CM@Risk, however, subconsultants limits of liability shall not be less than \$1,000,000 per occurrence / \$2,000,000 aggregate.

7.4 NOTICE OF CANCELLATION

- 7.4.1 Each insurance policy required by the insurance provisions of this Contract will provide the required coverage and not be suspended, voided, canceled, reduced in coverage or endorsed to lower limits except after thirty (30) days prior written notice has been given to the City. Such notice shall be sent by certified mail, return receipt requested and sent directly to the City's Purchasing Manager at:

City of Denton
Attn: Purchasing Manager – Contract 8590
Purchasing
901B Texas Street
Denton, TX 76209

7.5 ACCEPTABILITY OF INSURERS

- 7.5.1 Insurance is to be placed with insurers duly licensed or approved unlicensed companies in the State of Texas, and with an "A.M. Best" rating of not less than A-. The City in no way warrants that the above required minimum insurer rating is sufficient to protect the CM@Risk from potential insurer insolvency.

7.6 VERIFICATION OF COVERAGE

- 7.6.1 The CM@Risk will furnish the City, Certificates of Insurance (ACORD form or equivalent approved by the City) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

- 7.6.2 All certificates and endorsements are to be received and approved by the City before work commences. Each insurance

policy required by this Contract must be in effect at or prior to the earlier of commencement of work under this Contract and remain in effect for the duration of the Project. Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of contract.

7.6.3 All certificates required by this Contract will be sent directly to the Engineering and Architectural Services Department Contracts Administration Section contracts officer for this Project. The City project/contract number and project description shall be noted on the certificates of insurance. The City reserves the right to require complete, certified copies of all insurance policies required by this Contract, at any time. DO NOT SEND CERTIFICATES OF INSURANCE TO THE CITY'S RISK MANAGEMENT DIVISION.

7.7 APPROVAL

7.7.1 Any modification or variation from the insurance requirements in this Contract must be approved by the Law Department, whose decision will be final. Such action will not require a formal contract amendment but may be made by administrative action.

This Contract will be in full force and effect only when it has been approved and executed by the duly authorized City officials.

IN WITNESS WHEREOF, the parties hereto have executed this Contract on_____.

CITY OF DENTON, TEXAS

BY: _____

Printed Name

Title

CM@Risk
DocuSigned by:
BY: Daniel Walsh Jr.
FDEB784E59884BC...
Daniel Walsh Jr.
Printed Name
President
Title

ATTEST:
INGRID REX, INTERIM CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

DocuSigned by:
Marcella Lunn
BY: 4B070831B4AA438...

THIS AGREEMENT HAS BEEN
BOTH REVIEWED AND APPROVED
as to financial and operational obligations and business
terms.
Signed by:
Stephen D Gay
Stephen D Gay
SIGNATURE PRINTED NAME
General Manager
TITLE
Water Utilities and Street Operations
DEPARTMENT

EXHIBIT A – PROJECT DESCRIPTION

Following is a brief description of the Project for which the design phase service services specified in this Contract are to be performed:

Archer Western understand that the City of Denton intends to upgrade their existing Ray Roberts Water Treatment Plant from 20 MGD of production to 40 MGD by adding the following upgrades and features of work:

- Modifications and additions to the Raw Water Pump Station including electrical facilities.
- Additional Parallel Raw Water Pipeline with associated flow control and metering.
- Additional Flow Control and Metering for the existing Conventional Plant.
- Additional Pre-Ozone Contactor for the Membrane Plant along with associated ozone generation.
- Onsite Yard Piping with associated Flow Splitting Structures
- Additional Flocculation and Sedimentation Basins utilizing inclined Plate Settlers
- New Solids Handling Facilities for Centrifugal Dewatering with associated Sludge Pump Stations
- New Membrane Treatment Building with associated Feed Pump Station, CIP System, and Operations Facility.
- Additional Intermediate Ozone Contactor along with associated ozone generation.
- Additional Biologically Active Filters with associated Electrical Improvements
- Additional Washwater Recovery Basin and associated pumping.
- Additional Transfer Pumping Station
- Additional Ground Storage Tank
- Additional HSPS Electrical Building
- New or Additional Emergency Power Facilities
- Additional Maintenance Facility
- New Onsite Sewage Facility
- Additional Chemical Feed Provisions
- Modifications to HSPS including increased pumping capacity.
- Addition of Electrical Buildings and equipment as needed for the scope above

We understand that Denton will accomplish the above scope of work by employing the CMAR process of project procurement. Bringing on an Engineering Firm and Construction Manager in the very beginning allows both to work towards a common goal of fast tracking the project while at the same time minimizing cost through collaboration.

It is anticipated that the preconstruction phase of this project will begin no later than January 1st 2025 with an approximate duration of 34 months. The construction phase is anticipated to last approximately 38 months with final completion by the end of 2030.

EXHIBIT B – HOURLY RATE SCHEDULE

The schedule of hourly labor rates for employees of the CM@Risk and its Subconsultants follow and are based on the approved proposal submitted to the City.

LIST OF CLASSIFICATIONS:

<u>Classification</u>	<u>Direct Labor Rate</u>	<u>Total Labor Rate</u>
Chief Estimator/VP	\$ 145.00	\$ 172.06
Project Director	\$ 125.00	\$ 172.06
Preconstruction Director	\$ 114.00	\$ 172.06
Preconstruction Manager	\$ 100.00	\$ 172.06
Sr. Estimator/Estimator	\$ 85.00	\$ 159.16
Project Manager	\$ 111.00	\$ 172.06
Superintendent	\$ 121.50	\$ 172.06
Scheduler	\$ 105.75	\$ 141.95
Project Engineer	\$ 62.35	\$ 107.54
Administrator	\$ 47.00	\$ 75 .00

EXHIBIT C – SUBMITTAL REQUIREMENTS FOR THE GMP

GMP submittal, one copy for review.

One printed, signed original copy and a digital copy in searchable PDF format will be requested by the City of Denton prior to contract execution.

Table of Contents:

- 1. Scope of Work
 - 2. Summary of the GMP
 - 3. Schedule of Values – summary spreadsheet and backup documents
 - 4. List of Plans and Specifications used for GMP Proposal
 - 5. List of clarification and assumptions
 - 6. Project Schedule
1. Scope of work will consist of a brief description of the work to be performed by CM@Risk and major points that the CM@Risk and the City must be aware of pertaining to the scope. (normally one paragraph is sufficient.)
2. A summary of the GMP with a total for each of the components of the GMP as listed in its definition in Article 1 as shown in the table below:

The general conditions fee includes bond and insurance cost. All costs should be listed individually for future use.

PROJECT #: DATE:
PROJECT NAME:

GMP Summary					AMOUNT
A.	Cost of the Work (Labor, Materials, Equipment, Warranty)				\$
B.	CM@Risk's Contingency				\$
C.	Additional Marketplace Risk Contingency				\$
INDIRECT COSTS				RATE	
D.	Construction Fee			%	\$
E.	General Conditions				\$
	E1	Payment and Performance Bond	\$		
	E2	Insurance	\$		
	E3	Two Year Maintenance Bond	\$		
			G. TOTAL GMP		\$
			H. Owner's Contingency		\$
I. Contract Amount					\$

Substantial Completion XXX Calendar Days

Final Completion XXX Calendar Days

(Do not acquire bond or insurance until notified by the City of Denton Project Manager.)

3. Schedule of Values – Spread sheet with the estimated bid or cost organized by subcontract categories, allowances, bid contingency, general conditions costs, taxes, bonds, insurances, and the CM@Risk's construction phase fee. The supporting documents for the spreadsheet must be provided in an organized manner that correlates with the schedule of values. The backup information shall consist of the request for bids, bids received, and clarification s and assumptions used for each of the particular bid item listed on the schedule of values, if applicable.
4. A final variance report shall also be provided, showing the delta between the CM@Risk's most recent Control Estimate and the proposed GMP items a level of detail acceptable to the City and their consultants.
5. A final variance report shall also be provided, showing the delta between the CM@Risk's most recent Control Estimate and the proposed GMP items a level of detail acceptable to the City and their consultants.
6. A list of the Plans and Specifications with latest issuance date including all addenda used in preparation of the GMP proposal. The plans used for the GMP must be date stamped and signed by CM@Risk, Design Consultant, and Project Manager using the format below.

Plans Used For Preparation of GMP No.	
CM@Risk	Date
Design Consultant	Date
Project Manager	Date

7. A list of the clarifications and assumptions made by the CM@Risk in the preparation of the GMP proposal, to supplement the information contained in the documents.
8. A Critical Path Method (CPM) diagram construction schedule.
9. The CM@Risk shall provide any of the above submittals in their native file format (e.g. .docx, .xls, .xer, etc.) before GMP approval, when requested by the City or their consultants.
10. The CM@Risk shall provide any of the above submittals in their native file format (e.g. .docx, .xls, .xer, etc.) before GMP approval, when requested by the City or their consultants.

NOTE: The submittal package must be kept as simple as possible all on 8 ½ x 11 sheets. Color or shading must be kept to a minimum. If used, make sure the color or shading will not affect the reproduction of the submittal in black and white.

Final GMP submittal will consist of the following:

1. One printed copy of the GMP and one digital copy in searchable PDF format.
2. One copy of the plans and technical specifications used to arrive at the GMP (signed by Design Professional, CM@Risk and City's Project Manager).

For questions regarding the submittal requirements, please contact City of Denton Project Manager.

EXHIBIT D – TEXAS WATER DEVELOPMENT BOARD SUPPLEMENTAL CONTRACT CONDITIONS

The information provided in this article is from the Texas Water Development Board (TWDB) document TWDB-0552 revised in November 2018. The TWDB forms and guidance documents noted in this Article may be accessed through the TWDB's Financial Assistance website at <http://www.twdb.texas.gov/financial/instructions/index.asp>.

8.1 SUPERSESSSION

- 8.1.1 The Owner and Contractor agree that the TWDB Supplemental Conditions apply to the work eligible for Texas Water Development Board assistance to be performed under this contract and these clauses supersede any conflicting provisions of this contract.

8.2 PRIVITY OF CONTRACT

- 8.2.1 Funding for this project is expected to be provided in part by a loan or grant from the Texas Water Development Board. Neither the state of Texas, nor any of its departments, agencies or employees is, or will be, a party to this contract or any lower tier contract. This contract is subject to applicable provisions in 31 TAC Chapter 363 in effect on the date of the assistance award for this project.

8.3 DEFINITIONS

- 8.3.1 The term "Owner" means the local entity contracting for the construction services.
- 8.3.2 The term "TWDB" means the Executive Administrator of the Texas Water Development Board, or other person who may be at the time acting in the capacity or authorized to perform the functions of such Executive Administrator, or the authorized representative thereof.
- 8.3.3 The term "Engineer" means to the Owner's authorized consulting engineer for the project.

8.4 LAWS TO BE OBSERVED

- 8.4.1 In the execution of the contract, the Contractor must comply with all applicable local, state and federal laws, including but not limited to laws concerned with labor, safety, minimum wages, and the environment. The Contractor shall be familiar with and at all times shall observe and comply with all federal, state, and local laws, ordinances and regulations which in any manner affect the conduct of the work, and shall indemnify and save harmless the Owner, Texas Water Development Board, and their representatives against any claim arising from violation of such law, ordinance or regulation by the Contractor, their Subcontractor or their employees.

8.5 REVIEW BY OWNER AND TWDB

- 8.5.1 The Owner, authorized representatives and agents of the Owner, and the TWDB shall, at all times have access to and be permitted to observe and review all work, materials, equipment, payrolls, personnel records, employment conditions, material invoices, and other relevant data and records pertaining to this contract, provided, however, that all instructions and approval with respect to the work will be given to the Contractor only by the Owner through authorized representatives or agents.
- 8.5.2 Any such inspection or review by the TWDB shall not subject the state of Texas, or its representatives, to any action for damages.

8.6 PERFORMANCE AND PAYMENT BONDS

- 8.6.1 Each Contractor awarded a construction contract must furnish performance and payment bonds:
- 8.6.1.1 The performance bond shall include without limitation guarantees that work done under the contract will be completed and performed according to approved plans and specifications and in accordance with sound construction principles and practices;
- 8.6.1.2 The performance and payment bonds shall be in a penal sum of not less than 100 percent of the contract price and remain in effect for one year beyond the date of approval by the Engineer or the political subdivision; and
- 8.6.1.3 The Contractor shall utilize a surety company that is authorized to do business in Texas in accordance with Surety Bonds and Related Instruments, Chapter 3503 of the Insurance Code.

8.7 PAYMENT SCHEDULE AND COST BREAKDOWN

8.7.1 The Contractor shall submit for approval immediately after execution of the Agreement a carefully prepared Progress Schedule, showing the proposed dates of starting and completing each of the various sections of the work, the anticipated monthly payments to become due to the Contractor, and the accumulated percent of progress each month.

8.7.2 The following paragraph applies only to contractors awarded on a lump sum contract price:

COST BREAKDOWN – The Contractor shall submit to the Owner a detailed breakdown of the estimated cost of all work to be accomplished under the contract, so arranged and itemized as to meet the approval of the Owner or funding agencies. This breakdown shall be submitted promptly after execution of the agreement and before any payment is made to the Contractor for the work performed under the contract. After approval by the Owner the unit prices established in the breakdown shall be used in estimating the amount of partial payments to be made to the Contractor.

8.8 WORKER'S COMPENSATION INSURANCE COVERAGE (AS APPLICABLE, CONSISTENT WITH TEXAS LABOR CODE § 406.096)

8.7.1 The Contractor shall certify in writing that they provide worker's compensation insurance coverage for each employee of the Contractor employed on the public project.

8.7.2 Each Subcontractor on the public project shall provide such a certificate relating to coverage of the Subcontractor's employees to the General Contractor, who shall provide the Subcontractor's certificate to the governmental entity.

8.7.3 A Contractor who has a contract that requires worker's compensation insurance coverage may provide the coverage through a group plan or other method satisfactory to the governing body of the governing entity.

8.7.4 The employment of a maintenance employee by an employer who is not engaging in building or construction as the employer's primary business does not constitute engaging in building or construction.

8.7.5 In this section:

8.7.5.1 "Building or construction" includes:

- (a) Erecting or preparing to erect a structure, including a building, bridge, roadway, public utility facility, or related appurtenance;
- (b) Remodeling, extending, repairing, or demolishing a structure; or
- (c) Otherwise improving real property or an appurtenance to real property through similar activities.

8.7.5.2 "Government entity" means this state or political subdivision of this state. The term includes a municipality.

8.9 U.S. IRON AND STEEL (DOES NOT APPLY TO SWIFT PROJECTS FUNDED PRIOR TO MAY 1, 2019)

8.9.1 The Contractor acknowledges to and for the benefit of the Applicant ("Purchaser") and the Texas Water Development Board ("TWDB") that it understands the goods and services under this Agreement are being funded with monies made available by the State Water Implementation Fund for Texas (SWIFT). That these funds have statutory requirements commonly known as "United States Iron and Steel" that requires all of the iron and steel products used in the project to be produced in the United States ("United States Iron and Steel Requirement") including iron and steel products provided by the Contractor pursuant to this Agreement. The Contractor hereby represents and warrants to and for the benefit of the Purchaser and the TWDB that (a) the Contractor has reviewed and understands the United States Iron and Steel Requirement, (b) all of the iron and steel products used in the project will be and/or have been produced in the United States in a manner that complies with the United States Iron and Steel Requirement, unless a waiver of the requirement is approved, and (c) the Contractor will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the United States Iron and Steel Requirement, as may be requested by the Purchaser or the TWDB. Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the Purchaser to enforce this Agreement and recover as damages against the Contractor any loss, expense, or cost (including without limitation attorney's fees) incurred by the Purchaser resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the TWDB or any damages owed to the TWDB by the Purchaser). Neither this paragraph (nor any other provision of this Agreement necessary to give this paragraph force or effect) shall be amended or waived without the prior written consent of the TWDB.

- 8.9.2 In the execution of the Contract, the Contractor shall be familiar with and at all times shall observe and comply with all applicable federal, state, and local laws, ordinances and regulations concerned with the use of iron and steel made in the United States which in any manner affect the conduct of the work, and shall indemnify and save harmless the Texas Water Development Board against any claim arising from violation of any such law, ordinance or regulation by the Contractor or by their Subcontractor or their employees.

8.10 PREVAILING WAGE RATES

- 8.10.1 This contract is subject to Government Code Chapter 2258 concerning payment of Prevailing Wage Rates. The Owner will determine what the general prevailing rates are in accordance with the statute. The applicable provisions include, but are not limited to the following:

8.10.1.1 §2258.021. Right to be Paid Prevailing Wage Rates

- (a) A worker employed on a public work by or on behalf of the state or a political subdivision of the state shall be paid:
 - (1) Not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the work is performed; and
 - (2) Not less than the general prevailing rate of per diem wages for legal holiday and overtime work.
- (b) Subsection (a) does not apply to maintenance work.
- (c) A worker is employed on a public work for the purposes of this section if the worker is employed by a Contractor or Subcontractor in the execution of a contract for the public work with the state, a political subdivision of the state, or any officer or public body of the state or a political subdivision of the state.

8.10.1.2 §2258.023. Prevailing Wage Rates to be Paid by Contractor and Subcontractor; Penalty

- (a) The Contractor who is awarded a contract by a public body or a Subcontractor of the Contractor shall pay not less than the rates determined under Section 2258.022 to a worker employed by it in the execution of the contract.
- (b) A Contractor or Subcontractor who violates this section shall pay to the state or a political subdivision of the state on whose behalf the contract is made, \$60 for each worker employed for each calendar day or part of the day that the worker is paid less than the wage rates stipulated in the contract. A public body awarding a contract shall specify this penalty in the contract.
- (c) A Contractor or Subcontractor does not violate this section if a public body awarding a contract does not determine the prevailing wage rates and specify the rates in the contract as provided by Section 2258.022.
- (d) The public body shall use any money collected under this section to offset the costs incurred in the administration of this chapter.
- (e) A municipality is entitled to collect a penalty under this section only if the municipality has a population of more than 10,000.

8.10.1.3 §2258.024. Records

- (a) A Contractor and Subcontractor shall keep a record showing:
 - (1) The name and occupation of each worker employed by the Contractor or Subcontractor in the construction of the public work; and
 - (2) The actual per diem wages paid to each worker.
- (b) The record shall be open at all reasonable hours to inspection by the officers and agents of the public body.

8.10.1.4 §2258.025. Payment Greater Than Prevailing Rate Not Prohibited

- (a) This chapter does not prohibit the payment to a worker employed on a public work an amount greater than the general prevailing rate of per diem wages.

8.11 PAYMENTS

8.11.1 Progress Payments

- 8.11.1.1 The Contractor shall prepare their requisition for progress payment as of the last day of the month and submit it, with the required number of copies, to the Engineer for review. Except as provided in paragraph (3) of this subsection, the amount of the payment due the Contractor shall be determined by adding to the total value of work completed to date, the value of materials properly stored on the site and deducting: (1) five percent (5%) minimum of the total amount, as a retainage and (2) the amount of all previous payments. The total value of work completed to date shall be based on the actual or estimated quantities of work completed and on the unit prices contained in the agreement (or cost breakdown approved pursuant to section 8.7.2 relating to

lump sum bids) and adjusted by approved change orders. The value of materials properly stored on the site shall be based upon the estimated quantities of such materials and the invoice prices. Copies of all invoices shall be available for inspection by the Engineer.

- 8.11.1.2 The Contractor shall be responsible for the care and protection of all materials and work upon which payments have been made until final acceptance of such work and materials by the Owner. Such payments shall not constitute a waiver of the right of the Owner to require the fulfillment of all terms of the Contract and the delivery of all improvements embraced in this contract complete and satisfactory to the Owner in all details.
- 8.11.1.3 This clause applies to contracts when the Owner is a District or Authority. The retainage shall be ten percent of the amount otherwise due until at least fifty percent of the work has been completed. After the project is fifty percent completed, and if the District or Authority's Board finds that satisfactory progress is being made, then the District may authorize any of the remaining progress payments to be made in full. The District is not obligated to pay interest earned on the first 50% of work completed (Texas Water Code Sec. 49.276(d)).
- 8.11.1.4 The five percent (5%) retainage of the progress payments due to the Contractor may not be reduced until the building of the project is substantially complete and a reduction in the retainage has been authorized by the TWDB.
- 8.11.2 Withholding Payments. The Owner may withhold from any payment otherwise due the Contractor so much as may be necessary to protect the Owner and if so elects may also withhold any amounts due from the Contractor to any Subcontractors or material dealers, for work performed or material furnished by them. The foregoing provisions shall be construed solely for the benefit of the Owner and will not require the Owner to determine or adjust any claims or disputes between the Contractor and their Subcontractors or Material dealers, or to withhold any monies for their protection unless the Owner elects to do so. The failure or refusal of the Owner to withhold any monies from the Contractor shall in no way impair the obligations of any surety or sureties under any bond or bonds furnished under this contract.
- 8.11.3 Payments Subject to Submission of Certificates. Each payment to the Contractor by the Owner shall be made subject to submission by the Contractor of all written certifications required of the Contractor, their Subcontractors and other general and special conditions elsewhere in this contract.
- 8.11.4 Final Payment
 - 8.11.4.1 Upon satisfactory completion of the work performed under this contract, as a condition before final payment under this contract or as a termination settlement under this contract the Contractor shall execute and deliver to the Owner a release of all claims against the Owner arising under, or by virtue of, this contract, except claims which are specifically exempted by the Contractor to be set forth therein. Unless otherwise provided in this contract, by state law or otherwise expressly agreed to by the parties to this contract, final payment under this contract or settlement upon termination of this contract shall not constitute a waiver of the Owner's claims against the Contractor or their sureties under this contract or applicable performance and payment bonds.
 - 8.11.4.2 After final inspection and acceptance by the Owner of all work under the Contract, the Contractor shall prepare their requisition for final payment which shall be based upon the carefully measured or computed quantity of each item of work at the applicable unit prices stipulated in the Agreement or cost breakdown (if lump sum), as adjusted by approved change orders. The total amount of the final payment due to the Contractor under this contract shall be the amount computed as described above less all previous payments.
 - 8.11.4.3 The retainage and its interest earnings, if any, shall not be paid to the Contractor until the TWDB has authorized a reduction in, or release of, retainage on the contract work.
 - 8.11.4.4 Withholding of any amount due to the Owner, under general and/or special conditions regarding "Liquidated Damages" shall be deducted from the final payment due the Contractor.

8.12 ARCHEOLOGICAL DISCOVERIES AND CULTURAL RESOURCES

- 8.12.1 No activity which may affect properties listed or properties eligible for listing in the National Register of Historic Places or eligible for designation as a State Archeological Landmark is authorized until the Owner has complied with the provisions of the National Historic Preservation Act and the Antiquities Code of Texas. The Owner has previously coordinated with the appropriate agencies and

impacts to known cultural or archeological deposits have been avoided or mitigated. However, the Contractor may encounter unanticipated cultural or archeological deposits during construction.

- 8.12.2 If archeological sites or historic structures which may qualify for designation as a State Archeological Landmark according to the criteria in 13 TAC Chapter 26, or that may be eligible for listing on the National Register of Historic Places in accordance with 36 CFR Part 800, are discovered after construction operations are begun, the Contractor shall immediately cease operations in that particular area and notify the Owner, the TWDB, and the Texas Historical Commission, 1511 N. Colorado St. , P. O. Box 12276, Capitol Station, Austin, Texas 78711-2276. The Contractor shall take reasonable steps to protect and preserve the discoveries until they have been inspected by the Owner's representative and the TWDB. The Owner will promptly coordinate with the State Historic Preservation Officer and any other appropriate agencies to obtain any necessary approvals or permits to enable the work to continue. The Contractor shall not resume work in the area of the discovery until authorized to do so by the Owner.

8.13 ENDANGERED SPECIES

- 8.13.1 No activity is authorized that is likely to jeopardize the continued existence of a threatened or endangered species as listed or proposed for listing under the Federal Endangered Species Act (ESA), and/or the State of Texas Parks and Wildlife Code on Endangered Species, or to destroy or adversely modify the habitat of such species.
- 8.13.2 If a threatened or endangered species is encountered during construction, the Contractor shall immediately cease work in the area of the encounter and notify the Owner, who will immediately implement actions in accordance with the ESA and applicable State statutes. These actions shall include reporting the encounter to the TWDB, the U.S. Fish and Wildlife Service, and the Texas Parks and Wildlife Department, obtaining any necessary approvals or permits to enable the work to continue, or implement other mitigation actions. The Contractor shall not resume construction in the area of the encounter until authorized to do so by the Owner.

8.14 HAZARDOUS MATERIALS

- 8.14.1 Materials utilized in the project shall be free of any hazardous materials, except as may be specifically provided for in the specifications.
- 8.14.2 If the Contractor encounters existing material on sites owned or controlled by the Owner or in material sources that are suspected by visual observation or smell to contain hazardous materials, the Contractor shall immediately notify the Engineer and the Owner. The Owner will be responsible for the testing and removal or disposal of hazardous materials on sites owned or controlled by the Owner. The Owner may suspend the work, wholly or in part during the testing, removal or disposal of hazardous materials on sites owned or controlled by the Owner.

8.15 CHANGES

- 8.15.1 The Owner may at any time, without notice to any surety, by written order designated or indicated to be a change order, make changes in the work within the general scope of the contract, including but not limited to changes:
- 8.15.1.1 In the specifications (including drawings and designs);
- 8.15.1.2 In the time, method or manner of performance of the work;
- 8.15.1.3 To decrease or increase the quantity of work to be performed or materials, equipment or supplies to be furnished;
- 8.15.2 The total price of a contract may not be increased by a change order unless provision has been made for the payment of the added cost by the appropriation of current funds or bond funds for that purpose, by the authorization of the issuance of certificates, or by a combination of those procedures.
- 8.15.3 A contract with an original contract price of \$1 million or more may not be increased by more than 25 percent. If a change order for a contract, with an original contract price of less than \$1 million, increases the contract amount to \$1 million or more, subsequent change orders may not increase the revised contract amount by more than 25 percent.
- 8.15.4 A governing body may grant authority to an official or employee responsible for purchasing or for administering a contract to approve a change order that involves an increase or decrease of \$50,000 or less.

8.15.5 Changes that involve an increase in price will be supported by documentation of the cost components. For projects funded through the EDAP program, or with grant proceeds, TWDB staff may request this information to be provided in a format equivalent to the Cost and Pricing Information form (No. WRD-277).

8.15.6 Any change orders involving a change in the project requiring a relocation of project components, sizing, or process may require additional environmental approval. A map and description of the proposed changes should be sent to the TWDB Environmental Reviewer for coordination and approval as soon as possible to avoid any delay.

8.16 OPERATION AND MAINTENANCE MANUALS AND TRAINING

8.15.1 The Contractor shall obtain installation, operation, and maintenance manuals from manufacturers and suppliers for equipment furnished under the contract. The Contractor shall submit three copies of each complete manual to the Engineer within 90 days after approval of shop drawings, product data, and samples, and not later than the date of shipment of each item of equipment to the project site or storage location.

8.15.2 The Owner shall require the Engineer to promptly review each manual submitted, noting necessary corrections and revisions. If the Engineer rejects the manual, the Contractor shall correct and resubmit the manual until it is acceptable to the Engineer as being in conformance with the design concept of the project and for compliance with information given in the contract documents. Owner may assess Contractor a charge for reviews of same items in excess of three (3) times. Such procedure shall not be considered cause for delay.

8.15.3 Acceptance of manuals by Engineer does not relieve Contractor of any requirements of terms of Contract.

8.15.4 The Contractor shall provide the services of trained, qualified technicians to check final equipment installation, to assist as required in placing same in operation, and to instruct operating personnel in the proper manner of performing routine operation and maintenance of the equipment.

8.15.5 Operations and maintenance manuals specified hereinafter are in addition to any operation, maintenance, or installation instructions required by the Contractor to install, test, and start-up the equipment.

8.15.6 Each manual is to be bound in a folder and labeled to identify the contents and project to which it applies. The manual shall contain the following applicable items:

8.15.6.1 A listing of the manufacturer's identification, including order number, model, serial number, and location of parts and service centers.

8.15.6.2 A list of recommended stock of parts, including part number and quantity.

8.15.6.3 Complete replacement parts list.

8.15.6.4 Performance data and rating tables.

8.15.6.5 Specific instructions for installation, operation, adjustment, and maintenance.

8.15.6.6 Exploded view drawings for major equipment items.

8.15.6.7 Lubrication requirements.

8.15.6.8 Complete equipment wiring diagrams and control schematics with terminal identification.

8.17 AS-BUILT DIMENSIONS AND DRAWINGS

8.17.1 Contractor shall make appropriate daily measurements of facilities constructed and keep accurate records of location (horizontal and vertical) of all facilities.

8.17.2 Upon completion of each facility, the Contractor shall furnish the Owner with one set of direct prints, marked with red pencil, to show as-built dimensions and locations of all work constructed. As a minimum, the final drawings shall include the following:

8.17.2.1 Horizontal and vertical locations of work.

8.17.2.2 Changes in equipment and dimensions due to substitutions.

8.17.2.3 "Nameplate" data on all installed equipment.

8.17.2.4 Deletions, additions, and changes to scope of work.

8.17.2.5 Any other changes made.

8.18 CLOSE-OUT PROCEDURES

8.18.1 To close-out the contract and release final retainage, the following steps must be completed:

8.18.1.1 TWDB Staff must conduct a construction contract final inspection (CCFI).

8.18.1.2 The following submittals must be received, reviewed, and accepted by TWDB:

- (a) The final change order, adjustment of quantities, or a statement that all change orders have previously been submitted and there will be no more change orders;
- (b) The final pay request from the Contractor;
- (c) An affidavit by the Contractor that all bills have been paid;
- (d) Certification by the consulting Engineer that the work has been completed and was constructed in accordance with the approved plans and specifications and sound engineering principles and construction practices;
- (e) Acceptance of the project by the Owner in the form of a written resolution or other formal action;
- (f) Notification of the beginning date of the warranty period for the contract; and
- (g) Confirmation that the Owner has received as-built drawings from the Contractor.
- (h) Certificate of Compliance with U.S. Iron and Steel Requirements (TWDB-1105A)

8.18.1.3 TWDB will issue a Certificate of Approval allowing the release of retainage.

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) and by City of Denton Ethics Code, Ordinance 18-757.

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.

Archer Western Construction, 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._____
Name of Officer

Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government 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.

4 ☐ I have no Conflict of Interest to disclose.**5**

DocuSigned by:

Daniel Walsh Jr.

8/20/2025

Signature of vendor doing business with the governmental entity

Date

CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

A complete copy of Chapter 176 of the Local Government Code may be found at [http://www.statutes.legis.state.tx.us/ Docs/LG/htm/LG.176.htm](http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm). For easy reference, below are some of the sections cited on this form.

Local Government Code § 176.001(1-a): "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

Local Government Code § 176.003(a)(2)(A) and (B):

- (A) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:
 - (2) the vendor:
 - (A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that
 - (i) a contract between the local governmental entity and vendor has been executed; or
 - (ii) the local governmental entity is considering entering into a contract with the vendor;
 - (B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:
 - (i) a contract between the local governmental entity and vendor has been executed; or
 - (ii) the local governmental entity is considering entering into a contract with the vendor.

Local Government Code § 176.006(a) and (a-1)

- (a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:
 - (1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);
 - (2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or
 - (3) has a family relationship with a local government officer of that local governmental entity.
- (a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:
 - (1) the date that the vendor:
 - (A) begins discussions or negotiations to enter into a contract with the local governmental entity; or
 - (B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or
 - (2) the date the vendor becomes aware:
 - (A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);
 - (B) that the vendor has given one or more gifts described by Subsection (a); or
 - (C) of a family relationship with a local government officer.

City of Denton Ethics Code Ordinance Number 18-757

Definitions:

Relative: a family member related to a City Official within the third 3rd degree of affinity (marriage) or consanguinity (blood or adoption)

City Official: for purpose of this article, the term consists of the Council Members, Department Heads, or member of the Board of Ethics, Planning and zoning Commission Members, Board of Adjustment, Historic Landmark Commission, or Public Utilities Board

Vendor: a person who provides or seeks to provide goods, services, and/or real property to the City in exchange for compensation. This definition does not include those property owners from whom the City acquires public right-of-way or other real property interests for public use.

Per the City of Denton Ethics Code, Section 2-273. – Prohibitions

- (3) It shall be a violation of this Article for a Vendor to offer or give a Gift to City Official exceeding fifty dollars (\$50.00) per gift, or multiple gifts cumulatively valued at more than two hundred dollars (\$200.00) per a single fiscal year.

Per the City of Denton Ethics Code, Section 2-282. – Disposition (b), (5) Ineligibility

If the Board of Ethics finds that a Vendor has violated this Article, the Board may recommend to the City Manager that the Vendor be deemed ineligible to enter into a City contract or other arrangement for goods, services, or real property, for a period of one (1) year.

Certificate Of Completion

Envelope Id: D9BE4514-1870-4EC7-B9C8-447928F9A9B2

Status: Sent

Subject: Please DocuSign: City Council Contract 8590 RRWTP CMAR Expansion Project

Source Envelope:

Document Pages: 39

Signatures: 4

Envelope Originator:

Certificate Pages: 6

Initials: 3

Erica Garcia

AutoNav: Enabled

901B Texas Street

Envelopeld Stamping: Enabled

Denton, TX 76209

Time Zone: (UTC-06:00) Central Time (US & Canada)

erica.garcia@cityofdenton.com

IP Address: 198.49.140.10

Record Tracking

Status: Original

Holder: Erica Garcia

Location: DocuSign

8/18/2025 2:30:04 PM

erica.garcia@cityofdenton.com

Signer Events

Signature

Timestamp

Erica Garcia

Completed

Sent: 8/18/2025 3:17:33 PM

erica.garcia@cityofdenton.com

Viewed: 8/18/2025 3:17:43 PM

Senior Buyer

Signed: 8/18/2025 3:20:38 PM

City of Denton

Using IP Address: 198.49.140.10

Security Level: Email, Account Authentication (None)

Electronic Record and Signature Disclosure:

Not Offered via DocuSign

Lori Hewell

Sent: 8/18/2025 3:20:42 PM

lori.hewell@cityofdenton.com

Viewed: 8/18/2025 4:11:11 PM

Purchasing Manager

Signed: 8/18/2025 4:11:49 PM

City of Denton

Security Level: Email, Account Authentication (None)

Signature Adoption: Pre-selected Style

Using IP Address: 198.49.140.104

Electronic Record and Signature Disclosure:

Not Offered via DocuSign

Marcella Lunn

DocuSigned by:
Marcella Lunn
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Sent: 8/18/2025 4:11:52 PM

marcella.lunn@cityofdenton.com

Viewed: 8/18/2025 4:54:25 PM

Senior Deputy City Attorney

Signed: 8/18/2025 4:57:23 PM

City of Denton

Security Level: Email, Account Authentication (None)

Signature Adoption: Pre-selected Style

Using IP Address: 198.49.140.10

Electronic Record and Signature Disclosure:

Not Offered via DocuSign

Daniel Walsh Jr.

DocuSigned by:
Daniel Walsh Jr.
FDEB784E59884BC...

Sent: 8/18/2025 4:57:27 PM

dpwalsh@walshgroup.com

Viewed: 8/20/2025 9:56:14 AM

President

Signed: 8/20/2025 9:57:39 AM

The Walsh Group

Security Level: Email, Account Authentication (None)

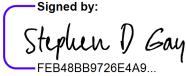
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Using IP Address: 4.2.190.34

Electronic Record and Signature Disclosure:

Accepted: 8/9/2019 11:22:32 AM

ID: 420f2f0f-f56-4257-8bd7-544fb0ce7859

Signer Events	Signature	Timestamp
Denis Qualls Denis.Qualls@cityofdenton.com Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Accepted: 8/28/2025 4:53:36 PM ID: 88b1b2d8-64f1-48d7-9934-608a3b376409	Initial Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 8/20/2025 9:57:43 AM Resent: 8/28/2025 10:48:34 AM Resent: 9/3/2025 9:37:09 AM Resent: 9/3/2025 10:21:23 AM Viewed: 9/3/2025 12:55:57 PM Signed: 9/3/2025 3:38:46 PM
Kyle Pedigo kyle.pedigo@cityofdenton.com Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Accepted: 9/3/2025 3:59:42 PM ID: 6073d1da-16a9-4d49-a038-ca0098e28c4a	Initial Signature Adoption: Pre-selected Style Using IP Address: 2600:6c56:55f0:6d0:7517:f1a8:f69:a061	Sent: 9/3/2025 3:38:51 PM Viewed: 9/3/2025 3:59:42 PM Signed: 9/3/2025 4:13:07 PM
Stephen D Gay stephen.gay@cityofdenton.com General Manager Water Utilities Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Accepted: 9/5/2025 3:07:07 PM ID: f38f2c95-5a99-4d49-9043-08c22b91bb5c	Signed by: FEB48BB9726E4A9... Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 9/3/2025 4:13:11 PM Resent: 9/5/2025 3:04:28 PM Viewed: 9/5/2025 3:07:07 PM Signed: 9/5/2025 3:07:39 PM
Cheyenne Defee cheyenne.defee@cityofdenton.com Procurement Administration Supervisor City of Denton Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign		Sent: 9/5/2025 3:07:45 PM
Sara Hensley sara.hensley@cityofdenton.com Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign		
Ingrid Rex Ingrid.Rex@cityofdenton.com Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign		

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Agent Delivery Events	Status	Timestamp

Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp
Cheyenne Defee cheyenne.defee@cityofdenton.com Procurement Administration Supervisor City of Denton Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign	COPIED	Sent: 8/18/2025 3:20:41 PM
Gretna Jones gretna.jones@cityofdenton.com Legal Secretary City of Denton Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign	COPIED	Sent: 9/5/2025 3:07:44 PM Viewed: 9/5/2025 3:46:57 PM
City Secretary Office citysecretary@cityofdenton.com Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign		
Kathrine Koch katherine.koch@cityofdenton.com Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Accepted: 9/3/2025 9:47:32 AM ID: e3b19f67-b070-45ad-84af-e819affb7bd5		
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Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	8/18/2025 3:17:33 PM
Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

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If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

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You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: purchasing@cityofdenton.com

To advise City of Denton of your new e-mail address

To let us know of a change in your e-mail address where we should send notices and disclosures electronically to you, you must send an email message to us at melissa.kraft@cityofdenton.com and in the body of such request you must state: your previous e-mail address, your new e-mail address. We do not require any other information from you to change your email address..

In addition, you must notify DocuSign, Inc to arrange for your new email address to be reflected in your DocuSign account by following the process for changing e-mail in DocuSign.

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To inform us that you no longer want to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your DocuSign account, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an e-mail to purchasing@cityofdenton.com and in the body of such request you must state your e-mail, full name, US Postal Address, telephone number, and account number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

Required hardware and software

Operating Systems:	Windows2000? or WindowsXP?
Browsers (for SENDERS):	Internet Explorer 6.0? or above
Browsers (for SIGNERS):	Internet Explorer 6.0?, Mozilla FireFox 1.0, NetScape 7.2 (or above)
Email:	Access to a valid email account
Screen Resolution:	800 x 600 minimum
Enabled Security Settings:	•Allow per session cookies •Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection

** These minimum requirements are subject to change. If these requirements change, we will provide you with an email message at the email address we have on file for you at that time providing you with the revised hardware and software requirements, at which time you will have the right to withdraw your consent.

Acknowledging your access and consent to receive materials electronically

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please verify that you were able to read this electronic disclosure and that you also were able to print on paper or electronically save this page for your future reference and access or that you were able to e-mail this disclosure and consent to an address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format on the terms and conditions described above, please let us know by clicking the 'I agree' button below.

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- I can access and read this Electronic CONSENT TO ELECTRONIC RECEIPT OF ELECTRONIC RECORD AND SIGNATURE DISCLOSURES document; and
- I can print on paper the disclosure or save or send the disclosure to a place where I can print it, for future reference and access; and
- Until or unless I notify City of Denton as described above, I consent to receive from exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to me by City of Denton during the course of my relationship with you.